The Senate

Community Affairs Legislation Committee

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

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

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

March 2010

ISBN 978-1-74229-273-1

Senate Community Affairs Committee Secretariat:
Mr Elton Humphery (Secretary)
Ms Naomi Bleeser (Secretary)
Ms Christine McDonald (Principal Research Officer)
Mr Owen Griffiths (Senior Research Officer)
Mr Bill Bannear (Senior Research Officer)
Ms Leonie Peake (Research Officer)
Ms Ingrid Zappe (Executive Assistant)
Ms Hanako Jones (Executive Assistant)
Ms Victoria Robinson-Conlon (Executive Assistant)
Ms Sophia Fernandes (Executive Assistant)

The Senate
Parliament House
Canberra ACT 2600
Phone: 02 6277 3515
Fax: 02 6277 5829
E-mail: community.affairs.sen@aph.gov.au
Internet: http://www.aph.gov.au/senate_ca

This document was produced by the Senate Community Affairs Committee Secretariat and printed by the Senate Printing Unit, Parliament House, Canberra.

MEMBERSHIP OF THE COMMITTEE

42nd Parliament

Members

Senator Claire Moore, Chair	ALP, Queensland
Senator Rachel Siewert, Deputy Chair	AG, Western Australia
Senator Judith Adams	LP, Western Australia
Senator Sue Boyce	LP, Queensland
Senator Carol Brown*	ALP, Tasmania
Senator Mark Furner	ALP, Queensland

Participating Members for this inquiry

Senator Trish Crossin (ALP, Northern Territory) to replace Senator Carol Brown for this inquiry.

TABLE OF CONTENTS

MEMBERSHIP OF THE COMMITTEE iii

Abbreviations ix

Recommendations xi

SOCIAL SECURITY AND OTHER LEGISLATION AMENDMENT (WELFARE REFORM AND REINSTATEMENT OF RACIAL DISCRIMINATION ACT) BILL 2009; 1

FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS AND OTHER LEGISLATION AMENDMENT (2009 MEASURES) BILL 2009; AND 1

FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS AND OTHER LEGISLATION AMENDMENT (RESTORATION OF RACIAL DISCRIMINATION ACT) BILL 2009 1

THE INQUIRY 1

BACKGROUND 1

THE BILLS 2

Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 2

Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 8

Families, Housing, Community Affairs and Other Legislation (Restoration of Racial Discrimination Act) Bill 2009 10

Structure of the Report 10

Note on references 11

Chapter 2 13

Reinstatement of the Racial Discrimination Act 13

Background 13

The need to reinstate the Racial Discrimination Act 15

Issues 16

NTER Redesign Consultations 27

Chapter 3 35

Income management 35

Background....35
The proposed new model of income management....35
Historical context of policy change....40
Issues....41

Chapter 4....63
Other measures....63

Senate Standing Committee on Community Affairs....69
COALITION SENATORS' DISSENTING REPORT....69
Executive summary....69
Inviting a legal challenge to the legislation....70
Special measures....72
Discrimination in the Bill....72
Proposed amendments – *'Dysfunction not race'*....73
Conclusion....74

Inquiry into the provisions of the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of the Racial Discrimination Act) Bill 2009 and related legislation....75

Dissenting report by Senator Rachel Siewert, Australian Greens....75
Inadequacies of the majority report....76
The current approach does not restore the RDA....77
Permissible limitations on human rights....78
Failure to qualify as 'special measures'....78
The duty to consult....79
Land is a special case....80
The need for a 'notwithstanding' clause....81
Legal challenge is inevitable....82
Parliament should resolve legislative problems, not the courts....82
The national introduction of indiscriminate mandatory income management 84
Fundamental issues of principle....84
The lack of pathways 'up and out' of income management....87
No evidence income management has resulted in better nutrition....88
Income management does not improve financial capacity....89
Income management costs reduce investment in social services....91

Intensive case management, not IM alone, produces results 92
Absence of assessment framework and baseline data 93
Conclusion 94
Recommendations: 94

APPENDIX 1 97

Submissions and Additional Information received by the Committee 97

Submissions received 97
Additional Information 100

APPENDIX 2 103

Public Hearings 103

Abbreviations

ACOSS	Australian Council of Social Services
AHRC	Australian Human Rights Commission
AIHW	Australian Institute of Health and Welfare
AMSANT	Aboriginal Medical Services Alliance Northern Territory
CAALAS	Central Australian Aboriginal Legal Aid Service
CIRCA	Cultural and Indigenous Research Centre Australia
CLC	Central Land Council
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
GBM	General Business Manager
LCA	Law Council of Australia
NAAJA	North Australian Aboriginal Justice Agency
NGO	Non-Government Organisation
NPY Women's Council	Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council
NTER	Northern Territory Emergency Response
NTNER	Northern Territory National Emergency Response
RDA	*Racial Discrimination Act 1975*
SSAT	Social Security Appeals Tribunal

Recommendations

Recommendation 1

2.76 The committee recommends that the government maintain its commitment to increase the capacity of Indigenous interpretative services in the Northern Territory and in Indigenous communities across Australia.

Recommendation 2

3.17 The committee recommends that, should the government's proposed legislation be passed, the Department of Families, Housing, Community Services and Indigenous Affairs should consult with relevant non-government organisations, peak advocacy groups and other stakeholders in developing the legislative instruments associated with the legislation.

Recommendation 3

3.57 The committee recommends that the evaluation of the proposed income management measure in the Northern Territory be well-resourced, include community consultation in the design of the evaluation, feature the collection of baseline data prior to implementation, include robust quantitative data analysis and be undertaken by an independent research organisation.

Recommendation 4

4.19 The committee recommends that the Senate pass the government's bills.

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.

- 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.

Chapter 2

Reinstatement of the Racial Discrimination Act

Background

2.1 The Northern Territory Emergency Response (NTER) legislation introduced in 2007 by the former Howard Government included provisions that suspended the operation of the *Racial Discrimination Act 1975* (Racial Discrimination Act). This was achieved by exempting the NTER measures from Part II of the Racial Discrimination Act, which is the section prohibiting racial discrimination.

2.2 Additionally, the NTER measures were deemed by the legislation to be 'special measures' and hence exempt from the general prohibition on racial discrimination. In short, special measures are measures which apply to a particular racial or ethnic group that assist in the advancement of that group. Special measures are further discussed later in this chapter.

2.3 Using these two different mechanisms, the NTER legislation suspended the Racial Discrimination Act from applying to the NTER measures and income management regimes in the Northern Territory and Cape York.

2.4 At the time the legislation was introduced, the Howard Government stated that an important purpose of these provisions was to ensure that the NTER measures, as well as the establishment and operation of what was the Queensland Commission[1] and changes to approved programs of work for income support, could be implemented without delay and without uncertainty.[2]

2.5 The current government, when in opposition, commented during the parliamentary debate on the NTER bills in 2007 that suspension of the Racial Discrimination Act was unnecessary.[3] When it was elected in November 2007, the current government indicated that it would continue the NTER but that a review would be undertaken after 12 months of operation. As part of this process, the NTER Review Board reported to the government in October 2008. The Review Board found

---

1 The Queensland Family Responsibilities Commission was subsequently declared to be the Queensland Commission for the purpose of the relevant provisions of the Welfare Payment Reform Act and the Social Security Administration Act.

2 *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*, Explanatory Memorandum, p. 3.

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

the situation in remote Northern Territory communities and town camps remained sufficiently acute to be described as a 'national emergency'.[4]

2.6 The NTER Review Board (the Review Board) made three overarching recommendations in its report, which were that:

- the Australian and Northern Territory Governments recognise as a matter of urgent national significance the continuing need to address the unacceptably high level of disadvantage and social dislocation being experienced by Aboriginal Australians living in remote communities throughout the Northern Territory;
- in addressing these needs both governments acknowledge the requirement to reset their relationship with Aboriginal people based on genuine consultation, engagement and partnership; and
- government actions affecting the Aboriginal communities respect Australia's human rights obligations and conform with the Racial Discrimination Act.[5]

2.7 The government announced on 23 October 2008 that it accepted each of the Review Board's three overarching recommendations, and committed to introducing legislation into the parliament to remove the provisions that exclude the operation of the Racial Discrimination Act.[6] The government released a policy statement on 25 November 2009 which set out the reforms of the welfare system it was introducing and the reinstatement of the Racial Discrimination Act. In relation to the reinstatement, it was stated:

> …the government is moving to reinstate the *Racial Discrimination Act 1975* (RDA) in relation to the operation of the Northern Territory emergency Response (NTER) and related legislation operating in the Northern Territory and Queensland. The removal of the RDA suspension, along with the redesign of relevant measures to ensure they conform with the RDA will strengthen the NTER and assist in resetting the government's relationship with Aboriginal people nationally.[7]

2.8 On the same day, the Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon Jenny Macklin, MP, introduced 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. In

---

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

5 NTER Review Board, *Report*, October 2008, p. 12.

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

7 Australian Government, *Policy Statement: Landmark Reform to the Welfare System, Reinstatement of the Racial Discrimination Act, and Strengthening of the Northern Territory Emergency Response*, 25 November 2009.

her second reading speech, the minister stated that the bill was intended to honour the government's commitment to reinstate the Racial Discrimination Act in relation to the NTER. The minister stated that the reinstatement will strengthen the NTER and that 'the government believes that all NTER measures are either special measures under the Racial Discrimination Act or non-discriminatory and thus consistent with the Racial Discrimination Act'[8].

2.9 The explanatory memorandum makes clear that the alcohol, restricted materials, five year lease and community store licensing measures are time-limited in the proposed legislation and will cease in August 2012.[9]

2.10 The proposed reinstatement of the Racial Discrimination Act was the focus of much of the evidence that the committee received.

The need to reinstate the Racial Discrimination Act

2.11 The vast majority of witnesses and submitters before the committee agreed with the government's intention to reinstate the Racial Discrimination Act. For example, the Law Council of Australia (LCA) stressed to the committee the importance of the Racial Discrimination Act in Australia's legal history, stating:

> The prohibition of racial discrimination is not constitutionally entrenched in Australia…When enacted in 1975, the RDA was landmark legislation reflecting the will of the Australian Parliament to join the consensus of the international community in condemning and prohibiting any form of racial discrimination.[10]

2.12 The committee found that the reinstatement of the Racial Discrimination Act was strongly desired by many Indigenous people in the Northern Territory. For example, Mr Samuel Bush-Blenasi, Northern Land Council, stated:

> We are the first Australians in this country and we are citizens of Australia. Australian citizenship was given to us by the federal government a long time ago; I was not even born then. Our rights—we have no rights at the present moment. That is why most of our people are really screaming about the Racial Discrimination Act as we have stated.[11]

2.13 The importance of the Racial Discrimination Act was underscored by suggestions that its suspension had resulted in perceived levels of racism increasing in the Northern Territory with respect to certain NTER measures. For example, some

---

8 The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, *House of Representatives Hansard*, 25 November 2010, p. 12783.

9 *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*, Explanatory Memorandum, p. 32, 41, 45 &52.

10 Law Council of Australia, *Submission 83*, p. 9.

11 Mr Samuel Bush-Blenasi, Northern Land Council, *Committee Hansard*, 15 February 2010, p. 74.

witnesses attested to feelings of discrimination as a result of the introduction of the BasicsCard, including segregated shopping lines and embarrassment at the register:

> While there might not be rigorous academic reports on the issue, I can assure you—and you will have a lot of people before you today on this—that anyone who lives in Alice Springs can tell you racism is alive and well and discriminatory practices are alive and well. Certainly the introduction of the BasicsCard and its implementation have assisted to highlight just how different the arrangements are in this town for people who are black and people who are white…I can certainly tell you, from our council meetings and others, that there have been hours and hours of discussions around just how humiliating the administrative arrangements of the BasicsCard are for people.[12]

2.14 More generally, Ms Barbara Shaw, Prescribed Area People's Alliance, stated:

> There has always been racism in this town but, with the suspension of the Racial Discrimination Act, it has come out from under the carpet.[13]

2.15 The committee strongly supports the reinstatement of the Racial Discrimination Act. In the words of Mr Ron Levy, Northern Land Council:

> The whole point about discrimination is that people throughout Australia—black or white—are entitled to go to court and test things if they want to.[14]

2.16 The committee feels that all citizens of Australia deserve the right to challenge legislation and government actions in court.

Issues

2.17 Issues associated with the government's proposed reinstatement of the Racial Discrimination Act fell into two broad categories. Firstly, some witnesses were of the opinion that a mere repeal of the sections exempting the NTER measures from the prohibition on racial discrimination may not go far enough. Secondly, many witnesses commented on the definition and characterisation of special measures, and whether the amended NTER measures would qualify as such.

Repeal of sections suspending the Racial Discrimination Act

2.18 The North Australian Aboriginal Justice Agency (NAAJA) highlighted the desire of residents of prescribed areas to see the reinstatement of the Racial Discrimination Act but also the need for the act to be properly reinstated. Mr Jared Sharp, NAAJA, stated:

---

12 Ms Jayne Weepers, Central Land Council, *Committee Hansard*, 17 February 2010, p. 4.

13 Ms Barbara Shaw, Prescribed Area People's Alliance, *Committee Hansard*, 17 February 2010, p. 27.

14 Mr Ron Levy, Northern Land Council, *Committee Hansard*, 15 February 2010, p. 71.

> Ms Pingelly and I did a consultation with our board. We are an Aboriginal-controlled organisation. We travelled around the Territory to consult with our board, and the universal message that our board gave to us was that restoring the Racial Discrimination Act is vital…They did, however, qualify that…by saying that if the Racial Discrimination Act is to be restored it needs to be restored properly.[15]

2.19 A number of witnesses, including the Australian Human Rights Commission (AHRC), expressed concern that as the government bill is currently worded, the Racial Discrimination Act may not prevail over potentially discriminatory measures in the amended NTER legislation. The AHRC stated:

> …if the NTER legislation cannot be read so as to be consistent with the RDA, the NTER legislation, being the later legislation, will prevail. In other words, if NTER measures remain discriminatory, they will not be altered by the 'reinstatement' of the RDA.[16]

2.20 Amnesty International Australia also drew this possible legal issue to the attention of the committee.[17] Additionally, Dr Sarah Pritchard, LCA, noted that:

> It is a fairly standard principle of statutory interpretation that…specific provisions prevail over general provisions, and we consider that there is a real risk that the repeal of the suspending provisions will leave the specific provisions to operate and override the protections intended to be conferred by the Racial Discrimination Act.[18]

2.21 In its submission to the committee, the AHRC also noted two further issues with the repeal of the sections in the NTER legislation that suspended the Racial Discrimination Act, using the example of compulsorily-acquired 5-year leases. Firstly, item 4(a) of Schedule 1 of the government bill specifies that the repeal would not have retrospective effect. Secondly, item 4(b) of Schedule 1 specifies that section 8 of the *Acts Interpretation Act 1901* applies to the repeal and is unaffected by contrary intention. In terms of the section 8 argument, the AHRC stated:

> The effect of this provision is that any rights acquired by the Commonwealth under the leases continue. More generally, anything done under the current legislation will not be affected by the repeal of the provision that suspends the operation of the RDA.[19]

2.22 The AHRC thus concluded that:

---

15 Mr Jared Sharp, North Australian Aboriginal Justice Agency, *Committee Hansard*, 15 February 2010, p. 28.

16 Australian Human Rights Commission, *Submission* 76, p. 14.

17 Amnesty International Australia, *Committee Hansard*, 11 February 2010, p. 3.

18 Dr Sarah Pritchard, Law Council of Australia, *Committee Hansard*, 25 February 2010, pp 10–11.

19 Australian Human Rights Commission, *Submission 76*, p. 15.

> It appears, therefore, that the existence of all existing five-year leases will not be able to be successfully challenged under the RDA even if the suspension of the RDA is lifted by the government Welfare Reform Bill. Likewise, nothing already done by the Commonwealth pursuant to the grant of the leases will be able to be successfully challenged.[20]

2.23 In order to ensure that the Racial Discrimination Act would prevail over the NTER legislation, the AHRC, the LCA, and the Northern and Central Land Councils recommended the inclusion of a 'notwithstanding' clause that would expressly state that the provisions of the Racial Discrimination Act prevail notwithstanding anything to the contrary, in the NTER legislation.

2.24 The AHRC informed the committee that:

> 38. Such a clause would require all acts authorised under the legislation to be undertaken consistently with the RDA. To be effective a notwithstanding clause should be unequivocal that the provisions of the NTER legislation are subject to the provisions of the RDA.
>
> 39. The consequences of not including a notwithstanding clause are significant. Without such a clause, any provision of the amended emergency response legislation that is inconsistent with the RDA will still override the RDA.[21]

2.25 The AHRC elaborated on this argument in relation to five-year leases. It concluded that 'including a notwithstanding clause in the NTER legislation would serve to give full effect to the government's intention to reinstate the RDA'.[22]

2.26 The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) rejected the notion that a 'notwithstanding' clause was necessary to ensure the Racial Discrimination Act was fully reinstated and indicated that it would in fact be undesirable to do so. Mr Rob Heferen, FaHCSIA, stated:

> Schedule 1 of the Bill removes all of the provisions that exclude the operation of the RDA and also all of the provisions which state that the measures are 'special measures'.
>
> The effect of this is that, following the repeal, the RDA will apply to the NTER, and people will have their rights to bring appropriate proceedings. A complaint in relation to the administration of the NTER can be made in the usual way to the Australian Human Rights Commission, and then to a court, or, if there are disputes about the operation of the legislation itself, these can be raised in proceedings in a court. Of course, whether there has been a breach of the RDA in a particular case will still need to be determined by the Commission or the court…

---

20 Australian Human Rights Commission, *Submission 76*, p. 15.

21 Australian Human Rights Commission, *Submission 76*, p. 15.

22 Australian Human Rights Commission, *Submission 76*, p. 16.

> The intention of the Bill is clear from its face and this is supported by the numerous statements of the minister and the government. The Second Reading Speech states that the provisions that modify the operation of the RDA, and the provisions that deem the legislation and acts to be special measures, are to be repealed. The Explanatory Memorandum contains a number of statements about the effect of the repeal, including a clear statement that the RDA will no longer be excluded.
>
> …It is not desirable to include a provision stating that the RDA applies in relation to the NTER because it is not good practice to include in legislation provisions that are not necessary and such a provision is not necessary here for the reasons I have outlined above. Inserting such a provision could lead to the argument that similar provisions must be included in all Acts made since the RDA in 1975, which has wide ranging implications. In the circumstance of this Bill, such a provision is not necessary to provide clarity and its interpretation could provide an additional matter for dispute.[23]

2.27 The committee notes that the repeal of the provisions in the original NTER legislation that excluded the measures from the prohibition on racial discrimination will mean that individuals would be able to challenge the measures under the Racial Discrimination Act once the proposed legislation came into force.

2.28 While cognisant of the issues raised, the committee considers the government's legislation to be a strong step forward for the NTER. The AHRC, while critical of some aspects of the legislation, also stated in its submission:

> The Commission notes that, overall, while the proposed changes to the NTER do not address all the concerns of the Commission, they will improve the measures that currently apply to individuals in prescribed communities in the Northern Territory[24]

Special measures

2.29 The existing NTER legislation deems the NTER measures to be special measures and thus exempt from Part II of the Racial Discrimination Act which prohibits racial discrimination. Special measures are defined in the International Convention on the Elimination of All Forms of Racial Discrimination as:

> …measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for

23 Mr Rob Heferen, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 51.

24 Australian Human Rights Commission, *Submission 76*, p. 5.

> different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.[25]

2.30 The government's proposed legislation repeals the sections in the NTER legislation that assert that the NTER measures are special measures under the Racial Discrimination Act. However, the minister in her second reading speech and the explanatory memorandum makes clear that the government intends the measures to be 'special'. It is stated in the explanatory memorandum that:

> The repeal of subsection 4(1) of the FaCSIA NTNER and Other Measures Act does not alter the fact that the provisions of that Act, and acts done under or for the purposes of those provisions, are intended to be special measures under the Racial Discrimination Act.[26]

2.31 The definition and scope of special measures has been the subject of debate both internationally and domestically. The LCA noted the importance of the wishes of affected communities in determining special measures, as observed by Justice Brennan in the 1985 High Court case *Gerhardy v Brown*:

> A special measure must have the sole purpose of securing advancement, but what is "advancement"?…The purpose of securing advancement for a racial group is not established by showing that the branch of government or the person who takes the measure does so for the purpose of conferring what it or he regards as a benefit for the group if the group does not seek or wish to have the benefit. The wishes of the beneficiaries for the measure are of great importance (perhaps essential) in determining whether a measure is taken for the purpose of securing their advancement. The dignity of the beneficiaries is impaired and they are not advanced by having an unwanted material benefit foisted on them.[27]

2.32 The AHRC also noted the importance of free, prior and informed consent under the United Nations Declaration on the Rights of Indigenous Peoples:

> The Declaration while not legally-binding is constituted of human rights standards recognised in existing covenants and conventions that Australia has ratified. Further, the treaty body committees have looked to the Declaration to guide their interpretation of human rights standards, in their application to indigenous peoples. Compliance with the Declaration is therefore an important means of ensuring that the NTER measures are consistent with human rights standards.
>
> A critical component of the Declaration is the principle of free, prior and informed consent. This requires appropriate community consultation and

---

25 *International Convention on the Elimination of All Forms of Racial Discrimination*, Article 1(4).

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

27 *Gerhardy v Brown* (1985) 159 CLR 70.

> engagement in the design, development, implementation and review of laws, policies and programs that affect indigenous peoples.[28]

2.33 The AHRC submission commented that, in its opinion, the redesigned measures would not meet the requirements for special measures where:

- the government's redesign consultations do not meet the standard of consultation and consent of the affected group;
- there is insufficient current and credible evidence which shows that the measure will be effective;
- there are alternative means of achieving the objective that are not as restrictive of affected persons' human rights; and
- there are inadequate mechanisms for monitoring and evaluating the measure to ensure if it is working effectively and if its objective has been met.[29]

2.34 NAAJA was highly critical of the characterisation of NTER measures as 'special measures' as they did not feel that an evidence base proving the need for the certain NTER measures existed. Mr Sharp stated:

> We feel that, if the Racial Discrimination Act is to be restored, it needs to be done in a non-discriminatory way. To do otherwise there needs to be the evidence basis, and there simply is not. For example, human rights law is really clear about the criteria that need to be applied if a measure is a 'special measure'. The crucial one to start with is necessity: has the government demonstrated that there is a need for this measure, to justify this special treatment? Our submission is that, in the absence of credible evidence, which certainly has not been made publicly available if it exists, there simply is not the demonstrated necessity to support special measures.[30]

2.35 NAAJA also informed the committee that in its opinion, the redesigned NTER measures, using the example of the pornography restrictions, would not or had not been introduced with informed consent from the affected population, nor had the beneficial effects been proven:

> …it needs to be the case that the government can demonstrate that the measure is for the sole purpose and advancement of the targeted group. Again, in our submission we say that we do not feel that that has been the case. When looking at the key criteria, the standard of free, prior and

28 Australian Human Rights Commission, *Submission 76*, p. 8.

29 Australian Human Rights Commission, *Submission 76*, pp 19–20.

30 Mr Jared Sharp, North Australian Aboriginal Justice Agency, *Committee Hansard*, 15 February 2010, p. 29.

> informed consent is perhaps paramount, and we think that has not been demonstrated.[31]

2.36 The Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council (NPY Women's Council), however, defended the characterisation of the NTER measures as special measures on the grounds that they protected the rights of women and children, stating:

> 4.1 Whilst the suspension of the RDA is touted by opponents of the NTER as something akin to a national disaster, it is very clear that the true disaster is in the previously ignored rights of many, in particular women and children, which have been greatly improved by the Intervention. Presumably if the Act had not been suspended, this attempt to improve people's lives would have become entangled in court applications arguing breaches of the Act.
>
> 4.2 The committee members would also be aware of the definitions and Australian case law in relation to special measures. NPY suggests that an argument can be made for such measures to apply to vulnerable people such as aged and disability benefit recipients, and that it is perhaps time to test the potential for the development of the definition of special measures with reference to international conventions.[32]

2.37 The minister, in her second reading speech, noted that the government had given careful consideration to the issue of special measures. The committee notes that the legislation redesigns a number of measures to make them more clearly special measures under the Racial Discrimination Act. The committee notes the minister's statement that:

> Apart from the income management scheme, which is designed to apply in a non-discriminatory fashion to any citizen in the Northern Territory within the specified categories, the government has redesigned a number of the other measures dealt with by this bill so that they are more sustainable and more clearly special measures under the Racial Discrimination Act.
>
> The bill removes the provisions that deem the legislation and acts done under the legislation to be special measures, as those provisions could be said to have the indirect effect of suspending parts of the Racial Discrimination Act. However, this does not alter the fact that the government considers that the redesigned measures are special measures under the Racial Discrimination Act.
>
> Special measures help people of a particular race to enjoy their human rights equally with others. They are an important part of the Racial Discrimination Act because they allow governments, when it is necessary, to make special laws to ensure the protection of the human rights of the people who need it most.

---

31 Mr Jared Sharp, North Australian Aboriginal Justice Agency, *Committee Hansard*, 15 February 2010, p. 31.

32 NPY Women's Council, *Submission 93*, p. 6.

> The government understands the important decisions that need to be made before introducing special measures. The government has given careful consideration to the need for these laws as a necessary and appropriate way to address the challenges facing Indigenous people in the Northern Territory and as part of the transition of the NTER to the long-term development phase. The NTER measures that are special measures are all time limited.[33]

2.38 FaHCSIA informed the committee that with the new legislation and the reinstatement of the Racial Discrimination Act, people who did not feel the measures constituted special measures would be able to challenge this in court. Mr Anthony Field, FaHCSIA, stated:

> In the new legislation we are not saying that they are special measures by force of the act. What is being said in the supporting documents is that the government has redesigned them to be more special measures and that is what they are and that from the repeal of the RDA exemptions, which included provisions that deemed them to be special measures, people will have their rights under the Racial Discrimination Act to bring complaints and court action if they think that they are not.[34]

2.39 The AHRC raised a specific objection to the characterisation of the five year leases as a special measure, stating that measures relating to land could not be special measures for Indigenous communities. Mr Graeme Innes, AHRC, stated:

> We cannot see any way that the five-year leases can be a special measure…Specifically, land and application to land is excluded by section 10(3) of the RDA in relation to Indigenous people.[35]

2.40 Subsection 10(3) of the Racial Discrimination Act reads as follows:

> (3) Where a law contains a provision that:
>
> (a) authorizes property owned by an Aboriginal or a Torres Strait Islander to be managed by another person without the consent of the Aboriginal or Torres Strait Islander; or
>
> (b) prevents or restricts an Aboriginal or a Torres Strait Islander from terminating the management by another person of property owned by the Aboriginal or Torres Strait Islander;
>
> not being a provision that applies to persons generally without regard to their race, colour or national or ethnic origin, that provision shall be deemed to be a provision in relation to which subsection (1) applies and a reference

33 The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, *House of Representatives Hansard*, 25 November 2010, p. 12784.

34 Mr Anthony Field, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 56.

35 Mr Graeme Innes, Australian Human Rights Commission, *Committee Hansard*, 26 February 2010, p. 34.

> in that subsection to a right includes a reference to a right of a person to manage property owned by the person.[36]

2.41 Subsection (1) refers to the right of persons of any race, colour, nationality or ethnic origin to enjoy the right to equality before the law.

2.42 FaHCSIA did not agree with the assertion that special measures could not involve land. Mr Anthony Field, FaHCSIA, commented:

> That is a proposition with which we just do not agree. We understand that section 10(3) of the Racial Discrimination Act deals with property, but we do not agree with the bold proposition that you cannot have a special measure that deals with land.[37]

2.43 The committee is of the opinion that the government's redesigned measures, other than income management, which is non-discriminatory, are special measures. The committee notes that with the government's intended reinstatement of the Racial Discrimination Act, citizens who disagree will be free to challenge the measures as should be the right of all Australian citizens.

2.44 The committee notes comments by the Australian Human Rights Commission that the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009 instead provides that the NTER legislation in its entirety, and all acts done under the legislation, are intended to constitute special measures, stating:

> 55. The Social Justice Commissioner noted his view in the Social Justice Report 2007 that it is not possible for the entire legislation to be a special measure. This is because a number of the measures in the legislation are not a proportionate response to the problems they seek to address and were introduced without community consent. While the Commission supports the change in legislative language away from special measures being 'deemed', the Commission does not accept the characterisation of the legislation as a whole as a special measure.
>
> 56. Further, the Greens' Bill does not include a redesign of the individual NTER measures to be compliant with the RDA. While it leaves individual measures open to legal challenge under the RDA, the Commission suggests that Parliament should seek to make the NTER compliant with the RDA, rather than leave it to individuals to challenge aspects that may be discriminatory.[38]

36 *Racial Discrimination Act 1975*, ss10(3); subsection (1).

37 Mr Anthony Field, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 57.

38 Australian Human Rights Commission, *Submission 76*, p. 17.

Indirect discrimination

2.45 Several witnesses commented that though the proposed legislation would provide for the establishment of income management across the Northern Territory rather than in prescribed Aboriginal communities, the measure would still fall most heavily on Aboriginal people. They therefore argued that the measure would constitute indirect discrimination. For instance, Ms Annabel Pengilley, NAAJA, stated:

> …while the government is saying, 'This measure is not targeted at Aboriginal people; it applies to both Indigenous and non-Indigenous Australians,' the effect on the ground is that it is mostly going to affect Aboriginal people in the Northern Territory. Unfortunately, we do not have access to the data which would allow us to understand how many non-Indigenous people in the Northern Territory would be affected, but we can certainly see that, of the Indigenous people on Centrelink benefits in the Territory, a good two-thirds look like they will remain under the income management scheme.[39]

2.46 The AHRC also raised a concern over the potential for indirect discrimination through the proposed income management categories:

> …the commission is concerned that the broad reach and automatic application of the 'disengaged youth' and 'long-term welfare payment recipient' categories could result in a disproportionate number of Aboriginal people being unnecessarily income managed. This risk stems from the limited access to education, training and employment for Aboriginal people, in particular in remote communities in the Northern Territory, and the consequent high proportion of Aboriginal people accessing welfare payments for extended periods.[40]

2.47 The committee is of the opinion that the use of categories targeted on an objective basis of need rather than on race or ethnic background means that the income management measure will be non-discriminatory. The committee notes statements by the government indicating the non-discriminatory policy basis of the income management categories:

> The new income management scheme will progressively be extended across the Northern Territory, to targeted categories of people that the government believes will particularly benefit from the help income management provides…
>
> The government selected these categories to target assistance to the most disengaged and disadvantaged individuals in the welfare system. The categories provide an objective basis for targeting the benefits of income

---

39 Ms Annabel Pengilley, North Australian Aboriginal Justice Agency, *Committee Hansard*, 15 February 2010, pp 29–30.

40 Mr Mick Gooda, Australian Human Rights Commission, *Committee Hansard*, 26 February 2010, p. 29.

> management that is independent of race, and as a result, is intended to be non-discriminatory…
>
> The government has chosen the target groups based on their need for support due to their high risk of social isolation and disengagement, poor financial literacy, and participation in risky behaviours.[41]

2.48 The three new categories of income management are further discussed in the next chapter.

2.49 FaHCSIA noted that the new income management scheme is designed to be non-discriminatory and would operate without the suspension of the Racial Discrimination Act from its commencement on 1 July 2010 if the legislation is passed.[42]

Consultation and special measures

2.50 Some witnesses were concerned that the government was relying on the NTER Redesign Consultations process to provide evidence that informed consent for the NTER measures had been obtained and that this could be used to defend the government claim that certain measures were 'special measures' under the Racial Discrimination Act. For instance, Mrs Barbara Bradshaw, Northern Territory Law Society, made the following statement regarding the redesign consultations:

> We understand that it is very important that the affected people have an opportunity to be heard, particularly when the outcomes of these processes will inevitably have a significant impact on their legal rights and obligations. We agree that the consultations that were held were very important, but we would be concerned if the intention of those consultations was that they would be used to support an argument that the intervention measures are special measures under the Racial Discrimination Act.[43]

2.51 The question of whether the government considered the redesign consultations to have been for the purpose of obtaining prior, informed consent for special measures was put to FaHCSIA. Mr Field responded:

> The answer is no. The reason for that is because the purpose of the consultations is set out in the discussion paper and the other documents. Those purposes related to resetting the relationship continuing the Northern Territory Emergency Response and reinstating the Racial Discrimination Act, which are the three overarching recommendations of the review board that were accepted. That was the purpose that the consultations were

41 Policy Statement: Landmark Reform to the Welfare System, Reinstatement of the Racial Discrimination Act and Strengthening of the Northern Territory Emergency Response, p. 6.

42 FaHCSIA, *Opening statement*, tabled at hearing on 26 February 2010, p. 9.

43 Ms Barbie McDermott, Northern Territory Law Society, *Committee Hansard*, 15 February 2010, p. 27.

> entered into for, and that is the way that they were conducted in an open and transparent way…
>
> …The discussion paper that formed the basis for the consultations does not use the expression 'consent' or 'prior informed consent' and the government's position in relation to the measures in the bill is that they are designed to be special measures, the RDA will be restored, and people will have the opportunity should they choose to challenge.[44]

2.52 The committee received a large amount of evidence on the consultation process and explores the issues raised in the next section.

NTER Redesign Consultations

2.53 Between May and September 2009, the government conducted extensive consultations with Indigenous people in the Northern Territory regarding future directions for the NTER. This process was used to inform the government proposals contained in the legislation before the committee.

2.54 Through the redesign consultation process, meetings were conducted in all 73 communities affected by the NTER as well as several other Indigenous communities and town camps, with over 500 meetings in all.[45]

2.55 The consultations, conducted by FaHCSIA, included four different tiers:

- 444 meetings as part of an ongoing process in which individuals, families and small groups in communities met with General Business Managers (GBM) in their communities on an open-door basis (Tier 1);
- 109 whole-of-community meetings led by Indigenous Coordination Centre (ICC) managers and GBMs (Tier 2);
- six regional workshops of two or three days duration involving 176 different people from NTER communities and Indigenous leaders (Tier 3); and
- five workshops with major Indigenous stakeholder organisations in the Northern Territory involving 101 different people (Tier 4).[46]

2.56 On the scale of the consultations, Dr Bruce Smith, FaHCSIA, commented:

> I have been involved in Indigenous affairs for only a few years, but people who have been involved for much longer say it is the largest and most comprehensive consultation they can remember. While there have been communitywide consultations before and workshops, there was something new about this consultation. The 444 tier 1 consultations, which were held on an ongoing basis over three months in communities, were completely

---

44 Mr Anthony Field, FaHCSIA, *Committee Hansard*, 26 February 2010, pp 58–59.

45 Report on the Northern Territory Emergency Response Redesign Consultations, p. 7.

46 Ms Cath Halbert, FaHCSIA, *Committee Hansard*, 4 February 2010, p. 3.

> new because of course we had never had government business managers there before. So that kind of open door process where people were able to come in at any time and put their views and the government business manager going to small groups and seeking their views over that three-month period was, to my knowledge, unprecedented.[47]

2.57 FaHCSIA noted that it was difficult to assess exactly how many people were involved with the Tier 1 and 2 meetings, as people moved in and out of meetings and may have attended more than one meeting or tier of consultation. FaHCSIA estimated that there may have been three or four thousand people involved in total, but that it was impossible to give a reliable estimate due to issues of double-counting.[48]

Criticisms of the consultation process

2.58 One of the main criticisms levelled at the government's NTER Redesign Consultations was that the structure of the consultation was biased toward eliciting responses that supported the government's policy agenda. Though not formally part of the redesign consultations, the Central Land Council provided feedback on the process to the committee, noting an issue with the provision of information.

> How you present information is critical to the feedback that you receive. This is where we have concerns about the consultation process. It was designed to emphasise the benefits of the measures. There is no evidence that we can see that shows that there was a balanced approach to try and give people the full suite of information you may need to make, for example, a decision around something like five-year leases or land tenure arrangements.[49]

2.59 Another related criticism was the perceived inability to raise policy suggestions outside of what the government was proposing. The Central Land Council (CLC) was of the opinion that a genuine consultation could have considered alternative policies:

> The CLC has got 30 years of experience in consultation on complex matters with remote communities. There are some things that are very critical, and we do not believe that this consultation process lives up to very high standards on any of those fronts. One of those is transparency about the purpose of the consultations. I think this is where the process was very flawed. We would have expected a process that was looking at a genuine redesign of the NTER, would allow people to look at the full scope of the measures to be presented with data on what the impacts have been, what the costs have been and what other measures have been considered by

47 Dr Bruce Smith, FaHCSIA, *Committee Hansard*, 4 February 2010, pp 14–15.

48 Dr Bruce Smith, FaHCSIA, *Committee Hansard*, 4 February 2010, p. 15.

49 Ms Jayne Weepers, Central Land Council, *Committee Hansard*, 17 February 2010, p. 10.

> governments or by NGOs or by other parties that could perhaps come into play in preference to the measures that we have currently.[50]

2.60 Ms Annabel Pengilley, NAAJA, who had attended several of the consultation meetings made a similar comment in regard to the discussion at those meetings of income management:

> The consultations did not take a step back, as the government has done in formulating its legislation, and say to people: 'What's the role of the delivery of Centrelink benefits in communities? What are the good things about how social security is delivered? How can we use social security to effect positive change in communities? What are the faults? What are the positives? How can we use this to get positive outcomes in communities?' None of that was opened up to communities for discussion or for their ideas or their input. Simply what was put to people was, 'Would you like income management to stay exactly like it is or would you like to be able to opt out?' In summary, that is broadly how those consultations went.[51]

2.61 Ms Clare Martin, Australian Council of Social Services, was also critical of the restricted nature of the consultations, stating:

> Consultations conducted in the Northern Territory were a wasted opportunity to develop real solutions in partnership with Aboriginal communities. Despite the evidence that opinion about income management in communities is deeply divided and that there have been numerous problems with the administration of the scheme, Aboriginal people were not given the option of replacing the scheme with a trigger-based model or a voluntary system. Rather, community members were given very limited options for change. They could choose either to retain compulsory income management in its current form or opt for a system with limited exemptions.[52]

2.62 FaHCSIA disagreed with assertions that the consultations restricted the ability for participants to voice their opinions, stating:

> In terms of open and fair consultations, the discussion paper at page 3 clearly indicates the initial proposals were a starting point for discussion. The discussion paper went on to say that:
>
> The government is open to ideas and proposals. It will listen to ideas put forward in consultations.
>
> This openness to seeking people's views is reflected in the questions asked in the discussion paper. The questions asked people what they thought about the problems as well as benefits, how key measures could be improved, what difference it would make if the measure was changed,

---

50 Ms Jayne Weepers, Central Land Council, *Committee Hansard*, 17 February 2010, p. 4.

51 Ms Annabel Pengilley, North Australia Aboriginal Justice Agency, *Committee Hansard*, 15 February 2010, p. 32.

52 Ms Clare Martin, ACOSS, *Committee Hansard*, 26 February 2010, p. 22.

> whether the change was better than the existing arrangements, whether there were other ways of achieving the same aim and whether people would benefit from a continuation of the measure.[53]

2.63 FaHCSIA also noted that Tier 1 consultations had provided an extra avenue of accessibility to people wanting to participate in the consultations:

> The openness and fairness of the consultations is shown in the steps the government took to be inclusive. Page 17 of the consultation report refers to the opportunities for vulnerable, shy and hard-to-reach people to convey their views in a way that was comfortable, safe and flexible for them. The open door tier 1 meetings with local government business managers, or GBMs, enabled anyone in the community to come and talk with a GBM about their concerns and views. There were over 400 such discussions. This shows that many people took up this opportunity…[Cultural and Indigenous Research Centre Australia (CIRCA)] commented on the importance of the tier 1 consultations for people who might not ordinarily speak up because of their social position and rules about who can speak.[54]

2.64 Several submitters and witnesses referred to the *Will They Be Heard* report, commonly referred to as the Nicholson Report, compiled by the Jumbunna House of Indigenous Learning. The report examined recordings or minutes of three Tier 2 meetings and five Tier 3 meetings and was highly critical of the consultations over all.[55]

2.65 The Jumbunna Indigenous House of Learning summarised the criticisms contained within the report, stating:

> In summary, there was a lack of independence; no Aboriginal input, which is best practice; and no qualified interpreters in some cases. But, substantively—and I think these are the major flaws—it was actually a consultation process about proposals that had already been made and designed. It was not an open process engendering questions about design. There was inadequate explanation and description of some measures—the CIRCA report talks about people not have any knowledge of measures, and they certainly did not understand them—and a failure to explain very important legal concepts like the special measures.[56]

2.66 In response to questions arising regarding the Nicholson Report, Dr Smith, FaHCSIA, made the following statement:

---

53 Mr Rob Heferen, FAHCSIA, *Committee Hansard*, 26 February 2010, p. 51.

54 Mr Rob Heferen, FAHCSIA, *Committee Hansard*, 26 February 2010, p. 52.

55 Ms Alison Vivian, Jumbunna Indigenous House of Learning, *Committee Hansard*, 26 February 2010, p. 40.

56 Ms Alison Vivian, Jumbunna Indigenous House of Learning, *Committee Hansard*, 26 February 2010, p. 38.

> …[O]ur broadest response is that the [Nicholson] report was produced before the consultation report was released. In fact, it was released earlier in the day that the consultation report was released. The report is a substantial refutation of a number of the statements in the Nicholson report…The consultation report is a very frank and balanced report. We do not believe that it was, in some sense, angled towards particular outcomes. It is based … on a very comprehensive consultation process within communities over three months—and there were community meetings and workshops with regional stakeholders. There were variations in the findings across all those levels of consultation, as noted in the report, but there was a high degree of consistency. It is those findings which we have gone through in the report.[57]

2.67 FaHCSIA further noted:

> The consultation report recorded criticisms as well as positive comments. Indeed, many of the submissions quote the consultation report to support their arguments opposing the redesign measures. Amnesty International representatives have told the committee that the consultation report 'captured the gist of what people were saying'.[58]

2.68 FaHCSIA also responded to comments in the *Will They Be Heard* report regarding the lack of explanation and description of measures, stating:

> Considerable effort was taken in the drafting of the discussion paper to ensure that it was written in plain English as far as possible, and that measures were clearly explained. GBMs and Indigenous engagement officers were available and willing to explain the consultations to anyone who asked. Further, the tier 1 and tier 2 consultation meetings in communities were occasions to ask about the purpose of the consultation and the measures if people did not understand them.[59]

Lack of interpreters

2.69 The consultations were also criticised for not having provided interpreters at some of the Tier 2 community consultations. FaHCSIA noted that this had been a problem at some meetings, but that on the whole they had achieved a good result despite the difficulties posed by availability of interpreters in the Northern Territory. Dr Smith stated:

> We believe in fact that, whilst there were faults in the process at various points, nevertheless it was by and large a sound process. For example, on the issue of interpreters the process represented in fact a huge step forward in government consultation processes. It is the largest process of its kind where we have actually engaged interpreters on a very wide-ranging basis.

57 Dr Bruce Smith, FaHCSIA, *Committee Hansard*, 4 February 2010, p. 11.

58 Mr Rob Heferen, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 52.

59 Mr Rob Heferen, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 53.

> We believe that, given the circumstances to do with the supply of skilled interpreters, we did the best we could have done.[60]

2.70 Mr Rob Heferen informed the committee that FaHCSIA had worked closely with the Northern Territory Aboriginal Interpreter Service to ensure availability of interpreters in as many places of possible and that interpreters were present at almost two thirds of the Tier 2 consultations.[61]

2.71 The *Will They Be Heard* report was critical of the lack of interpretative services at the redesign consultation meetings it analysed.

> Assistance by way of translators is a minimum requirement of genuine consultation in remote Aboriginal communities, where English is a second or third language. However, a number of the consultations were seemingly conducted with a presumption of English proficiency. Qualified interpreters were not present and attendees were co-opted to interpret complex legal concepts, such as those related to the reinstatement of the Racial Discrimination Act and its provision for special measures.[62]

2.72 However, FaHCSIA refuted this analysis, stating:

> The Nicholson report identifies three communities where it has been said that interpreters were not present when their presence would have been helpful. We have examined each of the three case studies in the Nicholson report. We have been advised that in one of these communities the GBM took advice from the community council. The majority of the community's leaders sit on this council. The GBM advised that the engagement of interpreters was offered and that the council said no interpreter was required.
>
> In the other two instances interpreters were booked and attended the tier 2 consultation meetings but their services were not used as originally planned. We understand that in one case the interpreter assisted in interpreting the women's session while a community leader interpreted the men's session and the initial whole-of-community meeting. In the third case the interpreter did arrive, held a discussion with the community leader and subsequently informed the ICC manager that the community leader would be interpreting at the meeting. There was a range of factors that led to interpreters not been able to be booked or attend consultation meetings. These included other more urgent work, such as assisting a seriously ill person, transport problems, illness and relationships with community members.[63]

---

60 Dr Bruce Smith, FaHCSIA, *Committee Hansard*, 4 February 2010, p. 12.

61 Mr Rob Heferen, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 53.

62 Jumbunna Indigenous House of Learning, *Will They Be Heard?* November 2009, p. 11.

63 Mr Rob Heferen, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 53.

2.73 FaHCSIA noted that the Cultural and Indigenous Research Centre Australia (CIRCA) had been engaged to review the consultations from the beginning of the process, which enabled the department to adjust the consultations in line with CIRCA recommendations early in the consultation process.[64] Dr Smith also commented:

> The lack of skilled interpreters is an ongoing problem in the Northern Territory. So there were instances where, because of that, we did not end up with the right person on the day. That was very much a minority of cases and we worked as best we could around that, particularly using Indigenous engagement officers and other means.[65]

2.74 FaHCSIA acknowledged that the capacity of interpreting services and of departments, agencies and officials to use them required further development. FaHCSIA noted that the 2009–10 Commonwealth budget included $8 million over three years to further develop interpreter services in the Northern Territory, and that the Remote Service Delivery National Partnership would include a joint Commonwealth-state investment of approximately $40 million over 5 years to expand the use of interpreters.[66]

2.75 The committee supports initiatives by the government to increase the capacity of interpretive services in the Northern Territory and reemphasises the importance of interpretive services in designing and implementing Indigenous policy. The committee recommends that the government continue to develop the capacity of Indigenous interpretive services in the Northern Territory and across Australia.

Recommendation 1

2.76 The committee recommends that the government maintain its commitment to increase the capacity of Indigenous interpretative services in the Northern Territory and in Indigenous communities across Australia.

2.77 FaHCSIA also elaborated further on the role of CIRCA in strengthening the integrity of the consultation process. Mr Rob Heferen, FaHCSIA, stated:

> Several criticisms have been made of arrangements for CIRCA to observe a number of the consultations. These criticisms include possible lack of independence of CIRCA and that, because the monitoring was only in relation to tiers 2 and 3, it was not comprehensive. In response to comments about independence, while CIRCA has been contracted on other tasks for the department, the relationship is transparent. CIRCA was selected to observe a number of the consultations because officials had over time found that it worked well in remote Indigenous communities and understood the cultural and research protocols involved. The consultations were concerned with resetting the relationship and we needed to be confident that the role

64 Dr Bruce Smith, FaHCSIA, *Committee Hansard*, 4 February 2010, pp 12–13.

65 Dr Bruce Smith, FaHCSIA, *Committee Hansard*, 4 February 2010, p. 13.

66 Mr Rob Heferen, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 53.

> undertaken by CIRCA was conducted by an organisation that understood and was able to work in this frame.
>
> CIRCA's report contains criticisms, praise and sound advice on improvements for the future. CIRCA and its staff conducted their work with utmost professionalism, independence and impartiality through the consultation process.[67]

2.78 The committee is of the opinion that, in addition to providing contemporary feedback as the consultation meetings occurred, the integrity of the consultation process was also improved by the involvement of CIRCA and the publication of their independent report.

2.79 The committee considers that the FaHCSIA consultation process was generally successful and looks forward to further improvements in government consultation processes over time. The committee is encouraged by government investment in interpretative capacity, as interpretation is a key element of successful government consultation and for progress in Indigenous affairs generally.

67 Mr Rob Heferen, FaHCSIA, *Committee Hansard*, 26 February 2010, pp 53–54.

Chapter 3

Income management

Background

3.1 Income management was a measure introduced as part of the Northern Territory Emergency Response (NTER) in 2007. Under the measure, a proportion of a welfare recipient's payment is quarantined and can only be spent on essential items such as food, clothing, rent and utilities. Quarantined income can specifically not be spent on alcohol, cigarettes, pornography or gambling products.

3.2 Income management, as enacted through the NTER since 2007, applies to welfare recipients in prescribed communities in the Northern Territory. As part of the government's commitment to reinstate the *Racial Discrimination Act 1975 (*Racial Discrimination Act), it redesigned most measures in order to make them more clearly 'special measures'. Rather than continuing income management as a special measure, the proposed expansion of income management is intended to be non-discriminatory. Under the proposed legislation, income management would apply to specific categories of welfare recipient across the Northern Territory and, subsequently, in disadvantaged areas across Australia, regardless of race.

The proposed new model of income management

3.3 The government's proposed new income management scheme would apply to welfare recipients in five categories.

Disengaged youth

3.4 Disengaged youth refers to 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. The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) outlined their reason for including this category, linking the measure to the Council of Australian Governments (COAG) Compact with Young Australians:

> There is an increasing focus by the government to link income support payments with education, work and socially responsible behaviour. This will assist people to achieve better life outcomes and avoid becoming entrenched in welfare dependency. The Australian government together with state and territory governments through the Council of Australian Governments, or COAG, have agreed to implement a compact with young Australians to ensure that all young people under 25 have the education or training they need to improve their qualifications and ensure they are skilled for a more productive and rewarding life. The compact with young Australians give young people a very clear message by putting education and training front and centre. Under the compact with young Australians framework, young people under 24, depending on their age, must undertake

> full-time education or employment to receive youth allowance. This also applies with the parents of the young person who receive family tax benefit part A. This bill is part of a long-standing series of reforms to income support to assist young people. For these reasons, youth have been included in this measure.[1]

Long-term welfare recipients

3.5 This category refers to 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.

> For the long-term unemployed, people aged 25 and above on specified welfare payments such as Newstart allowance and parenting payment for more than one year in the last two years will be subject to income management unless they meet the exemption criteria. The government has indicated that it wants to address the poor outcomes for people and children growing up in these circumstances, particularly for school attendance and educational and work attainment. The government does not consider income management to be a punitive tool. Rather, it believes it provides the foundations for pathways to economic and social participation by assisting people to ensure the priorities of life are met. Long-term unemployed people on specified welfare payments are therefore being brought under the new income management measure.[2]

Persons assessed as vulnerable

3.6 This category refers to 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. FaHCSIA elaborated on the mechanism by which this assessment would occur, stating:

> It is not intended that a person will be income managed under the vulnerable measure simply by virtue of meeting one or more criterion. Rather, a Centrelink social worker will consider a set of decision making principles, including whether income management is the most appropriate mechanism to apply to support the person. The vulnerable measure is not intended to replace other supports but complement them. Income management is a part of a suite of tools, including the new weekly payments option and Centrepay. The measure provides Centrelink social workers with an additional tool when working with individuals who are vulnerable or at risk. For these reasons, vulnerable people are included in the measure.[3]

---

1 Mr Rob Heferen, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 48.

2 Mr Rob Heferen, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 49.

3 Mr Rob Heferen, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 49.

Referral by child protection authorities

3.7 The scheme includes a provision for persons referred to Centrelink for income management by child protection authorities. FaHCSIA noted that over 200 people were currently on child protection income management in Western Australia, while it was also one of the triggers for income management in the Cape York welfare reform trial.[4]

Voluntary income management

3.8 The proposed income management model includes a provision for people who wish to voluntarily opt-in to income management arrangements.[5]

Exemption from income management

3.9 The proposed legislation provides the opportunity for people subject to income management under the disengaged youth and long-term welfare payment recipient categories, to be exempted from income management based on the demonstration of socially responsible behaviour. As outlined in the explanatory memorandum:

> …for people without dependent children, the exemption criteria are related, in general terms, to evidence being provided of engagement in study or a sustained pattern of employment. For those with dependent children, the exemption criteria are related to the provision of evidence of responsible parenting. These exemptions are intended to ensure that the new measures are narrowly targeted to support the most vulnerable and disengaged people, and encourage those on welfare payments to develop the skills and capabilities to engage in productive and social activities as parents, students or employees. [6]

3.10 The explanatory memorandum outlines three main circumstances that would allow for an exemption under the proposed bill. The first allows the minister to create exemptions for 'groups of people with shared characteristics whom the minister considers should be exempt from income management.'[7] This would allow delegates of the secretary (possibly Centrelink officers) to exempt people from income management if they fit the criteria of that group.

---

4 Mr Rob Heferen, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 49.

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

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

7 Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009, Explanatory Memorandum, p. 24.

3.11 The second main set of circumstances, relate to people without dependent children, or people with dependent children above school age. A person may be found to be exempt from income management if they are:

- a full-time student or a new apprentice; or
- the person worked for at least 26 weeks, during the preceding 12 months, on wages that were at or above the 'relevant minimum wage'; or
- the person is undertaking an activity that is specified in a legislative instrument made by the minister.[8]

3.12 The third main set of circumstances, relates to people with dependent children who are school age or younger. The requirements that apply to a person in relation to each dependent school age child of a person and may allow an exemption from income management are that:

- the children are enrolled at and attend school without significant absences (no more than five unexplained absences in the each of the previous two school terms ending immediately before the test time); or
- they are covered by an alternative schooling arrangement (such as home schooling) and their schooling is progressing satisfactorily; or
- they are participating in an activity specified in a legislative instrument made by the minister for the purposes of this provision.

3.13 The requirements that apply to a person in relation to each dependent child of the person who is younger than school age are that:

- the person or the child is participating in the number and kind of activities that are specified in a legislative instrument made by the minister, most likely relating to a child's intellectual, physical or social development.

3.14 The committee requested further information on the exemption process from FaHCSIA. The response indicated that exemptions would be made on an individual basis, following an individual applying for an exemption through Centrelink. Though a decision had not yet been made, FaHCSIA indicated that the power to make a decision on an exemption application would generally be delegated to Centrelink. As the decision would be an administrative decision, they would be subject to review under Part 4 of the *Social Security (Administration) Act 1999.*[9]

3.15 The committee notes that the exemption criteria, though subject to development through legislative instrument, provide a number of ways by which an individual in one of the first two categories of compulsory income management could be exempted from the scheme, simply by displaying socially responsible behaviour.

---

8 Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009, Explanatory Memorandum, p. 24.

9 FaHCSIA, answer to question on notice WR18.

The exemption criteria thus represent a further level of targeting, ensuring that income management will be applied to those that need it most, regardless of race or ethnic background.

3.16 The development of the legislative instruments relating to exemption criteria and the definition of 'vulnerable persons' provides an opportunity to consult with the community and further enhance the income management measure. The committee therefore recommends that FaHCSIA should consult with relevant non-government organisations and peak advocacy groups in developing the legislative instruments.

Recommendation 2

3.17 The committee recommends that, should the government's proposed legislation be passed, the Department of Families, Housing, Community Services and Indigenous Affairs should consult with relevant non-government organisations, peak advocacy groups and other stakeholders in developing the legislative instruments associated with the legislation.

3.18 The committee also notes that the legislative instruments associated with the proposed income management measure are intended to be disallowable instruments.[10] This would ensure that the Senate would thus exercise oversight over the legislative instruments informing much of the detail of the income management measure. FaHCSIA tabled a list of intended disallowable instruments for the committee's benefit. Some of the more important decisions that would require Senate approval include:

- the decision to introduce income management to a particular area, making it a 'declared income management area';
- the definition of a 'vulnerable welfare payment recipient' for the purpose of the third income management category listed above; and
- the criteria used to exempt individuals or classes from income management under the 'disengaged youth' or 'long-term welfare payment recipient' categories.[11]

3.19 The list of disallowable instruments provided by FaHCSIA indicates that important details of the income management measure will be the subject of Senate scrutiny and debate.

Quarantine conditions

3.20 Under the new legislation, 50 per cent of a welfare recipient's regular income and 100 per cent of lump sum payments is quarantined. Quarantined income can be spent on essential items such as food, clothing, rent and utilities. It can not be spent on alcohol, cigarettes or gambling products.

---

10 Mr Gavin Matthews, FaHCSIA, *Committee Hansard*, 4 February 2010, p. 21.

11 FaHCSIA, Answer to Question on Notice WR4, pp 2–4.

3.21 The government's stated intention is to implement the new income management model across the entirety of the Northern Territory, as a 'first step in a future national roll out of income management to disadvantaged regions.'[12]

Historical context of policy change

3.22 Several witnesses noted the importance of the government's intention to introduce income management across Australia in the historical context of welfare policy development in Australia. For some, this represented an opportunity to strike a new balance between welfare rights and obligations, while for others it represented a return to a previous era. The St Vincent de Paul Society, who are against the government's proposed roll-out of income management, wrote that:

> Income Management is returning social policy in Australia to the depression era Sustenance Allowance, commonly referred to as the 'susso'. While recipients were obviously appreciative of the susso, the manner in which it was administered commonly stripped any remaining dignity from the recipient.[13]

3.23 The Brotherhood of St Lawrence, however, suggested that the proposed introduction of income management could be useful if it was part of a more general overhaul of the welfare system using the government's social inclusion agenda.

> With the appropriate balance we support the proposed extensions to income management. We do argue, however, in the current state of Australian social policy, the existence of an appropriate balance cannot be taken for granted. Therefore, we need fundamental social policy renewal and believe that the Government's emerging Social Inclusion agenda offers the vehicle.[14]

3.24 FAHCSIA also commented on the historical context in which the policy has been proposed:

> These reforms are proposed against the background of a policy shift that has been occurring over several decades where closer linkages are being made between eligibility for and delivery of payments and social support arrangements to achieve greater economic and social independence and security for particular groups. This has involved increased use of incentives, conditionality, and targeting.[15]

3.25 The minister summarised the government's policy rationale for national income management in the second reading speech for the legislation, stating:

---

12 Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009, Explanatory Memorandum, p. 2.

13 St Vincent de Paul Society, *Submission 16*, p. 2.

14 Brotherhood of St Lawrence, *Submission 66*, p. 4.

15 Mr Rob Heferen, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 48.

> Income management is a key tool in the government's broader welfare reforms to deliver on our commitment to a welfare system based on the principles of engagement, participation and responsibility.
>
> Welfare should not be a destination or a way of life.
>
> The government is committed to progressively reforming the welfare system to foster individual responsibility and to provide a platform for people to move up and out of welfare dependence.[16]

3.26 The committee recognises the significance of the proposed national roll out of income management in the history of welfare policy development in Australia.

Issues

3.27 There were many issues raised in connection with income management. The main issues are discussed below.

Evidence base

3.28 The main issue raised in relation to the government's proposal was the robustness of the evidence used to justify the expansion of income management across Australia. Most of the government's evidence provided to the committee relates to the experience of income management in the Northern Territory. The committee notes that trials are also underway in Western Australia and Queensland using different models to the Northern Territory.

3.29 The committee found that community opinion on income management in the Northern Territory is polarised. Reports commonly cited by the government have shown majority support for and positive outcomes in terms of health and welfare as a result of income management. Likewise, these reports have also documented problems with the measure, mostly relating to the operation of the BasicsCard and perceptions that it is a racially discriminatory measure.

3.30 FaHCSIA provided a list of particular documents that had been used in developing the government's policy position on income management. This list included:

- the NTER Redesign Consultation Report (November 2009);
- NTER Taskforce Final Report to Government (June 2008);
- Government Business Manager Survey (July 2008);
- Central Land Council Submission to the NTER Review (submission no. 37) (July 2008);

16 The Hon Jenny Macklin, MP, Minister for Families, Housing, Community Services and Indigenous Affairs, *House of Representatives Hansard*, 25 November 2009, p. 12783.

- Elliott Community submission to the NTER Review (submission no. 207) (2008);
- Final Stores Post-licensing Review Report – 66 Stores (June 2009);
- Community Feedback on the Northern Territory Emergency Response (NTER) prepared by the Cultural and Indigenous Research Centre Australia (CIRCA) (September 2008); and
- the Australian Institute of Health and Welfare (AIHW) evaluation of income management in the NT (August 2009).[17]

3.31 FaHCSIA noted that the results of the studies varied, but consistently indicated positive outcomes as a result of income management and related measures, such as increased sales of fresh fruit and vegetables, reduced levels of gambling, alcohol consumption and harassment for cash and a greater contribution by men towards family groceries.

3.32 Examples include a finding of the NTER taskforce, in its final report to the government in June 2008, that women in many communities supported income management as it ensured money was available for food and other necessities for children, reduced harassment and helped to develop household budgeting skills.[18]

3.33 The survey of Government Business Managers (GBMs) also reported that harassment for money had decreased in 39 per cent of communities. The survey indicated a reduction in the amount of gambling in communities and amounts wagered in individual games.[19]

3.34 According to the Stores Post-Licensing Review Report, over two thirds of store operators identified an increase in the amount of healthy food purchased, including fresh fruit and vegetables, dairy products and meat.[20]

3.35 A submission to the NTER Review Board by the Central Land Council indicated an increased household expenditure on food and children, an increase in men's contribution to family shopping expenses, reductions in gambling and drinking and improved quality of stock in community stores.[21]

3.36 According to the Community Feedback Survey undertaken by CIRCA, respondents reported several positive outcomes, including increased purchases of food

17 Mr Rob Heferen, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 49.

18 Mr Rob Heferen, FaHCSIA, Committee Hansard, 26 February 2010, p. 49.

19 Mr Rob Heferen, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 49.

20 Mr Rob Heferen, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 49.

21 Mr Rob Heferen, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 49.

and other essential items; increased savings; reduction of alcohol consumption and gambling; increased ease of paying bills; and reduction in family tension.[22]

3.37 FaHCSIA noted that these findings were similar to the views expressed by many people in the NTER redesign consultations about the benefits they saw from the NTER measures.[23]

3.38 The committee also heard that income management had beneficial effect. For instance, the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council (NPY Women's Council) supported the income management measure on the grounds that it helped to protect women and children. Ms Vicki Gillick noted that in her opinion, income management had resulted in more money being spent on essential items.24 The NPY Women's Council noted the beneficial effect of income management in their submission, stating:

> The elected Directors believe that, along with other NTER measures such as an increased policing and child health checks, IM has increased the funds available to welfare recipient for the necessities of life, and served to reduce the amount of money available for grog, illicit drugs and gambling, and thus the level of demand sharing by those who spend their funds largely on substance abuse.[25]

3.39 Indeed, NPY Women's Council were concerned that the redesign of the income management scheme, including the removal of compulsory income management for individuals receiving aged or disability pensions would be harmful:

> NPY is greatly concerned that the proposed changes will leave the most vulnerable, the recipients of aged and disability benefits, once more vulnerable to demand sharing ('humbugging'.) The relief that these people have enjoyed since the introduction of IM may well dissipate, with them once again becoming targets, this time by those who will still be subjected to the IM regime.[26]

3.40 The Central Australian Youth Link-Up Service noted that under the new scheme, the elderly and disabled may be the target of increased harassment, stating:

> Now pensioners are the only ones who are going to have ready cash. How does that make them any safer? I am sure you understand what I am getting at. It just seems like insanity, particularly so in terms of our work with brain-damaged ex-petrol sniffers. A lot of them have been, quite sensibly, moved onto pensions because they have no capacity to manage their money. Even now we do fairly serious support work for them, even though

---

22 Mr Rob Heferen, FaHCSIA, *Committee Hansard*, 26 February 2010, pp 4950.

23 Mr Rob Heferen, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 50.

24 Ms Vicki Gillick, NPY Women's Council, *Committee Hansard*, 17 February 2010, p. 44.

25 NPY Women's Council, *Submission 93*, p. 2.

26 NPY Women's Council, *Submission 93*, p. 2.

> they are on pensions and they do not fall out of the system and it is a much better system for them. We are concerned that they will holus-bolus drop back into getting all of their money again, and a lot of the factors that led them to be petrol sniffers are still there.[27]

3.41 The committee notes that the third category introduced under the proposed legislation, which allows Centrelink workers to refer individuals deemed as vulnerable onto income management, would offer a level of protection to these individuals. Similarly, there would be the ability for aged or disabled pensioners to voluntarily opt-in to income management.

3.42 The Northern Territory Council of Social Services, while opposed to the government's proposed expansion of income management, noted the existence of support for compulsory income management, stating:

> There has been some support for the application of compulsory income management in certain circumstances. For example, in some quarters there has been support for compulsory income management in terms of consequences for chronic drinkers or people misusing other substances. Some organisations support the continuation of income management in its current form, while others have advocated a system that allows people to be exempt from income management or to progress off income management when certain conditions are met. Some organisations have also called for income management to be applied to the broader community to ensure that the system is non-discriminatory.[28]

3.43 The Western Australian Department of Child Protection indicated that the trial of income management in that state had been very positive.

> Anecdotally, we talk to our case workers on a very frequent basis and we get feedback about how it is working. As you would expect, where the parents are initially referred for income management the reaction is not always positive. However, when they understand how the process works and how it can help them manage their financial resources and understand that they still have 30 per cent of their funds as discretionary they are generally very supportive. So we look for case managers' referral rate and uptake and also the anecdotal feedback about how clients are responding and how they are finding it. We have had some fantastic stories about how the financial management aspect has really helped people look after their children much more effectively.[29]

3.44 The committee notes that the income management trial in Western Australia only targets parents referred to Centrelink by child support workers. The

---

27 Mr Blair McFarland, CAYLUS, *Committee Hansard*, 17 February 2010, p. 12.

28 Mr Jonathon Pilbrow, Northern Territory Council of Social Services, *Committee Hansard*, 17 February 2010, p. 36.

29 Ms Fiona Lander, Western Australian Department of Child Protection, *Committee Hansard*, 22 February 2010, p. 3.

Commonwealth government's proposed model also includes this mechanism for referral to income management.

Criticisms of the evidence base

3.45 Many submitters and witnesses were critical of the evidence base used to support the extension of income management across the Northern Territory and Australia. Some of these criticisms were summarised by Professor Jon Altman, who stated:

> Unfortunately and sadly, no empirical evidence with any integrity has emerged to unequivocally support income management measures. That collected by the Australian Institute of Health and Welfare has been highly qualified and equivocal. That collected by the Australian government or its agents has been in-house, unreviewed and, frankly, a little amateurish. At best, it has been deeply conflicted by moral hazard. Agents of the state are asked by state employees or their paid consultants whether state measures are effective.
>
> Worryingly, the evidence might change over time. For example, there is forthcoming research from the Menzies School of Health Research, currently under peer review, that outcomes from income management might, at best, be ineffective and, and at worst, perverse.[30]

3.46 Several witnesses, including Anglicare Australia, the Australian Council of Social Services (ACOSS) and the St Vincent de Paul Society noted the small sample size used in studies such as the AIHW evaluation report and were of the opinion that the evidence base was not strong enough to support the expansion of income management.

3.47 Anglicare Australia noted that income management was just one of a suite of measures introduced through the NTER. As a result, it was difficult to attribute results to income management alone:

> We were looking at the evidence and saying that, because the intervention had different objectives to this particular bill and because there were other issues that happened at the same time as income management, it is really very difficult to actually look back and say, 'Income management has achieved X, Y and Z.' There were also the changes to community stores at the time. There were changes to policing and changes to houses.[31]

3.48 Additionally, Anglicare made the point that the Northern Territory prescribed communities were not necessarily analogous environments to disadvantaged communities in urban areas:

> We also feel that the issues that the Northern Territory intervention was trying to offset do not necessarily happen in an average suburb around

30 Prof Jon Altman, *Committee Hansard*, 26 February 2010, p. 36.

31 Ms Kasy Chambers, Anglicare Australia, *Committee Hansard*, 26 February 2010, p. 7.

> Australia. It was looking at communities that were quite discrete, that understand themselves as communities and where there are hugely strong kinship obligations. I do not believe we see those in Cannington or the suburbs of Sydney and Melbourne. We do not have that same understanding of a set of people as a community. So, whether or not the blanket approach worked in the Northern Territory— and we have a view about that—we do not feel there has been enough evidence or looking at the stuff that did go on to take it in this form to every other single community in Australia.[32]

3.49 The committee is mindful of criticisms regarding the government's evidence base, but notes that the existence of a comprehensive evidence base is problematic in almost all areas of social policy development. The complexity of social policy rarely allows for controlled experiments or definitive findings.

3.50 The committee notes with interest the government's intention to evaluate the income management measure prior to expanding coverage of the scheme to other areas of Australia:

> The operation of the new scheme of income management in the Northern Territory will be carefully evaluated. The first evaluation progress report is expected in 2011/12. The other income management trials currently underway in Western Australia and Queensland will also continue to be evaluated. Future roll out elsewhere in Australia will be informed by the evidence gained from this evaluation activity.[33]

3.51 The committee considers that it is essential for this evaluation to be conducted to a high standard. The committee considers this to be a prime opportunity to establish a rigorous evaluation of social policy in order to strengthen the evidence base over time.

3.52 There was broad support for a robust evaluation process from witnesses such as Anglicare Australia:

> At the start of an activity like this, if we are going to go down this track, let's set up some evaluation, some ability to draw evidence from this; because the evidence we have seen out of the Northern Territory intervention is weak.[34]

3.53 The Salvation Army also noted the importance of baseline data in evaluating new programs:

> I did hear talk, before, about baseline data and the collection of it across a whole range of programs. We all support that. It is hard enough getting

---

32 Ms Kasy Chambers, Anglicare Australia, *Committee Hansard*, 26 February 2010, p. 7.

33 Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009, Explanatory Memorandum, p. 2.

34 Ms Kasy Chambers, Anglicare Australia, *Committee Hansard*, 26 February 2010, p. 5.

> decent baseline data in our own organisations but across the system it is even more difficult. I would want that transparency opened right out into major systems like Job Services Australia and others, because we have certain sections of the community who are highly accountable for anything they receive and other service systems not very accountable at all for delivering good outcomes with appropriate transparent measurements.[35]

3.54 ACOSS noted that any evaluation of the proposed scheme in the Northern Territory should have the following characteristics:

- The evaluation should be designed and conducted by a respected research organisation which is independent of government.
- Affected communities should be consulted about the evaluation design.
- The evaluation should seek to measure the impact of income management on a range of clearly defined outcomes that relate to policy objectives. It should also seek to measure any unintended effects.
- As a pre-condition to further evaluation, benchmark data needs to be collected and collated to enable meaningful comparison.
- The evaluation should take into account, if not control for, the impact of other variables (including other NTER measures) on the outcomes.
- The evaluation should include reliable quantitative as well as qualitative data. Existing evidence is too reliant on qualitative data.[36]

3.55 The committee has long noted the difficulty in obtaining baseline data and supports calls to collect baseline data as part of evaluation framework for the expansion of income management.

3.56 The committee views the evaluation process as being integral to the government's proposal and will follow the development of the evaluation framework with interest. Furthermore, the committee recommends that the evaluation be carried out by an independent body and that the evaluation process is robust and transparent.

Recommendation 3

3.57 The committee recommends that the evaluation of the proposed income management measure in the Northern Territory be well-resourced, include community consultation in the design of the evaluation, feature the collection of baseline data prior to implementation, include robust quantitative data analysis and be undertaken by an independent research organisation.

3.58 Though issues with the current evidence base exist, the committee notes consistent findings indicating an overall positive effect from income management and evidence indicating positive outcomes that has been provided to the committee.

---

35 Major David Eldridge, Salvation Army, *Committee Hansard*, 26 February 2010, p. 19.

36 ACOSS, Answer to Question on Notice received 5 March 2010, p. 2.

However, the committee notes that income management has by no means been without flaws. The next section details some problems, particularly regarding the operation of the BasicsCard, and other evidence provided to the committee.

Problems with the BasicsCard

3.59 Most criticisms of income management were directly related to the operation of the BasicsCard system. The issues included difficulties arising from not knowing the balance of the cards resulting in humiliating situations in stores, the restriction of shopping options to licensed stores resulting in high travel costs, the existence of segregated lines at supermarkets and associated perceptions of racism and problems for businesses. The committee notes that some of the issues raised in submissions and by witnesses relate to early in the implementation of the BasicsCard and that the system has been improved over time.

3.60 The committee has followed the development of the BasicsCard since the card's inception, including through the Senate estimates process. The committee was therefore aware of many of the following issues prior to this inquiry. The committee notes continuing efforts by FaHCSIA and Centrelink to improve the operation of the system over time. These efforts have already resulted in some improvements as detailed in responses by FaHCSIA below. The committee strongly encourages efforts to improve communication about the BasicsCard system with both businesses and income managed individuals and reinforces the importance of communication to the overall success of the measure.

Understanding of the BasicsCard system

3.61 The Northern Australia Aboriginal Justice Agency (NAAJA) noted that despite government communication strategies, there was still a lack of understanding of the BasicsCard system by certain individuals.

> One thing that remains very clear is that people still do not properly understand how income management works. People have got used to it and are going along with it but still have very limited understanding of the actual structure of income management and the fact that there is an income management account, and that there is then a BasicsCard and so on. In spite of the good work that Centrelink is doing in the communities and their greatly improved level of service, there is still a huge amount of ignorance about how the system actually works.[37]

3.62 This point was echoed by the Salvation Army, which stated:

> Some of the stories that we heard from our services in Alice Springs spoke of the confusion and the resignation of people. They did not understand why they were only getting half their Centrelink benefit but they just accepted that that is what they had to live on. We are talking about people

37 Ms Annabel Pengilley, North Australian Aboriginal Justice Agency, *Committee Hansard*, 15 February 2010, p. 39.

> whose third language is English, so even to communicate with Centrelink is just impossible. People just passively accepted the situation. They certainly would not have the capacity to know that there was the opportunity to opt out.[38]

3.63 FaHCSIA informed the committee that they understood the need to improve communication for the new scheme, stating:

> As part of the implementation of the new scheme, Centrelink and FaHCSIA will develop detailed urban and remote communication strategies for the new scheme of income management, tailored to different audiences, including customers, merchants, intermediaries and staff. Work is currently underway on a range of products, including letters to affected customers, radio advertisements, posters, outreach kits for community organisations, presentations and community information sessions, DVD and CD presentations and written and audio fact sheets. Newly affected customers, including culturally and linguistically diverse customers, have been considered and will be included in the development of communication strategies and products. Key information will be translated into a variety of Indigenous and non-Indigenous languages.[39]

3.64 The committee strongly supports the improvement of communication regarding the income management scheme and notes that some criticisms of the scheme relate to misunderstanding rather than actual problems with the scheme itself.

Restriction of shopping options

3.65 The Northern Land Council informed the committee that many of their members experienced difficulty in getting access to shops and BasicsCard facilities.

> A lot of the council members live on outstations. They do not have access to facilities to use their basic cards. A lot of them do not like to go into major communities because of the humbug, the transportation. The cost associated with going into communities is enormous. Some people are paying up to $200 just to go one way in these so-called 'bush taxis'.[40]

3.66 Anglicare Australia also noted that some of their clients were spending a lot of money on taxi vouchers in order to get to stores where they could spend their quarantined income.[41] The committee notes however, that issues associated with travel costs predate the introduction of the BasicsCard. The committee is also mindful of reports such as the submission to the NTER Review Board by the Central Land Council indicating an improved quality of stock in community stores.[42]

---

38 Ms Wilma Gallet, Salvation Army, *Committee Hansard*, 26 February 2010, p. 16.

39 Mr Rob Heferen, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 50.

40 Mr Kim Hill, Northern Land Council, *Committee Hansard*, 15 February 2010, p. 74.

41 Ms Kasy Chambers, Anglicare Australia, *Committee Hansard*, 26 February 2010, p. 5.

42 Mr Rob Heferen, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 49.

3.67 ACOSS informed the committee that the income management system required quotes and Centrelink approval for large purchases:

> It is something that we should be embarrassed about. I have a transcript here from Stateline in the Northern Territory just a couple of weeks ago where they were talking to Aboriginal people in Katherine, and women, whom I know, were railing against the fact that if they want to buy a piece of furniture, they had to go to Centrelink and get a quote for it. They cannot even make that choice about their own lives. They have to trek around the streets getting quotes and take them, cap in hand, to Centrelink and say, 'Can I buy this piece of furniture?' and Centrelink will write out the cheque. What is this legislation doing to people's lives? It is not making them accountable or managing their finances better. It is really demeaning.[43]

3.68 FaHCSIA informed the committee that there had been several improvements made to the income management system in order to make the purchase of larger items, whitegoods and appliances easier.

> In relation to ACOSS' comments around customers using their income managed funds to purchase goods from furniture stores, particularly in Katherine, the Minister last year approved furniture and electrical stores to be considered in scope for the BasicsCard, following an initial review of the BasicsCard Merchant Approval Framework. This has enabled customers to have more flexibility and choice when purchasing items such as furniture, whitegoods and kitchen and household appliances including microwave ovens, toasters, kettles and vacuum cleaners.
>
> Customers can also purchase goods and/or services from stores using alternative payment methods or they can use the percentage of their welfare payment that is not income managed. Provided that Centrelink is satisfied that the customer has met all their priority needs, Centrelink can arrange to make a one-off payment to a store on their behalf. In these circumstances, the customer is not required to…submit multiple quotes from stores. However, the customer does need to inform Centrelink of the cost of the item to enable Centrelink to transfer or write a cheque for the correct amount to the merchant.
>
> Additionally, where a merchant is in an income managed area and may be eligible for the BasicsCard, Centrelink engages with then to ensure that they are offered the opportunity to become an approved BasicsCard merchant.
>
> In December 2009, the Minister approved an increase to the daily spend limit on the BasicsCard from $800 to $1500, and the BasicsCard balance limit from $1500 to $3000 to make it easier for income managed customers to purchase larger items such as furniture and whitegoods.[44]

43 Ms Clare Martin, ACOSS, *Committee Hansard*, 26 February 2010, p. 25.

44 FaHCSIA, answer to question on notice, WR27.

3.69 The Western Australian Council of Social Services informed the committee that the Western Australian experience of income management had included problems with accessing appropriate stores:

> Reports also suggest that the merchant stores accepting BasicsCards were not necessarily appropriate for the demographic of families being subjected to income management. People were limited in where they could shop, subjecting them to higher prices and less choice. Shopping around at markets or smaller businesses was very difficult. From a cultural perspective, many people from diverse backgrounds were also not having their needs met. Many were unable to buy certified halal produce and were restricted in where they could shop.[45]

3.70 The Western Australian Department for Child Protection noted that Centrelink had been responsive in adding stores to the BasicsCard system:

> We have had a number of people who have indicated that they could not use the merchant in their area. They then rang Centrelink and Centrelink did everything they could to sign that merchant up and if the merchant did not want to sign up they arranged payment straight away. So the stories we have heard back have been quite positive.[46]

BasicsCard balances and segregation in retail outlets

3.71 Many witnesses made reference to a common difficulty in accessing the account balance on the BasicsCard. This resulted in a scenario whereby income-managed customers overestimate the amount on their card or how far it will stretch and have to return goods at the register. Many witnesses referred to high levels of shame and humiliation in this regard, that was compounded by the targeting of the card to Indigenous people.

> The elderly do not understand that they have to find out how much they have on their BasicsCard and go shopping with a limited amount. They are not aware of how far $100 is going to go when they go shopping. Quite a number of my clients go over the amount and I have to go in with them to help. It is an embarrassment for them. You have to put food back because they do not have enough money on their BasicsCard. The card cannot be swiped to tell them how much they have, so they are always going over the BasicsCard limit.[47]

3.72 Problems associated with BasicsCard balances extended even to those who were able to access their balance.

---

45 Ms Sue Ash, WACOSS, *Committee Hansard*, 22 February 2010, p. 11.

46 Ms Fiona Lander, Western Australian Department for Child Protection, *Committee Hansard*, 22 February 2010, p. 8.

47 Ms Ruby Walker, North Australian Aboriginal Justice Agency, *Committee Hansard*, 15 February 2010, p. 39.

> When I go into a shop I know how much is on my BasicsCard, but they say, 'Do you have any money on your BasicsCard?' They talk to you like that. It is not nice. Nobody wants to come across that attitude when you go shopping and you are feeling good about buying food for your children.[48]

3.73 The Northern Territory Department of Business and Employment, though noting that the issue was not restricted purely to BasicsCards, confirmed that the incidence of customers being unaware of their card balance and having to return items at the register was also a problem for businesses:

> This also creates a potential waste situation for the business in that some of the food cannot be reshelved and there is an additional labour cost to restock the shelves.[49]

3.74 The committee heard from the Northern Land Council that problems with the BasicsCard had led to the existence of segregated shopping lines existed in stores in Katherine.[50] The committee is concerned by such reports and notes that improvements in the operation of the BasicsCard would eliminate the existence of such lines.

3.75 Amnesty International Australia referred to evidence they had received that people living in the income managed area were having to buy phonecards in order to check their BasicsCard balance using the Centrelink phone service via a public phone. In addition to problems with phone charges, language difficulties also made use of the service impossible for members of the older generation in particular.[51]

3.76 In response to the commonly raised issue of BasicsCard balances, FaHCSIA informed the committee of some recent improvements to the system:

> Income managed customers are currently able to check their BasicsCard balance via the Income Management Line (13 2594) which is available 24 hours a day, 7 days a week. Customers can also phone the 1800 number (1800 057 111) which is free to home phones. There are facilities available in Centrelink offices for customer to check their BasicsCard balance at no cost to the customer, and they can also find out their balance by accessing the Centrelink website (www.centrelink.gov.au).
>
> In addition, Centrelink has installed hot-linked phones in over 70 community stores in remote areas of the Northern Territory and Western Australia. Hot-linked phones provide customers with direct access to the Income Management Line to check their BasicsCard balance and to speak to a Centrelink Customer Service Adviser if required. The Government is

48 Ms Barbara Shaw, Prescribed Area People's Alliance, *Committee Hansard*, 17 February 2010, p. 27.

49 Mr Doug Phillips, NT Department of Business and Employment, *Committee Hansard*, 15 February 2010, p. 6.

50 Mr Kim Hill, Northern Land Council, *Committee Hansard*, 15 February 2010, p. 74.

51 Mr Lucas Jordan, Amnesty International Australia, *Committee Hansard*, 11 February 2010, p. 10.

> also continuing to explore additional balance enquiry options in order to improve customer's access to their BasicsCard balance.[52]

3.77 The committee notes that the provision of hot link phones in stores would be particularly effective in ameliorating one of the most commonly cited grievances with the BasicsCard.

Trading/theft of BasicsCards

3.78 The committee notes that the BasicsCard may not necessarily protect individuals from harassment for money, often referred to as 'humbugging'. NAAJA noted that family members were still able to take the card and successfully demand the Personal Identification Number (PIN) from vulnerable relatives.[53]

3.79 The committee notes that though the theft of BasicsCard, or any system of payment, is a possibility, it is also mindful of evidence from the NPY Women's Council that the income management scheme has provided respite from harassment for money for the average community member.[54]

Ability to travel

3.80 ACOSS noted that the lack of BasicsCard facilities interstate made travelling extremely difficult for income managed individuals. [55] The committee notes that a future national roll out may improve this situation, but that it remained a problem while the measure applied purely to the Northern Territory and parts of Western Australia.

3.81 In response to a question on notice regarding this issue, FaHCSIA informed the committee that Centrelink was able to provide advice to customers travelling out of income managed areas on payment options. Additionally, FaHCSIA noted 50 per cent of a welfare recipient's income was not quarantined and hence could be used interstate:

> In response to ACOSS' comments around the difficulty customers find in using the BasicsCard when they travel interstate, Centrelink encourages customers to contact them prior to travelling so they can assist them to determine how they can access their income managed funds. Centrelink can provide alternative payment mechanisms to access funds such as stored value cards which can be used at most major retailers while travelling. There are also approved BasicsCard merchants in the Northern Territory, Queensland, Western Australia and South Australia however there are only

52 FaHCSIA, Answer to Question on Notice WR27.

53 Ms Ruby Walker, North Australian Justice Agency, *Committee Hansard*, 15 February 2010, p. 39.

54 NPY Women's Council Sub p. 6.

55 Ms Clare Martin, ACOSS, *Committee Hansard*, 26 February 2010, p. 25

> a small number of stores approved for BasicsCard outside these areas. Centrelink can provide a list of merchants to income-managed customers for their information. From July 2010, Centrelink will be publishing a list of approved merchants on their website.
>
> Income management redirects 50 per cent of a customer's income support and family payments to be spent on priority needs, such as food, clothing, housing and household goods. Customers therefore also have access to 50 per cent of their welfare payment to spend at their discretion.[56]

Impact on staff

3.82 The Northern Territory Department of Business and Employment raised a concern of Northern Territory businesses that under the current mechanism of licensing stores with a certain threshold of goods available to the BasicsCard, staff were relied upon to enforce the use of the BasicsCard for essential goods only:

> …staff are resistant to being the determiner of what is purchased and what is not. The other problem we have is that in the Northern Territory, like a lot of places, the turnover of staff in these checkout positions is quite high. You might educate your staff on what they can accept and what they cannot and then have a change of staff, or a staff member who has a different interpretation or a misunderstanding of what is required.[57]

3.83 The NT Department of Business and Employment therefore recommended that the BasicsCard be linked to universal product barcodes using an automatic electronic system, rather than relying on store licensing and on staff to be the arbiter of BasicsCard usage.[58]

Flexibility of system

3.84 Amnesty International Australia noted a problem faced by a couple living in Elliot with a daughter away at boarding school in Alice Springs. Amnesty International Australia informed the committee that Centrelink required three weeks notice to transfer quarantined income, which was resulting in an inability to provide cash to their daughter when needed.[59]

3.85 The Western Australian Department for Child Protection noted that the system in Western Australia worked fairly well and that Centrelink had shown flexibility in responding to problems with the system:

---

56 FaHCSIA, Answer to Question on Notice WR27.

57 Mr Doug Phillips, NT Department of Business and Employment, *Committee Hansard*, 15 February 2010, p. 17.

58 Mr Doug Phillips, NT Department of Business and Employment, *Committee Hansard*, 15 February 2010, p. 17.

59 Mr Lucas Jordan, Amnesty International Australia, *Committee Hansard*, 11 February 2010, p. 10.

> …on the whole, I think it is operating really well. There was a glitch last year at one point in one of our remote locations where the technology failed, but Centrelink and FaHCSIA were very good. They got a phone line and they were able to issue vouchers and/or arrange for the purchases to be made directly from the merchants. So I think the system that Centrelink has in place to manage the BasicsCard is actually very good.[60]

3.86 FaHCSIA also noted that Centrelink had robust strategies in place to ensure payment options were available in the event of system failures.

> …a number of mechanisms are in place to deal with situations where a customer's BasicsCard does not work. In the event of system failure, the companies that support the BasicsCard have implemented rigorous monitoring and alert systems to ensure a fast response. Centrelink has also developed a range of contingency arrangements enabling Centrelink staff to quickly arrange alternate short-term payment options for customers, including direct payments to a store or payment by credit card or cheque, depending on the merchant.[61]

3.87 The committee recognises the issues associated with the BasicsCard system but notes the responsiveness of the relevant government agencies in improving the system. In addition to improvements with the system itself, the committee also welcomes FaHCSIA's commitment to improve communication of the BasicsCard system in the Northern Territory.

Cost of the income management system

3.88 Several witnesses criticised the proposed scheme on the grounds of cost. ACOSS used the government's funding estimates to calculate a cost of $4400 per person managed by the scheme.[62]

> Put in perspective, that is nearly nine times the amount paid to employment service providers to help long-term job seekers, which is $500 annually, and it is over one-third of the Newstart allowance paid to a single adult, which is just under $12,000 a year.[63]

3.89 The total cost of the income management measure listed in the explanatory memoranda for the legislation is approximately $400 million over five years.[64]

---

60 Ms Fiona Lander, WA Department for Child Protection, *Committee Hansard*, 22 February 2010, pp 7–8.

61 FaHCSIA, Answer to Question on Notice WR27.

62 Ms Clare Martin, ACOSS, *Committee Hansard*, 26 February 2010, p. 22.

63 Ms Clare Martin, ACOSS, *Committee Hansard*, 26 February 2010, p. 22.

64 Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009, Explanatory Memorandum, p. 5.

3.90 Some witnesses were highly critical of the cost of the scheme, suggesting that the funds could be better used. For instance, the Western Australian Council of Social Services stated:

> We would argue that to see better outcomes for children and families we should stop diverting resources from effective programs and services into income management, which is expensive to administer, with no established hard evidence that it actually works. We would argue that a sustainable approach would invest in addressing the root causes of poverty and social exclusion. We must also be prepared to wait for the outcomes if we are to see real lasting and meaningful change for families facing poverty. The other aim is to foster individual responsibility and to provide a platform for people to move up and out of welfare dependence. We join ACOSS in suggesting that solutions should focus on investment in social services, ensuring the adequacy of social security payments and providing better employment assistance for the long-term unemployed.[65]

3.91 The committee notes that a large proportion of the funds allocated under the income management measure are aimed at ensuring access to Centrelink and other government services, which has been a positive development under the NTER.

Voluntary versus compulsory income management

3.92 Many of the witnesses who were against compulsory income management supported voluntary income management. For instance, the St Vincent de Paul Society stated:

> Income management can be a useful tool—a very useful tool, in our experience—in some circumstances, specifically when it is voluntary and forms part of a context of support and appropriate service delivery. It is not true that the people who are doing it tough can have a better life as a result of being treated in a paternalistic way.[66]

3.93 Professor Jon Altman informed the committee that, in the context of the Northern Territory, a voluntary scheme may have more uptake than the government expected:

> I have always been of the view that the government might be surprised how many people opt in if they are left with the opportunity to have a BasicsCard—which is fundamentally a debit card—onto which they could put zero to 100 per cent of their welfare income. I think that, if the scheme were made voluntary and individuals had the choice to use a system that has now been put in place at great public expense, they might utilise it.[67]

65 Ms Sue Ash, WACOSS, *Committee Hansard*, 22 February 2010, p. 10.

66 Dr John Falzon, St Vincent de Paul Society, *Committee Hansard*, 26 February 2010, p. 11.

67 Prof Jon Altman, *Committee Hansard*, 26 February 2010, p. 41.

3.94 The Western Australian Department for Child Protection noted that the voluntary income management scheme in Western Australia had grown in popularity:

> …the voluntary income management scheme has become more popular and, of course, as we roll the child protection income management initiative into this scheme, the voluntary scheme becomes more available and more known about as well. I think that people in the community do see voluntary income management as a positive tool to help them with their financial management, and that is why we are seeing increasing numbers self-referring.[68]

3.95 The committee is of the opinion that the popularity of the voluntary income management measure is an indication of the benefits of the scheme to participants.

3.96 The committee also notes comments by the NPY Women's Council regarding the inadequacy of voluntary income management alone. The Council's submission stated:

> The Australian Government, through [Office of Aboriginal and Torres Strait Islander Health], is currently funding the trial of a voluntary stores card in communities on the APY Lands. At the same time, considerable Commonwealth resources are going into the area: funding for police stations, public housing, police housing, and government hubs, or centres, at Mimili and Amata. There is, however, no compulsory income management and large amounts of cannabis and continues to be taken in to the APY communities. NPY believes the stores card will have little if any beneficial effect. Those who need IM: the drinkers, the dope smokers and gamblers - those who humbug - will not volunteer. All the money in the world can be poured into renovations or new housing, whether on the APY Lands, remote NT communities or in Alice Springs town camps, but without ways to effect behavioural change, including but not only through compulsory IM, there will be little beneficial result.[69]

Logistical issues with the expansion of income management

3.97 The initial expansion of income management across the Northern Territory is likely to see an increase from approximately 15 000 income managed individuals to 20 000, representing 9 per cent of the population.[70]

3.98 While the Northern Territory Government were supportive of the proposed legislation, they recommended that successful implementation would require cooperation between governments. For example, the use of school attendance as an income management exemption criterion could potentially mean that schools would

---

68 Ms Fiona Lander, WA Department for Child Protection, *Committee Hansard*, 22 = February 2010, p. 5.

69 NPY Women's Council, *Submission 93*, p. 5.

70 Mr Ken Davies, NT Department of Housing, Local Government and Regional Services, *Committee Hansard*, 15 February 2010, p. 3.

require more resources as attendance increased, and the necessity to report attendance data for the purpose of Centrelink may also provide its own challenges.[71]

3.99 In order to accommodate the expansion, the Northern Territory government encouraged a gradual roll out approach:

> Scaling up is always a challenge, particularly when you start going to remote regions, in terms of service delivery. So, just as the original income management role was phased in—it was not a blanket application across the Territory from day one; it started in the southern region and worked through the southern region communities so that proper place based negotiations with individual families could take place. It is a big logistical exercise to go and rework it, and then to put in the support structures around it that have to be properly managed so that families can be supported and case managed is going to be a big logistical challenge given that we are talking about 20,000 people being in this particular program.[72]

3.100 FaHCSIA noted that the minister was yet to make a decision on the matter, but that the roll out would most likely be staged in order to streamline implementation. Mr Sandison, FaHCSIA, stated:

> …regarding the process, there is still some decision-making for government, but basically one of the statements outlined was that it would probably be on a geographic rollout. It would not be a total switch-on, switch-off across the whole of the Northern Territory. Government is still in consideration about how to actually take that approach forward.
>
> Basically, it would probably be on geographic zones to give an opportunity for reasonable implementation for Centrelink, in terms of managing the workloads and the resources that would be involved.[73]

3.101 The Northern Territory Department of Business and Employment noted that the increase in number and wider distribution of income managed individuals would require increased capacity on behalf of business:

> It is imperative that Centrelink, or the nominated Australian government agency, commences soon as possible an appropriate extensive information campaign to the Northern Territory business community. We would suggest, if this is sent to Centrelink, that it involve staff visiting the business community Territory wide, encouraging eligible businesses to become registered merchants. The current guidelines indicate that it is up to the businesses to communicate to Centrelink. We are urging that Centrelink

71 Mr Alan Green, NT Department of Education and Training, *Committee Hansard*, 15 February 2010, p. 5.

72 Mr Ken Davies, NT Department of Housing, Local Government and Regional Services, *Committee Hansard*, 15 February 2010, p. 8.

73 Mr Barry Sandison, FaHCSIA, *Committee Hansard*, 4 February 2010, p. 21.

> become proactive so that when these changes come into effect on 1 July 2010 there are as many merchants registered as are required for the card.[74]

3.102 FaHCSIA informed the committee of current and future measures educating businesses and consumers about the BasicsCard system, including seminars for businesses that would assist with the implementation of the proposed new scheme.

> Under the current scheme, there are 549 approved BasicsCard merchants across the Northern Territory (NT), in remote and urban centres. FaHCSIA and Centrelink monitor the approved businesses to ensure that customers have access to a range of priority goods and services.
>
> FaHCSIA and Centrelink have recently undertaken a series of Merchant Seminars in Casuarina, Darwin, Katherine, Alice Springs, Tennant Creek and Palmerston in order to provide information for businesses about the BasicsCard and how it works. BasicsCard Seminars are advertised widely in Chamber of Commerce newsletters, the local papers and radio and via email to existing approved merchants who have provided an email address.
>
> Following the passing of the new income management legislation, further seminars will be conducted territory wide in both remote and urban areas in order to support businesses that may be eligible to apply to become BasicsCard merchants.
>
> With the implementation of the replacement BasicsCard, Centrelink has advised merchants that a list of Merchants approved for BasicsCard will be published on its website in July 2010. Customers can also request a list of approved merchants that are available in their area.
>
> In accordance with the Merchant Terms and Conditions, approved merchants are generally required to display BasicsCard signage indicating that their business is approved to accept the BasicsCard. Centrelink had also developed new signage to indicate that some petrol stations are approved to sell fuel only.[75]

Bureaucracy and welfare

3.103 ACOSS criticised the government's proposed scheme as it 'represents a top-down, one-size-fits-all bureaucratic solution to complex social problems facing individuals and communities.'[76]

> The use of the social security system to achieve wider behavioural change not tied to this objective is inappropriate and inefficient unless individuals or communities have sought this approach. This is because the social security system and Centrelink are poorly adapted to providing the kind of intensive case management that is required, which is rightly provided by

74 Mr Doug Phillips, NT Department of Business and Employment, *Committee Hansard*, 15 February 2010, p. 6.

75 FaHCSIA, answer to question on notice WR31.

76 Ms Clare Martin, ACOSS, *Committee Hansard*, 26 February 2010, p. 21.

> specialist local community organisations. Income management can be a useful tool for those services and communities, but it must be a tool in their hands, not an instrument applied by government.[77]

3.104 In response to this statement, FaHCSIA informed the committee that:

> …the Government considers the new scheme of income management to be part of progressive welfare reform to protect children and families and help disengaged individuals.
>
> The new scheme has been targeted to reach specific categories of income support recipients that the Government considers are most in need of support and assistance, and extend no further than necessary.
>
> The new scheme of income management will be supported by a significant expansion of the financial counseling and money management services in the Northern Territory. In addition, , people will continue to have access to existing services offered, such as Job Services Australia, and a range of Commonwealth and NT Government funded community services.
>
> The Government does not consider income management to be a punitive tool. Rather it believes it provides the foundations for pathways to economic and social participation by assisting people to ensure the priorities of life are met.[78]

3.105 The Salvation Army raised a concern about the capacity of Centrelink to manage the sensitivity involved in running a national income management scheme:

> I can buy that income management is something that has been enhanced by the development of more financial counsellors and financial advisers across the emergency release system; there need to be more. I can see that that has been enhanced. I can only see it being rolled out as a bureaucratic process rather than a transformational engagement. You have a very rigid income support delivery tool now in Centrelink. It is nowhere near as nuanced it was 10 or 15 years ago for particularly disadvantaged groups. Where I was very confident working with Social Security and Centrelink in the early days with homeless young people, I am not now because it is a bureaucratic process. In the past it was an engagement where the community sector, the Social Security agents and the person who needed some sort of transformational assistance could come together. Until we get back to something like that, anything that you introduce that is not voluntary will be subject, basically, to the incompetence of that bureaucratic process.[79]

3.106 FaHCSIA indicated however, that the income management scheme included an investment in more responsive Centrelink services. FaHCSIA informed the committee of range of services offered, stating:

---

77 Ms Clare Martin, ACOSS, *Committee Hansard*, 26 February 2010, pp 21–22.

78 FaHCSIA, answer to question on notice WR32.

79 Major David Eldridge, Salvation Army, *Committee Hansard*, 26 February 2010, p. 18.

> The Centrelink service delivery offer for customers under the current scheme, and the new scheme is tailored to the needs of customers subject to each measure, and include:
>
> -Regular travel to remote communities by Remote Visiting Teams to enable people to have services delivered face-to-face and ongoing contact through Customer Service Centre's;
>
> -Identification of potential high-risk customers and tailored service delivery to suit the specific requirements of those customers. For example identification of people who have a high number of replacement BasicsCards and discussion of alternative payment mechanisms;
>
> -Regular reviews of deductions to ensure that the person able to meet their priority needs and those of their family over time;
>
> -Flexible allocations arrangements to best suit customers current requirements;
>
> -Discussions about the operation and functioning of the BasicsCard, including balance checking options, and consideration of the most appropriate payment option. For example, for some customers regular direct payments to community stores may be preferable to the BasicsCard for a number of reasons.
>
> -Providing information and advice about exemption processes and requirements, and assessing customers' eligibility for exemptions.
>
> -Annual reviews of exemptions
>
> -Transitioning all current NTER customers onto the New [income management] measures or off [income management] including offering Voluntary Income Management
>
> -Voluntary income management customers will receive assistance and advice from Centrelink about incentive payments, and customers subject to the disengaged youth and long-term unemployed income management measures will receive advice about the matched savings.
>
> In addition Centrelink provides referrals to money management services. Money Management services provide education, information and support to help people learn skills to manage their money more effectively.[80]

3.107 The committee supports the government's proposed expansion and refinement of income management and notes that continuing efforts by government departments will be required to ensure the successful implementation of the measure.

80 FaHCSIA, answer to question on notice WR24b.

Chapter 4

Other measures

4.1 This chapter provides a summary of the evidence presented to the committee regarding several other measures in the proposed legislation. The committee notes that it was not possible to examine or report on all measures contained in the legislation package and has here focussed on the government's proposed changes to the alcohol, restricted materials and associated measures, as well as comments regarding customary law and provisions in the *Northern Territory National Emergency Response Act 2007*.

4.2 The government's proposed legislation offers the opportunity for communities to tailor their own alcohol management plans to replace the existing blanket restrictions imposed on prescribed communities under the existing legislation. Similarly, residents of a prescribed area will be able to apply to the minister for an exemption from the prohibition of restricted material which includes pornography and violent material.

4.3 Witnesses before the committee were generally supportive of the proposed changes. Some desired more government support for new alcohol management plans, including assistance in terms of development of the consultation process and the plan itself.

4.4 The Central Land Council was supportive of the move to provide communities with the greater decision-making powers with respect to both measures:

> I guess what we are trying to say, and the same applies for our approach to the restrictions on prohibited material, is that you had a system where communities were empowered to make a decision around alcohol and they had made a decision. Now that decision may change over time, who knows, but the NTER effectively took that decision-making power away and gave it back to the government. What we are suggesting, and all the evidence shows in relation to substance issues that you need to engage the community that has the problem, is that we would welcome moves that allow that decision-making power to come back to a community level.[1]

4.5 The North Australian Aboriginal Justice Agency (NAAJA) informed the committee that while they supported the ability of communities to shape their own alcohol management plans, they would prefer the starting point to be non-discriminatory:

> What we would point out, and this came through our board consultations, is that we think the starting point should be non-discriminatory. We think the Liquor Act should be applied to all Territorians the same. That may mean

1 Ms Jayne Weepers, Central Land Council, *Committee Hansard*, 17 February 2010, p. 6.

> that some communities, as they did prior to the intervention, want to ban alcohol from their communities. That was clearly the case in a lot of communities— alcohol was banned, and that was the decision that communities took. What came through very strongly from our consultations is that the communities themselves have the solutions that they know will work in their communities.[2]

4.6 NAAJA noted that the development of alcohol management plans was resource-intensive and would require support from government:

> I guess our concern about those changes is that it is going to be quite onerous. The process that is outlined in the new proposed legislation involves writing to the minister, which is going to be quite a complex process for individuals in communities. We just have concerns about how an individual in a community that has an issue with alcohol is going to be able to put their voice and get a practical plan in place within their community.[3]

4.7 Aboriginal Medical Services Alliance Northern Territory (AMSANT) noted that the ability to tailor local solutions was important, but also highlighted the need to provide support in developing and implementing alcohol management plans:

> One of the problems that has happened under the intervention is that a lot of the dry areas have been massively expanded in geographic size such that people cannot drink outside the dry area but still close by their community so they can walk back in, and some of them are eight to 10 kilometres away which, the morning after, is a fairly decent hike. But some of them have now been moved to 20 or 30 kilometres from communities and so on which has actually got quite dangerous for people. It has always been AMSANT's principle that the only successful alcohol management plans are ones that are driven by locals, and which locals properly resourced.[4]

4.8 Changes to alcohol measures also include the repeal of a section in the Northern Territory Emergency Response (NTER) legislation that allows police to treat private areas in prescribed communities as public places with respect to the power to apprehend intoxicated individuals. In effect, the provision as it currently stands allows police the right to enter a private residence in order to apprehend an intoxicated person for a certain period. Under the proposed change, this police power would only exist if requested by a resident of the community, and agreed to by the minister or delegate after community consultation.

---

2 Mr Vernon Patullo, North Australian Aboriginal Justice Agency, *Committee Hansard*, 15 February 2010, p. 33

3 Ms Hannah Roe, North Australian Aboriginal Justice Agency, *Committee Hansard*, 15 February 2010, p. 32

4 Mr Chips Mackinolty, Aboriginal Medical Services Alliance Northern Territory, *Committee Hansard*, 15 February 2010, p. 58.

4.9 The Northern Territory Police noted that they had some concerns as to how this would operate but that community consultation was a positive addition:

> Certainly I think the issue of community consultation is what is important in this. All the communities in the prescribed areas are vastly different, so I think bringing it back to the local level with community consultation is a positive.[5]

4.10 Additionally, the committee recognises that the signage erected as part of the NTER alcohol and restricted materials measures has caused considerable offence to Indigenous communities. It therefore welcomes provisions in the proposed legislation that would allow greater discretion in placing appropriate signage and publishing notices.

4.11 The committee notes that several witnesses were concerned that the redesign of the NTER did not include amending provisions in the original legislation relating to the consideration of customary law in courts in the Northern Territory. Sections 90 and 91 of the *Northern Territory National Emergency Response Act 2007* include provisions that ensure bail and sentencing decisions cannot take into consideration any form of customary law or cultural practice.[6]

4.12 NAAJA was of the opinion that customary law strengthened Indigenous communities and needed to be recognised in Northern Territory courts. Mr Vernon Patullo, NAAJA, stated:

> I will say that, with the remote parts of the Northern Territory, not so much the urbanised parts, in the Little children are sacred report they are always talking about customary law. They do not recognise it in this system, and we really need them to understand that type of customary law. If customary law was in place, many of these things would never have happened in these communities. That was customary law. That was our law. I think you really need to look at it, particularly in the Northern Territory. We could manage many of these issues that they imposed on us if our law was recognised.[7]

4.13 Mr Jared Sharp, NAAJA elaborated further, stating:

> As Mr Patullo pointed out, we are very concerned about the glaring omission of customary law in the redesigned package. In our submission the NTER measures, particularly sections 90 and 91 of the NTER act, cause discriminatory treatment to Aboriginal people in the matters that they can have raised before courts, for sentencing or for bail purposes. We are very concerned that the government has not even addressed this in its redesigned package. As Mr Patullo pointed out, our board is very strongly of the view that customary law pays a vital role in community justice. As reports such

---

5 Mr Robert Kendrick, Northern Territory Police, *Committee Hansard*, 15 February 2010, p. 24.

6 *Northern Territory National Emergency Response Act 2007*, subsection 90(b) section 91.

7 Mr Vernon Patullo, North Australian Aboriginal Justice Agency, *Committee Hansard*, 15 February 2010, p. 28.

> Little Children are Sacred have pointed out, the approach we think should be taken is actually developing the utilisation of customary law—rather than condemning it, we should have it working in partnership with the Northern Territory law.[8]

4.14 Concerns over the exclusion of customary law from the redesign of the NTER were shared by the Law Council of Australia,[9] Northern Territory Legal Aid Commission[10] and the Central Australian Aboriginal Legal Aid Service (CAALAS). Ms Emily Webster, CAALAS, stated:

> …we note that the bill before you does not deal with the issue of customary law. At the time the legislation was put in place in 2007 mechanisms allowing customary law to be taken into consideration in sentencing and in bail applications were removed. We are quite concerned that this has not been addressed at this point in time in the redesign of the legislation. We believe that those provisions that take away the right of a magistrate or a judge in the Northern Territory to take into consideration those issues should be repealed, therefore allowing them to take into consideration those issues when determining sentencing and bail applications.
>
> …
>
> It is actually not just about NTER legislation. It is about any crime in the Northern Territory. It is not about whether you are prosecuted under the NTER legislation. It is about when you appear before a court in the Northern Territory.[11]

4.15 Mr Richard Downs, Alyawarr Engkerr-Wenh Aherrenge Cooperation informed the committee of the importance of customary law in remote communities, stating:

> We have always had controls and measures in place in remote areas and the communities, working in partnership with the Northern Territory government over the last 30 or 40 years. We utilise tribal customs and ways. Punishment has to be dealt out, but it is done in a particular way. You follow the customary family line, so the family takes responsibility. We were able to control that but, since the AFP and the police came in, those controls and measures were taken away from us. So there is nothing much we can do. People say, 'Why aren't you people taking control of your kids?' but as soon as we touch them we are portrayed as offenders. The tide has turned and there is nothing we can do. But we did have those controls

8 Mr Jared Sharp, North Australian Aboriginal Justice Agency, *Committee Hansard*, 15 February 2010, pp 28–29.

9 Dr Sarah Pritchard, Law Council of Australia, *Committee Hansard*, 25 February 2010, p. 11.

10 Ms Susan Cox QC, NT Legal Aid Commission, *Committee Hansard*, 15 February 2010, p. 30.

11 Ms Emily Webster, Central Australian Legal Aid Service, *Committee Hansard*, 17 February 2010, pp 33–34.

> and measures in the leadership group, and it was working. But we are losing it.[12]

4.16 FaHCSIA noted however, that the issue of customary law and its role in bail and sentencing decisions was under review, with a decision on whether further legislative reform was required to be made after 12 months.

> The bail and sentencing provisions in Part 6 of the Northern Territory National Emergency Response Act are not subject to the provisions that suspend the operation of the Racial Discrimination Act 1975 (RDA). Rather, they apply in relation to all bail and sentencing decisions made under Northern Territory legislation, regardless of the defendant's race.
>
> The provisions have been reviewed separately by the Attorney-General's Department and a report provided to the Attorney-General and the Minister for Home Affairs on 12 November 2009. There is little evidence available at this stage about the impacts of the provisions. The Attorney-General and Minister for Home Affairs have therefore decided to monitor the provisions for a further 12 months before deciding whether legislative reform is required.[13]

4.17 The committee notes that this is an area that should be the subject of future consultation with remote communities in the Northern Territory.

4.18 The committee supports the changes outlined in the government's legislation and recommends that the Senate pass the government bills.

Recommendation 4

4.19 The committee recommends that the Senate pass the government's bills.

Senator Claire Moore

Chair

12 Mr Richard Downs, Alyawarr Engkerr-Wenh Aherrenge Cooperation, *Committee Hansard*, 17 February 2010, p. 26.

13 FaHCSIA, answer to question on notice WR33, p. 1.

Dissenting Report by Coalition Senators

Senator Sue Boyce

Senator Judith Adams

Executive summary

The Coalition remains broadly supportive of income management and retains a steadfast commitment to acting in the interests of all Australians, including those living in Indigenous communities. The *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009* (herein "the Bill") will water down current income management arrangements and weaken the welfare quarantining system.

The application and operation of social welfare reforms in contemporary Australian society is an issue which has been the subject of much debate in recent years and subject to numerous inquiries. Social welfare remains a crucial issue in Australian society which fully demonstrates the powerful impact public policy can have on the well-being of Australians. This is particularly true of the income management arrangements that continue to operate across 73 Indigenous communities in the Northern Territory.

The government has said much on income management. It is now apparent, however, that the government's rhetoric surrounding the potential expansion of the Coalition's successful income management arrangements is yet another hollow commitment, with the proposed expansion applying only to the Northern Territory, before an evaluation of where, and whether, the Minister should apply the system elsewhere.

As part of the Northern Territory Emergency Response (NTER), the Coalition established an income management system to quarantine welfare payments across some 73 remote Indigenous communities. The implementation and ongoing operation of income management measures has been both successful and effective, but the economic security and social harmony afforded to those communities, particularly to women and children, is directly threatened by the government's proposed amendments.

The Bill would not give consistency to the application of income management; rather, it would enshrine arbitrary and subjective approaches.

Coalition Senators encourage the government to amend the proposed legislation to avoid the inherent and now apparent potential legal consequences this Bill may give rise to. This would ensure that the protections currently afforded to those in remote Indigenous communities continue under a system based on dysfunction, not race.

Inviting a legal challenge to the legislation

After considering the evidence provided to the Committee in its entirety, Coalition Senators have formed the view that the proposed Bill is fundamentally flawed.

Indeed, whilst many of the witnesses were opposed to any form of compulsory income management, their evidence suggesting the Bill exacerbates legal uncertainties is a cause for concern.

The expert evidence principally leads to the conclusion that not only will the Bill water-down current arrangements, but more seriously, this Bill could effectively undermine the entire legislative framework by giving rise to a successful legal challenge.

Dr Robyn Seth-Purdie, from Amnesty International Australia, gave evidence that

> *"As for challenging, let the RDA reinstatement come in so that it can be challenged and then we can sort it out in the courts, that is a risk because it is not beyond doubt that, if the RDA exclusions are removed from the Northern Territory intervention legislation, the RDA would prevail over a statute passed subsequent to it. Conflict of laws doctrine: the later statute prevails."*[1]

Mr Vernon Patullo of the North Australia Aboriginal Justice Agency and Ms Suzan Cox QC, the Director of the Northern Territory Legal Aid Commission, also noted that because of the proposed restoration of the *Racial Discrimination Act and* the maintenance of special measures, there was likelihood that the legislation could be challenged.

Indeed, in her evidence to the inquiry, Ms Cox noted that:

> *"If the RDA is reinstated, a lot of the laws remaining are discriminatory—for example, prohibitions on alcohol and other materials in particular areas. So we have those sorts of issues."*[2]

---

1 Amnesty International Australia, *Committee Hansard*, 11 February 2010, pp 12–13.

2 NAAJA and NT Law Society, *Committee Hansard*, 15 February 2010, p. 30.

This view was supported by Mr Jared Sharp, also of the North Australia Aboriginal Justice Agency, who gave evidence stating:

> *"Our key concern goes to the characterisation of NTER measures as special measures for those measures that we referred to earlier. If we were to look at those in specifics—for example, the pornography measure—I do not know the precise way in which it would be challenged. It is something that as an organisation we would need to take advice about. What we would be challenging is the designation of the measure as a special measure based on, for example, the fact that for a special measure to be a special measure there needs to be this demonstrated necessity. In our submission, that does not appear to be the case. Similarly, it needs to be the case that the government can demonstrate that the measure is for the sole purpose and advancement of the targeted group. Again, in our submission we say that we do not feel that that has been the case. When looking at the key criteria, the standard of free, prior and informed consent is perhaps paramount, and we think that has not been demonstrated."*

And Ms Pengilley summarised the situation best when she noted

> *"Surely it has to be, because if the Racial Discrimination Act is reinstated then it becomes open to challenge."*[3]

The Law Society Northern Territory also suggested a challenge was more likely, noting in their submission that:

> *"We are not sure that the measures will in fact comply with the Racial Discrimination Act if they continue, as they are likely to constitute indirect discrimination at the very least if they have a disproportionate impact on Indigenous people."*[4]

Coalition Senators are gravely concerned that the proposed legislative amendments will give rise to grounds for mounting a legal challenge against the legislation.

Special measures

The Law Institute of Victoria, in their submission to the Committee expressed concern about the government's amendments.

---

3 Ms Annabel Pengilley, NAAJA, *Committee Hansard*, 15 February 2010, p. 33.

4 Law Society Northern Territory, *Submission 69*, p. 10.

> *"The LIV is also concerned about aspects of the Government consultation process, which raise questions about the Government's contention that all aspects of the NTER Amendment Bills (and therefore amended NT Intervention legislation) are either special measures under the Racial Discrimination Act or non-discriminatory and thus consistent with the Racial Discrimination Act…*
>
> *We are extremely concerned by reports of deficient consultation processes with Indigenous communities and about the potential for indirect discrimination brought about by the redesign of measures such as income management."*[5]

Dr Pritchard of the Law Council of Australia gave evidence that recourse to the UN Racial Discrimination Committee would also be possible where a person or organisation objected to a special measure:

> *"That would depend on the advice one received. It would depend on the full reinstatement of the Racial Discrimination Act in the first instance. It would also depend on the interpretation by the court of the interaction between the NTNER legislation and the Racial Discrimination Act. It would also have regard to whether or not an amendment along the lines proposed by Senator Siewert were enacted. And then it would ultimately depend on whether the question were justiciable or not, and that would be a matter that would need to be determined by a court. In the event that no remedy were available domestically, then there would be recourse to the UN racial discrimination committee."*[6]

Discrimination in the Bill

The evidence before the Committee directly supports the contention that the government's proposed broadening of income management measures does not change the discriminatory nature of the legislation.

Dr Seth-Purdie, gave evidence that:

> *"We are not persuaded by them because, even if the compulsory income quarantining is rolled out across Australia and applies to areas designated by the minister as disadvantaged, this will still affect Indigenous Australians disproportionately, so it will be indirectly discriminatory because Indigenous Australians do live in the most disadvantaged areas. It could be seen as simply a mechanism to ensure that compulsory income quarantining continues. Indirect discrimination is similarly not permissible under*

5 Law Institute of Victoria, *Submission 8*, p. 5.

6 Dr Sarah Pritchard, LCA, *Committee Hansard*, 25 February 2010, p. 15.

> *international human rights treaties. Not only would Indigenous people be subject to this sort of discrimination but chronically disadvantaged non-Indigenous people would also be placed in that category. They would be treated less favourably than their non-disadvantaged counterparts elsewhere in the country by having their income managed. For Indigenous people it is not non-discriminatory nor would it be for other disadvantaged groups.*[7]

This evidence was broadly supported throughout the hearings conducted by the Committee.

Proposed amendments – '*Dysfunction not race*'

Coalition Senators cannot support the Bill in its current form. To do so would be to abrogate our responsibility to protect those vulnerable people in Indigenous communities and to condone the subjective and inconsistent application of welfare quarantining.

Coalition Senators believe several amendments could address the concerns currently held. These amendments would include:

1. Limit qualifying period for the application of income management to thirteen weeks of benefits/payments in the past 26 weeks. Extend applicability to ensure that the measures cover all recipients of Newstart, Youth Allowance, parenting payments and special benefits and to carers and disability pension recipients with children under the age of 18;

2. Remove the evaluation proposal so as to empower the Minister to expand the income management system nationally from the time Royal Assent is issued;

3. Amend the Bill so it does not seek to reinstate the *Racial Discrimination Act*; and

4. Either split the Bill, or sufficiently amend the Bill, so that current arrangements in 73 Indigenous communities are maintained.

---

7 Dr Robyn Seth-Purdie, Amnesty International Australia, *Committee Hansard*, 11 February 2010, p. 12.

Conclusion

The Coalition supports the first three recommendations of the Chair's Report, but does not accept the fourth, which recommends that the Senate pass the Government's bills in their current form.

The evidence before the Committee affirms that the Coalition-introduced income management arrangements have delivered significant and substantial benefit to those Australians living in 73 Indigenous communities.

These measures and the income management system were introduced expeditiously and in direct response to the emergency situation which confronted the previous Coalition government.

Watering down those measures and weakening the protections afforded to women and children in these communities is simply counterproductive and detrimental.

Whilst Coalition Senators broadly support income management, such quarantining must be achieved through a system that identifies, and seeks to remedy, welfare recipients based on dysfunction not race. Therefore, unless the Bill is sufficiently amended so as to incorporate and address the concerns held by the Coalition Senators, the Coalition will find it difficult to support the proposed legislation in the Senate.

Judith Adams
Senator for Western Australia

Sue Boyce
Senator for Queensland

Dissenting report by Senator Rachel Siewert, Australian Greens

The whole approach being pursued by the Rudd Government to the need to reform the problems of the Northern Territory Emergency Response (NTER) as reflected in the Government's bills is fundamentally flawed. The government is attempting to simultaneously pursue contradictory and incompatible policy objectives. It made a firm commitment in opposition to restore the application of the Racial Discrimination Act to the NTER legislation and went to the election advocating the progressive social policy of social inclusion. However, since coming to government it has become enamoured with a punitive model of conditional welfare targeting disadvantaged Indigenous communities (despite the enormous cost and a lack of evidence for its efficacy) which is incompatible with social inclusion and basic human rights. While these kinds of deep philosophical and moral contradictions can be glossed over in the short term with creative public messaging, the victory of spin over substance is always short-lived.

What is particularly concerning is the manner in which the government is proposing to resolve this contradiction by pursuing what is arguably the biggest change to Australia's welfare system since the Second World War – the introduction of a national scheme of indiscriminate mandatory income quarantining. It is particularly concerning that the Rudd Government has not sought and does not have a public mandate for such major reforms. This is very different from the social policy platform they took to the last election – in fact it seems to be at direct odds with their campaign about the rights of working families – and there has been no real effort made to inform the Australian public about these intentions. These bills were introduced in the last sitting of the year during a major public debate concerning climate change without even a press conference or a media release to announce them.

The best thing for the government to do at this point would be to drop this approach, continue on with reforming the negative aspects of the NTER and shift to a more consultative community development approach to addressing the underlying causes of disadvantage and social exclusion in Aboriginal communities.

The starkest outcome of this inquiry by the Community Affairs Legislative Committee was the lack of any substantive evidence to support the government's assertions of the efficacy of its approach after two and a half years of the intervention, and the overwhelming concern expressed by experts and community organisations with the approach being taken. This lack of hard evidence is a serious indictment of the government of a Prime Minister who

continues to expresses his commitment to 'evidence-based policy'. In relation to the efficacy of income management, the analysis provided by AIHW[1] of data collected by FaHCSIA highlighted serious deficiencies in the evidence, including: the lack of any comparison group or baseline data, the over-reliance on anecdotal evidence, perceptions and opinions; the absence of hard empirical evidence to back up any of these claims; the relatively small number of clients interviewed and the lack of random selection of interviewees; the limited amount of quantitative data collected for evaluation purposes, and the difficulty in isolating the effects of income management to other effects from increased investment in affected communities. They characterised all of the data collected as falling towards the bottom of an evidence hierarchy and were highly critical of its reliability and validity. It is very clear that this evidence does not provide a basis for continuing or extending income management, and the failure to collect meaningful empirical data undermines any claim that these were 'trial' measures.

Inadequacies of the majority report

The Community Affairs committee has in recent years undertaken a number of inquiries relating to the circumstances and well-being of Aboriginal communities. In these instances I have been impressed by the candour and rigour with which it has approached these complex and sensitive issues and by the manner in which the Committee has worked to uncover the underlying issues and deliver comments and recommendations in which the best interests of those affected communities were paramount. It is in this context that I wish to express my disappointment with this current inquiry and report. There has not been enough time to consider these very important issues, and the large amount of evidence outlining major concerns with the proposals has been largely dismissed. The approach pursued appears to be one where the legislation will be supported come what may, despite all the evidence to the contrary.

The report seeks to make the case for government policies and commitments for which there is neither compelling evidence nor a convincing argument. On a large number of points the report has not even made a convincing attempt to argue the case for the government's policy position, but has simply relied on departmental assertions that well argued criticisms and opposing evidence are not true, and that the department believes or the Minister has stated something to the contrary. The most striking example of this relates to the debate concerning whether the proposed income management measures are discriminatory – where in the face of detailed and compelling argument from constitutional and human rights law experts the report falls back on assertion that the government intends these measures to be non-discriminatory and so

[1] I believe it is misleading to refer to this analysis as 'the AIHW report', particularly given evidence to the committee in Senate Estimates in February that the AIHW Ethics Committee had previously refused to participate in the study.

therefore they are non-discriminatory. The Government did not seek to argue its case and has refused to release their legal advice.

I do not support the recommendation that this legislation should proceed, and I do not consider that the evidence presented to the committee supports this conclusion.

The current approach does not restore the RDA

The two bills proposed by the government do not fully restore the application of the Racial Discrimination Act[2] to the measures taken under the Northern Territory Emergency Response. The evidence presented to the committee by constitutional and human rights law experts (including LCA, HRLRC, NACLC, AHRC, Jumbunna, CAALAS, Professor Peter Bailey, Mr Ernst Willheim, Ms Jo-Anne Weinman, Dr Anthony Cassimatis and Dr Peter Billing[3]) was overwhelming in this regard.

The government bills in their current form continue to breach a number of Australia's international human rights obligations[4] and continue to be condemned by international human rights bodies[5]. The recent report by the UN *Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples*, Professor James Anaya was highly critical of the ongoing approach taken by the Rudd government in the NTER, and it is clear that the proposed legislative changes do not address the recommendations he has put forward and the substantive issues of concern he has raised. I fully expect that if the legislation proceeds in its current form it will be criticised and condemned internationally as incompatible with Australia's international human rights commitments.

The Government bills take three different approaches to the non-compliance of current NTER measures with the Racial Discrimination Act. In the case of the proposed changes to income management, the government has (unsuccessfully) sought to change the measures so it can claim that they do not directly discriminate on the basis of race. In relation to alcohol restrictions, prohibited

---

[2] Nor the Anti-discrimination Acts of the Northern Territory and Queensland

[3] See for example *submissions 18, 52, 57, 74, 76* and *83* or *Committee Hansard*, 25 February 2010, pp 10–28.

[4] Including the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the United Nations Declaration on the Rights of Indigenous Peoples (DRIP)

[5] Including more recently, the Committee on the Elimination of Racial Discrimination in March 2009, the Human Rights Committee in March 2009, the Committee on Economic, Social and Cultural Rights in May 2009, and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people in February 2010

material (pornography and violence) and five year leases the government has introduced minor amendments to allow it to continue to assert these are 'special measures'. In the case of suspension of consideration of 'customary law' in sentencing, the government has conveniently ignored the ongoing suspension of the Racial Discrimination Act and continues to deny Aboriginal people in the Northern Territory the right to have all relevant matters considered in a court of law. In all three instances the evidence to the committee makes a compelling case that the Racial Discrimination Act is not being fully restored and that Aboriginal Australians in the Northern Territory will not be able to exercise their right to be free from discrimination in the same manner they could prior to the introduction of the NTER laws.

Permissible limitations on human rights

Under international human rights law it is very clear that any limitations placed onto human rights must be reasonable and demonstrably justified. They need to be for a legitimate and pressing purpose, they must be clearly necessary to achieve that purpose and the limitation of human rights needs to be proportionate to the benefit conferred and limited for only as long as is necessary.[6] It is clear that the onus is on states to demonstrate the necessity of such human rights limitations and to establish them as both reasonable and demonstrably justified. I agree with the majority of witnesses to the inquiry who clearly stated that they did not believe that the government had made a compelling case for these reforms.

Failure to qualify as 'special measures'

When the previous Howard Government introduced a number of measures under the NTER that clearly contravened the Racial Discrimination Act they got around this issue in two ways – by deeming these measures to be "special measures" within the legislation and by suspending the application of the RDA to the NTER. These measures have been assessed by UN human rights bodies[7] as discriminatory and "incapable of being characterised as special measures."[8]

In seeking to partially restore the application of the RDA to those NTER measures (concerning alcohol and prohibited material, compulsory five year leases and the special powers given to the Australian Crime and Corruption Commission to compel evidence), the government continues to assert its belief that these measures constitute 'special measures'.

---

[6] Human Rights Law Resource Centre, *Submission 18,* p18-21.

[7] United Nations Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant,* CCPR/C/AUS/CO/5, May 2009 & United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Observations on the Northern Territory Emergency Response*, Advance Version, February 2010.

[8] Jumbunna Indigenous House of Learning, University of Technology, Sydney, *Submission 57,* p. 5.

The definition of special measures under Article 1(4) of CERD is quite clear:

> Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as maybe necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken to have been achieved.[9]

CERD makes it very clear that, irrespective of whether or not the state considers any particular discriminatory measure to be a 'special measure', it is the opinions and desires of those affected that actually matter, particularly for measures that impact negatively on peoples' rights. The measures must be understood to be beneficial and desired by those affected by them – that is, 'special measures' require full informed consent.

It is very clear from the evidence presented to the committee from Aboriginal organisations within the Northern Territory that they were not consulted prior to the introduction of the original NTER measures, nor were they properly consulted on the new measures proposed by the Government to 'reform' the NTER. It is also abundantly clear that there is not widespread support for the continuation of these measures, and that they are not considered to be either necessary or proportionate to tackle the original objective of the NTER – tackling child abuse and neglect.

The duty to consult

The fact that 'special measures' require the prior informed consent of those affected is one of the main reasons why the adequacy of the NTER Redesign Consultations has become a contested issue. We note that in evidence to the committee FaHCSIA clearly stated that the consultation process was not designed or intended to serve the purpose of providing 'informed consent' for these 'special measures'.[10] While this may address some of the criticisms of the consultation process[11] (although we remain highly critical of the consultation process itself), it does not get the government out of the problem that it still requires prior informed consent. In any case, such consultation and consent cannot be achieved retrospectively and so any consultation concerning special

[9] International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Article 1(4).

[10] Mr Anthony Field, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 58.

[11] Jumbunna House of Indigenous Learning, *Will They Be Heard report*, August 2009.

measures would have to concern itself with new measures and initiatives to address child abuse and neglect (or locational disadvantage[12]).

While the government has addressed one of the criteria for special measures by time-limiting some of the measures, it has failed to address consent, necessity and proportionality.

The measures relating to alcohol and prohibited materials and the ACC still leave themselves open to challenge as being discriminatory if the Racial Discrimination Act is partially restored as proposed.

Land is a special case

The issue of compulsory five year leases is more complicated still, as the right to land is considered a special case under CERD, and a number of witnesses have suggested that it is unlikely that compulsory leases could ever be considered as 'special measures'.[13] It is also arguable that the government could make a compelling case for the need to over-ride the rights of Aboriginal communities to negotiate the uses to which their land is put. If the purpose of the compulsory five year leases is to over-ride the right to negotiate so the government can quickly deliver benefits which communities have been crying out for over decades – then surely communities will either want to expeditiously agree on the delivery of services, or the government has seriously missed the mark on the communities priority needs (perhaps as a result of the lack of prior consultation).

The Law Council of Australia addressed this issue specifically in answer to a question on notice from the committee, and concluded that Section 8(1) of the RDA precludes the management of Aboriginal land without consent.[14] The LCA noted that provision already exists under Section 19 of the Aboriginal Land Rights (Northern Territory) Act 1976 for the negotiation of such leases (i.e. to obtain consent and therefore qualify as a 'special measure'), and that Departmental officials acknowledged this during the committee hearings.[15] We support the finding of the Law Council that on this basis the necessity for compulsory acquisition of 5 year leases without consent has not been demonstrated.[16]

---

[12] *Noting the discussion further below that suggests the objective of the income management measures has changed from child abuse and neglect to locational disadvantage as measured by Socio-Economic Index for Areas.*

[13] See for example evidence presented by the Northern Land Council, *Committee Hansard*, 15 February 2010, p. 70 or the Australian Human Rights Commission, *Committee Hansard*, 26 February 2010, p. 34.

[14] Law Council of Australia, *supplementary submission 83a*.

[15] *Committee Hansard*, 26th February 2010, p. 57.

[16] Law Council of Australia, *supplementary submission 83a*, p3.

The need for a 'notwithstanding' clause

A number of witnesses to the inquiry (including Australian Human Rights Commission, Law Council of Australia, Law Society of Northern Territory, Northern Territory Legal Aid Commission, Northern Australian Aboriginal Justice Agency, Northern Land Council, Central Land Council, Human Rights Law Resources Centre, and Amnesty International) supported the inclusion of a 'notwithstanding' clause in the legislative amendments to expressly state that, in the event of any uncertainty or contradiction between the NTER legislation and the RDA, the provisions of the RDA should prevail. A 'notwithstanding' clause is included in my private Senator's bill, and was endorsed by the Law Council of Australia[17].

Without the inclusion of such a clause the Australian Human Rights Commission argues that "… any provision of the amended emergency response legislation that is inconsistent with the RDA will still override the RDA"[18] As such, without the inclusion of a 'notwithstanding clause' or some functionally equivalent mechanism the Government bills can only represent a partial reinstatement of the RDA and does not deliver on the Government's promise to fully restore the RDA.

In response to these concerns, FaHCSIA sought to argue that the inclusion of a 'notwithstanding' clause was unnecessary and therefore somehow legislatively undesirable, arguing:

> "…It is not desirable to include a provision stating that the RDA applies in relation to the NTER because it is not good practice to include in legislation provisions that are not necessary and such a provision is not necessary here for the reasons I have outlined above. Inserting such a provision could lead to the argument that similar provisions must be included in all Acts made since the RDA in 1975, which has wide ranging implications. In the circumstance of this Bill, such a provision is not necessary to provide clarity and its interpretation could provide an additional matter for dispute.[19]"

This contradicts the considered opinion of a number of witnesses to the inquiry, (including Australian Human Rights Commission, Law Council of Australia, Law Society of Northern Territory, Northern Territory Legal Aid Commission, Northern Australian Aboriginal Justice Agency, Northern Land Council, Central Land Council, Human Rights Law Resources Centre, and Amnesty International) all of whom suggested that the provisions of the Social Security bill raised significant doubts as to whether it was repealing parts of the RDA. FaHCSIA did not seek to address these concerns, but merely referred generally to legal advice held by the Minister which it refused to release or discuss in any detail. I am inclined to consider this line of argument is specious and agree

---

[17] Law Council of Australia submission 83, *Committee Hansard*, 25 February 2010.

[18] Australian Human Rights Commission, *Submission 76*, p 15.

[19] Mr Rob Heferen, FaHCSIA, *Committee Hansard*, 26 February 2010, p. 51.

with the objections to it raised by the Law Council of Australia in their supplementary submission.[20]

The Law Council makes the compelling point that: "…notwithstanding such a body of opinion, it is apparent that the Government is content to see legal challenges brought to resolve the uncertainty" and noted that Departmental officers did not address the desirability of certainty nor did they argue against conventional principles of statutory interpretation relating to the implied repeal of the RDA (that is, that the more recent specific measures in the bill will override older, more general ones of the RDA).

In light of the singular nature of the suspension of the RDA, and the widespread condemnation of the Parliament for enacting such legislation, it is unfortunate that the Government has chosen to eschew an approach to legislative drafting which would enhance certainty and minimise the potential for dispute, and for which, as the Departmental officers accepted in their evidence, there exists precedent.[21]

Legal challenge is inevitable

From the evidence to the committee it seems clear that, if the partial restoration of the RDA continues as proposed, then there are several grounds on which a legal challenge can be mounted. While there were mixed opinions on the likelihood of success of such a challenge, with a number of witnesses suggesting that ultimately such a challenge may not succeed[22], it is also clear from the strength of feeling on this issue and other recent challenges that a challenge or challenges are highly likely if not almost certain.

The government would be either naïve or negligent to think that the uncertainty around of the ultimate success of such challenges is likely to make them any less likely – particularly given the strong desire demonstrated by a number of stakeholders to establish these issues of discrimination and social justice in principle, and the moral and political ground to be made in publicly airing these issues.

Parliament should resolve legislative problems, not the courts

The point was made strongly in evidence to the committee that, given knowledge of this series of issues and the likelihood of challenge, there is what amounts to a moral obligation on the Parliament to seek to address and resolve these issues legislatively, rather than proceed with this legislation and leave it up to the courts to resolve these contradictions through time-consuming and costly litigation.

---

[20] Law Council of Australia, *supplementary submission 83a* p3

[21] Law Council of Australia, *supplementary submission 83a* p. 4.

[22] for instance on the grounds that the Constitution in fact allows the Parliament to make laws that are contrary to international conventions such as the Convention on the Elimination of All Forms of Racial Discrimination; Mr Ernst Willheim, *Committee Hansard*, 25 February 2010, pp 24–25.

There are a couple of fundamental points that any judicial consideration of such a challenge may hinge upon. Firstly there will be the issue of the government's stated intent in moving this legislation – that is, if it intends to fully and effectively restore the RDA and achieve compliance with our international human rights commitments. The Minister, in her second reading speech stated that: 'This bill honours the government's commitment to reinstate the Racial Discrimination Act 1975…in relation to the NTER legislation.'[23] The response to date from the government to fulfil this intention has been both equivocal and contradictory – in that they continue to assert that they are restoring the RDA and that their new measures are non-discriminatory, but at the same time they refuse to countenance inclusion of provisions that would resolve a contradiction between the RDA and NTER measures when one inevitably emerges… and have stated a strong intention to press on with their income management plans despite warnings that it is likely to be considered indirect discrimination.

The second key issue for judicial consideration is likely to revolve around whether or not the Act discriminates either directly or indirectly on the basis of race. Billings & Cassimatis argue that the issue for consideration is likely to be the "true basis' of the application of income management (and other measures) to prescribed areas in the 2007 legislation. They suggest both that under Section 18B of the RDA 'race' would be considered the dominant or substantial reason, and that "…expansion of the scope of income management to the entire Northern Territory does not relevantly alter the position."[24]

> Section 9(2) of the RDA makes it clear that such human rights and fundamental freedoms include the right to "social security and social services". In assessing whether an action involves a distinction "based on" race, members of the High Court of Australia have suggested, in an analogous context, that the question becomes - what is the "true basis" of an act? What was the true basis of applying income management to the prescribed areas in the 2007 legislation? All indicators suggest "race" was a dominant or substantial reason (consider the terms of section 18B of the RDA). Arguably, the proposed expansion of the scope of income management to the entire Northern Territory does not relevantly alter the position.[25]

That is, according to this argument, if the true basis of the original Act is discriminatory then the proposed changes to extend income management to

---

[23] The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, *House of Representatives Hansard*, 25 November 2009, p. 12783.

[24] Dr Peter Billings and Dr Anthony Cassimatis, answer to question on notice received 4 March 2010, p. 2.

[25] Dr Peter Billings and Dr Anthony Cassimatis, answer to question on notice received 4 March 2010, pp 1–2.

include some other groups within the Northern Territory are insufficient to alter the likelihood of the laws being found to be discriminatory.

It is interesting to note the difference between the Minister's publicly stated intention that income management is only being extended within the Northern Territory in the first instance, and the lack of any provisions within the proposed legislation that specify any geographic or temporal restrictions. There is nothing in the bills that limits income management to the Territory, that sets up any sort of sunset clause or requirements for a review, or puts any such conditions on how, when and where income management can be extended to other communities across Australia.

It is questionable whether the Government is trying to walk a fine political line between (on the one hand) avoiding any mention of the national introduction of conditional welfare laws (which may be unpopular in disadvantaged urban and regional electorates in the run up to a 2010 Federal Election) … and (on the other hand) putting forward a legislative package which gives a *prima facie* appearance of not discriminating on the basis of race, by failing to specify an intention to disproportionately target Indigenous communities. I believe it is disingenuous for the government to seek to claim that the proposed legislation in not discriminatory because it applies *in potentia* to any Australian on income support payments, while continuing to assert it intends to initially target these laws geographically at areas where Aboriginal people predominate. This does nothing, as stated above, to change the 'true basis' of income management laws which were clearly designed and implemented on the basis of race.

Such a strategy will also not prevent a challenge which asserts that the selective application of these laws to the Northern Territory is discriminatory, irrespective of whether their national scope *in potentia* might mean that they are not on the face of it discriminatory. On this basis it might be that those affected by the application of the new scheme of income management in the Northern Territory might take a case directly against the Minister for applying these laws in a discriminatory fashion, rather than challenging the laws themselves.

The national introduction of indiscriminate mandatory income management

Fundamental issues of principle

The proposed extension of non-discriminate mandatory income management to classes of income support recipients across the country represents a major shift in social security policy. In my view and in the view of the vast majority of

social service providers who gave evidence to the committee, [26] this represents a fundamental shift in values which goes to the very heart of the concept of social security as an entitlement designed to reduce poverty by delivering an adequate income and assistance to find work. In doing so it violates the principle of inalienability of the social security safety net which has been the cornerstone of modern welfare law.

For instance, Australian Council of Social Services (ACOSS) asserts that:

> "The primary and proper role of the social security system is to reduce poverty by providing adequate payments and supporting people into work. Appropriate activity requirements to assist people into employment are consistent with this objective. Compulsory income management which does not increase payment levels and removes individual autonomy does not further this objective. Rather, it locks people into long-term dependence on others to make financial decisions for them without enabling them to manage their finances independently."[27]

Catholic Social Services Australia (CSSA) also agrees that:

> "Adequate income support is an entitlement. It should not be a tool for governments or public sector managers to grant, withhold or modify in an effort to achieve 'outcomes'. Increasingly, it seems policy makers regard the right to income support as itself a cause of disadvantage and as an impediment to the efficient and effective pursuit of policy goals.[28]

Anglicare Australia points to the principles of social inclusion articulated by the Social Inclusion Board including the *aspirations* of "…reducing disadvantage, increasing participation and matching greater voice with greater responsibility" and the *approaches* of "… building on individual and community strengths, building partnerships with key stakeholders, and developing tailored and joined up services" concluding that "the blanket approach to income management that this legislation pursues is not consistent with these approaches."[29]

---

[26] Including evidence from ACOSS, Anglicare, CSSA, UCA, St Vincent de Paul, FRSA, and NWRN.

[27] Australian Council of Social Services, *Submission 17*, p. 4.

[28] Catholic Social Services Australia, *Submission 63*, p. 2.

[29] Anglicare Australia, *Submission 33* pp 7-8.

The National Welfare Rights Network argues that the proposed legislation breaches well established principles of the inalienability of Social Security and Family Assistance law, saying that:

> "Section 60 of the Social Security (Administration) Act 1999 provides principal protection of a person's legal right to receive a Social Security payment where they are qualified and entitled to the payment. Inalienability enshrines the person's legal right to the payment, as it cannot be given to someone else. The principle gives legal force to the intention that the payments are designed to provide income support."[30]

The Australian Council of Trade Unions (ACTU) Indigenous Committee indicated that the recent ACTU Congress expressed concern about the violation of the inalienability of social security payments, indicating that the ACTU Congress Policy 2009 - Aboriginal and Torres Strait Islander Policy states:

> "Congress believes that income management provision under the NTER and the further national roll out of income management in other Aboriginal and Torres Strait Islander communities are contrary to well established social security principles under Australian legislation. Under the Social Security (Administration) Act 1999 social security payments and the right to appeal decisions, pertaining to the provision of an individual's social security, are absolutely inalienable and this inalienability applies to all forms of entitlements. Congress believes that the nature of the income management reforms, which target specified geographical locations, mostly populated by Aboriginal and Torres Strait Islander peoples, are inherently discriminatory and calls on the government to cease this arbitrary legislation."[31]

The ACTU Indigenous Committee went on to point out that:

> "Aboriginal and Torres Strait Islander women are particularly disengaged from the workforce and the [ACTU Indigenous] Committee feels that undermining their decision to be dedicated mothers, particularly in the early stages of child's life will do little to encourage entering or re-entering the workforce. The [ACTU Indigenous] Committee also submits that the direct discrimination against a certain type of mother based on their socio-economic circumstances is not within the spirit Australia's commitment under the Convention on the Elimination of all Forms of Discrimination against Women."[32]

---

[30] National Welfare Rights Network, *Submission 77*, p. 8.

[31] Australian Council of Trade Unions Indigenous Committee, *Submission 65*, p. 7.

[32] Australian Council of Trade Unions Indigenous Committee, *Submission 65*, p. 7.

I recognise that income support recipients have obligations that go along with those entitlements, as do the organisations whose evidence I have discussed above. However, as they argue, those obligations are primarily to be actively looking for work and to take advantage of programs and services which improve their ability to find it (which in the case of youth aged 15-24 now includes participation in full-time study or vocational training). However the point, which is strongly made by Catholic Social Services Australia, is that the current indiscriminate approach to mandatory income management *"… removes the entitlement to income support from entire groups of people without considering whether or not they are meeting their obligations.*[33]*"*

In these terms it is clear that the current blanket mandatory income management measures together with the proposed new national measures represent a significant reduction in the ability of those on affected categories of income support payments, without delivering corresponding proportional benefits in terms of services and supports and without offering a clear pathway 'up and out' of income management.

The policy is clearly indiscriminate – in that it fails to discriminate in any manner between those in declared 'disadvantaged communities' on affected payments who are caring and providing for their children and managing their money well, and those who are not. Australian citizens should not be asked to forgo basic entitlements simply because of where they live or which income support category they fall into.

The lack of pathways 'up and out' of income management

The weight of the evidence of the use of income management and the strength of expert opinion presented to the committee is that income management alone will not help those in disadvantaged communities to better manage their finances, expenditure and their lives. As ACOSS argues, despite the Government Policy Statement framing these measures as 'reforms' to 'fight passive welfare' and 'welfare dependency' the scheme is in fact "… likely to increase the dependency of affected recipients on government to make decisions about their individual finances."[34]

---

[33] Catholic Social Services Australia, *Submission 63*, p. 2.

[34] ACOSS, *Submission 17*, p. 5.

If the government's intention is to promote personal responsibility and a more 'active' model of welfare, then it needs to be actively targeting services and supports to increase the capacity of those particular individuals who lack this capacity… and offer them a pathway out of income management.

As Catholic Social Services Australia argue "…a sure way to undermine social inclusion and create division is to arbitrarily apply different rules to different people regardless of their individual circumstances."[35]

No evidence income management has resulted in better nutrition

The Government asserts that one of the primary reasons for the introduction of income management and the BasicsCard, and for the provisions relating to the licensing of community stores was to address child neglect (and to close the gap on health outcomes) by ensuring more money was spent buying healthy food. However, in practice, the initial roll-out of income management in many centres involving the use of store cards issued for major retailers such as Coles, Woolworths and Kmart meant that affected Aboriginal people were deprived of the opportunity to shop at smaller retail and specialty stores such as greengrocers, butchers, bakeries and health food stores. It remains to be seen if this reduction in shopping options to places with a wider range and greater focus on processed foods over fresh ones actually resulted in healthier or less healthy food choices.

Evidence presented to the Senate Select Committee into Regional and Remote Indigenous Communities (RRIC committee) in May 2009 by the Sunrise Health Service indicated an alarming rise in the rates of anaemia in young children:

The data indicates anaemia rates in children under the age of five in the Sunrise Health Service region jumped significantly since the Intervention. From a low in the six months to December 2006 of 20 per cent—an unacceptably high level, but one which had been reducing from levels of 33 per cent in October 2003—the figure had gone up to 36 per cent by December 2007. By June 2008 this level had reached 55 per cent, a level that was maintained in the six months to December 2008.

As Sunrise Health Service noted in their submission to the RRIC committee:

> This means that more than half of the children under the age of five in our region face substantial threats to their physical and mental development. In two years, 18 months of which has been under the Intervention, the anaemia rate has nearly trebled in our region. It is nearly double the level it was before the Sunrise Health Service was established, and more than twice the rate measured across the rest of the Northern Territory.

---

[35] CSSA, *Submission 63,* p. 3.

> According to the World Health Organisation, levels of anaemia above 40 per cent represent a severe public health problem. At 55 per cent, the Sunrise Health Service results must be seen as particularly severe. On that basis, the latest Sunrise figures can be equated to early childhood anaemia levels in Brazil, Burundi, Iraq and Zambia; and are worse than Zimbabwe, Swaziland, Pakistan, Peru, Jamaica, Indonesia, Bangladesh, Algeria and Equatorial Guinea."[36]

In contrast to these reports, the government has relied on reports from store owners and operators that they are of the opinion that they are selling more fresh food without any solid quantitative data on fresh food sales to back it up. The Government has not been able to provide any breakdown or analysis of expenditure which could differentiate the types of items purchased. In response to media reports last week that alleged that 72% of BasicsCard expenditure was being spent on food and 17% on clothing it has been revealed that Centrelink do not have an actual breakdown of expenditure by category and that the figures were derived by assigning the amount of money spent in particular stores to particular categories (for instance a Community Store could be categorised as only selling food and K-Mart as only selling clothes).

A letter to the inquiry from the Menzies School of Health Research tabled by Outback Stores reports on research currently in publication that found no increase in the purchase of fresh foods and a significant increase in the purchase of soft drinks and junk food.[37]

Outback Stores themselves were unable to document to the inquiry any information on whether there had been an increase in food purchased as they had no baseline data on which to compare current purchases.[38]

Income management does not improve financial capacity

The government continues to claim that income management will improve the capacity of affected individual's to manage their financial affairs. Not only has the government failed to make the case that the current measures are actually doing so … but evidence presented to the inquiry strongly suggest that the opposite is the case, as the manner in which income management is implemented reduces the ability of those affected to monitor and actively manage their finances and spending patterns.

---

[36] Sunrise Health Service, submission 85 to the Senate Select Committee into Regional and Remote Indigenous Communities, May 2009, pp 34-35.

[37] Letter from Menzies School of Health Research, tabled by Outback Stores, 15 February 2010.

[38] Outback Stores, *Committee Hansard*, 15 February 2010, p. 60.

Income management statements that detail allocations to the Basics Card and to third parties (such as rent or utilities) are only provided to Aboriginal people every quarter – meaning they have limited opportunity to check they have received the correct allocation of funds and that funds have been directed or agreed by them. Basics Cards transaction statements setting out all transactions are only sent out to social security recipients every six months – giving Aboriginal people very limited opportunity to reconcile their expenditure against a statement or to check for unauthorised transactions. Such long gaps between statements provide minimal opportunity for Aboriginal people to actively review their spending habits and make informed decisions about their money management.

Perhaps the most compelling case against the indiscriminate roll-out of mandatory income management as a means of improving the capacity of those affected was that put by the Australian Financial Counselling and Credit Reform Association (AFCCRA) –the professional association of financial counsellors. AFCCRA members have had direct experience of both providing assistance to those involved in the various income management schemes in NT and WA, as well as with other alternative approaches and initiatives to improve the financial literacy and day-to-day budgeting skills of disadvantaged families and other people under financial stress. It is important to note that AFCCRA does support both voluntary 'opt in' approaches to income management and appropriate trigger-based compulsory income management (based on evidence such as a child protection notification).[39]

AFCCRA were however highly critical of mandatory income management schemes and indicated their opposition to the proposed measures. They strongly recommended that referral to financial counsellors or money management courses for those having their income managed should not be compulsory, stating that this 'fundamentally alters' the way financial counselling is delivered, undermining its success. They went on to state:

> "We understand that referrals of clients to financial counselling or money management programs, under income management as it operates at present, are on a voluntary basis. There is strong evidence however that the opposite is happening in practice. It appears for example that Centrelink staff, particularly in Western Australia, tell people that they must see a financial counsellor."[40]

[39] Australian Financial Counselling and Credit Reform Association, *Submission 79*.

[40] Australian Financial Counselling and Credit Reform Association, *Submission 79*, p5.

AFCCRA go on to argue that effective financial counselling depends on the relationship between the client and counsellor. Where clients are concerned that whether they attend a referral and how they perform at it will be reported back to their case manager undermines the trust that is paramount to the success of the financial counselling. Placing such requirements onto financial counsellors is, they argue *"…contrary to our ethical standards and over 30 years of professional practice."*[41]

While we note that some additional resources have been provided in the Northern Territory, there remains a big gap between the total number of those on income management and the number and location of financial counsellors, meaning that a very limited number of those currently on income management have access to financial counselling support. It is also important to note that a high proportion of those currently income managed in the Northern Territory have English as a second or third language, have had limited access to education and below average numeracy skills.

The prospect of a national roll-out of mandatory income management is of particular concern both because of the national shortage of properly trained and qualified financial counsellors, and because it is highly unlikely that there will be the substantial increase in the overall welfare budget that would be needed, firstly to administer this complex and administratively intensive system, and secondly to provide the case management, financial counselling and other wrap around support services that are essential to make income management work effectively as a part of a wider case management approach.

Income management costs reduce investment in social services

One of the problems with a blanket mandatory approach to income management is that, without a massive increase in associated resources, the roll-out of such an expensive system will ultimately result in a net reduction of services and supports available to disadvantaged communities. Any government that takes it upon itself to reduce the rights of its citizens supposedly 'for their own good' in this manner should then be obliged to deliver on its side of the bargain, and guarantee access to the supports and services necessary to give those on income management a real path 'up and out' of welfare quarantining. This hasn't happened to date in Northern Territory or Western Australia.

A number of social service providers and community organisations within the Northern Territory complained that the problems with the roll-out of income

[41] Australian Financial Counselling and Credit Reform Association, *Submission 79*, p6.

management measures under the NTER meant that they were effectively left to carry the can, with a significant increase in those coming to them for assistance or emergency support, and no concomitant increase in the resources from the commonwealth.

While some additional resources for financial counselling and money management training have been provided, there has been nowhere near enough to provide the necessary services and support. It is also not clear why those currently on income management would want to pursue these options, in the absence of any provisions that would guarantee that demonstrated money management skills would lead to financial independence.

The Commonwealth Government is not providing additional resources to assist with support services and the Northern Territory Government reported to the inquiry that they are yet to decide what additional resources will be contribute by the NT Government.

The $350m that the rollout will cost in NT alone would be better invested in addressing the underlying causes of disadvantage and increasing the capacity of community-based support services with a demonstrated track record of delivering results.

Intensive case management, not IM alone, produces results

It was interesting to note the responses from the WA Department of Child Protection on the limited application of the targeted income management for child protection scheme in WA. They characterised targeted compulsory income management as only one of several case management and client support tools and noted that the evaluation report had not yet been released. Income management in WA was embedded in existing case management structures. As the WA Department for Child Protection noted, for their purposes income management is:

> '…a case management tool that we have streamlined into all of our other case management support. It is just another initiative or another measure that case workers can invoke when it is appropriate. In terms of the additional support that people have received, as I said earlier, it does depend on the case. If it is a fairly significant case but it does not meet the threshold of a child protection concern then we would obviously wrap more support around that family than just income management, and they would be

> referred for non-government service provision, responsible care and a host of other services.'[42]

The Western Australian Council of Social Services noted that income management alone was a simple tool, stating:

> 'Income management is a simple way of trying to deal with the money issue when in actual fact for many of these people who are vulnerable to being put on compulsory income management their circumstances are such that they really need longer term, more intense and complex intervention in order to be able to achieve the outcomes. Compulsory income management will only achieve a short change in terms of their financial situation but it will not actually lead to the long-term outcomes that we are all desiring.'[43]

Absence of assessment framework and baseline data

I remain concerned that, while the Minister has spoken publicly to indicate an intention that there will be some form of assessment of the proposed new income management measures before they are rolled-out beyond the Northern Territory, there is nothing in the legislation requiring or setting out the timeframe and terms of reference for such an inquiry and there is no evidence to date that there is either sufficient baseline data, ongoing protocols for collecting relevant data nor any evaluation framework. This does not fit well with the government's ongoing claims of its commitment to evidence-based policy, nor does the fact that there has been no consultation with affected communities on the evaluation fit well with their claims of 'resetting the relationship' and undertaking greater consultation with Aboriginal people.

I agree with the recommendations put forward by ACOSS in their supplementary submission responding to questions on notice that, should the legislation be passed (which we do not support), a full independent evaluation should be conducted along the lines they have suggested:

- The evaluation should be designed and conducted by a respected research organisation which is independent of government.
- Affected communities should be consulted about the evaluation design.
- The evaluation should seek to measure the impact of income management on a range of clearly defined outcomes that relate to policy objectives. It should also seek to measure any unintended effects.
- As a pre-condition to further evaluation, benchmark data needs to be collected and collated to enable meaningful comparison.

---

[42] WA Department for Child Protection, *Committee Hansard*, 22 February 2010, p. 4.

[43] WACOSS, *Committee Hansard*, 22 February 2010, p. 14.

- The evaluation should take into account, if not control for, the impact of other variables (including other NTER measures) on the outcomes.
- The evaluation should include reliable quantitative as well as qualitative data. Existing evidence is too reliant on qualitative data.[44]
- If it is the government's intention that income management should not be extended beyond the NT until such an evaluation has been conducted, then the geographic and temporal limits and terms of reference of the evaluation should all have been clearly outlined within the legislation.

Conclusion

The Government bills do not fully restore the operation of the RDA to the NTER. The bills represent an unacceptable fundamental shift in social security policy, an approach that there is no evidence to support and about which the Government has not consulted the Australian community.

Recommendations:

- **The legislative package is separated so that the restoration of the RDA is dealt with separately to changes to social security that expand income management.**

- **The Commonwealth amend the NTER Act to revoke the provisions relating to compulsory leases, and negotiate leases in good faith under the existing provision of the Aboriginal Land Rights (Northern Territory) Act 1976.**

- **The legislation is amended to include a 'not withstanding' clause which clearly indicates that the Racial Discrimination Act is intended to prevail over the provisions of the NTER.**

- **All existing discriminatory measures are amended to ensure that they comply with the provisions of the Racial Discrimination Act, and that those intended to be special measures legitimately meet the requirements of 'special measures' through a process that ensures full informed consent in the development of new community-based measures.**

[44] ACOSS, answer to question on notice, 26 February 2010, received 5 March 2010.

- **If these changes are not made, then the legislation should be opposed.**

Senator Rachel Siewert

Australian Greens

APPENDIX 1

Submissions and Additional Information received by the Committee

Submissions received

1	Oliver, Mr Andrew
2	Nicholls, Ms Anthea
3	Northern Territory Council of Social Service (NTCOSS)
4	Yearly Meeting Indigenous Concerns Committee (YMICC) of The Religious Society of Friends (Quakers) in Australia
5	Las Casas Dominican Centre
6	National Council of Churches in Australia (NATSIEC)
7	Settlement Council of Australia
8	Law Institute of Victoria
9	Community Child Care
10	The Religious Society of Friends (Quakers), Regional Victoria
11	Billings, Dr Peter and Cassimatis, Dr Anthony
12	Nura Gili Indigenous Programs, University of New South Wales
13	Western Australian Council of Social Service (WACOSS)
14	Pensioners and Superannuants Association
15	ANGLICARE Sydney
16	St Vincent de Paul Society National Council of Australia
17	Australian Council of Social Service (ACOSS)
18	Human Rights Law Resource Centre
19	Amnesty International Australia
	Supplementary information
	Additional information following hearing 11.02.10, received 25.02.10
20	Carers Australia

21 Office of the Privacy Commissioner
22 Public Interest Law Clearing House (PILCH)
23 Australian Indigenous Communications Association (AICA)
24 Reconciliation Australia
25 Annetts, Mr Joe
26 Merckenschlager, Mr Max
27 Egan, Sr Patricia
28 Aboriginal Catholic Social Services (ACSS)
29 Family Relationship Services Australia (FRSA)
30 Federation of Community Legal Centres (Vic) Inc (FCLC)
31 National Association of Prevention of Child Abuse and Neglect (NAPCAN)
32 Small, Ms Pauline
33 ANGLICARE Australia
34 Women's International League for Peace and Freedom (WILPF)
35 Intervention Rollback Action Group (IRAG)
36 Paterson, Ms Jane
37 Healy, Dr Joan
38 Chester, Ms Leonie Nampijinpa
39 Heysen, Ms Kerry
40 Ryan, Ms Genevieve
41 Edge, Ms Jennifer
42 Lynn, Ms Joan
43 Radman, Ms Patricia
44 Leahy, Dr Micheal
45 van Ruth, Sr Katrina
46 Rich, Ms Bianca
47 White, Ms Pilawuk
48 Madigan, Sr Michele
49 McMahon, Mr John

50 Altman, Professor Jon

51 Michele Harris spokesperson for group of concerned Australians

52 National Association of Community Legal Centres (NACLC)

53 Australian Youth Affairs Coalition (AYAC)

54 National Council of Single Mothers and their Children Inc

55 Tangentyere Council, Central Australian Youth Link-Up Service (CAYLUS)

56 Victorian Council for Civil Liberties

57 Jumbunna Indigenous House of Learning, University of Technology, Sydney

58 ANU National Centre for Indigenous Studies

59 Aboriginal Medical Services Alliance Northern Territory (AMSANT)

60 Australians for Native Title and Reconciliation (ANTaR)

61 Central Land Council (CLC)

Supplementary information

Additional information provided at hearing 17.02.10

62 The Fred Hollows Foundation

63 Catholic Social Services Australia

64 Good Shepherd Youth and Family Service

65 Australian Council of Trade Unions (ACTU) Indigenous Committee

66 Brotherhood of St Laurence

67 Soul Parents' Union

68 North Australian Aboriginal Justice Agency (NAAJA)

69 Law Society Northern Territory

70 Women's Electoral Lobby Australia

71 Distaff Associates

72 The Salvation Army Australia Southern Territory

73 Regulatory Institutions Network (RegNet)

74 Central Australian Aboriginal Legal Aid Service (CAALAS)

75 Northern Territory Legal Aid Commission

76 Australian Human Rights Commission (AHRC)

77 National Welfare Rights Network

78 Judge, Ms Celia

79 Australian Financial Counselling and Credit Reform Association

80 Laynhapuy Homelands Association

81 Northern Land Council

Supplementary Submission

82 Northern Territory Government

Supplementary information

Additional information following hearing 15.02.10, received 26.02.10

83 Law Council of Australia

83a Supplementary Submission – Law Council of Australia

84 Australian Domestic and Family Violence Clearinghouse

85 Women's Refuge Movement Working Party

86 Oxfam Australia

87 Stop the Intervention Collective Sydney (STICS)

88 Sydney Centre for International Law, Faculty of Law

89 Reconciliation for Western Sydney

90 Deirdre Finter

91 Uniting Care Australia

92 National Foundation for Australian Women

93 Ngaanyatjarra Pitjantjatjara Yankunytjatjara, Women's Council (Aboriginal Corporation)

94 Bennelong & Surrounds Residents for Reconciliation

95 Sabine Kacha

Additional Information

1 Amnesty International Australia

Additional information following hearing 11.02.10, received 25.02.10

2	FaHCSIA Response to Questions on Notice 1- 27, 29-33 following hearing 04.02.10e
3	Northern Territory Government Response to Questions on Notice 1-12, following hearing 15.02.10
4	North Australian Aboriginal Justice Agency Response to Question on Notice, following hearing 15.02.10
5	Dr Peter Billings and Dr Andrew Cassimatis Response to Question on Notice, following hearing 25.02.10
6	Welfare Rights Network Response to Question on Notice, following hearing 25.02.10
7	Australian Council of Social Service Response to Question on Notice, following hearing 26.02.10
8	Central Australian Aboriginal Legal Aid Service (CAALAS) Response to Question on Notice, following hearing 17.02.10
9	Aboriginal Medical Services Alliance Northern Territory (AMSANT) Response to Question on Notice, following hearing 15.02.10
10	Ms Weinman and Professor Bailey Response to Question on Notice, following hearing 25.02.10
11	Welfare Rights Centre Additional comments, following hearing 25.02.10
12	Northern Territory Council of Social Service (NTCOSS) Addendum, following hearing 17.02.10

APPENDIX 2

Public Hearings

Thursday, 4 February 2010
Parliament House, Canberra

Committee Members in attendance

Senator Claire Moore (Chair)
Senator Rachel Siewert (Deputy Chair)
Senator Judith Adams
Senator Sue Boyce
Senator Trish Crossin
Senator Mark Furner

Witnesses

Department of Families, Housing, Community Services and Indigenous Affairs

Mr Rob Heferen, Deputy Secretary
Mr Barry Sandison, Acting Deputy Secretary
Mr Anthony Field, Group Manager, Legal and Compliance
Ms Cath Halbert, Group Manager, Office of Indigenous Policy Coordination
Dr Bruce Smith, Branch Manager, Indigenous Policy
Mr Gavin Matthews, Branch Manager, Welfare Payments Reform
Mr John Litchfield, Branch Manager, Land Reform

Attorney-General's Department

Ms Helen Daniels, Assistant Secretary, Copyright and Classifications Policy Branch
Ms Sarah Chidgey, Assistant Secretary, Criminal Law and Law Enforcement Branch

Thursday, 11 February 2010
Parliament House, Canberra

Committee Members in attendance

Senator Claire Moore (Chair)
Senator Rachel Siewert (Deputy Chair)
Senator Sue Boyce
Senator Trish Crossin
Senator Mitch Fifield
Senator Mark Furner
Senator Gary Humphries
Senator Kate Lundy

Witnesses

Amnesty International Australia
Mr Mark Burness, Government Relations Manager
Dr Robyn Seth-Purdie, Government Relations Advisor
Mr Lucas Jordan, Research Officer
Ms Monica Morgan, Campaign Officer
Mr Gregory Marks, Consultant

Monday, 15 February 2010
Darwin Convention Centre, Northern Territory

Committee Members in attendance

Senator Claire Moore (Chair)
Senator Rachel Siewert (Deputy Chair)
Senator Judith Adams
Senator Sue Boyce
Senator Trish Crossin
Senator Mark Furner

Witnesses

Northern Territory Government Agencies
Mr Ken Davies, Chief Executive
Department of Housing, Local Government and Regional Services
Ms Clare Gardiner-Barnes, Acting Executive Director, NT Families and Children,
Department of Health and Families
Mr Alan Green, Executive, Department of Education and Training
Mr Robert Kendrik, A/g Assistant Commissioner, Operations Services, NT Police
Miss Elizabeth Morris, Deputy CEO, Policy Coordination, Department of Justice
Mr Doug Phillips, Executive Director, Business Support,
Department of Business and Employment

North Australian Aboriginal Justice Agency
Ms Ruby Walker, Board Director for the Katherine Region
Mr Vernon Patullo, Board Director
Ms Hannah Roe, Board Director
Ms Annabel Pengilley, Welfare Rights Solicitor (Darwin)
Mr Jared Sharp, Advocay Manager
Ms Nadia Rosenman, Welfare Rights Solicitor (Katherine)

Northern Territory Legal Aid Commission
Ms Suzan Cox QC, Director

Law Society of the Northern Territory
Ms Barbara Bradshaw, Chief Executive Officer

Ms Barbie McDermott, Project Officer, Research and Policy

Larrakia Nation Aboriginal Corporation
Ms Alana Eldridge, Chief Executive Officer

Aboriginal Medical Services Alliance Northern Territory
Mr John Paterson, Chief Executive Officer
Mr Chips Mackinolty, Manager of Policy and Stretegy

Fred Hollows Foundation
Ms Joy Mclaughlin, Manager, Indigenous Programs

Outback Stores
Mr Warren Bretag, Business Development Manager
Ms Megan Ferguson, Health and Wellbeing Manager

Northern Land Council
Mr Kim Hill, Chief Executive Officer
Mr Wali Wunungmurra, Chairman
Mr Samuel Bush-Blenasi, Deputy Chairman

Wednesday, 17 February 2010
Chifley Alice Springs Resort, Alice Springs

Committee Members in attendance

Senator Claire Moore (Chair)
Senator Rachel Siewert (Deputy Chair)
Senator Judith Adams
Senator Trish Crossin
Senator Mark Furner

Witnesses

Central Land Council
Mr David Ross,Director
Ms Jane Weepers, Senior Policy Officer
Mr Daniel Kelly, Senior Solicitor
Mr David Avery, Lawyer

Tangentyere Council and Central Australian Youth Link Up Service
Mr Tristan Ray, Manager
Mr Blair McFarland

Mr Harry Nelson
Ms Barbara Shaw
Ms Elaine Peckham

Mr Richard Downs
Mrs Valerie Martin
Mrs Raelene Silverton

Central Australian Aboriginal Legal Aid Service
Ms Patricia Miller, CEO
Ms Emily Webster
Ms Lauren Walker
Ms Elise Rivett

Northern Territory Council of Social Services
Ms Wendy Morton, Executive Director
Ms Jonathan Pilbrow, Central Australian Policy Officer

Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council
Ms Vicki Gillick, Coordinator

Monday, 22 February 2010
Parliament House, Canberra

Committee Members in attendance

Senator Claire Moore (Chair)
Senator Rachel Siewert (Deputy Chair)
Senator Judith Adams
Senator Trish Crossin
Senator Mark Furner

Witnesses

Western Australian Department for Child Protection
Ms Fiona Lander, Executive Director
Ms Susan Diamond, A/g Director Child Protection

Western Australian Council of Social Services
Ms Sue Ash, Chief Executive Officer
Ms Lorilee Beecroft, Senior Policy Officer

UnitingCare West
Mr Chris Hall, Chief Executive Officer
Ms Melissa Del Borrello, Corporate Projects Officer

Thursday, 25 February 2010
Parliament House, Canberra

Committee Members in attendance

Senator Claire Moore (Chair)
Senator Rachel Siewert (Deputy Chair)
Senator Judith Adams
Senator Sue Boyce
Senator Trish Crossin
Senator Mark Furner

Witnesses

National Welfare Rights Network
Ms Katherine Beaumont, President
Ms Genevieve Bolton, NWRN Delegate
Mr Gerard Thomas, NWRN Delegate
Ms Liz Turnbull, NWRN Delegate

Law Council of Australia
Mr Nick Parmeter
Dr Sarah Pritchard

Dr Peter Billings
Dr Anthony Cassimatis

ANU College of Law and ANU National Centre for Indigenous Studies
Adjunct Professor Peter Bailey, Adjunct Professor
Ms Jo-Anne Weinman, Research Associate, National Centre for Indigenous Studies
Mr Ernst Willheim, Visiting Fellow

Friday, 26 February 2010
Parliament House, Canberra

Committee Members in attendance

Senator Claire Moore (Chair)
Senator Rachel Siewert (Deputy Chair)
Senator Judith Adams
Senator Sue Boyce
Senator Trish Crossin
Senator Mark Furner

Witnesses

Brotherhood of St Laurence
Professor Paul Smythe, General Manager, Research and Policy Centre
Ms Amy Stockwell, Head, Government Relations

ANGLICARE Australia
Ms Kasy Chambers, Executive Director

St Vincent de Paul
Dr John Falzon, Chief Executive Officer
Mr Jonathan Campton, Research Officer

Salvation Army
Major David Eldridge, Territorial Social Program Director
Ms Wilma Gallet, Strategic Adviser

UnitngCare Australia
Ms Karen Bevan, Director of Social Justice
Ms Susan Helyar, Acting National Director

Australian Council of Social Services
Hon Clare Martin, Chief Executive Officer
Mr Peter Davidson, Senior Policy Officer
Ms Jacqueline Phillips, Policy Officer

Human Rights Commission
Mr Mick Gooda, Aboriginal and Torres Straight Islander Social Justice Commissioner
Mr Graeme Innes, Disability Discrimination Commissioner and Race Discrimination Commissioner
Mr Darren Dick, Acting Director, Policy and Programs
Ms Christine Fougere, Deputy Director, Legal Services

Professor John Altman

Jumbunna Indigenous House of Learning (Research Unit), University of Technology, Sydney
Ms Alison Vivian

Combined Pensioners and Superannuants Association of New South Wales Inc.
Ms Charmaine Crowe

Department of Families, Housing, Community Services and Indigenous Affairs
Mr Rob Heferen, Deputy Secretary
Mr Barry Sandison, Acting Deputy Secretary
Mr Anthony Field, Group Manager
Mr John Litchfield, Group Manager, Office of Indigenous Policy Coordination
Ms Cath Halbert, Group Manger, Office of Indigenous Policy Coordination

Mr Gavin Matthews, Branch Manager, Welfare Payments Reform
Dr Bruce Smith, Branch Manager
Ms Elizabeth Stehr, Branch Manager, Money Management

Attorney-General's Department
Ms Sarah Chidgey, Assistant Secretary
Ms Helen Daniels, Assistant Secretary