

**SOCIAL SECURITY AND OTHER LEGISLATION
AMENDMENT (WELFARE REFORM AND
REINSTATEMENT OF RACIAL
DISCRIMINATION ACT) BILL 2009;
FAMILIES, HOUSING, COMMUNITY SERVICES
AND INDIGENOUS AFFAIRS AND OTHER
LEGISLATION AMENDMENT (2009
MEASURES) BILL 2009; AND
FAMILIES, HOUSING, COMMUNITY SERVICES
AND INDIGENOUS AFFAIRS AND OTHER
LEGISLATION AMENDMENT (RESTORATION
OF RACIAL DISCRIMINATION ACT) BILL 2009**

Chapter 1

THE INQUIRY

1.1 On 26 November 2009 the Senate, on the recommendation of the Selection of Bills Committee (Report No. 18 of 2009), referred the provisions of the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 and the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 along with the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009 to the Community Affairs Legislation Committee (the committee) for inquiry and report by 9 March 2010.

1.2 The committee received 95 submissions relating to the bills and these are listed at Appendix 1. The committee considered the bills at public hearings in Canberra on 4, 11, 22, 25 and 26 February 2010, Darwin on 15 February 2010 and Alice Springs on 17 February 2010. Details of the public hearings are referred to in Appendix 2. The submissions and Hansard transcript of evidence may be accessed through the committee's website at http://www.aph.gov.au/senate_ca.

BACKGROUND

1.3 In June 2007, the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse provided its report, *Little Children are Sacred*, to the Chief Minister of the Northern Territory. The report detailed the high

levels of sexual abuse and dysfunction in Indigenous communities in the Northern Territory.¹ On 21 June 2007, in response to the Board of Inquiry's findings, the Howard Government announced the Northern Territory Emergency Response (NTER). The NTER included a suite of measures directed at Indigenous communities with the immediate aim of protecting children and making communities safe. In the longer term the measures were designed to create a better future for Aboriginal communities in the Northern Territory.

1.4 Following the change of government in November 2007, the incoming Rudd Government indicated that it would continue the NTER and undertake a review after 12 months of operation. The NTER Review Board reported to the government in October 2008. One of the three overarching recommendations made by the Review Board was that government actions affecting Indigenous communities respect Australia's human rights obligations and conform with the *Racial Discrimination Act 1975* (Racial Discrimination Act).²

1.5 On 23 October 2008, the government provided its interim response to the NTER Review Board report accepting each of the three overarching recommendations. At the same time, the government announced its medium-term strategy to continue and strengthen the NTER and that the longer term aim was to achieve sustainable improvement in Northern Territory communities.³

THE BILLS

Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009

1.6 There are a number of purposes of the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 (the bill). The bill provides the basis for a national welfare reform initiative aimed at supporting disengaged and vulnerable welfare recipients in the most disadvantaged locations across Australia. The bill amends several acts relating to income management arrangements under the social security law and the NTER. The bill also repeals sections of the NTER legislation that suspended the operation of the Racial Discrimination Act.⁴

1.7 The welfare reform initiative is based on a new model of income management to be used in selected locations throughout Australia, in relation to people who meet

1 Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Ampe Akelyernemane Meke Mekarle Little Children are Sacred*, June 2007.

2 Northern Territory Emergency Response Review Board, *Report*, October 2008.

3 Australian Government and Northern Territory Government, *Response to the Report of the NTER Review Board*, May 2009.

4 *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*, Explanatory Memorandum, p. i.

objective criteria independent of their race or ethnicity. The existing income management measures that apply only to prescribed areas in the Northern Territory will be repealed and three new income management measures will be introduced to apply to disengaged youth, long-term welfare payment recipients and persons assessed as vulnerable. The bill will also introduce voluntary income management for welfare recipients not included in the three categories who wish to opt-in. The new scheme will commence in the Northern Territory as a first step to a future national roll out of income management in disadvantaged areas.

1.8 The welfare reform bill also proposes to repeal existing provisions in certain Commonwealth Acts that modify the application of:

- the Racial Discrimination Act, in relation to the NTER, the Queensland Family Responsibilities Commission and the income management arrangements as they relate to the commission, and approved programs of work for income support;
- Northern Territory anti-discrimination laws in relation to the NTER and approved programs of work for income support; and
- Queensland anti-discrimination laws in relation to the Queensland Family Responsibilities Commission and the income management arrangements as they relate to the commission.

1.9 The bill also amends various NTER measures to ensure they conform to the requirements of the Racial Discrimination Act, including:

- NTER alcohol restriction measures;
- the existing restrictions on prohibited material in the prescribed areas of the Northern Territory;
- provisions governing the five-year leases that have been compulsorily acquired over certain Northern Territory communities;
- the existing community stores licensing scheme; and
- the *Australian Crime Commission Act 2002*, to ensure the Australian Crime Commission's use of its special powers in relation to violence and child abuse committed against Indigenous victims.

1.10 The Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon Jenny Macklin MP, concluded that the welfare reform bill:

...provides a stronger legislative basis for the current NTER measures and lays the foundations for sustainable development across remote communities in the Northern Territory.

It demonstrates our commitment to sustained, long term action in the Northern Territory, working in partnership with Indigenous Australians to develop and drive policies and programs to close the gap.

The bill tackles, on a national scale, the entrenched cycle of passive welfare through a new system of income management and incentives to support people moving from welfare to personal responsibility and independence.

The bill reflects the Government's determination to put children and families at the centre of our welfare reform agenda.⁵

Schedule 1: Repeal of laws limiting anti-discrimination laws

1.11 This schedule repeals sections in the legislation facilitating the NTER and income management that modified the application, for certain purposes, of the Racial Discrimination Act, Northern Territory anti-discrimination laws, and Queensland anti-discrimination laws.

1.12 The three pieces of legislation affected are the *Families, Community Services and Indigenous Affairs and Other Legislation (Northern Territory National Emergency Response and Other Measures) Act 2007* (the FaCSIA NTNER and Other Measures Act), the *Northern Territory National Emergency Response Act 2007* (the NTNER Act) and the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (the Welfare Payment Reform Act).

1.13 Schedule 1 of this bill repeals sections in these acts that enabled the suspension of the Commonwealth and state or territory anti-discrimination legislation by both deeming the provisions to be 'special measures' and by excluding them from Part II of the Racial Discrimination Act and relevant state and territory anti-discrimination laws which prohibit racial discrimination.

Schedule 2: Income management regime

1.14 Schedule 2 establishes a new model of income management to be used in selected locations across Australia, but will commence in the Northern Territory as a first step to a national roll out.⁶

1.15 The bill repeals the existing income management measure currently applying to prescribed areas in the Northern Territory (the old NT measure) and establishes a new income management scheme that will apply to all of the Northern Territory rather than prescribed areas.

1.16 The new income management scheme is intended to come into force on 1 July 2010. Division 2 of the bill allows persons who have their income managed under the old NT measure to remain subject to that measure for a further 12 months

5 The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, *House of Representatives Hansard*, 25 November 2009, p. 12787.

6 *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*, Explanatory Memorandum, p. 11.

from 1 July 2010. It is intended that these individuals will either transition to income management under the new scheme or move off income management altogether.⁷

1.17 Under the new scheme, there will be five different categories of people who may be subject to income management:

- disengaged youth: people aged 15 to 24 who have been in receipt of Youth Allowance, Newstart Allowance, Special Benefit or Parenting Payment for more than 13 weeks in the last 26 weeks;
- long-term welfare recipients: people aged 25 and above (and younger than age pension age) who have been in receipt of Youth Allowance, Newstart Allowance, Special Benefit or Parenting Payment for more than 52 weeks in the last 104 weeks;
- persons assessed as vulnerable: people assessed by a delegate of the secretary (in practice, a Centrelink social worker) as requiring income management for reasons including vulnerability to financial crisis, domestic violence or economic abuse;
- persons referred to Centrelink for income management by child protection authorities (currently in operation in Western Australia and to be extended to the Northern Territory); and
- persons who voluntarily opt-in to income management arrangements.⁸

1.18 The first three categories of people have been chosen based on their need for support due to their high risk of social isolation and disengagement, poor financial literacy, and participation in risky behaviours.⁹ Welfare recipients referred for income management by child protection authorities will be included in the new scheme, under provisions in the existing legislation.

1.19 For people subject to income management under the disengaged youth and long-term welfare payment recipient categories, new provisions will provide for exemptions from income management based on the demonstration of socially responsible behaviour.¹⁰

1.20 The bill amends the existing legislation to include a provision that enables welfare recipients not covered under the new scheme to voluntarily opt-in to income

7 *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*, Explanatory Memorandum, p. 16.

8 *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*, Explanatory Memorandum, p. 13.

9 *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*, Explanatory Memorandum, p. 11.

10 *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*, Explanatory Memorandum, p. 14.

management. The bill establishes a new incentive payment of \$250 for each 26 week period for which a person voluntarily opts for income management.

1.21 The bill also creates a matched savings scheme payment for those subject to compulsory income management. This scheme provides a one-off payment equal to the amount saved over a 'qualifying savings period', capped at \$500. In addition, the recipient must undertake an approved course, for example, in financial literacy to be eligible for the payment.¹¹

Schedule 3: Alcohol

1.22 This schedule amends the NTER alcohol measures that applied a blanket set of restrictions to prescribed areas in the Northern Territory. It is intended that communities will be able to tailor alcohol restrictions to suit local circumstances, following consideration on a case-by-case basis of evidence about alcohol-related harm in each community, community consultation about the effectiveness of restrictions, and consideration of whether alternative restrictions such as alcohol management plans are more appropriate for the community.¹²

1.23 Amendments in this schedule include:

- explicitly stating that the objective of the alcohol measures is to reduce alcohol-related harm in Indigenous communities in the Northern Territory;
- allowing more discretion in placing appropriate signage and published notifications regarding alcohol restrictions;
- removing the blanket provision that applied Division 4 of Part VII of the *Northern Territory Police Administration Act* to prescribed areas as if they were public places. This police power allows officers to treat private residences in prescribed areas as public places for the purpose of apprehending, without charge, intoxicated persons. This bill will provide that this power is only applied at the Commonwealth Minister's discretion, following a request by a resident of a prescribed community and after community consultation;
- allowing for alcohol management plans to be implemented in prescribed areas or parts of prescribed areas after consultation with stakeholders; and
- removing the need for certain record keeping requirements relating to the sale of alcohol.¹³

11 *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*, Explanatory Memorandum, p. 30.

12 *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*, Explanatory Memorandum, p. 32.

13 *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*, Explanatory Memorandum, p. 33.

Schedule 4: Prohibited material

1.24 This schedule provides that the existing restrictions on the possession and supply of prohibited pornographic or very violent material may be removed following requests made by, or on behalf of, people ordinarily resident in a prescribed area. The decision to remove the existing restrictions is to be made by the Commonwealth Minister or delegate. Before doing so, the minister or delegate must have regard to the evidence about the well-being of, and the views of, the people living in the prescribed area. Residents of the prescribed area are to be consulted before a declaration is made that restrictions will no longer apply to the prescribed area.¹⁴

Schedule 5: Acquisition of rights, titles and interests in land

1.25 This schedule proposes to amend the provisions of the NTNER Act governing the five-year leases that have been compulsorily acquired over certain Northern Territory communities, to confirm the beneficial intent of the leases. New provisions will make improvements to the existing arrangements, such as defining the permitted use of the leases, stipulating the objectives of the leases, requiring the minister to make guidelines governing land use approval processes, and enshrining in legislation the intended transition to voluntary leases.

Schedule 6: Licensing of community stores

1.26 This schedule amends the existing community stores licensing scheme in Part 7 of the NTNER Act to extend, improve and clarify the operation of that scheme.

1.27 The amendments will include:

- extending the scope of the licensing scheme to cover shops which are a key source of food, drink and grocery items for an Indigenous community;
- modifying the range of 'assessable matters' which form the basis for the assessment of community stores in relation to licensing decisions;
- ensuring that the legislative scheme reflects the specific responsibilities of store owners and store managers in the operation of a community store; and
- provision for the Secretary to require the owner of a licensed community store, where the owner is incorporated under the *Northern Territory Associations Act*, to become registered under the *Commonwealth Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

1.28 The proposed amendments under this schedule also provide for review of key licensing decisions by the Administrative Appeals Tribunal and removes the Commonwealth's powers to acquire the assets and liabilities of a community store.

14 *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*, Explanatory Memorandum, p. 39.

Schedule 7: Powers of the Australian Crime Commission

1.29 Schedule 7 proposes an amendment to the *Australian Crime Commission Act 2002* to ensure that the Australian Crime Commission's use of its special powers is in relation to violence and child abuse committed against Indigenous victims. Specifically, the definition of 'Indigenous violence or child abuse' will be changed from 'serious violence or child abuse committed by or against, or involving, an Indigenous person' to 'serious violence or child abuse committed against an Indigenous person' thereby emphasising that the focus of the measure is to protect Indigenous people.¹⁵

Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009

1.30 This bill will amend various acts in the families, housing, community services and Indigenous affairs portfolio to provide for several non-budget measures including to schedule three further parcels of land in the Northern Territory so that they can be granted as Aboriginal land and amendments to improve the operation of the Social Security Appeals Tribunal (SSAT) across its social security, family assistance and child support jurisdictions.

Schedule 1: Scheduling of land

1.31 This schedule adds several parcels of land in the West MacDonnell National Park, Loves Creek and Tennant Creek regions of the Northern Territory to Schedule 1 to the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA), enabling the land to be granted to relevant Aboriginal Land Trusts. This follows an agreement between the Northern Territory Government and the Central Land Council that the additional parcels of land should be given to the relevant land trusts as Aboriginal land under the ALRA.¹⁶

Schedule 2: Income management regime

1.32 This schedule amends the income management provisions in the social security law to:

- enable income management in Cape York of age pension and carer payment;
- close a loophole by allowing any residual balance from a past period of income management, for a person who starts a new period of income management, to be paid into the special account for the person instead of being paid to the person; and

15 *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*, Explanatory Memorandum, pp 85–86.

16 *FaHCSIA and Other Legislation Amendment (2009 Measures No. 1) Bill 2009*, Explanatory Memorandum, p. 2.

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- allow the residual amount for a deceased customer to be paid to an appropriate person.¹⁷

Schedule 3: Social Security Appeals Tribunal

1.33 The improvements to the operation of the SSAT across its social security, family assistance and child support jurisdictions provided for in this schedule include:

- changes to titles for tribunal members, such as renaming the Executive Director to Principal Member;
- removal of the requirement for the Principal Member to chair panels on which he or she sits by enabling the Principal Member to determine who will be the presiding member; and
- allowing the SSAT to convene a pre-hearing conference for social security and family assistance law appeals – if parties reach agreement at the pre-hearing conference, the SSAT is empowered to make a decision in accordance with the agreement.¹⁸

Schedule 4: Disposal of assets

1.34 This schedule will clarify that a gift that has been returned does not have to be assessed as a deprived asset under the social security disposal of assets provisions.¹⁹

Schedule 5: Controlled private trusts

1.35 This schedule will clarify, for the purposes of the means test treatment of private trusts, the requirements for an individual to pass the control test in relation to a controlled private trust.²⁰

Baby bonus

1.36 This schedule introduces a new requirement for an individual to notify if a child for whom baby bonus is paid leaves the individual's care within 26 weeks beginning on the day of the child's birth or the day the child is entrusted to care.²¹

17 *FaHCSIA and Other Legislation Amendment (2009 Measures No. 1) Bill 2009*, Explanatory Memorandum, p. 3.

18 *FaHCSIA and Other Legislation Amendment (2009 Measures No. 1) Bill 2009*, Explanatory Memorandum, p. 7.

19 *FaHCSIA and Other Legislation Amendment (2009 Measures No. 1) Bill 2009*, Explanatory Memorandum, p. 18.

20 *FaHCSIA and Other Legislation Amendment (2009 Measures No. 1) Bill 2009*, Explanatory Memorandum, p. 21.

21 *FaHCSIA and Other Legislation Amendment (2009 Measures No. 1) Bill 2009*, Explanatory Memorandum, p. 27.

Other amendments

1.37 This schedule makes further amendments to portfolio legislation to address minor anomalies and technical errors.²²

Families, Housing, Community Affairs and Other Legislation (Restoration of Racial Discrimination Act) Bill 2009

1.38 This private senator's bill, introduced by Senator Siewert, proposes to repeal sections in the FaCSIA NTNER and Other Measures Act, the NTNER Act and the Welfare Payment Reform Act that either deemed actions undertaken under those pieces of legislation to be 'special measures' or excluded them from Part II of the Racial Discrimination Act. An extended discussion of the nature of these sections appears above.

1.39 This bill inserts new provisions into the three relevant acts, specifically stating that:

- the provisions of the Racial Discrimination Act are intended to prevail over the provisions of the acts;
- the acts do not authorise conduct that is inconsistent with the provisions of the Racial Discrimination Act;
- the provisions of the acts and any actions done under the provisions are intended to qualify as special measures; and
- any actions done, decisions made or discretion exercised under any of the three acts must be consistent with the intended beneficial purpose of that particular act.²³

Structure of the Report

1.40 The committee did not receive evidence on all measures outlined in the above legislation. The majority of evidence provided to the committee related to the proposed reinstatement of the Racial Discrimination Act with respect to the NTER measures or to the proposal to expand the geographical coverage of income management in Australia.

1.41 For this reason, Chapter 2 relates to the reinstatement of the Racial Discrimination Act, while Chapter 3 relates to the proposed new income management scheme. Chapter 4 provides a summary of evidence on the changes to alcohol restrictions and the prohibition of restricted materials and comments regarding

22 *FaHCSIA and Other Legislation Amendment (2009 Measures No. 1) Bill 2009*, Explanatory Memorandum, p. 29.

23 *Families, Housing, Community Affairs and Other Legislation (Restoration of Racial Discrimination Act) Bill 2009*, Explanatory Memorandum, p. 1.

customary law. Due to the sheer number of measures contained within the legislation, it has not been possible to comment on all within the time constraints of the inquiry.

Acknowledgement

1.42 The committee thanks those organisations, government departments and individuals who made submissions and gave evidence at the committee's public hearings.

Note on references

1.43 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee Hansard relate to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

