

Submission of the
Australian Council of Trades Unions
Indigenous Committee

Response to

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

1. Introduction

The Australian Council of Trade Unions (ACTU) is the peak Union body in Australia and works with Affiliated Unions, representing over 2 million workers in Australia to advance the industrial, political and social standing of their members.

The ACTU Indigenous Committee (the Committee) comprises Indigenous representatives of National Unions and represents Indigenous members of affiliates of the ACTU. The committee's main aim is to:

Provide culturally appropriate and accountable leadership, support and advice to the ACTU executive and affiliates in relation to Indigenous employment and Social Justice issues and strategies affecting the lives of Aboriginal and Torres Strait Islander peoples.

The Committee seeks to promote equality for Aboriginal and Torres Strait Islander peoples in the workplace and in society, and to achieve a society and workplaces free from discrimination.

The Committee welcomes the opportunity to provide feedback on the proposed legislation to the Senate Review Committee.

This submission is designed to address and make suggestions on the broader impacts of the proposed Bill and effect on Aboriginal communities. The submission addresses relevant discussion points from the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009, Explanatory Memorandum and includes structured references to ACTU Policy as endorsed at ACTU Congress 2003 & 2009.

2. Background

Unions have a long history of fighting for improved conditions for working families, including Aboriginal and Torres Strait Islander workers and their families.

Whilst we have been able to achieve significant gains for union members and communities through bargaining, community campaigning, thousands of Indigenous

workers and communities remain without basic rights and are usually unemployed, under-employed or employed in the most vulnerable and insecure types of work.

Recognising this, in 2003 ACTU Congress formally resolved that it was committed to the development of an effective partnership with Aboriginal and Torres Strait Islander peoples and communities, and believes that such a partnership should (amongst other key issues):

- Continue the ACTU involvement with, and commitment to Aboriginal and Torres Strait Islander rights, including addressing social justice issues such as land rights, racism and reconciliation.

Further, at the 2009 ACTU Congress unions reaffirmed this resolve and acknowledged:

- That regardless of race, all citizens should have access to the opportunities a first world country provides. In circumstances where there is a significant gap, as is the case for Aboriginal and Torres Strait Islander peoples and other Australians, then unions, governments and employers should work towards bridging this gap;
- The ACTU and its affiliates are making a clear statement and commitment to campaign to improve the situations for Australia's Aboriginal and Torres Strait Islander peoples and that this will be a priority of unions; and
- Our responsibility in advocating for social justice, human and civil rights for Aboriginal and Torres Strait Islanders. The ACTU and unions will develop and participate in forums which empower effected communities, community leaders and peak Aboriginal and Torres Strait Islander organisations to voice their concerns about the NTER.

The Committee's submission is based on this policy.

3. Committee's Response to Proposed Reforms

The significant reforms to welfare policy which would be enabled under the proposed legislation will have an affect on a large number of disadvantaged Australians, particularly a continuing affect on Aboriginal communities in the Northern Territory and other Indigenous communities.

3.1 Repeal of laws limiting anti-discrimination laws

The Committee welcomes the Governments commitment to reinstate the Racial Discrimination Act 1975, the Northern Territory anti-discrimination laws and the Queensland anti-discrimination laws in accordance with the recommendations of the NTER Review Board.

As outlined in the discussion paper *Future Directions for the Northern Territory Emergency Response 2009*, the Government has a requirement under the RDA to ensure that all people are treated equally before the law, regardless of their race, colour or ethnicity.

However, the Committee is concerned that discriminatory elements of the legislation have not significantly changed but have merely been redefined as “special measures” and therefore exempt from the operation of the Racial Discrimination Act 1975.

3.2 Income Management Regime

The Committee acknowledges the positive aspects of the reforms to the income management regime specifically that pensioners and veterans under the NTER will no longer have their income forcibly managed. This is a positive deviation from the previous legislation and recognises the contribution and value that our elders and veterans have made to Australian society.

The Committee is concerned that the negative effects of income management that have been experienced by Aboriginal people under the NTER will only be exasperated by the expansion to “selected locations throughout Australia” and commencing “across the Northern Territory - in urban, regional and remote areas –

as a first step in a future national roll out of income management to disadvantaged regions.”¹

Negative effects experienced under the NTER have included²:

- People feeling degraded and disempowered and are treated more disrespectfully when using the BasicsCard;
- Income management does little to address the underlying causes of the problems experienced by disadvantaged communities and individuals; and
- Income management causes more dependency

As outlined in the discussion paper *Future Directions for the Northern Territory Emergency Response 2009* there are a number of challenges and criticisms about income management including:

- Criticism that income management is applied to all people in a community, regardless of how well they manage their money and care for their children and families;
- Criticism that people are only able to do their shopping at certain stores;
- Problems with the operation of the BasicsCard, including breakdowns of computer systems, and difficulties obtaining information about the balance on a person’s BasicsCard; and
- Concerns that income management in the prescribed area has not help itinerant people.

The proposed legislation and explanatory memorandum provides little information on how the Government intends to deal with the highlighted challenges. Nor does it provide information on what social & support mechanisms will be set up to address the underlying causes of disadvantaged communities and individuals.

In fact given the negative social experiences outlined by those affected by the NTER it can only be assumed that the extension of the income management regime will leave a larger part of Australian society experiencing negative affects from the

¹ Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009, Explanatory Memorandum, p.11

² NTER Redesign Tier 3 Regional Workshop, Alice Springs, Minutes.

regime and feeling disempowered and degraded. The expansion of the regime will also put more pressure on an already failing system in terms of the BasicsCard.

3.2 (a) Categories of welfare payment recipients in scope

The Committee acknowledges and supports the Governments desire to reduce the negative outcomes for people on long-term welfare support such as poor social and health outcomes and financial vulnerability.

However, the Committee is particularly concerned about, the category:

- i) disengaged youth receiving parenting payments:

The proposed legislation appears to impose a heavy burden upon, primarily women, who chose to be a dedicated parent for the first 6 months of their child's life.

The forced management of the income of a new mother or farther (single) appears to be in direct conflict with the ideology underpinning the Paid Parental Leave Scheme³ which states it is designed to

[e]nable more parents to stay at home to care for their baby full time during vital early months of social, cognitive and physical development

And that

[t]he Government is committed to supporting mothers, whether they are in a paid job or at home. The Baby Bonus and Family Tax Benefits will still be available for families not eligible for Paid Parental Leave, and for those who chose not to participate in the scheme.(emphasis added)

Aboriginal and Torres Strait Islander women are particularly disengaged from the workforce and the 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 Committee also submits that the direct discrimination against a certain type of mother based on their socio-economic

³ Australia's Paid Parental Leave Scheme, Supporting Working Australian Families, 2009.

circumstances is not within the spirit Australia's commitment under the Convention on the Elimination of all Forms of Discrimination against Women.

3.2(b) Exemptions from income management

The Committee acknowledges and welcomes the new provisions which provide for exemptions from income management.

However, the Committee submits that a system where the burden of proof for exemption lies with the welfare recipient is a 'deficit' model which initially assumes a person is either financially incompetent, doesn't send their children to school and/or are unable to feed their family and manage their household.

Added to this is the possible humiliation and disempowerment that may be experienced by recipients in obtaining evidence (from schools etc) that will satisfy the exemption requirements.

ACTU Congress Policy 2009- Aboriginal and Torres Strait Islander Policy p.77 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.
- However Congress believes that voluntary income management programs are a way to promote social and financial development in communities, by communities.

- Congress calls on government to work with communities to develop voluntary, agreed programs which support communities in all aspects of social life including financial literacy, parenting and caring responsibilities.

Therefore the Committee recommends that:

- All income management regimes under the new legislation be voluntary, unless there are extreme circumstances of child neglect or abuse;
- That the voluntary regime could be developed in a similar way to that of the Family Responsibilities Commission in Queensland where there is a process of natural justice, community and individual engagement and appropriate support services available; and
- The system that reflects fairness and natural justice would inevitably reverse the burden of proof for exemption from income management and therefore would reduce the wide spread negative impact likely to be produced by the proposed legislation.

3.3 Acquisition of rights, titles and interests in land

As per ACTU Congress Policy 2009- Aboriginal and Torres Strait Islander Policy, p. 76:

- Congress rejects that changes and proposed changes to Aboriginal Land Rights Acts, the elimination of permit systems in Aboriginal communities, and the forced acquisition of Aboriginal title to land, have any relationship to genuine measures to protect children. Congress calls on government to cease its policy of making communities trade their land rights for the provision of essential services which are fundamental rights in all other Australian communities.

The Committee endorses and supports the Congress position that leases acquired over Aboriginal land have no direct correlation to the protection of children nor have they had any beneficial impact on the Aboriginal title holders or communities.

The Committee acknowledges and supports the intended transition to voluntary leases, however the Government acquiring lease over Aboriginal land should not be

a requirement before Aboriginal communities are provided with essential services and infrastructure.

3.4 Other relevant issues

As per ACTU Congress Policy 2009- Aboriginal and Torres Strait Islander Policy, pp. 76-77 the Committee highlights the following the Senate Review Committee:

- Congress believes that for there to be any legitimacy in the government's reform agenda, government must acknowledge their responsibility to fully fund the provision of quality services for all Aboriginal children and all Aboriginal and Torres Strait Islander communities in the areas of education, employment, health, housing, municipal services and infrastructure. Congress calls on government to properly fund essential services in all Aboriginal and Torres Strait Islander communities and make all resources available on a long term basis.
- Congress believes that for there to be any legitimacy in the government's reform agenda, government must be guided by the principles and policies of the UN Declaration on the Rights of Indigenous Peoples.
- Congress believes that one of the corner stones of community life is safety. Under the NTER law and order needs to be addressed by a coordinated multi-agency response. Services need to be provided in a whole-of-government coordinated manner, with police officers in each community supported and have access to a community facilitator who can provide dispute resolution, cultural empowerment, and facilitation services. In turn, the police officers can provide a secure environment for communities and other government officials.
- Dedicated police services in each community allow for trusting relationships to be formed, a consistent policing approach to law and order issues, and provide community stability in which other government agencies can safely provide services. Evidence suggests the best way to police remote Aboriginal communities is to have a permanent police presence within the communities.

- Congress calls on government to address the needs of Aboriginal and Torres Strait Islander communities on evidence based, community by community basis and to take a coordinated multi-agency approach which is committed to providing statutory and essential services to communities in a whole-of-government manner with all workers and members of the community having a stake in how policy is developed and implemented.

3.4 Conclusion

One of the greatest concerns to the Committee, for reasons stated in this submission, is that the proposed legislation will do little to

- improve the social and economic conditions, social inclusion and life outcomes of all disadvantaged individuals and communities;
- improve the engagement, participation and responsibility of certain welfare recipients;
- deliver measureable improvements in protecting women and children, or
- promote community engagement and strengthening personal and cultural sense of value in all affected communities.

Also of great concern is the lack of understanding in the already affected communities under the NTER, and it can only be hoped that a relevant education campaign will be undertaken by Government upon the implementation of any new welfare reform scheme.