



# North Australian Aboriginal Justice Agency

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8 October 2008

Committee Secretary  
Community Affairs Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Committee Secretary

**Re: Inquiry into Social Security and Veterans' Entitlements Legislation  
Amendment (Schooling Requirements) Bill 2008**

We have been advised that the Community Affairs Committee will be conducting public hearings on the Inquiry into Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) Bill 2008 (the "Bill") in Perth on 9 October 2008 and in Canberra on 3 November 2008.

NAAJA (the North Australian Aboriginal Justice Agency) and CAALAS (the Central Australian Aboriginal Legal Service) are the two Aboriginal and Torres Strait Islander Legal Services for the Northern Territory. We have advised the Committee that we will be making a joint submission to the Committee and have been invited to give oral evidence to the Committee by telephone on 3 November 2008.

We thank the Committee for the opportunity to provide oral evidence via telephone, however we are extremely concerned about the Committee's decision not to hold any hearings in the Northern Territory. We urge the Committee to re-consider this decision and to hold hearings in the Northern Territory given that six trial sites have been announced for this jurisdiction and only one site in Western Australia. We are particularly concerned about there being no hearings in the Northern Territory given that:

- a) we believe that there has been insufficient promotion of the Inquiry and that many stake holders in the Northern Territory will not have provided submissions;
- b) many of the important stakeholders for this Bill are Indigenous people living in remote communities, particularly the 6 trial sites. Some of these people may find the process of preparing written submissions to an Inquiry difficult because of language and cultural barriers. However, their views and experiences should be of fundamental importance to this Inquiry.

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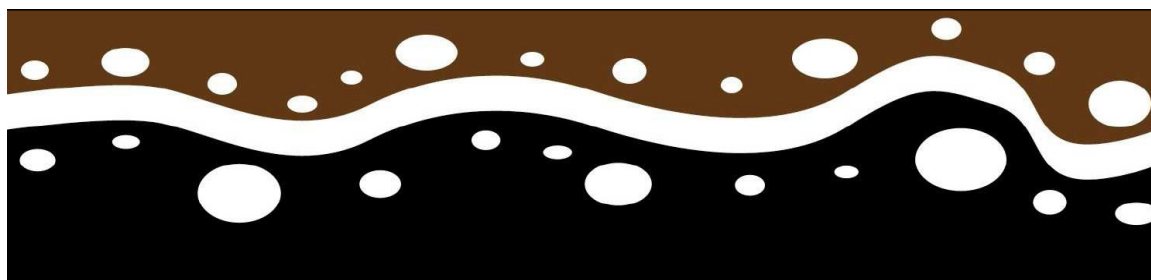
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**Joint submission by CAALAS and NAAJA to the  
Senate Community Affairs Committee on the Social  
Security and Veterans' Entitlements Legislation  
Amendment (Schooling Requirements) Bill 2008**

October 2008



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## Appendix A

## 1. Introduction

There are two Aboriginal and Torres Strait Islander Legal Services (**ATSILS**) in the Northern Territory (**NT**). The Central Australian Aboriginal Legal Aid Service (**CAALAS**) services the Southern Zone and the North Australian Aboriginal Justice Agency (**NAAJA**) services the Northern Zone. This is a joint submission by both ATSILS.

CAALAS and NAAJA have recently received one year's funding to provide advice, casework, community legal education and policy input regarding welfare rights issues, in particular relating to the Northern Territory Emergency Response (**NTER**). The two services are the main source of information and advice on welfare rights issues to Indigenous people in the NT.

NAAJA and CAALAS share the Commonwealth Government's concern about education outcomes (particularly remote education) in the NT. On a daily basis, we witness the difficulties experienced by our clients, their families and their communities because of the failures of the education system. We are well aware of the widening education gap in remote communities, with our juvenile and young adult clients often having lower levels of literacy and English than their parents and particularly their grandparents. However, we are strongly opposed to suspending or cancelling welfare payments as proposed in the Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) Bill 2008 (the **Bill**). We believe the proposed measures may exacerbate financial disadvantage without improving educational outcomes.

### 1.1 Executive Summary

The introduction of this Bill raises serious questions given that:

- there is already legislative provision for school attendance and school enrolment income management;
- the NT Government and the NTER Review have both acknowledged that remote Indigenous education in the Northern Territory is in crisis;
- the Federal Government has only just started its 4-year plan to ensure there is adequate capacity and resources within schools to meet the anticipated increases in school enrolments and attendance;
- the Federal Government has recognised suspension of income support payments is punitive and can be counter-productive; and
- the Bill is being trialed in a racially discriminatory manner.

In light of these concerns, we urge the Committee to recommend that the Bill not be passed and instead that Government be encouraged to develop positive approaches to engaging families that take into account the barriers to participation in school and school communities.

If this recommendation is not accepted, we urge that substantial safeguards are built into the legislation to ensure that the Bill delivers on the Government's stated objectives –

particularly that people will be suspended only as a “last resort” and cancelled only in “the most extreme cases”.<sup>1</sup>

We believe that whatever safeguards may be in place (and noting that the Bill in its current form provides none), suspensions and cancellations will inevitably occur.

We doubt whether these suspensions or cancellations will be effective in improving education outcomes given the complex, inter-related factors that experts cite as the reasons for poor school attendance and school enrolment rates.

We are concerned about adverse impacts on families under the proposed scheme, including that:

- families will suffer financial hardship;
- people will be confused by the impact of separate regimes affecting payments;
- there will be increased stress on families; and
- there is inadequate provision for complex family structures.

## 1.2 Public Hearings

We thank the Committee for the opportunity to provide oral evidence via telephone.

As outlined in our letter to the Committee of 8 October 2008 (Appendix A), we are disappointed that the Committee will only hold public hearings in Perth and Canberra, given that:

- a) we believe that there has been insufficient promotion of the Inquiry and that many stake holders in the NT will not have provided submissions; and
- b) many of the important stakeholders for this Bill are Indigenous people living in remote communities, particularly the 6 trial sites. Some of these people may find the process of preparing written submissions to an Inquiry difficult because of language and cultural barriers. However, their views and experiences should be of fundamental importance to this Inquiry.

## 2. Concerns about the introduction of the Bill

### 2.1 Why has school attendance and school enrolment income management not been utilised?

The NT trial sites for the Bill are Hermannsburg, Katherine, Katherine Town Camps, Wallace Rock Hole, Wadeye and Tiwi Islands. All of these sites, besides Katherine, are prescribed areas and subject to the income management regime pursuant to the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007*. People

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<sup>1</sup> Hon Julia Gillard MP, Second Reading Speech, Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) Bill 2008, Hansard, 27 August 2008.

within these communities will be subject to the schooling requirements compliance regime in addition to income management.

Part 3B of the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* provides for income management with respect to school attendance and school enrolment. To date, this type of income management has not commenced in the NT.

According to the NTER Review this was because:

“The Board understands that complex legal and administrative issues particularly relating to flow of data between the governments, linking education benchmarking to income management and holding families responsible for teenage school attendance, led the Rudd Government to develop a different approach to that formulated by the previous government.”<sup>2</sup>

This “different approach” is a far more draconian system whereby welfare payments will be suspended or cancelled for non-compliance, rather than quarantined.

Moreover, this “different approach” would seemingly suffer from the same complex legal and administrative issues relating to flow of data between the governments, linking education benchmarking to income suspension and cancellation and holding families responsible for teenage school attendance.

Perhaps this is why at one stage the Government appeared to have confused the operation of the two different schemes. Both the Government’s “One Year On” report and the accompanying FAHSCIA web page state that:

“further welfare-reform measure linking parents’ welfare payments to their children’s school enrolment and attendance will begin in 2008-09, initially in six Northern Territory communities and two urban areas in other States. This will be the first use of income management to tackle educational outcomes for children.”<sup>3</sup>

This appears to be a reference to the Bill, yet the Bill does not provide for income management but rather to suspension or cancellation of Centrelink payments. This is concerning considering the Schooling Requirements regime was first announced on 13 May 2008.<sup>4</sup>

#### **Recommendation 1**

That the Government provide urgent clarification about why the school attendance and school enrolment income management provisions of the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* will not be utilised.

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2 Peter Yu, Marcia Ella Duncan and Bill Gray, “Northern Territory Emergency Response: Report of the NTER Review Board”, October 2008, p 29.

3 Commonwealth of Australia, “Northern Territory Emergency Response: One Year On”, June 2008, p 23, and web page at [http://www.facs.gov.au/nter/docs/reports/one\\_year\\_on.htm](http://www.facs.gov.au/nter/docs/reports/one_year_on.htm).

4 Budget Paper No. 2 – Part 2: Expense Measures – Families”, (<http://www.budget.gov.au/2008-09/content/bp2/html/expense-11.htm>).

## 2.2 Why is the Bill being considered now, given that the Northern Territory Government and the NTER Review acknowledged that remote Indigenous education in the Northern Territory is in crisis?

On 17 April 2008, the Deputy Chief Minister of the NT stated in reference to remote Indigenous education “(t)here is a crisis. We have agreed to work together to try and deal with and overcome this disadvantage that we do have and that we are facing with all of our remote communities”. This “startling admission” was made to ABC’s Lateline in a report featuring a school in Hermannsburg, one of the pilot communities.<sup>5</sup> Less than a month later, the proposed scheme was announced.

Six months later, the NTER Review Board found that:

“there is an education system failure in Northern Territory Aboriginal communities. The Board believes that the failure of governments and Aboriginal communities to provide a functioning education system necessary for children’s physical, intellectual and emotional development is of paramount concern for the future of Aboriginal communities.”<sup>6</sup>

The Board went on to say that:

“There are universal success factors that improve education outcomes that don’t appear to be contested: focus on early childhood development, good quality teaching, quality education infrastructure and teaching resources, quality bilingual education, and associated sporting, cultural and development programs. All these critically important ingredients that determine education achievement globally are highly deficient in remote Northern Territory Aboriginal community schools.

The Board is reminded that a far reaching and high profile inquiry into Northern Territory Aboriginal education was conducted in 1999 and made significant recommendations to the Northern Territory Government which do not appear to have been implemented.”<sup>7</sup>

### **Recommendation 2**

That the Bill not be passed and instead the Government urged to adopt an incentive-based scheme where at the end of each term income support recipients receive bonuses on their children being enrolled in school and satisfactorily attending.<sup>8</sup>

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5 <http://www.abc.net.au/lateline/content/2007/s2220371.htm>

6 Peter Yu, Marcia Ella Duncan and Bill Gray, “Northern Territory Emergency Response: Report of the NTER Review Board”, October 2008, p 30.

7 Peter Yu, Marcia Ella Duncan and Bill Gray, “Northern Territory Emergency Response: Report of the NTER Review Board”, October 2008, p 31.

8 The Maternity Immunisation Allowance is an example of an existing precedent for an incentive-based approach.

2.4 Why is the Bill being considered now, when the Federal Government has a 4-year plan to ensure there is adequate capacity and resources within schools to meet the anticipated increases in school enrolments and attendance?

The Federal Government has acknowledged that resources have to be put into education in the Northern Territory. As part of the NTER, the Department of Education, Science and Training (**DEST**) is implementing “five key measures” to assist with “ensuring that there is adequate capacity and resources within schools to meet the anticipated increases in school enrolments and attendance”:<sup>9</sup>

- 1) School Nutrition Programme
- 2) Build a Quality Teaching Workforce - \$98.9 million over five years to increase teacher numbers in the NT by over 200 (50 each year) to help educate the approximately 2000 young people not enrolled. As at 21 June 2008, the first 19 teachers were undergoing remote teacher training, pending deployment.<sup>10</sup>
- 3) Additional Classrooms – According to DEST “(a)t least 10 schools in the prescribed communities have current average student attendance that exceeds available classroom capacity. A further 12 schools have emerging classroom pressures where classrooms are operating at 80% or more of current capacity and will face significant accommodation pressure when school attendance provisions impact on communities.” We note that the Catholic Education Office was given \$1.703 million to build four new classrooms in Wadeye which were to be available in 2008.<sup>11</sup> The complaint by Our Lady of the Sacred Heart School at Wadeye, to the Human Rights and Equal Opportunity Commission that its students have been discriminated against for 30 years and denied tens of millions of dollars in federal funding, suggests that \$1.703 million will be insufficient.
- 4) Accelerated Literacy and Numeracy - \$56.4 million over four years for the “Building Strong Foundations Program to assist in the delivery of literacy and numeracy programs for underachieving Indigenous students”. The funding will also go toward “Individual Learning Plans” (ILP); and
- 5) Volunteers – “seeks to increase the number of teachers and teacher assistants within the prescribed communities in the NT”.<sup>12</sup>

As at 30 September 2008, the NTER Review found it “difficult to assess the impact” of these measures.<sup>13</sup>

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9 [http://www.dest.gov.au/sectors/indigenous\\_education/programmes\\_funding/programme\\_categories/NT\\_Emergency\\_Response/](http://www.dest.gov.au/sectors/indigenous_education/programmes_funding/programme_categories/NT_Emergency_Response/)

10 [http://www.facs.gov.au/nter/docs/reports/one\\_year\\_on.htm](http://www.facs.gov.au/nter/docs/reports/one_year_on.htm)

11 Lindsay Murdoch, “NT intervention a crisis for schools”, *The Age*, 23 October 2007, (<http://www.theage.com.au/news/national/nt-intervention-a-crisis-for-schools/2007/10/22/1192940985070.html>).

12 [http://www.dest.gov.au/sectors/indigenous\\_education/programmes\\_funding/programme\\_categories/NT\\_Emergency\\_Response/](http://www.dest.gov.au/sectors/indigenous_education/programmes_funding/programme_categories/NT_Emergency_Response/)



This expenditure will be insufficient according to a report by the Australian Education Union which states that as many as 7500 indigenous children in the NT have been missing out on school or preschool.<sup>14</sup> The Report recommended:

- a) at least \$1.7 billion in additional funding over five years;
- b) at least 1360 extra teachers in the remote areas, along with 585 additional staff, including bilingual indigenous assistant teachers; and
- c) up to \$440 million to be spent on infrastructure.

**Recommendation 3**

That detailed information on the progress of each of these five key measures be provided.

**Recommendation 4**

That there be increased expenditure as detailed by the Australian Education Union and confirmation that the necessary infrastructure is in place prior to the Bill being enacted.

**2.5 Why is the Bill being introduced when the Federal Government has recognised suspension of income support payments is punitive and can be counter-productive?**

Linking income support payments with school attendance is an expansion of the social security compliance and penalty system. In 2006, the Australian Labor Party was opposed to Indigenous parents and families being “feeling singled out by harsh penalties” and instead endorsed “positive incentives” and a “holistic, community-driven response”.<sup>15</sup>

This expansion appears to be contrary to Minister of Employment Participation’s concerns that the current system is too punitive and harsh:

“Submissions to the Employment Services Review indicated that stopping payment for eight consecutive weeks places job seekers, particularly already vulnerable job seekers, at great risk of disconnection and in many cases has resulted in personal crisis and homelessness.

According to Homelessness Australia “up to 20 per cent of people who underwent an eight week “breach” lost their accommodation or were forced to move to less appropriate housing”.

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13 Peter Yu, Marcia Ella Duncan and Bill Gray, “Northern Territory Emergency Response: Report of the NTER Review Board”, October 2008, p 30.

14 Australian Education Union, “Education is the Key: An Education Future for Indigenous Communities in the Northern Territory”, 9 September 2007, (<http://www.aeufederal.org.au/Publications/Educationisthekey.pdf>).

15 Senator Chris Evans, “Halls Creek Tenancy Trial”, Media Statement, 6 February 2006, (<http://www.alp.org.au/media/0206/msfcsfcsialoos060.php>).

Further, the 'penalise first' approach may result in costs to the community in other ways, through imposts on the health, housing and welfare systems, and placing additional pressure on charitable organisations to provide support."<sup>16</sup>

Indigenous Australians who are in receipt of income support payments are already disproportionately penalised by the current compliance regime<sup>17</sup> and Indigenous homelessness is already at critical levels.<sup>18</sup>

The preceding points highlight that the Bill is contrary to the Government's social inclusion and homelessness agenda.

#### **Recommendation 5**

That the Bill not be supported on the basis that it is punitive and will exacerbate social disadvantage and homelessness.

2.6 Why is the Bill being trialed in a racially discriminatory manner when the Federal Government in opposition stated its opposition to the suspension of the Racial Discrimination Act (RDA) in the NTER?<sup>19</sup> What measures have been undertaken by the Government to ensure that the trials comply with the RDA?

We believe the Committee should investigate whether the selection of Aboriginal communities for the majority of the trial sites is directly discriminatory, noting that no information has been publically provided on:

- a) why the selection of five Aboriginal communities and Katherine, which has a high Aboriginal population, is not racially discriminatory;
- b) whether the Government views the selection of the trial sites as a 'special measure';<sup>20</sup> and

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16 Hon Brendan O'Connor MP, Second Reading Speech, Social Security Legislation Amendment (Employment Services Reform) Bill 2008, Hansard, 24 September 2008. We note that the Social Security Legislation Amendment (Employment Services Reform) Bill 2008 retains an 8-week non payment period penalty and introduces a new 'no show no pay' system, however, our concerns about its operation are outside the scope of the current inquiry.

17 Data provided to Senate Estimates from the 2006-07 financial year revealed that 68% of all 8-week non-payment periods were applied against Indigenous Australians in the North Australia region. Source: Answer to Question on Notice, Senate Standing Committee on Finance and Public Administration, 4 April 2008.

18 Indigenous homelessness was three times the rate of that for other Australians (Department of Families Housing, Community Services and Indigenous Affairs, "Which Way Home: A new Approach to Homelessness", March 2008, p 21). Indigenous clients made up almost 17 per cent of Supported Accommodation Assistance Program (SAAP) clients across Australia, but only 1.9 per cent of the total population. Further, there was a high level of unmet demand for homelessness services (ibid, p 39).

19 "Additional comments by the Australian Labor Party", contained in Senate Standing Committee on Legal and Constitutional Affairs, "Report on Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response", August 2007, p 39.

20 *Racial Discrimination Act 1975* (Cth), s 8.

c) if so, what community consultation (if any), has been undertaken?

We note with concern that the Federal Government has referred to consulting with the NT Government, but has not referred to consulting with Aboriginal communities.<sup>21</sup>

**Recommendation 6**

That the trial of the Bill not be undertaken on the basis that prima facie the selection of the trial sites contravenes the RDA.

**2.7 No information on length of trials or whether legal assistance will be provided for during the trial periods**

There is no public information on how long the trials will run for. Nor has there been an indication that additional legal services will be provided for people affected by the new measures. Given the serious consequences of suspension and cancellation of income support, we believe it is imperative that additional legal services be provided.

**Recommendation 7**

That the Government indicate how long the trials will run for and how many people will potentially be affected (being the number of people in the trial sites who are in receipt of schooling requirements payments).

**Recommendation 8**

That the Government make provision for additional legal services in the trial areas.

**3. Concerns about the provisions of the Bill**

**3.1 Notices**

Other than notices provided by schools to Centrelink pursuant to s 124K(1)(b), the Bill is silent on whether other notices issued pursuant to the Bill have to be provided in writing. The Bill does not state whether any notice will be provided of suspension or cancellation under ss 124H and 124M.

This is inadequate given the serious potential consequences that can result from non compliance.

We recommend that Centrelink be required to issue all notices under the Bill in writing. Given our experience that many recipients of Centrelink benefits do not understand the notices sent to them by Centrelink, we have specific recommendations about the form, content and mode of delivery of notices which are set out below.

We acknowledge that written notices alone are not appropriate communication for people who do not have English as a first language and/or who are not literate.

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21 Minister for Families, Housing, Community Services and Indigenous Affairs with Marion Scrymgour, MLA, "NT Trials to boost school attendance", Media Release, 20 June 2008.

Therefore, we recommend that there is also a positive duty on Centrelink to ensure that the written notice has been received and is understood.

**Recommendation 9**

Centrelink must provide all notices in writing and notices must:

- a) be provided in plain English and the recipient's first language (where this is not English);
- b) provide adequate time for compliance having regard to where the recipient lives, mail delivery times, travel time to nearest Centrelink office/school, etc; and
- c) clearly set out what a person must do in order to get their payment restored (following suspension), to make a new claim for payment (following cancellation) or to appeal. This information must be set out in the main body of the notice.

**Recommendation 10**

That there is a positive duty on Centrelink to ensure that the written notice has been received and is understood, which includes that notices must be:

- a) personally served by a Centrelink social worker and/or an Indigenous Liaison Officer; and
- b) supplemented by personal contact with a Centrelink officer, using an interpreter wherever necessary.

### 3.2 Contact with Centrelink

Given that the Bill requires people to respond to enrolment or attendance notices by contacting Centrelink, the effectiveness of Centrelink's communication methods and systems will be vitally important. The Government needs to heed criticisms of poor communication in the roll out of the NTER, particularly to younger and older people.<sup>22</sup> In particular, there have been criticisms regarding the low usage of interpreters in disseminating and receiving information. Government cannot rely solely on call centres to communicate with their customers as these are not properly resourced to communicate with non-English speakers. For example, the Indigenous Call Centre, (based in Palmerston and Tasmania) does not have Central Australian Aboriginal language speakers.<sup>23</sup>

### 3.3 Bill does not ensure that suspension will be "a last resort" and that cancellation of benefits will be "only in the most extreme cases".<sup>24</sup>

In his Second Reading Speech to the Bill, Senator McLucas stated that suspension would only apply where parents "persistently refuse to enrol their children or support

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22 Central Land Council, "Reviewing the Northern Territory Emergency Response: Perspectives from Six Communities", July 2008, p 70.

23 Family and Community Services Advisory Council (FACSAC), "The Impact of Income Management NT Emergency Intervention", Full Report, June 2008, pp 14-15.

24 Hon Julia Gillard MP, Second Reading Speech, Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) Bill 2008, Hansard, 27 August 2008.

their children to attend school” and suspension “would only be used as a last resort following repeated attempts to engage a parent over a considerable period time period where a parent has not provided a reasonable excuse or there are other special circumstances accounting for their inability to comply”.<sup>25</sup>

In her Second Reading Speech to the Bill, Minister Gillard stated that Centrelink will:

- attempt to engage parents;
- offer assistance to help overcome barriers; and
- draw on expertise of Centrelink social workers.<sup>26</sup>

These measures are not provided for in the Bill and we have not seen any financial provision for them.

#### **Recommendation 11**

There should be significant outlay on supporting measures such as caseworkers, housing and on educational resources and the commitment given by the Minister to the use of Centrelink social workers should be fully funded and resourced prior to enactment of the Legislation.

Instead of safeguards, the Bill provides for mandatory suspension or cancellation (ss 124H, 124M), where a notice has been issued and not complied with (14 days under ss 124F “School Enrolment”, 28 days under ss 124K “School Attendance”), if there is no “reasonable excuse” or “special circumstances” (ss 124G(2)(b), and 124L(2)(b)).

#### **Recommendation 12**

The Bill should place a positive duty on the Secretary to take steps that ensure suspension and cancellation will only occur as a last resort and in the most extreme cases:

- a) Every notice should invite the recipient to attend an appointment with a social worker.
- b) Notice periods should not be automatically set at the default minimum notice period of 14 or 28 days. They should be tailored to reflect the particulars of mail delivery and logistics in particular communities and any other relevant factors. For example, it can take longer for mail to reach people living in homelands or outstations than to reach people living in urban centres.
- c) Any attempts at communication must be appropriate and effective having regard to the person’s circumstances. For example, where a person is illiterate, it would be appropriate and effective for them to have personal contact through an Indigenous Liaison Officer and inappropriate and ineffective to rely solely on notices in English sent by mail.
- d) Interpreters must be offered and provided wherever there is any doubt that a person may not have a full understanding of English. Payment must continue

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<sup>25</sup> Senator Jan McLucas, Second Reading Speech, Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) Bill 2008, Hansard, 15 September 2008.

<sup>26</sup> Hon Julia Gillard MP, Second Reading Speech, Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) Bill 2008, Hansard, 27 August 2008.

during any period where an interpreter is not available until such time as Centrelink are able to communicate with the person through an interpreter.

- e) Social workers should be involved in decisions about the existence of special circumstances or reasonable excuse.
- f) Social workers should be involved in decisions about notice periods and lifting of suspensions.
- g) Where social workers identify barriers to non-compliance, they must recommend the provision of appropriate assistance, either from Centrelink or another agency, school or non-government organization. When no such assistance is available, special circumstances should be deemed to apply.
- h) Where an appeal is lodged against a suspension or cancellation, payment pending review must automatically apply. This information must be given clearly in all notices advising of appeal rights and processes.

### 3.4 No definition of reasonable excuse or special circumstance

We acknowledge that while the Bill does not provide any definition of reasonable excuse or special circumstance, substantial further detail of these two terms was provided to the Senate by Senator Evans.<sup>27</sup>

We welcome the detailed list provided by Senator Evans, nonetheless we believe that the factors should be contained in the legislation to enable a crucial part of the process prescribed in the Bill to be subject to Parliamentary scrutiny. It is totally inappropriate that the Secretary's duties and obligations to safeguard the inalienable right to benefits are set out in determinations and policy developed without the scrutiny of parliament.

In our recommendation below, we have set out the matters we believe should be included in a non-exhaustive list in the Bill. The list broadly reflects the matters referred to by Senator Evans, however, we have added current or prospective severe financial hardship.

#### **Recommendation 13**

That there is a positive duty on the Secretary to investigate whether a reasonable excuse exists or special circumstances exist before determining that payment should be suspended or cancelled.

#### **Recommendation 14**

That factors which constitute reasonable excuse and special circumstance should be listed in the legislation as including, but not being limited to:

- a) Compliance or suspension will cause severe financial hardship (for example, a parent may be unable to meet their rent commitments and this could lead to eviction, or parent may not be able buy food, medical needs, or pay for child's transport to school);
- b) No appropriate school places available in area;

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<sup>27</sup> Senator Chris Evans, Second Reading Speech, Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) Bill 2008, Hansard, 1 September 2008.

- c) No school available in child's area;
- d) School or education authority rejects enrolment application (and no other appropriate school available);
- e) School vacation period;
- f) School is closed;
- g) School is not adequately or appropriately staffed or resourced;
- h) School does not provide a safe environment for child;
- i) School does not adequately cater for special needs of child;
- j) School has expelled or suspended child;
- k) Child not attending school although carer is taking reasonable steps to ensure child's attendance;
- l) Child has medical, behavioural, psychological or psychiatric condition which affects carer's ability to enrol child or ensure child's attendance;
- m) Child has unavoidable caring responsibilities;
- n) Parent/carer does not exercise control over child's school attendance (eg person has only weekend caring responsibilities for a child);
- o) Parent/carer, child or another child or close family member is escaping or subject to or at risk of domestic violence or other criminal act;
- p) Parent/carer or child have suffered bereavement;
- q) Parent/carer has a medical, behavioural, intellectual, psychological or psychiatric condition or disability which affects their ability to comply with an enrolment or attendance notice;
- r) Parent/carer or child unable to attend/enrol for religious or cultural reasons;
- s) Parent/carer did not receive enrolment or attendance notice within time;
- t) Parent/carer did not understand the notice;
- u) Parent/carer did not understand what was required in order to comply with the notice;
- v) Time for compliance in notice not appropriate in the particular circumstances;
- w) Compliance with notice outside carer's control (e.g school fails to provide information at all or in a timely fashion); and
- x) Child about to move to a different school for cultural/business/family reasons.

We consider that a large number of schooling requirements children and schooling requirements persons will fall within the reasonable excuses and special circumstances outlined above.

This is necessary to ensure that suspension and cancellation will only occur as a last resort and in the most extreme cases. However, the process of determining whether reasonable excuses and special circumstances exist will mean an increased administrative burden on schools, community agencies, and increased pressure on families.

### 3.5 The suspension regime has harsh consequences

The Bill provides that payment can be suspended an unlimited number of times.

Where payment has been suspended for a total period of *less than* 13 weeks, following a determination by the Secretary under s 124J and 124 M, payment will be made back to the date of the most recent suspension. This means people will receive payment for all the times that payment was suspended, albeit delayed until the dates that the suspensions were lifted, provided they comply with the notice, special circumstances apply or they have a reasonable excuse.

However, where payment has been suspended for *more than* 13 weeks in total, the person will not necessarily be paid back to the date of the most recent suspension, rather, they will be paid as “at the day of reconsideration” or “an earlier date as determined by the Secretary” (ss 124J(4), 124N(5)).

The concern here is that people will not be paid at all for some periods, even though:

- their payment has not been formally cancelled; and
- they have been non-compliant for less than 13 weeks in the most recent suspension period.

*Bob's Disability Support Pension is suspended for 8 weeks in October-November because his daughter Sally is not attending school regularly. Sally complains regularly of being unwell, although the doctor finds nothing wrong, and says she doesn't like school. Bob finds it hard to force her to go to school. In July the following year, Bob's son Shane comes to live with Bob. It is 7 weeks before Bob enrolls Shane in school. Bob says he had thought it was good for Shane to spend a few weeks fishing with his uncles before getting stuck into school. The Secretary determines that this is not a reasonable excuse and that there are no special circumstances. Bob's suspension is lifted when Shane is enrolled. The Secretary determines that Bob becomes payable from the date of enrolment, but Bob does not receive any payment for the 7 weeks that Shane was not enrolled at school.*

In comparison, if Bob had enrolled Shane at week 3, rather than week 7 (with the two suspension periods adding up to 11 weeks), following Shane being enrolled, Bob would receive arrears from the date of the suspension. Thus, for the two periods Bob has been suspended, he receives arrears for the entirety of both periods following him becoming compliant. Yet, as in the example where the suspension is for 15 weeks, Bob never receives the 7 weeks of payments for the period Shane was not enrolled in school.

This example demonstrates that the suspension regime under the Bill is unduly harsh and suspension will not be a measure of last resort.



**Recommendation 15**

Sections 124J(4) and 124N(5) to be deleted, with the effect that arrears are paid from the date of the most recent suspension in all cases.

*If Recommendation 15 is not accepted by the Committee, we recommend in the alternative that:*

**Recommendation 16**

Subsections 124J(4) and 124N(5) should be amended to limit cumulative suspension to a certain time period eg “suspension for 13 weeks or more in the last 26 weeks”.

### 3.6 Particular concerns about the power to cancel payments

As discussed above, we have a number of significant concerns with the operation of the Bill. However we are particularly concerned about the Secretary’s power to cancel payments, as detailed below.

#### **3.6.1 Potential delays and difficulty in re-connecting with Centrelink after cancellation**

Once a person’s payment has been cancelled, they will have to reapply in order to again receive payment.<sup>28</sup> Our experience is that once cancelled, many people in rural and remote communities struggle to “reconnect” with Centrelink. Difficulties can arise from delays in the delivery of mail, poor literacy levels, the logistics involved in attending a Centrelink agent or office, and/or literacy and cultural barriers to providing required documentation. This means that people will miss out on payments to which they would otherwise be entitled.

#### **3.6.2 Arrears during cancellation period**

There are barriers to obtaining arrears for the cancellation period. Once a new claim has been paid, a person will not be entitled to arrears for the period of cancellation unless a successful appeal is made. An appeal must be made within 13 weeks of the date of cancellation.

We understand that Indigenous people in rural and remote communities have low rates of appeal against Centrelink decisions. We are therefore concerned that people who are otherwise entitled to arrears will miss out because they are not properly aware of their appeal rights or, for a range of reasons, they are unwilling or unable to exercise their rights of appeal. This may lead to a situation where inappropriate Centrelink decisions remain unchallenged because a significant number of people will accept cancellation as a final and unchallengeable act.

#### **3.6.3 Cancellation of payments may change payment type and a loss of existing entitlements**

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<sup>28</sup> Section 37AA, Social Security and Veterans’ Entitlements Legislation Amendment (Schooling Requirements) Bill 2008.

A person whose payment is cancelled, and who has been in receipt of Parenting Payment prior to 1 July 2006, will lose their right to be paid under the former legislation. A person who has been in receipt of Parenting Payment since prior to 1 July 2006 is not affected by the harsher Welfare to Work changes. However the person will be affected by the Welfare to Work changes if their payment is cancelled and they have to reapply.

For example, a person on Parenting Payment whose youngest child is six years old (for partnered recipients) or 8 years old (single recipients) who has their payment cancelled under this scheme, will no longer be eligible for Parenting Payment. They will instead have to apply for Newstart Allowance and meet the more onerous compliance and activity test requirements. This also would result, at current rates, in a reduction in payment of \$74 per fortnight for a person going from Parenting Payment Single to Newstart Allowance (dependent child rate).

#### **Recommendation 17**

That the Secretary should not have power to cancel a person's payment.

In our view, this recommendation is more in keeping with the way that the Bill has been presented in many public statements about the Bill which have not referred (or only referred obliquely) to the cancellation power.<sup>29</sup>

## **4 The effectiveness of the proposed measures**

We note that the Bill's "primary purpose" is:

"to engender behavioural change in parents who are receiving income support with the aim being to improve the school enrolment and attendance of their children."<sup>30</sup>

The basic premise of the proposal is that parental encouragement is the sole cause of the poor attendance and enrolment rates in schools. We acknowledge that research shows that a lack of parental engagement or support for education plays a role in truancy. However, it is well documented that this factor is not the sole determinant of whether a child attends school; the reasons for non-attendance and enrolment are far

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29 We draw to the Committee's attention that the 13 May 2008 budget announcement, "Welfare Payment Reform – Child Protection Pilot and School Attendance and Enrolment Pilot" refers only to suspension of payment not to cancellation; the 13 May 2008 Families, Housing, Community Services and Indigenous Affairs factsheet, "Improving School Enrolment and Attendance through Welfare Reform", does not mention cancellation; the 20 June 2008 media release by the Minister for Families, Housing and Community Services and Marion Scrymgour MLA, "NT Trials to Boost School Attendance", does not directly refer to cancellation of payment; the 17 July 2008 media release by the Minister for Families, Housing and Community Services, "Increasing School Attendance in Cannington", does not directly refer to cancellation of payment; and, finally, on 4 September 2008, the Minister for Families, Housing, Community Services and Indigenous Affairs, Jenny Macklin, Second Reading Speech, makes no direct reference to cancellation.

30 Explanatory Memorandum, Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) Bill 2008.

more complex and multifaceted.<sup>31</sup> As these factors are not addressed by the Bill, we do not believe that the measures proposed will be effective in improving educational outcomes for Indigenous children.

Further, enrolment and attendance do not in themselves guarantee educational outcomes for Indigenous children. The school system in the NT needs to be adequately resourced so as to provide an appropriate, quality learning environment for Indigenous children that does not impose limits on their capacities and ability to succeed.<sup>32</sup>

#### 4.1 Factors which impact on attendance, enrolment and the quality of education for Indigenous children

##### a) **Socio-economic**

Research shows that low socio-economic status, low parental achievement, domestic violence, child abuse and drug and alcohol abuse are important factors in determining school attendance and enrolment. For example, a Western Australian study found that school attendance of Aboriginal children was linked to the level of their carer's education, emotional or behavioural difficulties, high incidence of life stress events in family, the child's main language being Aboriginal English or an Aboriginal language, inadequate sleep, attendance at day care, and isolation.<sup>33</sup>

##### b) **Health**

Health has been recognised to have a significant impact on attendance rates for Indigenous children. Studies have demonstrated that low attendance rates of Indigenous children are associated with high rates of ear disease and associated hearing loss. Furthermore, poor nutrition affects many Indigenous students and results in children who are lethargic and disruptive in the classroom and more likely to be absent from school.<sup>34</sup>

##### c) **High needs students**

A high proportion of Indigenous students in the Northern Territory have English as a second, third or fourth language and live in communities where English is only

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31 Larissa Behrendt and Ruth McCausland, "Welfare Payments and School Attendance: An Analysis of Experimental Policy in Indigenous Education", Jumbunna Indigenous House of Learning, University of Technology Sydney, August 2008, p 27, (<http://www.aeufederal.org.au/Publications/2008/LBehrendtpaper.pdf>).

32 Rex Wild and Pat Anderson, *Ampe Akelyernemane Meke Mekarle: "Little Children Are Sacred"*, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, April 2007, pp 147-155.

33 Western Australian Child Health Survey: Improving the Educational Experiences of Aboriginal Children and Young People, Curtin University of Technology and Telethon Institute for Child Health Research, 2006, p 8.

34 Larissa Behrendt and Ruth McCausland, "Welfare Payments and School Attendance: An Analysis of Experimental Policy in Indigenous Education", Jumbunna Indigenous House of Learning, University of Technology Sydney, August 2008, p 28.

spoken at the school and the health centre.<sup>35</sup> Further, a high proportion of Indigenous children have disabilities.<sup>36</sup>

The needs of children with disabilities, health problems and English as a second language (ESL) are not currently being met.<sup>37</sup> The current resources will need to be expanded to cater for additional students and to include adequate numbers of teachers with ESL skills, assistant teachers with language skills, counsellors and intensive transition support.<sup>38</sup>

A reason for this is the continued inappropriate use of attendance figures rather than enrolment and population as the basis for staffing schools has been cited as a reason for this shortfall in resources.<sup>39</sup> In a submission to the Senate Inquiry, it was noted that increases in school attendance mean “an exponential need for Aboriginal assistant teachers and associated liaison staff will be critical”.<sup>40</sup>

#### **d) Housing**

The Halls Creek evaluation acknowledges the impact that overcrowded housing has on educational attainment and in employability of adults in Indigenous households:

“Indigenous Australians have the poorest quality housing and an inadequate supply of housing compared with non-Indigenous Australians. Indigenous housing is generally not suited to their ‘extended family’ way of life and therefore often overcrowded ... Overcrowding results in physical stresses on housing and its infrastructure and in social stresses from just too many people. These stresses, in turn, have specific and practical impact on the work-readiness of parents(s) and the school-readiness of children in the household. Such impact can result in a lack of sleep and lack of security and privacy for work related

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35 Australian Education Union, “Education is the Key: An Education Future for Indigenous Communities in the Northern Territory”, 9 September 2007, p 16. At p 20, the report states that “a strong cohort of bilingual and trilingual teachers trained in cross-cultural sensitivities is essential and of prime importance for the NT education system”.

36 Australian Education Union, “Education is the Key: An Education Future for Indigenous Communities in the Northern Territory”, 9 September 2007, p 16.

37 Rex Wild and Pat Anderson, *Ampe Akelyernemane Meke Mekarle: “Little Children Are Sacred”*, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, April 2007, at p 153, states that its Inquiry was told about young children coming to school for the first time and either having no English at all or a bare minimum of understanding and facing teachers that only spoke English – which meant that “children are not being communicated with”.

38 Australian Education Union, “Education is the Key: An Education Future for Indigenous Communities in the Northern Territory”, 9 September 2007, pp 21, 34.

39 Australian Education Union, “Education is the Key: An Education Future for Indigenous Communities in the Northern Territory”, 9 September 2007, p 27.

40 Bill Fogarty and Maria Patterson, “Constructive Engagement: Impacts, Limitations and Possibilities during a National Emergency Intervention”, PIA Consultants/Bawinanga Aboriginal Corporation, August 2007, p 27.

items. It can also result in a lack of washing facilities and poor health from broken facilities.”<sup>41</sup>

It should be noted that both the Tangentyere Council and the Central Land Council report that there has been little improvement in housing during the first 12 months of the NTER.<sup>42</sup>

**e) Cultural appropriateness of the school environment**

The cultural appropriateness of the school environment is a factor in determining whether a child attends school. As the NTER Review found:

“Schools, whether they are government, community or church-based, are generally not recognised by children, families and the community as an important asset for social and cultural development. There is little evidence that Aboriginal language and culture have been seriously incorporated into the formal school curriculum even though English was not the first language spoken in most communities that the Board visited.”<sup>43</sup>

When non-Aboriginal teachers are unable to explain concepts in a way that their Aboriginal students can understand, the students develop a “failure syndrome” where their failure to remember what was taught that day causes them to become depressed”.<sup>44</sup> School curriculum needs to be developed to recognise and reflect the experiences of its students.

The Little Children Are Sacred report notes that almost every community that the Inquiry visited wanted boys and girls aged 12 and over to be in separate classes for cultural reasons.<sup>45</sup> A failure to accommodate this can result in non-attendance.<sup>46</sup>

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41 Australian Government, Department of Employment and Workplace Relations “Halls Creek Engaging Families Trial February – July 2006: Evaluation Report, pp 9-10.

42 Tangentyere Council Inc, “Submission to the Review Board of the Northern Territory Emergency Response”, August 2008, p 4; Central Land Council, “Reviewing the Northern Territory Emergency Response: Perspectives from Six Communities”, July 2008, p 5.

43 Peter Yu, Marcia Ella Duncan and Bill Gray, “Northern Territory Emergency Response: Report of the NTER Review Board”, October 2008, p 30.

44 Rex Wild and Pat Anderson, *Ampe Akelyernemane Meke Mekarle: “Little Children Are Sacred”*, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, April 2007, p 147.

45 Rex Wild and Pat Anderson, *Ampe Akelyernemane Meke Mekarle: “Little Children Are Sacred”*, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, April 2007, p 153.

46 As a teacher in a very remote school reported, “Our community wanted separate classes for young men and women. The principal over-rode that. The boys aren’t coming to school,” Australian Education Union, “Education is the Key: An Education Future for Indigenous Communities in the Northern Territory”, 9 September 2007, p 20.

The Hall's Creek report also indicated that bullying and teasing by students and teachers impacts on attendance, bullying was the most common reason reported by parents for their child's absence at school.<sup>47</sup>

**f) Teacher quality and staff turn over**

The Halls Creek School principal reported that different class attendance rates within the school were partly due to variations in teacher quality. Unfortunately, many of the teachers at the school had little teaching experience and were perhaps likely to have been attracted to the school for financial reasons.<sup>48</sup>

The AEU report expresses concern at the impact on students of the high staff turnover in remote schools.<sup>49</sup>

The NTER Review found that "[t]he high turnover of teaching staff is clearly a critical problem that has a negative impact on school and community relationships".<sup>50</sup>

**g) Cultural differences about parental responsibility**

The Hall's Creek evaluation found that a factor in school non-attendance was a lack of parental insistence that children get to school in the morning.<sup>51</sup> Many parents reported feeling powerless to get their children to school, especially those with children aged 12 years and upwards.<sup>52</sup> This is also reflected in the NTER Review which states that:

"In its community visits the Board spoke to those who feel the pain of the education crisis. We were told by parents and families that their children were beyond their control and would not be directed to attend school."<sup>53</sup>

This was also impacted by the autonomy of Indigenous children in the control of their time use, where parents have a relatively passive role in overseeing the decisions that children make about their time.<sup>54</sup> This is a cultural difference

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47 Australian Government, Department of Employment and Workplace Relations "Halls Creek *Engaging Families* Trial February–July, Evaluation Report", September 2006, p 31.

48 Australian Government, Department of Employment and Workplace Relations "Halls Creek *Engaging Families* Trial February–July, Evaluation Report", September 2006, pp 30-31.

49 Australian Education Union, "Education is the Key: An Education Future for Indigenous Communities in the Northern Territory", 9 September 2007, p 25.

50 Peter Yu, Marcia Ella Duncan and Bill Gray, "Northern Territory Emergency Response: Report of the NTER Review Board", October 2008, p 30.

51 Australian Government, Department of Employment and Workplace Relations "Halls Creek *Engaging Families* Trial February–July, Evaluation Report", September 2006, p 29.

52 Larissa Behrendt and Ruth McCausland, "Welfare Payments and School Attendance: An Analysis of Experimental Policy in Indigenous Education," Jumbunna Indigenous House of Learning, University of Technology Sydney, August 2008, p 12.

53 Peter Yu, Marcia Ella Duncan and Bill Gray, "Northern Territory Emergency Response: Report of the NTER Review Board", October 2008, p 30.

54 Australian Government, Department of Employment and Workplace Relations "Halls Creek *Engaging Families* Trial February – July 2006: Evaluation Report, p 30.

between Indigenous and non-Indigenous households in terms of the autonomy of children. In Indigenous families, children are encouraged to be autonomous and to make their own decisions from an early age.<sup>55</sup>

Given the recognised cultural imperative to encourage autonomy in Indigenous children, the Halls Creek report recognises the need for the school to be an attractive option for the child; they must want to be in the classroom with their teacher.<sup>56</sup> Unfortunately, schools are often not attractive to students for the reasons described above.

## 4.2 Evidence about alternative measures to improve school attendance and enrolment rates

The Government recently committed to the development of Indigenous policy being “driven by one single criterion – evidence”, with all policy and decision making “to be based on thorough forensic analysis of the facts and the evidence”.<sup>57</sup>

Despite this, there is no available Australian or international evidence which suggests that the measures proposed in the Bill will make parents more responsible, or improve children’s lives in the long term.<sup>58</sup>

Campbell and Wright undertook a study of evaluations conducted of seven programs in the United States which linked families’ welfare payment to their children’s satisfactory school attendance. They found that programs that did not simultaneously expand case management services did nothing to improve school attendance. Those programs which combined sanctions with case management, supportive services and positive financial incentives were found to have only limited positive results.<sup>59</sup> Importantly, evaluations showed that it was case management rather than sanctions that was the most critical variable in determining attendance. Improvements observed were in increased enrolment rather than on improved rates of attendance, graduation or long-term economic well-being.<sup>60</sup>

The Central Land Council research cites school initiatives to improve attendance, including “shops not serving children in school hours, ‘no school no sport/no pool rules’, voluntary truant officers, school bus services and teachers collecting students”. The

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55 Australian Government, Department of Employment and Workplace Relations “Halls Creek *Engaging Families* Trial February–July, Evaluation Report”, September 2006, p 30.

56 Australian Education Union, “Education is the Key: An Education Future for Indigenous Communities in the Northern Territory”, 9 September 2007, p 31.

57 Hon Jenny Macklin MP, Speech to National Press Club, 27 February 2008, as reported by ABC Lateline, “Govt to quarantine WA Indigenous welfare payments”, (<http://www.abc.net.au/pm/content/2008/s2174480.htm>).

58 Larissa Behrendt and Ruth McCausland, “Welfare Payments and School Attendance: An Analysis of Experimental Policy in Indigenous Education,” Jumbunna Indigenous House of Learning, University of Technology Sydney, August 2008, p 23.

59 David Campbell and Joan Wright, “Rethinking Welfare School-Attendance Policies”, *Social Service Review*, March 2005, Volume 29, No 1.

60 David Campbell and Joan Wright “Rethinking Welfare School-Attendance Policies”, *Social Service Review*, March 2005, Volume 29, No 1, p 4.

research also listed community suggestions such as “increased focus on education, youth programs, stopping underage drinking and increased recreational and after school activities”.<sup>61</sup>

**Recommendation 18**

That the Bill should not be passed and instead the Government should focus its attention on adequately resourcing the school system, addressing the underlying causes of poverty and involving parents and community in the school system.

### 4.3 Lack of consultation

The effectiveness of Bill will be impacted by the level and quality of consultation with the community (a major criticism of the NTER was the lack of consultation with Aboriginal people and communities).<sup>62</sup>

As there has been no public discussion of the consultations with the specific communities and schools, we have no information about the arrangements and protocols for information sharing between schools, community, the NT education department and the Commonwealth. We note with concern that the Federal Government has referred to consulting with the NT Government, but has not referred to consulting with Aboriginal communities.<sup>63</sup>

**Recommendation 19**

That subject to the approval of the individual communities, the Government should make public its consultation with the communities about the Bill and if consultation has not been adequate, Government commits to full consultation with communities prior to the commencement of the trials.

## 5. Impact on children and families

The Government has stated that “it is anticipated that a very small number of people will have their income support payments suspended and even less, if any, will have their payments cancelled”.<sup>64</sup>

We believe that the Government is mistaken and that significant numbers of people will be suspended and cancelled because, as discussed above, the Bill does not:

- a) address the complex inter-related factors which result in low attendance and enrolment rates; or

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61 Central Land Council, “Reviewing the Northern Territory Emergency Response: Perspectives from Six Communities”, July 2008, p 78.

62 Central Land Council, “Reviewing the Northern Territory Emergency Response: Perspectives from Six Communities”, July 2008, p70.

63 Minister for Families, Housing, Community Services and Indigenous Affairs with Marion Scrymgour, MLA, “NT Trials to boost school attendance”, Media Release, 20 June 2008.

64 Hon Julia Gillard MP, Second Reading Speech, Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) Bill 2008, Hansard, 27 August 2008, p 6299.



- b) contain safeguards ensuring that people will be suspended only as a “last resort” and cancelled only in “the most extreme cases”.

We note that in the two-month trial in Halls Creek, “a number” of the 16 Centrelink recipients whose children had school attendance problems had their payments suspended.<sup>65</sup>

### 5.1 The Bill will cause families financial hardship

The suspension or cancellation of payments will place families in financial hardship. Although the Bill will not impact on Family Tax Benefit payments, income support payments make up a substantial proportion of a family’s fortnightly income. For example, if a person on Parenting Payment Single were suspended or cancelled, they would have \$562.10 less in the fortnightly family budget.

#### **Recommendation 20**

That financial case management be offered to all income support recipients who are suspended or cancelled.

### 5.2 People will be confused by impact of separate regimes affecting payments

Income support recipients in most of the trial areas could be subject to the schooling requirements scheme, compulsory income management and the welfare to work compliance regime. The government has not provided any information on the practical interaction and potential consequences for a person who is affected by all three systems, as illustrated:

*Meg’s children are aged 8, 10 and 11 years. Meg has an exemption from seeking child support as her ex-partner is violent. Meg’s two youngest children attend school regularly. However, the 11 year old boy regularly truants school despite Meg’s best efforts. Meg’s Parenting Payment Single is suspended and Meg now has to support her family on approximately \$530.00 a fortnight (including rent assistance and large family supplement). \$265.00 is quarantined under income management however this does not even cover fortnightly rent, food and school lunches. Meg is unable to put petrol in the car to get into town to attend a mutual obligation appointment and is concerned she will lose even more of her income. Meg is considering whether it would be better for her family if her eldest son went to live with his father despite her concerns about the father’s violent behaviour.*

In our experience, it is likely that people will be confused about the reasons for reduction, suspension or cancellation of a payment. This confusion and uncertainty will make it more difficult for a person to take the appropriate course of action to have a payment restored.

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65 Marilyn Harrington and Peter Yeend, “Social Security and Veterans’ Entitlements Legislation Amendment (Schooling Requirements) Bill 2008”, *Bills Digest*, No 14, Parliamentary Library, Canberra, 2 September 2008, (<http://www.aph.gov.au/library/pubs/bd/2008-09/09bd014.htm>).

### 5.3 Increase stress on families

Apart from the stress on families caused by the loss of income, the actual process of parents attempting to enforce school attendance is likely to cause additional stress on families. The Halls Creek trial showed that truancy within families can vary considerably and, as discussed above, parents felt powerless to force their children (particularly over the age of 12) to attend school. In these circumstances, additional pressure put on family relationships because of the threatened or actual loss of family income will have further detrimental effect on precarious relationships and result in additional family stress and potentially family violence.

### 5.4 Inadequate provision for complex family arrangements leads to adverse impacts

#### a) Families with multiple children

The proposed legislation does not elucidate how it intends to deal with families with multiple children, some of which who attend school regularly and others who do not. The Hall's Creek evaluation study demonstrated that poor or good attendance does not run in families. It cites the example of a family with five school aged children, with attendance levels ranging from 14 to 88%.<sup>66</sup>

Cutting off income support and thereby putting the whole family into financial hardship in order to "encourage" a parent to make one non-compliant child attend school is a worrying eventuality.

#### **Recommendation 21**

That where in a family with multiple children there is a single child who is not enrolled or satisfactorily attending school, there be a presumption that a reasonable excuse exists or special circumstances exist, noting the significant hardship that would be caused to all family members through suspension or cancellation.

#### b) Children with multiple carers

Often care arrangements for Indigenous children are informal and involve the extended family having responsibility for children.

Section 124B of the Bill enables Centrelink to withhold payments from anyone who under a family law order or a parenting plan has a child staying with them for 14% of the time. This could lead to a person with weekend access and no control over the day-to-day activities of the child having their payments suspended or cancelled. There is no limit to how many people can have their payments suspended or cancelled for the non-enrolment or non-attendance of a single child.

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66 Australian Government, Department of Employment and Workplace Relations, "Halls Creek *Engaging Families* Trial February–July, Evaluation Report", September 2006, p 28.

We refer the Committee to Recommendation 14 (n) above that the criteria for reasonable excuse or special circumstance should include that “the Parent/carer does not exercise control over child’s school attendance (eg person has only weekend caring responsibilities for a child).

#### 5.4 Privacy implications

Section 124P of the Bill purports to override any law in force in a State or Territory to allow information to be provided to Centrelink about the enrolment or attendance of children at school. Accordingly, Schooling Requirement persons and their children would not receive any protection from the *Information Act NT* in relation to this information.

Nor would people be protected by the *Privacy Act 1988* as it would not apply to individuals who may have access to information relating to schooling attendance and other sensitive records.

Consequently, it would appear that the normal protections that would generally apply to personal information would not apply to children or their families who come under the Bill.

#### 5.5 Inalienability

Section 60(1) of the *Social Security (Administration) Act 1999* (Cth) provides for the inalienability of payments. Payments must be provided to a person who is qualified and in that respect the Bill abrogates the principle of inalienability.

According to the Bill’s Digest, the inalienability “provisions protect payment from a Minister or a public official deciding that a payment should not be provided to an individual or a group of persons”.<sup>67</sup>

Under the Bill, decisions about whether an inalienable payment is provided to a person will be guided by policy that has not been scrutinised by Parliament.

#### 5.6 Right to welfare without discrimination

The Bill would effectively remove the inalienable right of a group of people, arguably among the most marginalized and vulnerable in our society, to income support. Further, the Bill does this, not on the basis of that person’s eligibility or qualification for income support, but on the entirely unrelated issue of whether or a not a child in that person’s care is enrolled at or attending school.

The International Covenant on Economic, Social and Cultural Rights Article 9 recognises the right “of everyone to social security, including social insurance.” The “right” is not conditional and does not require that the person complies with conditions precedent as required by the Bill.

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67 Marilyn Harrington and Peter Yeend, “Social Security and Veterans’ Entitlements Legislation Amendment (Schooling Requirements) Bill 2008”, *Bills Digest*, No 14, Parliamentary Library, Canberra, 2 September 2008, (<http://www.aph.gov.au/library/pubs/bd/2008-09/09bd014.htm>).

## 6. Impact on schools and communities

### 6.1 Potential breakdown of trust between schools and communities due to the requirement of schools to report to Centrelink.

The Bill requires teachers and administrative staff at schools to report poor school attendance to Centrelink. We have not seen any documentation of the protocols about schools reporting of poor attendance, however, we are concerned that schools will be under pressure to report poor attendance. The reporting will be damaging for schools by undermining the relationships between individual teachers, their students and their families, as well as between the school and the community.

We believe that this loss of trust could have a serious long-term impact on school and community relationships.

Furthermore, the Bill places an additional administrative burden on under-resourced schools to report to Centrelink. Additional resources will presumably need to be diverted to cope with this, resources which could be better used in the education of children.

#### **Recommendation 22**

That the Government should set out the circumstances in which schools and teachers will be required to report attendance rates.

## 7. List of Recommendations

### Recommendation 1

That the Government provide urgent clarification about why the school attendance and school enrolment income management provisions of the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* will not be utilised.

### Recommendation 2

That the Bill not be passed and instead the Government urged to adopt an incentive-based scheme where at the end of each term income support recipients receive bonuses on their children being enrolled in school and satisfactorily attending.

<sup>68</sup>

### Recommendation 3

That the Committee request detailed information on progress of each of these five key measures.

### Recommendation 4

That the Committee recommended increased expenditure as detailed by the Australian Education Union and confirmation that the necessary infrastructure is in place prior to date of effect of the Schooling Requirements legislation.

### Recommendation 5

That the Bill not be supported on the basis that it is punitive and will exacerbate social disadvantage and homelessness.

### Recommendation 6

That the trial of the Bill not be undertaken on the basis that prima facie the selection of trial sites contravenes the RDA.

### Recommendation 7

That the Government indicate how long the trials will run for and how many people will potentially be affected (being the number of people in the trial sites who are in receipt of schooling requirements payments).

### Recommendation 8

That the Government make provision for additional legal services in the trial areas.

### Recommendation 9

Centrelink must provide all notices in writing and notices must:

- a) be provided in plain English and the recipient's first language (where this is not English).
- b) provide adequate time for compliance having regard to where the recipient lives, mail delivery times, travel time to nearest Centrelink office/school, etc.

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<sup>68</sup> The Maternity Immunisation Allowance is an example of an existing precedent for an incentive-based approach.

- c) clearly set out what a person must do in order to get their payment restored (following suspension), to make a new claim for payment (following cancellation) or to appeal. This information must be set out in the main body of the notice.

#### **Recommendation 10**

That there is a positive duty on Centrelink to ensure that the written notice has been received and is understood, which includes that notices must be:

- a) personally served by a Centrelink social worker and/or an Indigenous Liaison Officer; and
- b) supplemented by personal contact with a Centrelink officer, using an interpreter wherever necessary.

#### **Recommendation 11**

There should be significant outlay on supporting measures such as caseworkers, housing and on educational resources and the commitment given by the Minister to the use of Centrelink social workers should be fully funded and resourced prior to enactment of the Legislation.

#### **Recommendation 12**

The Bill should place a positive duty on the Secretary to take steps that ensure suspension and cancellation will only occur as a last resort and in the most extreme cases:

- a) Every notice should invite the recipient to attend an appointment with a social worker.
- b) Notice periods should not be automatically set at the default minimum notice period of 14 or 28 days. They should be tailored to reflect the particulars of mail delivery and logistics in particular communities and any other relevant factors. For example, it can take longer for mail to reach people living in homelands or outstations than to reach people living in urban centres.
- c) Any attempts at communication must be appropriate and effective having regard to the person's circumstances. For example, where a person is illiterate, it would be appropriate and effective for them to have personal contact through an Indigenous Liaison Officer and inappropriate and ineffective to rely solely on notices in English sent by mail.
- d) Interpreters must be offered and provided wherever there is any doubt that a person may not have a full understanding of English. Payment must continue during any period where an interpreter is not available until such time as Centrelink are able to communicate with the person through an interpreter.
- e) Social workers should be involved in decisions about the existence of special circumstances or reasonable excuse.
- f) Social workers should be involved in decisions about notice periods and lifting of suspensions.
- g) Where social workers identify barriers to non-compliance, they must recommend the provision of appropriate assistance, either from Centrelink or another agency, school or non-government organization. When no such assistance is available, special circumstances should be deemed to apply.

- h) Where an appeal is lodged against a suspension or cancellation, payment pending review must automatically apply. This information must be given clearly in all notices advising of appeal rights and processes.

### **Recommendation 13**

That there is a positive duty on the Secretary to investigate whether a reasonable excuse exists or special circumstances exist before determining that payment should be suspended or cancelled.

### **Recommendation 14**

That factors which constitute reasonable excuse and special circumstance should be listed in the legislation as including, but not being limited to:

- a) Compliance or suspension will cause severe financial hardship (for example, a parent may be unable to meet their rent commitments and this could lead to eviction, or parent may not be able buy food, medical needs, or pay for child's transport to school)
- b) No appropriate school places available in area
- c) No school available in child's area
- d) School or education authority rejects application (and no other appropriate school available)
- e) School vacation period
- f) School is closed
- g) School is not adequately or appropriately staffed or resourced
- h) School does not provide a safe environment for child
- i) School does not adequately cater for special needs of child
- j) School has expelled or suspended child
- k) Child not attending school although carer is taking reasonable steps to ensure child's attendance
- l) Child has medical, behavioural, psychological or psychiatric condition which affects carer's ability to enrol child or ensure child's attendance
- m) Child has unavoidable caring responsibilities
- n) Parent/carer does not exercise control over child's school attendance (eg person has only weekend caring responsibilities for a child)
- o) Parent/carer, child or another child or close family member is escaping or subject to or at risk of domestic violence or other criminal act
- p) Parent/carer or child have suffered bereavement
- q) Parent/carer has a medical, behavioural, intellectual, psychological or psychiatric condition or disability which affects ability their ability comply with an enrolment or attendance notice
- r) Parent/carer or child unable to attend/enrol for religious or cultural reasons
- s) Parent/carer did not receive enrolment or attendance notice within time
- t) Parent/carer did not understand the notice

- u) Parent/carer did not understand what was required in order to comply with the notice.
- v) Time for compliance in notice not appropriate in the particular circumstances
- w) Compliance with notice outside carer's control (e.g school fails to provide information at all or in a timely fashion).
- x) Child about to move to a different school for cultural/business/family reasons in other area.

**Recommendation 15**

Sections 124J(4) and 124N(5) to be deleted, with the effect that arrears are paid from the date of the most recent suspension in all cases.

**Recommendation 16**

Subsections 124J(4) and 124N(5) should be amended to limit cumulative suspension to a certain time period eg "suspension for 13 weeks or more in the last 26 weeks".

**Recommendation 17**

That the Secretary should not have power to cancel a person's payment.

**Recommendation 18**

That the Bill should not be passed and instead the Government should focus its attention on adequately resourcing the school system, addressing the underlying causes of poverty and involving parents and community in the school system.

**Recommendation 19**

That subject to the approval of the individual communities, the Government should make public its consultation with the communities about the Bill and if consultation has not been adequate, Government commits to full consultation with communities prior to the commencement of the trials.

**Recommendation 20**

That financial case management be offered to all income support recipients who are suspended or cancelled.

**Recommendation 21**

That where in a family with multiple children, there is a single child who is not enrolled or satisfactorily attending school, there be a presumption that a reasonable excuse exists or special circumstances exist, noting the significant hardship that would be caused to all family members through suspension or cancellation.

**Recommendation 22**

That the Government should set out the circumstances in which schools and teachers will be required to report attendance rates.



## APPENDIX A

NAAJA letter to the Committee, 8 October 2008  
[emailed separately]

Wednesday, October 08, 2008

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This request is made on behalf of the following legal services: Central Australian Aboriginal Legal Aid Service, Katherine Womens Information & Legal Service, the Northern Territory Legal Aid Commission and Darwin Community Legal Service.

We look forward to hearing from you about this matter.

Yours faithfully,  
North Australian Aboriginal Justice Agency Ltd



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