



**CAALAS Submission to the Senate Community
Affairs Inquiry into:**

**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**

and

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

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PART A - EXECUTIVE SUMMARY & RECOMMENDATIONS

(a) Executive Summary

The Bills before the Senate Committee represent a shift in the application of the NTER measures to Aboriginal people in the Northern Territory and an unprecedented reform to Australia's social security system.

Despite its stated commitment to "resetting the relationship" with Aboriginal people, CAALAS is disappointed that the Government has not availed itself of the opportunity to work in partnership with Aboriginal communities to address the challenge of establishing infrastructure in health, education, housing and employment in regional and remote Aboriginal communities.

Instead, the Government has presented Aboriginal people of the Northern Territory with a 'redesign' of the NTER measures that falls short of community expectations and achieves little beyond a continuation of the measures in their current form. The widespread disillusionment and hurt caused by the imposition of these measures with no appropriate consultation and no prior warning, has not been addressed. Two and a half years later, Aboriginal people are again being subjected to racially discriminatory measures purportedly required for their benefit, but which have not been informed by genuine consultation.

CAALAS expresses the following overarching concerns with the Government's 'redesign' of the NTER legislation:

- The proposed measures remain racially discriminatory and cannot be considered to be 'special measures' for the purposes of the *Racial Discrimination Act 1975* (Cth);
- Current NTER measures have done little to improve the social and economic conditions, social inclusion and life outcomes of disadvantaged Aboriginal people in the Northern Territory. No evidence has been provided by the Government to demonstrate that the NTER measures have achieved their stated objectives of protecting children, making communities safe and making a better future for Aboriginal people in the Northern Territory;
- The 'consultations' conducted by the Government were inadequate at best, and cannot be considered to indicate free, prior and informed consent on behalf of affected Aboriginal people and communities to any of the proposed measures;
- The proposed 'redesign' of income management will convert what is an explicitly racially discriminatory regime to an indirectly discriminatory regime;
- Income management will continue at a cost of \$352 million over four years despite the provision of little evidence to demonstrate its efficacy. The engagement of Aboriginal people in work and study can only be achieved through significant and sustained investment in social and economic development, education and training in regional and remote communities.

CAALAS calls on the Government to discontinue this program of top-down imposed 'reform' and instead engage with Aboriginal people and communities in genuine partnership towards a positive future for Aboriginal communities.

(b) Recommendations

Recommendation 1:

That the recommendation of the NTER Review Board that the “Government establish an authoritative database as a single integrated information system that enables regular measurement of outcomes of all Government agency programs and services that target Aboriginal communities in the Northern Territory” be implemented immediately.

Recommendation 2:

That the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 be amended to insert new provisions into the:

- *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007;*
- *Northern Territory Emergency Response Act 2007;* and
- *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007,*

which specifically state that:

- the provisions of the *Racial Discrimination Act 1975 (Cth)* are intended to prevail over the provisions of the Act;
- the Acts do not authorise conduct that is inconsistent with the provisions of the *Racial Discrimination Act 1975 (Cth)*;
- the provision of the Acts and any acts done under the provisions are intended to qualify as special measures; and
- any acts done, decisions made or discretion exercised under the Acts must be consistent with the intended beneficial purpose of the Act.

Such amendments are in line with the recommendations of the Aboriginal and Torres Strait Islander Social Justice Commissioner¹ on how best to reinstate the operation of the RDA in respect of NTER legislation, and reflect amendments put forward in the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009.

Recommendation 3:

That each community be given the opportunity to seek the lifting of alcohol restrictions in that community together with the development of an alcohol management program specific to that community and its needs. This must be achieved through community consultations that:

¹ Human Rights and Equal Opportunity Commission, Aboriginal and Torres Strait Islander Social Justice Commission, *Social Justice Report 2007*.

- are comprehensive, effective and culturally appropriate;
- are conducted in the language(s) spoken in that community;
- allow for effective participation of all community members by giving advance notice to the community and residents of any outstations that may be impacted by a community decision and provide outstation residents with the opportunity and means to attend any community consultation; and
- are independent of Government.

Recommendation 4:

That the Government immediately fund the expansion of support and rehabilitation programs to address alcohol and substance abuse in Central Australia.

Recommendation 5:

That the prohibited material restrictions be repealed.

Recommendation 6:

CAALAS supports the repeal of the compulsory acquisition powers in relation to community stores.

Recommendation 7:

That the assessable matters in relation to community store licences be amended to include reference to a commitment to training and employment of local Aboriginal people at all levels of store operation as an assessable matter.

Recommendation 8:

That appropriate enforcement mechanisms should be implemented to ensure the community stores licensing scheme operates as intended. Such enforcement mechanisms should include:

- resourcing and empowering the FaHCSIA Stores Licensing Team to rigorously monitor store standards, including the power to inspect a store without notice;
- proper communication to communities of the assessable matters for licensing and who to contact if they have a concern about pricing or other assessable matters at their local store; and
- the development of a dispute resolution scheme whereby individuals can take complaints regarding the operation of licensed stores.

Recommendation 9:

That in line with Recommendation 1, the community stores licensing measure be fully evaluated, commencing with a clear set of initial benchmarks, and with a full report due by mid 2011 to allow communities and policy makers to consider whether the measure should be extended beyond the 17 August 2012 end date.

Recommendation 10:

That the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 be amended to provide for the removal of 'Indigenous violence and child abuse' from the definition of federally relevant criminal activity in the *Australian Crime Commission Act 2002*.

Recommendation 11:

That Part 6 of the *Northern Territory National Emergency Response Act 2007* which precludes the consideration of customary law and cultural practice in bail applications and sentencing be repealed.

Recommendation 12:

That the Government withdraw the proposed changes to the operation of the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 relating to pre-hearing conferences and powers to obtain information.

Recommendation 13:

That the Government amend the *Social Security (Administration) Act 1999* to allow people travelling outside of declared relevant areas, 'disadvantaged areas' and where income management is not in place to have their income management suspended for the duration of their travel.

Recommendation 14:

That the deductible amount for advance payments and lump sums be set at 50%.

Recommendation 15:

That voluntary income management be enabled and that the Government only apply compulsory income management on the basis of child protection, school enrolment and attendance and other relevant behavioural triggers in line with the NTER Review Board recommendation and that the determination of 'other relevant behavioural triggers' be made in genuine consultation with communities.

Recommendation 16:

That the proposed income management categories of 'vulnerable welfare recipient', 'long term welfare payment recipient' and 'disengaged youth' be abandoned.

Recommendation 17:

That the requirement in the *Social Security (Administration) Act 1999* that the Secretary be satisfied that a person is not likely to become subject to income management in the next 60 days before paying any residual amount be removed.

Recommendation 18:

That the *Social Security (Administration) Act 1999* be amended to require the Secretary to immediately pay any residual amount as a lump sum directly to the social security recipient when a person ceases to be subject to the income management regime.

Recommendation 19:

If Recommendation 16 is not adopted, that:

- social security recipients who do not fall within the 'disengaged youth' and 'long term welfare payment recipient' categories be entitled to exit from the existing income management regime as soon as the legislation commences.
- Centrelink should provide information to affected social security recipients so that they are aware of their entitlement to be removed from income management from the commencement date.

Recommendation 20:

If Recommendation 16 is not adopted:

- that a definition of 'vulnerable welfare recipient' be incorporated into the legislation which restrictively defines a 'vulnerable welfare recipient' as a person experiencing 'economic abuse' together with a definition of 'economic abuse'. These amendments must be released for public comment prior to enactment;
- that the proposed section 123UGA(9) be withdrawn, allowing 'vulnerable welfare recipients' to exercise their appeal rights under Part 4 of the *Social Security (Administration) Act 1999* in the usual way;
- If the proposed section 123UGA(9) is not withdrawn, that the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 is to state that a right to request reconsideration of a determination under section 123UGA(9) in no way restricts rights of review made under Part 4 of the *Social Security (Administration) Act 1999*, specifically in relation to determinations of 'vulnerability'.

Recommendation 21:

That the 15 hour requirement specified in section 123UGC(1)(iii) be averaged over the 26 week period to account for variations in weekly working hours.

Recommendation 22:

That CDEP, voluntary work, part time study, part time or casual work, caring responsibilities and combinations of these activities be specified by the Minister as activities allowing for exemption from income management under proposed section 123UGC. Any proposed legislative instrument should be released for public comment before it is made.

Recommendation 23:

That:

- The Government invest in reducing barriers to employment and study by funding adult literacy and numeracy courses, developing community based employment, and addressing the causes of Aboriginal disadvantage.
- That the Government recommend and act on its positive obligation to provide appropriate and accessible options for work and study in remote communities.

Recommendation 24:

That the proposed section 123UGD(1)(d) which allows the Secretary to refuse to grant an exemption to persons with dependent children on the basis that there were 'indications of financial vulnerability' in the previous 12 month period be abandoned.

Recommendation 25:

In the event that Recommendation 24 is not adopted, that a definition of 'financial vulnerability' be inserted into the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009, and made available for public comment before enactment.

Recommendation 26:

That the Minister consider the availability of activities 'relating to a child's intellectual, physical or social development' to residents of remote communities, town camps, outstations and those persons living in remote centres such as Tennant Creek and Alice Springs prior to their specification in a legislative instrument.

Recommendation 27:

That the Welfare Reform Bill be amended to reflect that a 'dependent child' can be the responsibility of more than one person, and allow more than one person to apply for an exemption pursuant to proposed section 123UGD.

Recommendation 28:

That the deductible amount in relation to Voluntary Income Management be set at 50% or a different amount at the direction of the social security recipient.

Recommendation 29:

That the proposed amendment to section 123UO(1) preventing a person from requesting the termination of a voluntary income management agreement until the agreement has been in force for 13 weeks be abandoned.

Recommendation 30:

That Centrelink staff be compelled to comprehensively explain the voluntary income management scheme to Aboriginal people in a way that:

- emphasises the change in percentage amount;
- explains the difference in actual dollar amounts;
- explains the minimum time period of 13 weeks; and
- explains that the Incentive Payment is only available after 26 weeks and that it is 100% income managed.

Recommendation 31:

That the Government delay the activation of the child protection category until:

- The Northern Territory Families and Children (**NTFC**) stabilises; and
- sufficient detail is inserted in the legislation which outlines:
 - the decision making principles for NTFC employees in issuing a notice to the Secretary;
 - a maximum timeframe of 12 months for the expiry of the notice;

- the ability to vary or revoke a notice; and
- appeal rights in relation to the issue of a notice by NTFC.

Recommendation 32:

That in relation to the 'matched savings scheme (income management) payment':

- qualification requirements for the payment should be clearly set out in the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009, including a definition of 'pattern of regular savings' and 'approved courses'; and
- The Government ensure the availability of 'approved courses' in all communities and remote centres to ensure that all social security recipients are able to access the matched savings scheme (income management) payment.

Part B – Scope of submission

(a) About CAALAS

Central Australian Aboriginal Legal Aid Service (**CAALAS**) is the Aboriginal and Torres Strait Islander Legal Service (**ATSIL**) servicing the Southern Zone of the Northern Territory. The Southern Zone encompasses approximately 90,000 square kilometres from the South Australian border north to Marlinja, stretching from the Western Australian border across to the Queensland border. Over 50 communities and 20 town camps are situated within this area.

CAALAS works extensively with Aboriginal people living in Alice Springs and remote communities in Central Australia providing legal advice, representation and community legal education in the areas of criminal, civil, welfare rights and family law.

In relation to welfare rights, CAALAS is funded by the Commonwealth Attorney-General's Department to provide advice, casework, community legal education and policy input regarding welfare rights issues, in particular relating to the Northern Territory Emergency Response (**NTER**). The service is one of the main sources of information and advice for Aboriginal and Torres Strait Islander people in the Northern Territory on welfare rights issues.

CAALAS is uniquely placed to provide comment and insight into the impact of the NTER measures on Aboriginal people living in Central Australia.

(b) About this submission

CAALAS welcomes this opportunity to provide a submission in response to the Senate Community Affairs Legislation Committee (**Committee**) Inquiry into the proposed legislative changes to the:

- Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 (Welfare Reform Bill);
- Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 (2009 Measures Bill); and

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

The Committee's terms of reference (in brief) are to assess whether the proposed amendments will:

- overcome Aboriginal disadvantage;
- improve life for Aboriginal people, "including improvements in protecting women and children, reducing alcohol-related harm, improving nutrition and food security, promoting community engagement and strengthening personal and cultural sense of value in all affected communities";
- get people engaging in work and study; and
- comply with Australia's obligations under international law relating to eliminate all forms of racial discrimination.

The Committee is also to look at whether there are other, better ways to address these problems, and whether the Government's proposals are cost effective.

CAALAS submits that the existing NTER measures have done little to improve social and economic conditions, social inclusion and life outcomes of Aboriginal people in the Northern Territory. There has been no credible evidence put forward by the Government to indicate that the NTER has achieved any measurable improvements in the protection of women and children, the reduction in alcohol related harm, or the improvement of nutrition and food security. The process of the implementation of the NTER measures has undermined the cultural sense of value in Aboriginal communities, and the consultation process has made a farce of the 'promotion of community engagement'.

This submission outlines CAALAS's position and recommendations in relation to the proposed changes based on its experience of the current NTER measures.

CAALAS considers the proposed changes to the NTER to be little more than a continuation of the current regime. Therefore, CAALAS cannot see how the proposed amendments will be any more effective in addressing the above issues.

CAALAS and North Australian Aboriginal Justice Agency (**NAAJA**) have previously prepared joint submissions in relation to various aspects of the NTER. On this occasion, we have worked together closely to develop aspects of this submission; the submissions reflect that our organisations share similar concerns about the Bills which are the subject of the Inquiry. However, differing regional perspectives have led to CAALAS and NAAJA providing individual submissions to the Committee.

Recommendation 1:

That the recommendation of the NTER Review Board that the "Government establish an authoritative database as a single integrated information system that enables regular measurement of outcomes of all Government agency programs and services that target Aboriginal communities in the Northern Territory" be implemented immediately.

PART C – Background to Changes

The proposed changes to some of the measures instituted by the *Northern Territory National Emergency Response Act 2007 (NTNER Act)* and related legislation (collectively the **NTER legislation**) purportedly emerged from the 2008 review of the Northern Territory Emergency Response (**NTER**)² and a series of consultations termed the NTER Redesign Consultations.

The Australian Government has been under increasing domestic and international pressure to deliver on its promise³ to reinstate the *Racial Discrimination Act 1975 (RDA)* in the respect to the NTER legislation, particularly from the Aboriginal and Torres Strait Islander population of the Northern Territory who feel shame and disempowerment as a result of the suspension.

The proposed changes reinstate the operation of the RDA in respect to the NTER legislation, and ostensibly allow for the continuation and amendment of a number to the NTER measures on the basis that they qualify as ‘special measures’ for the purposes of the RDA.

PART D - The Racial Discrimination Act

(a) Reinstatement of the Racial Discrimination Act

CAALAS welcomes the reinstatement of the operation of the RDA in relation to NTER measures.

Currently, income management is being applied in a racially discriminatory matter in the Northern Territory, as the ‘declared relevant areas’ are Aboriginal communities, outstations and town camps and those income managed are overwhelmingly Aboriginal.

Further, relevant provisions of the RDA were expressly rendered inoperative by the NTER legislation, denying Aboriginal people the protections against racial discrimination enjoyed by other Australians. Members of the CAALAS Board who are subject to income management report feeling “shame” and feeling like “second class citizens” as a result of the suspension of the RDA. These sentiments are widely echoed by CAALAS clients and the findings of the NTER Review Board which stated:

*(t)he blanket imposition of compulsory income management across Indigenous communities in the Northern Territory has resulted in widespread disillusionment, resentment and anger in a significant segment of the Indigenous community.*⁴

While supportive of the reinstatement of the RDA, CAALAS expresses concern that the Welfare Reform Bill does not include a clause expressly providing that the provisions of the RDA will prevail notwithstanding anything to the contrary in the Welfare Reform Bill and the other NTER legislation. CAALAS is concerned that the absence of such a clause will limit the ability of Aboriginal people (and others) to challenge discriminatory aspects of the NTER legislation.

² Commonwealth of Australia (Peter Yu, Marcia Ella Duncan, Bill Grey), *Northern Territory Emergency Response – Report of the NTER Review Board*, October 2008.

³ Media Release, The Hon Jenny Macklin MP, *Compulsory income management to continue as key NTER measure*, 23 October 2008, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/nter_measure_23oct08.htm (accessed 2 January 2010).

⁴ *Report of the NTER Review Board*, p. 20.

Any measures that limit the ability of Aboriginal people to challenge the NTER measures undermines the positive effect of the reinstatement of the RDA, and again leaves Aboriginal people short of the full set of protections available to other Australians under the RDA. It is also likely that this means that Australia is not fulfilling its obligations under the *International Convention on the Elimination of All Forms of Racial Discrimination* (**Race Convention**).⁵

Recommendation 2:

That the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 be amended to insert new provisions into the:

Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007;

- *Northern Territory Emergency Response Act 2007;* and
- *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007,*

which specifically state that:

- the provisions of the *Racial Discrimination Act 1975* (Cth) are intended to prevail over the provisions of the Act;
- the Acts do not authorise conduct that is inconsistent with the provisions of the *Racial Discrimination Act 1975* (Cth);
- the provision of the Acts and any acts done under the provisions are intended to qualify as special measures; and
- any acts done, decisions made or discretion exercised under the Acts must be consistent with the intended beneficial purpose of the Act.

Such amendments are in line with the recommendations of the Aboriginal and Torres Strait Islander Social Justice Commissioner⁶ on how best to reinstate the operation of the RDA in respect of NTER legislation, and reflect amendments put forward in the Restoration of the Racial Discrimination Act Bill.

(b) Characterisation as 'special measures'

CAALAS has grave concerns regarding the characterisation by the Government of aspects of the redesigned NTER regime as special measures for the purposes of the RDA. The Government has stated that it believes the following measures qualify as special measures:

- The continuation of existing alcohol restrictions;
- The continuation of existing restrictions on prohibited material;
- The continuation of five-year leases;
- The continuation and extension of community store licensing;

⁵ *International Convention for the Elimination of All Forms of Racial Discrimination*, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969).

⁶ *Social Justice Report 2007*.

- The continuation (with amendment) of special law enforcement powers;
- The continuation of existing restrictions on the use of publicly funded computers; and
- The retention of business management area powers.⁷

Under section 8 of the RDA, the Act's prohibition on racially discriminatory measures does not apply to "special measures" as defined in Article 1(4) of the *Race Convention*.

A 'special measure' must have the following characteristics:⁸

- It must confer a *benefit* on some or all members of a class whose membership is based on race, colour, descent or national or ethnic origin;
- It must be undertaken for the *sole purpose* of securing adequate *advancement* of the beneficiaries;
- it must be *necessary* in order to allow the beneficiaries to enjoy human rights and fundamental freedoms equally with others;
- it must be *temporary*, ceasing on the achievement of the purpose for which they were taken.

As a state party to the *Race Convention*, the Government is obliged to consider the Committee for the Elimination of Racial Discrimination's *General Recommendation 23 – Rights of Indigenous Peoples*⁹ when exercising its obligations under the *Race Convention* in respect of Aboriginal and Torres Strait Islander people. Relevantly, General Recommendation 23 requires state parties to "ensure that members of Indigenous peoples have equal rights in respect of effective participation in public life, and that *no decision directly relating to their rights and interests are taken without their informed consent*" [emphasis added].¹⁰

The Australian Human Rights Commission (**AHRC**) has stated its view that measures will not be considered to be special measures where they are implemented without the free, prior and informed consent¹¹ of the group to whom they apply.¹²

'Free, prior and informed consent' requires providing affected communities with accurate and clear information that is translated where necessary and provided in a plain-English format; that is comprehensible for members of the community; and that is provided in both full and summary form. In addition, any consultation process should make use of appropriate interpreter services.¹³

CAALAS has serious concerns regarding the adequacy of the NTER Redesign Consultation.

⁷ Media Release, The Hon Jenny Macklin MP, *Strengthening the Northern Territory Emergency Response*, 25 November 2009, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/strengthening_nter_25nov2009.htm (accessed 29 January 2010).

⁸ Article 1(4), *International Convention for the Elimination of All Forms of Racial Discrimination*; Australian Human Rights Commission, *Draft guidelines for ensuring income management measures are compliant with the Racial Discrimination Act*, 11 November 2009, p 7.

⁹ CERD, *General Recommendation 23: Rights of Indigenous Peoples*, 51st sess, [3], UN Doc A/52/18, annex V at 122 (1997).

¹⁰ Committee on the Elimination of Racial Discrimination, *General Recommendation No. 23: Indigenous Peoples* (1997) par 4.

¹¹ Article 19, *Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 62nd sess, 107th plen mtg, Annex, UN Doc A/Res/61/295 (2006); AHRC *Draft Guidelines*, p 25.

¹² AHRC *Draft Guidelines*, p 25.

¹³ AHRC *Draft Guidelines*, p 26.

CAALAS welfare rights lawyers attended Tier 2 consultations in eight communities in Central Australia, and the Tier 3 and Tier 4 consultations in Alice Springs. CAALAS lawyers reported notable variations in the quality of the consultations and noted with particular concern the cursory nature of the process in relation to some measures, with facilitators being unable to define key terms such as 'racial discrimination' and 'pornography' to participants.

In one community, the consultation was allowed to proceed without the use of a qualified interpreter, despite there being a large number of participants not able to communicate in English. An attendee who was co-opted to interpret was only able to communicate small portions of the facilitator's explanations of the measures. This meant that participants were unable to fully understand the dialogue regarding the measures, and were unable to sufficiently feed back their opinions and concerns to the facilitators. Members of this community also expressed concern regarding the inadequate notice of the Tier 2 consultation in their community. Participants were not advised of their ability to attend the Tier 3 consultation.

Similarly, in another community, a CAALAS staff member was co-opted to interpret in the absence of an interpreter being provided by the facilitators.

These experiences are echoed in the report *Will They Be Heard? – A Response to the NTER Consultations June to August 2009 (Will They Be Heard?)*.¹⁴ The authors identify numerous deficiencies in the consultation process including a lack of Aboriginal input into the design and implementation of the consultation; a lack of notice; the absence of interpreters; inadequate explanations of the NTER measures; and lack of independence from Government of the people undertaking the consultations.¹⁵

Importantly, *Will They Be Heard?* identifies that the consultations merely amounted to facilitators seeking comment from Aboriginal communities on the Government's *Future Directions for the Northern Territory Emergency Response*¹⁶ discussion paper, which outlined proposed changes to some of the measures under the NTER regime.¹⁷

Participants at the consultations were not advised that their feedback would potentially be used as evidence of their 'consent' to the measures, nor that garnering consent was an aim of the consultations. Further, the consultations did not provide an opportunity for Aboriginal people to give input into the design, implementation or operation of any potential 'revised' measures or to put forward proposals for reform based on community experience, knowledge and requirements.

In regards to income management, communities were not consulted on the proposed model currently before the Committee. Rather, two other income management options were put forward – either no change to the existing model, or a model allowing for 'exemptions' for those who could demonstrate responsible money management and/or responsible parenting. Aboriginal people were not asked to comment on any other form of income management or to provide comment on a voluntary system or the abolition/rollback of income management.

¹⁴ Nicholson, Behrendt, Vivian, Watson and Harris, *Will they be heard? – A Response to the NTER Consultations June to August 2009*, November 2009.

¹⁵ *Will They Be Heard?*, p 9.

¹⁶ Australian Government, *Future Directions for the Northern Territory Emergency Response – Discussion Paper*, 21 May 2009, http://www.fahcsia.gov.au/sa/Indigenous/pubs/nter_reports/future_directions_discussion_paper/Documents/discussion_paper.pdf (accessed 29 January 2010).

¹⁷ *Will They Be Heard?*, p 12.

Due to the inadequacy of the consultation process, CAALAS does not consider that affected Aboriginal communities have provided consent to the use of discriminatory measures for the purposes of the RDA and disputes the Government's assertion that any of the NTER measures set out above qualify as special measures.

Part E - The Proposed Measures

CAALAS wishes to note that in this section it only addresses in detail those measures of which it has direct knowledge or expertise.

(a) Alcohol Restrictions

The NTER legislation prohibits the consumption, possession and transportation of alcohol in prescribed areas.

CAALAS notes that prior to the alcohol restrictions implemented through the NTER, most communities had in place their own individual restrictions which were tailored to meet the size, location and individual needs of the community. Some communities had regulated access to alcohol via alcohol purchase cards, permits or regulated clubs as well as 'wet' canteens located in appropriately contained areas. Prior to the NTER, many communities also had in place a number of management plans negotiated with the communities and relevant stakeholders.¹⁸

The blanket alcohol restrictions imposed by the NTER had complete disregard for the tailored community approaches in place designed to combat alcohol misuse.

The NTER Review Board noted:

*The alcohol measures introduced as part of the NTER were not based, as they should have been, on available evidence of what works and on the need to coordinate with existing alcohol arrangements in the NT.*¹⁹

In many communities the prescribed area in which alcohol is prohibited extends far beyond the area of the community.

For example, in Hermannsburg the prescribed area extends 45 kilometres east of the community. This means that those wanting to consume alcohol must drive beyond the prescribed area. With no public transport or taxi services in the area, people are forced to return to the communities by unsafe means²⁰. This has resulted in people being unnecessarily caught up in the criminal justice system with harsh penalties for anyone caught with bringing, possessing or controlling liquor. For example, a person found to be 'bringing liquor into a prescribed community' can be fined up to \$2,000, imprisoned for up to 6 months²¹ and in most circumstances will have their vehicle permanently seized²². These problems identified in Hermannsburg are replicated in many communities throughout Central Australia.

¹⁸ Australian Government NTER Review, Aboriginal Medical Services Alliance of the Northern Territory, August 2008, Chapter 7, http://www.nterreview.gov.au/subs/nter_review_report/190_Aboriginal_medical_services/190_Aboriginal_Medical_Services.htm, accessed on 21 January 2010.

¹⁹ Above n19.

²⁰ CAALAS telephone consultation with Hermannsburg Police Station on 8 February 2010.

²¹ Section 124 *Liquor Act 2009* (NT).

²² Sections 95 -99 *Liquor Act 2009* (NT).

Blanket alcohol restrictions have failed to decrease the amount of alcohol related violence in Central Australia. Since the beginning of the NTER, alcohol related incidents reported to police have increased by 29%, substance abuse related incidents reported to police have increased by 77%,²³ domestic violence incidents have increased by 61%²⁴ and there has been an increase in confirmed incidents of child neglect from 63 to 177 cases.²⁵

CAALAS favours the removal of blanket restrictions on the basis that their application is racially discriminatory.

The Government proposes to allow individual communities to tailor alcohol restrictions to suit their needs. Such restrictions would be implemented on a case by case basis only once:

- evidence has been produced detailing how alcohol-related harm has affected the community;
- community consultations about the effectiveness of the proposed consultations have been conducted; and
- there has been adequate consideration given to alternative methods of restricting alcohol (eg alcohol management plans).

While CAALAS is supportive of the continuation of alcohol restrictions, this should not be taken as an endorsement of alcohol restrictions as being the only effective means of adequately addressing the alcohol related problems in Central Australia.

CAALAS requests the urgent publication of evidence that alcohol restrictions have worked to address alcohol related harm in prescribed communities in the Northern Territory. Such information is an essential component of any assessment of the need for continued alcohol restrictions in communities and such information (or lack thereof) must be taken into account in assessing a community's request to have alcohol restrictions lifted.

CAALAS welcomes the amendments allowing communities to seek a lifting of alcohol restrictions based on the development of a community alcohol management plan. It is imperative that such plans are developed based on genuine consultation with the community and implemented in conjunction with support programs to address alcohol and substance abuse issues in that community.

Recommendation 3:

That each community be given the opportunity to seek the lifting of alcohol restrictions in that community together with the development of an alcohol management program specific to that community and its needs. This must be achieved through community consultations that:

- are comprehensive, effective and culturally appropriate;
- are conducted in the language(s) spoken in that community;
- allow for effective participation of all community members by giving advance notice to the community and residents of any outstations that may be impacted by a community

²³ *Closing the Gap Report*, p 34.

²⁴ *Closing the Gap Report*, p 35.

²⁵ *Closing the Gap Report*, p 40.

decision and provide outstation residents with the opportunity and means to attend any community consultation; and

- are independent of Government.

Recommendation 4:

That the Government immediately fund the expansion of support and rehabilitation programs to address alcohol and substance abuse in Central Australia.

(b) Prohibited Material

Part 10 of the *Classification (Publications, Films and Computer Games) Act 1995* (the **Commonwealth Classification Act**) prohibits the possession and supply of pornographic and very violent material in prescribed areas of the Northern Territory.

The Government proposes to continue the restrictions currently in place, however individuals residing in communities will be able to ask the Indigenous Affairs Minister to lift the restrictions in their community.

When making that decision the Indigenous Affairs Minister must consider the well-being of the people in the community; whether people living in the prescribed area have expressed their concerns about being at risk of violence or sexual abuse; whether children in the community have been exposed to prohibited material; the views of those in the community; and the views of the relevant law enforcement agency.

CAALAS notes that the proposed changes differ from those it 'consulted' on during the NTER Redesign consultations. The Future Directions model proposes the removal of blanket restrictions on prohibited material, with individuals resident in a prescribed area being able to apply to have the restrictions continued. In doing so, the Government has shifted from an opt-in model to an opt-out model.

A CAALAS lawyer in attendance at the Tier 3 consultation in Alice Springs noted that the facilitators did not explain that the measure related to both pornographic material and violent material. A participant stated that people did not understand the meaning of 'pornography' and no definition was provided by the facilitators. This also occurred at the Tier 2 consultation in Ti Tree on 23 June 2009. The inability of participants to understand the word pornography undermines any attempt by the Government to assert that consent was provided by communities in relation to this measure.

CAALAS requests the urgent publication of evidence that the restrictions on pornography and violent materials have achieved the Government's stated aims of protecting children from harm.

Recommendation 5:

That the prohibited material restrictions be repealed.

(c) 5 Year leases

CAALAS is not in a position to offer detailed commentary on this measure. However, CAALAS views the continuation of the five year leases as discriminatory and calls for the immediate discontinuation of this measure.

CAALAS respectfully refers the Committee to the Central Land Council's submission in relation to the proposed continuation of the five year leases.

(d) Licensing of Community Stores

CAALAS supports the Government's proposals to continue and strengthen the community stores licensing regime, in particular the inclusion of 'food security' as an assessable matter in the grant of a community store license.

CAALAS notes that the provision of adequate fresh food at a reasonable price continues to be a major issue in remote Central Australia. For example, at the Outback store in Yuendumu (the only store able to accept BasicsCard in the community), the following prices were observed on 4 February 2010:

- Loaf of white bread: \$5.65 (available at Woolworths Alice Springs - \$1.49)
- Litre of long life milk: \$2.35 (Woolworths Alice Springs - \$1.18)
- Lettuce: \$6.40 (Woolworths Alice Springs - \$3.28)

CAALAS recommends that food pricing and quality be a priority in auditing 'food security' and asks that the Government give urgent attention to ensuring food prices are adjusted to be at an acceptable level in remote communities.

CAALAS considers that a commitment to the training and employment of local Aboriginal people should be included as an assessable matter. CAALAS has observed that the hiring of Aboriginal staff in community stores is not uniform – some community stores provide employment opportunities for Aboriginal community members, while others are staffed solely by non-Aboriginal people.

The inclusion of a local training and employment requirement in the assessable matters would reflect the Government's over-arching aim of increasing Aboriginal engagement and participation in the paid workforce.²⁶ Such reference should also include provision for local staff to be trained at a managerial as well as general staff levels.

The success of the community stores licensing scheme is dependent on the introduction of appropriate enforcement mechanisms that include adequately resourcing and empowering the FaHCSIA Stores Licensing Team to monitor the performance of stores.

CAALAS notes that it is not in a position to provide comment on the proposed amendments dealing with community store governance issues. CAALAS respectfully directs the Committee to the Central Land Council's submission regarding community store licensing in respect of these matters.

²⁶ This would also help to fulfil Recommendation 11 of the House of Representatives Aboriginal and Torres Strait Islander Affairs Committee "The Committee recommends the Australian Government, in collaboration with educational institutions, investigate and develop: the facilitation of training of Indigenous staff living in remote communities to store management levels, and the certification of in-store training of skills such as health promotion and food supply and storage", as set out in Report of the House of Representatives Aboriginal and Torres Strait Islander Affairs Committee, *Everybody's Business: Remote Aboriginal Torres Strait Island Stores*, November 2009, p51, <http://www.aph.gov.au/house/committee/ATSI/communitystores/report/Everybody's%20Business%20Report.pdf> (accessed 4 February 2010).

Recommendation 6:

CAALAS supports the repeal of the compulsory acquisition powers in relation to community stores.

Recommendation 7: That the assessable matters in relation to community store licences be amended to include reference to a commitment to training and employment of local Aboriginal people at all levels of store operation as an assessable matter.

Recommendation 8:

That appropriate enforcement mechanisms should be implemented to ensure the community stores licensing scheme operates as intended. Such enforcement mechanisms should include:

- resourcing and empowering the FaHCSIA Stores Licensing Team to rigorously monitor store standards, including the power to inspect a store without notice;
- proper communication to communities of the assessable matters for licensing and who to contact if they have a concern about pricing or other assessable matters at their local store; and
- the development of a dispute resolution scheme whereby individuals can take complaints regarding the operation of licensed stores.

Recommendation 9: That in line with Recommendation 1, the community stores licensing measure be fully evaluated, commencing with a clear set of initial benchmarks, and with a full report due by mid 2011 to allow communities and policy makers to consider whether the measure should be extended beyond the 17 August 2012 end date.

(e) Australian Crime Commission Powers

CAALAS expresses grave concern at the Government's intention to continue the operation of the Australian Crime Commission's (ACC) 'special coercive powers' in relation to 'Indigenous violence or child abuse'.²⁷

Before the enactment of the NTER legislation, the special investigative powers available to the ACC under the *Australian Crime Commission Act 2002* (ACC Act) were only available for the investigation of 'serious and organised crime'. The NTER legislation amended the ACC Act to make the ACC powers also available in relation to 'Indigenous violence or child abuse'. The Government proposes to retain the ACC's special law enforcement powers but to narrow the definition of 'Indigenous violence or child abuse' so that the ACC's special powers relate only to crimes where an Indigenous person is the victim.²⁸

²⁷ Section 7(c) of the *Australian Crime Commission Act 2002* (Cth).

²⁸ Schedule 7, Item 1 of the Welfare Reform Bill, amending Section 7(c) ss4(1) of *Australian Crime Commission Act 2002*.

There is a lack of credible evidence that the expanded ACC powers have been effective in meeting the Government's aims of providing greater protection of women and children in Aboriginal communities through the detection and prosecution of 'Indigenous violence or child abuse'.

The NTER Consultations demonstrated the lack of understanding in Aboriginal communities about what the ACC special powers are, how they work, and in what way they may be necessary to protect women and children. CAALAS lawyers present at consultations observed that the ACC powers were inadequately explained to Aboriginal participants, particularly the nature and breadth of the coercive powers available to the ACC to require witnesses to give evidence and supply requested information. These were often misleadingly explained to Aboriginal communities as being for the protection of witnesses.²⁹

The Government has provided no evidence that Aboriginal people are supportive of the ACC's powers or wish for such measures to continue. Indeed, CAALAS's experience of the NTER Consultations suggest otherwise. CAALAS does not believe that the consultation process undertaken meets the requirements of a special measure under the RDA.

CAALAS believes that any allegation of violence or child abuse must be thoroughly and appropriately investigated, but questions the need for additional powers to do so. The ACC special coercive powers are an excessive measure that impose a level of intrusion into the private lives of Aboriginal people that would not likely be tolerated by the majority of Australians (in particular, the powers to access medical records and compel people to testify and produce documentation).

In the absence of any evidence demonstrating that the measures are working and necessary, the continuation of special powers (the operation of which are dependent on a victim's race) can only be viewed as discriminatory.

Recommendation 10:

That the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 be amended to provide for the removal of 'Indigenous violence and child abuse' from the definition of federally relevant criminal activity in the *Australian Crime Commission Act 2002*.

(f) Customary Law

CAALAS notes with alarm that the Government has chosen not to address the racially discriminatory provisions in the NTNER Act which preclude the consideration of customary law and cultural practice in bail applications and sentencing. These provisions depart from fundamental legal principle by excluding relevant factors from being considered in respect of moral culpability in sentencing and may result in serious discrimination against Aboriginal people.³⁰

We reiterate the statements made in our Joint Submission with NAAJA to the Senate Select Committee on Regional and Remote Indigenous Communities in June 2008³¹, which expressed deep concern that Aboriginal offenders are being disadvantaged in sentencing because the full context of their offending cannot be considered by the court, whereas non-Indigenous offenders are given full consideration of all relevant circumstances. The Joint

²⁹ An impression confirmed by *Will They Be Heard?*, p 14-15.

³⁰ Vivian A and Schokman B "The Northern Territory Intervention and the Fabrication of Special Measures" *Australian Indigenous Law Review* 2009, Vol 13, No 1 p 96.

³¹ Available at http://www.aph.gov.au/Senate/committee/indig_ctte/submissions/sublist.htm

Submission drew attention to the serious consequences of this discrimination; in CAALAS and NAAJA's experience, consensual sex with a child under 16 now receives higher sentences because customary law cannot be considered as a mitigating factor.³²

To date, CAALAS has not observed any increase in cases involving child abuse in the Northern Territory criminal courts. There has, however, been an increase in the number of prosecutions of consensual sexual relationships between teenagers. These prosecutions raise a multitude of issues, previously highlighted in the Joint Submission.

Recommendation 11: That Part 6 of the *Northern Territory National Emergency Response Act 2007* which precludes the consideration of customary law and cultural practice in bail applications and sentencing be repealed.

Part F - Changes to the operation of the Social Security Appeals Tribunal

The 2009 Measures Bill provides for changes to the procedures and powers of the Social Security Appeals Tribunal (**SSAT**).

CAALAS supports the comprehensive submission of the National Welfare Rights Network (**NWRN**) on this issue and in particular, reiterate its concerns about the proposed pre-hearing conferences and increased powers of the SSAT to obtain information or documents from applicants.

We also support the NWRN recommendation to repeal the proposed sections in the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Miscellaneous Measures) Bill 2008* that would:

- allow Centrelink to make oral and written submissions to the SSAT; and
- remove the SSAT's obligation to provide written reasons for decisions.

Pre-hearing conferences

The SSAT is the first level of external review of decisions made by Centrelink and the Child Support Agency (**CSA**) about social security, family assistance, education, training and child support payments. Currently the SSAT is empowered to hold pre-hearing conferences for matters within its child support jurisdiction.

CAALAS strongly believes that pre-hearing conferences should not be extended to appeals of Centrelink decisions. This alignment with the child support jurisdiction fails to recognise the inherent differences in the two jurisdictions, notably the significantly larger volume of matters handled by the SSAT concerning Centrelink. Between July 2008 and June 2009, 13,777 Centrelink review applications were made to the SSAT compared to 2,891 requests for the review of child support decisions.³³

The increased administrative burden associated with pre-conference hearings would significantly impact the SSAT's ability to provide access to justice in a timely and efficacious manner.

³² Joint Submission by the Central Australian Aboriginal Legal Aid Service and the North Australian Aboriginal Justice Agency to the Senate Select Committee on Regional and Remote Indigenous Communities June 2008, p 14. Available at http://www.aph.gov.au/Senate/committee/indig_ctte/submissions/sublist.htm.

³³ Social Security Appeals Tribunal, *Annual Report 2008-09*, p 101.

Another inherent difference relates to the nature of the disputes. Unlike Child Support matters where the primary dispute is between individual parties as well as the CSA, Centrelink disputes are between an individual and the Department/Centrelink where the balance of power is firmly in the hands of the Department as a repeat player in the jurisdiction.

Inspection and retention of documents

CAALAS is gravely concerned about the impact of proposed sections 165A, 165B and 165C of the 2009 Measures Bill, which empower the SSAT to request information and documents from a person. A person who fails to produce the requested documents within a specified period can be found to have committed an offence which carries a maximum penalty of 6 months imprisonment.

Also of concern is the absence of a maximum time period in which a person's private information can be held by the SSAT. Section 165C currently provides that the documents can be held for "as long as is reasonably necessary".

CAALAS believes these new provisions will adversely affect applicants living in remote areas. Remote communities are often subject to delays in receiving and sending mail and many community members report difficulties in accessing personal documentation from external agencies.

Remote applicants may have difficulty in understanding and complying with the request and have limited access to legal assistance. In practice, these provisions will mean that an Aboriginal applicant who has to leave their community for extended periods for cultural reasons could face a criminal conviction and imprisonment simply because they did not respond to a request from the SSAT within 14 days.

Northern Territory context

Currently an informal arena whereby individuals can talk openly with an independent panel about their grievances without the need for legal representation, the proposed changes will create a more complex, litigious and adversarial SSAT.

The proposed changes will significantly dilute the accessibility of the SSAT to people throughout the Northern Territory. The number of appeals conducted in the Northern Territory is already remarkably low. As at 1 July 2008, there were only 8 Centrelink appeal applications lodged compared to 75 in the ACT, 89 in Tasmania and 272 in South Australia.³⁴ Furthermore, CAALAS is unaware of any SSAT applications made by an Aboriginal person in a remote community in Central Australia.

CAALAS's clients already have trouble accessing the SSAT in its current form. Applicants living in Central Australia have their SSAT applications managed by a case worker in Queensland with all hearings conducted by video or telephone conference. Even the simple task of adjourning a hearing or reading SSAT hearing papers can be a difficult matter and often requires assistance from welfare rights lawyers at CAALAS.

Recommendation 12:

That the Government withdraw the proposed changes to the operation of the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 relating to pre-hearing conferences and powers to obtain information.

³⁴ Social Security Appeals Tribunal, *Annual Report 2008-09*, p 101.

Part G – Income management

Compulsory income management has two primary aims: “to stem the flow of cash that is expended on substance abuse and gambling; and to ensure funds that are provided for the welfare of children are actually expended in this way”.³⁵

These aims are reflected in the objects of income management detailed in the *Social Security (Administration) Act 1999*, which are to promote “socially responsible behaviour”, particularly in relation to the welfare of children through the direction of Centrelink payments towards priority needs.³⁶

(a) The Current Income Management Regime

The income management regime is established by virtue of Part 3B of the *Social Security (Administration) Act 1999*. The existing legislation allows for income management to be imposed via a number of specified categories.³⁷ Currently, the only category in use in the Northern Territory is established by section 123UB(2)(e) - people living in a declared Northern Territory are subject to income management. Approximately 15,500 people are currently compulsorily income managed across 73 prescribed communities, many outstations and numerous town camps.³⁸

Social security recipients who are income managed have 50% of their regular social security payments and 100% of any lump sum payments³⁹ quarantined into an “income management account” which can only be used for meeting “priority needs” as defined in the Act.⁴⁰ The other 50% is generally directed into the person’s bank account.

Compulsory income management forms part of the range of options available to the Family Responsibilities Commission, which operates in four communities in Cape York, Far North Queensland. Voluntary income management and income management triggered by child protection notifications are being trialled in some locations in Western Australia.

(b) Problems with Income Management in the Northern Territory

Income management was introduced in the Northern Territory without consultation, which caused widespread confusion, frustration and fear. Despite income management being in place for two and a half years, concerns from people that they do not fully understand the workings of income management and the BasicsCard continues to be a consistent source of complaints to the Commonwealth Ombudsman’s office.⁴¹

Changes to income management such as the introduction of the BasicsCard and the reinstatement of appeal rights have occurred without the Government effectively communicating with Aboriginal people affected by these changes. CAALAS agrees with the

³⁵ Social Security And Other Legislation Amendment (Welfare Payment Reform) Bill 2007 Explanatory Memorandum.

³⁶ Section 123TB *Social Security (Administration) Act 1999*.

³⁷ Section 123 TA, *Social Security (Administration) Act 1999* outlines the categories as such: if the person lives in a declared relevant Northern Territory area; or a child protection officer of a State or Territory requires the person to be subject to the income management regime; or the person, or the person’s partner, has a child who does not meet school enrolment requirements or has unsatisfactory school attendance; or the Queensland Commission requires the person to be subject to the income management regime; or the person voluntarily agrees to be subject to the income management regime.

³⁸ Department of Families, Housing, Community Services and Indigenous Affairs, *The Evaluation of Income Management in the Northern Territory*, http://www.facsia.gov.au/sa/Indigenous/pubs/nter_reports/Documents/nt_eval_rpt/3_mgt_funds.htm (accessed 29 January 2010).

³⁹ See Item 42, Welfare Reform Bill.

⁴⁰ Section 123TH, *Social Security (Administration) Act 1999*.

⁴¹ *Closing the Gap Report*, p 79.

comments made by the Commonwealth Ombudsman in the *Closing the Gap Report* which states "The provision of timely, relevant information to people directly affected by Government action or decisions should be a minimum requirement for agencies."⁴²

CAALAS believes that any extension of income management within the Northern Territory must only occur in conjunction with a significant investment of funds to address the many existing problems with income management. This must include a reassessment of the manner in which information about income management is disseminated to Aboriginal people in the Northern Territory.

The initial rollout

The speed with which income management was conceived and implemented resulted in income management being rolled out across the Northern Territory without suitable infrastructure in place. This forced people subject to income management to negotiate a complex and administratively burdensome system in order to use their income managed funds. These experiences will potentially be replicated across the country if the Government does not make serious efforts to address the current issues and to consider the ramifications of a proposed nation-wide income management regime.

Initially, people could only utilise their income managed funds by allocating their income managed funds to FaHCSIA licensed stores or in major retailers such as Coles, Woolworths and Kmart via the use of Centrelink issued store cards. In essence, the restrictions deprived people of the right to choose where they shopped and on what terms.

There were delays and restrictions on the issue of FaHCSIA licenses; in November 2007, there were only 10 FaHCSIA licensed community stores in the Northern Territory⁴³, meaning Aboriginal people were unable to spend their quarantined funds in their community store. In September 2009, the 15,424 people subject to income management living in 73 communities across the Northern Territory were able to spend their income managed funds in only 86 licensed community stores outside of remote centres⁴⁴.

If there was no licensed store in the community or to access stores outside of the community Aboriginal people were required to travel large distances to remote centres. To shop in town, Aboriginal people were required to personally attend a Centrelink office (within opening hours) and request a store card, which could be spent exclusively at major retailers.

The only alternatives were to arrange for Centrelink to issue a cheque or credit card payment to a third party. Large queues and long delays were experienced in all Centrelink offices in the Northern Territory. Aboriginal people were prevented from spending their income managed funds at small retailers, butchers, bakeries, health food stores, markets, second hand stores, or specialty stores such as camping shops unless a one off payment was organised with Centrelink.

The administrative hassles associated with store cards, the lack of choice of retailers available to income managed people and the administrative burdens placed on retailers led to the introduction of the BasicsCard in late 2008.

⁴² *Closing the Gap Report*, p 79.

⁴³ Transcript, The Hon Jenny Macklin MP, *Figures Show NT Intervention Alive*, 23 September 2009, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/nt_intervention_23sept09.htm (accessed 2 January 2010).

⁴⁴ Above n 44.

Lack of financial support services

CAALAS notes that the Government has committed to funding a Financial Management Program with the aim of supporting people before, during and after income management to help build financial literacy skills and capacity for self-help.⁴⁵

At present there are no 'community based financial counsellors' as envisaged by the policy. Currently, there are three financial counsellors based in Alice Springs are available to service the entire Southern Zone of the Northern Territory.

Further, only limited money management services are available; there are two money management services in Central Australia, operating from Alice Springs and Tennant Creek. Many communities have only irregular outreach services and some are not serviced at all. Quality of services varies across communities.

The BasicsCard

The BasicsCard has addressed some of the more severe administrative hassles associated with store cards and the expenditure of income managed funds. However, as the BasicsCard was developed and implemented very quickly as an "interim solution"⁴⁶, Aboriginal people still endure a wide range of administrative and practical difficulties in using income managed funds on a daily basis.

CAALAS clients routinely identify a number of issues with the BasicsCard system, in particular the difficulties in accessing BasicsCard balances and the resulting hassles this causes.

While the BasicsCard looks like a keycard, an 'account balance' cannot be obtained via the ATM system. Outside of attending a Centrelink office, via the internet (which has very low usage in Aboriginal communities), or a small number of swipe card balance readers that have been installed in remote community stores, BasicsCard balances can only be obtained by contacting the Indigenous Call Centre (**ICC**) or via the 1800 BasicsCard number. Centrelink offices and the ICC are not open on weekends or outside of standard business hours.

The difficulty in obtaining balances was acknowledged by the Closing the Gap report which states:

Determining a customer's BasicsCard balance is a major issue for many stores. The BasicsCard balance issue can be burdensome for stores when customers do not know their balances as customers often try to purchase more than they can afford or use the store's phone to contact Centrelink about the balance.⁴⁷

In practice, this means that the 15,500 Aboriginal people who are income managed are required to contact Centrelink prior to going shopping to ensure sufficient funds are available, or be forced to "shop blind" and risk not being able to pay for all or some of their shopping. This results in Aboriginal people having to abandon trolleys full of groceries at major retailers, further stigmatising those on income management and reinforcing broader community perceptions that those who are income managed are unable to manage their money or look after their family.

⁴⁵ Australian Government, *Guide to Social Security Law*, at 11.1.2.10.

⁴⁶ Ministerial Speech, Senator the Honourable Joe Ludwig, Minister for Human Services, 25 March 2009, Address to the Cards and Payments Australasia Conference.

⁴⁷ *Closing the Gap Report*, p 57.

The *Closing the Gap* report provides statistical support for the above; of almost 1,709,415 attempted transactions to 26 June 2009, 290,000 resulted in an unsuccessful transaction (17%). The Report found the majority of the unsuccessful transactions were due to insufficient funds on the card.⁴⁸

Community store operators have also commented on the difficulties with obtaining a balance of the BasicsCard, one describing the difficulties in the following terms:

*Customers fill their trolleys with food and then stand in line while the food is put through the checkout and packed into bags but when the card goes through, quite often, there isn't enough money in the account to pay for the groceries. So the customer asks to take items off the bill and what often happens is that there isn't enough money on the card for a can of baked beans. Meanwhile people are waiting in the line.*⁴⁹

Not being regularly informed of the balance of the BasicsCard means that it becomes more difficult to track expenditure and ensure that priority needs are covered, particularly for those who struggle with numeracy. It is also not possible for Aboriginal people to obtain a statement of their expenditure on the BasicsCard.

Case Study 1

Lucy lives in Wallace Rockhole and is income managed. Lucy travels an hour and a half to Alice Springs to grocery shop for her family. Before going shopping, Lucy attends the Centrelink office where she is advised that \$300 has been transferred to her BasicsCard. Lucy goes shopping at a number of stores to purchase clothing and pharmacy items. Lucy's last stop is Woolworths to purchase food for her family. Lucy's BasicsCard is rejected due to lack of funds. Lucy has to leave her trolley of groceries behind and find a payphone to call Centrelink and check her balance. Lucy then returns to Woolworths to re-do her shop.

Lucy has great difficulty in keeping track of how much she had spent during the day. Lucy is not good at maths, and was used to shopping with cash before the introduction of income management and the BasicsCard – Lucy finds it difficult to track her expenditure with the BasicsCard and feels embarrassment when she can't pay for goods at the checkout.

The deficiencies of the Basics Card system mean that refunds are not able to be loaded onto the cards; the exchange of items can only happen through the issue of exchange vouchers that can only be spent at the original store.

CAALAS has received numerous complaints regarding the \$5 minimum spend on the BasicsCard. The BasicsCard Merchant Terms and Conditions⁵⁰ state that a merchant cannot impose a minimum spend above \$5. This operates to prevent a person who only has say \$4.95 in their BasicsCard account from purchasing for example, two loaves of bread and a litre of milk at Woolworths Alice Springs. This condition is perverse as its practical effect is contrary to the objects of the legislation.

CAALAS strongly recommends that the ability for BasicsCard merchants to impose a minimum spend on the BasicsCard be removed.

⁴⁸ *Closing the Gap Report*, p 57.

⁴⁹ *Final Stores Post Licensing Monitoring Report*, p 5.

⁵⁰The BasicsCard Merchant Terms and Conditions <http://www.centrelink.gov.au/internet/internet.nsf/publications/bcmtc.htm>, (accessed 3 February 2010).

Basics Card outages

As BasicsCard transactions cannot be manually processed, if the EFTPOS network is not working or fails to process a transaction using the BasicsCard, Aboriginal people are prevented from making the transaction.⁵¹

There have been a number of outages to the BasicsCard system. For example, in January 2009 disruptions to the BasicsCard were experienced over an 18 hour period in Alice Springs. When individuals within the Aboriginal community are not able to access money for food for extended periods of time, this also has repercussions for the individual's extended family, as resources are often shared.

Whilst the Closing the Gap report recognises the need to ensure that "comprehensive contingency arrangements are in place when customers are not able to use the BasicsCard"⁵², there is no evidence that any such arrangements are in place.

Case Study 2

Geraldine and her sister-in-law Stella went to Coles in Alice Springs at around 7.00 pm on Friday 16 January 2009. They had \$400 on Stella's BasicsCard and shopped for their extended family of over 20 people, including 14 children. As they approached the checkout, they observed seven or so unattended trolleys, filled with food. Geraldine and Stella loaded their groceries onto the conveyor and produced Stella's BasicsCard for payment. At that stage, the cashier advised Stella that she could not use her BasicsCard as there was something wrong with the system and the transaction wouldn't go through. Having no other means of payment Stella and Geraldine reloaded the trolley and left the store.

Stella and Geraldine then went to Woolworths in Alice Springs, but were advised that it was having the same problem with the BasicsCard. Stella and Geraldine left with out food, and had to rely on extended family members for assistance over the weekend.

Stella and Geraldine went back to Coles on 17 January 2009 at 6.00pm. They were advised by the person at the checkout that BasicsCards were again not working. Stella and Geraldine went to Northside IGA but were only able to purchase a much smaller amount of items, as that retailer is more expensive than Coles.

Lack of security

Unlike all other debit cards available in Australia, the BasicsCard does not possess many simple mechanisms designed to ensure privacy and safety. Lack of security for those holding a BasicsCard is another inherent problem which imposes further obstacles to people who are income managed.

The name of the card holder is not embedded into the card, nor is there a signature underneath the magnetic strip. The lack of these features makes it easier for the card to be transferred.

FaHCSIA is not a signatory to the Electronic Funds Transfer Code of Conduct (**EFT Code**) which protects consumers who use electronic funds transfer. The EFT Code offers protection and certainty to consumers by setting out rules for the providers and consumers of EFT services regarding:

⁵¹ Centrelink, *BasicsCard Customer Terms and Conditions*, www.centrelink.gov.au/internet/internet.nsf/...0811/.../ah1803_0811en.rtf (accessed on 7 February 2010).

⁵² *Closing the Gap Report*, p 57.

- the information that a provider is required to give a consumer and how it is to be given;
- liability for unauthorised transactions;
- consumer responsibilities regarding PINs and passwords;
- complaints procedures; and
- privacy.

This puts BasicsCard users at a disadvantage compared to people who access funds through a conventional bank account. The code is a necessary protection in the case of unauthorised transactions, Centrelink errors and other complaints, and strongly suggest that FaHCSIA becomes a signatory to the EFT Code.

Lack of Choice

While the BasicsCard has widened the range of retailers available to those on income management, restrictions on choice still exist, limiting an individual's ability to make decisions about where and how they wish to provide for themselves and their family.

There are a number of retailers in every major town in the Northern Territory who are not BasicsCard merchants, either by choice or because they are unable to comply with the BasicsCard Merchant Terms and Conditions.⁵³ Many small, independent food businesses like butchers, wholesalers, greengrocers and specialty food stores are not BasicsCard merchants.

Essentially, income managed people are forced to shop at major supermarkets, a limited number of retail outlets and, in remote communities, at the community store, which is often a Government-run Outback Store where prices for fresh healthy food can be exorbitantly high, as discussed above in the discussion of Community Store Licensing. In communities where there is more than one store, not all stores are necessarily BasicsCard merchants (for example, in Yuendumu there are three stores, only one of which accepts BasicsCards).

The limited range of BasicsCard merchants prevents people from shopping around for the best price, taking advantage of groceries or clothing sales or purchasing second hand goods at non-merchant stores. It also affects family's ability to attend one off events – for example, BasicsCards were not able to be used at the Alice Springs, Darwin or Katherine Shows.

Administrative burden placed on social security recipients

Income management imposes significant administrative burdens on social security recipients. By requiring recipients to contact Centrelink every time they wish to change their income management allocations (for example, to establish a new allocation to pay for a bus fare on the Bush Bus) those who are compulsorily income managed need to attend a Centrelink office⁵⁴ or contact the ICC.

CAALAS clients report long waiting times, both in Centrelink offices and the ICC, to make simple changes to their allocations. These repeated contacts with Centrelink are a

⁵³ Centrelink, *BasicsCard Merchant Terms and Conditions (Agreed Version)*, 23 September 2008, [http://www.centrelink.gov.au/internet/internet.nsf/filestores/bcmtc_0807a/\\$file/bcmtc_0807en.pdf](http://www.centrelink.gov.au/internet/internet.nsf/filestores/bcmtc_0807a/$file/bcmtc_0807en.pdf) (accessed 29 January 2010).

⁵⁴ There are only permanent Centrelink offices in a few remote communities, for example in Yuendumu. Centrelink services approximately 35 communities every 3-8 weeks.

significant impost on recipients' lives and mean that activities such as applying for jobs or attending training become secondary to managing income managed funds.

The situation is amplified in communities where there may be only one public payphone in the community and one dedicated ICC phone. Long wait times are experienced by community members often having to wait 10 – 20 minutes for calls to be answered, also a common experience for CAALAS staff when assisting clients. As the ICC number is not toll free, the dedicated ICC phone in communities is in high demand.

In addition to the wait times experienced before ICC answer the call, changes to allocations usually take a considerable amount of time. Calls can take up to half an hour to complete. These long delays and high call costs mean people often hang up and don't pursue the matter.

Delays are also caused by language difficulties. A large proportion of Aboriginal people in the Northern Territory speak an Indigenous language and speak English as their second or third language, however there are no Central Australian language speakers in the ICC. Centrelink recipients from linguistically diverse backgrounds have access to the Centrelink Multilingual Call Centre; no such equivalent service exists for Aboriginal and Torres Strait Islanders.

The lack of language speakers in the ICC causes confusion as to where people's funds are directed. CAALAS has had experience of clients in remote communities who advised Centrelink that they wanted funds to go to their BasicsCard, but money was sent to their local store or retained in their income management account, requiring further contact with Centrelink to rectify the mistake.

Although there are Centrelink agents in most communities, these agents have limited functionality and availability, opening only certain restricted hours during the day. In relation to income management, the agents are able to do little more than assist people to telephone Centrelink. They cannot access information on the Centrelink database, change people's details or their income management allocations.

Case Study 3

Rosie is an elderly Aboriginal woman who lives at Kintore, a remote Aboriginal community. She speaks fluent Luritja, some Pitjantjatjara but very little English. She wants to transfer some money onto her BasicsCard, but does not want her family to know. She calls the ICC, but no-one can speak Luritja. Centrelink offer to arrange for an interpreter to assist, but no interpreters are available for another week. On the day, Rosie has to wait by the public phone in her community to receive the call.

Cost imposition

(i) On Businesses & Service Providers

The high administrative burden associated with income management has lead to increased costs to businesses and service providers throughout the Northern Territory.

According to the Final Stores Monitoring Report:

The majority of store operators reported that IM added somewhere between half-an-hour to two hours to their daily workload.⁵⁵

⁵⁵ Final Stores Post Licensing Monitoring Report 2009, p 14.

Increased work-loads have lead to 'frustration and unhappiness'⁵⁶ amongst store owners as well an increase in over-head costs.

Community agencies have also experienced an increase in workload, placing a strain on budgeting and resource allocation as well as decreasing the ability of organisations to focus on providing core services to those most in need in an efficient and timely manner.

This extra workload is partly due to services having a pre-existing relationship with Aboriginal people whom are most effected by income management. As noted by the Central Land Council Report *Perspectives From Six Communities*:

*For a variety of reasons it appears that many Centrelink clients take their problems with income management arrangements direct to welfare agency representatives rather than to Centrelink.*⁵⁷

Agencies in remote communities have also been subjected to increased administrative costs associated with "helping people to understand, and resolve problems, under income management arrangements."⁵⁸ To date such agencies have received little or no additional funding for this extra administrative workload.

(ii) *On Income Managed Centrelink Recipients*

Although Centrelink publications state that "[i]ncome management will not change the total amount of your payments"⁵⁹, income management has shifted costs onto Aboriginal social security recipients.

Personally attending a Centrelink office will generally incur travel costs, either petrol consumption if traveling in a private car, taxi or bus fares. The Centrelink office in Alice Springs is located in the town centre, at a significant distance from the town camps where the vast majority of town-based income managed recipients live. This situation is amplified by the manifest lack of public transport in and around Alice Springs.

Case Study 4

Dennis lives south of Alice Springs at Little Sisters Camp. Dennis needs to attend Centrelink to change his BasicsCard allocations. Dennis does not have access to a private car and so must pay a taxi fare of \$15 in cash to get to the Alice Springs Customer Service Office .

From Karnte Camp, located further south of Little Sisters, Cecilia must pay a \$20 – \$25 taxi fare to get to Centrelink.

Alice Springs Taxis do not accept BasicsCards, which means Dennis and Cecilia must pay their taxi fares using the 'discretionary' portion of their social security payment.

Those who wish to change an allocation, report a lost or stolen card or put money onto the BasicsCard by contacting the ICC are not afforded a free-call number⁶⁰ and so must expend a portion of their social security payments on managing those payments. Local call rates to

⁵⁶ Final Stores Post Licensing Monitoring Report 2009, p 14.

⁵⁷ Central Land Council, *Perspectives From Six Communities*, July 2008, p 30-31.

⁵⁸ Central Land Council, *Perspectives From Six Communities*, July 2008, p 31.

⁵⁹ Centrelink, *Income Management for the Northern Territory Emergency Response factsheet*, <http://www.centrelink.gov.au/internet/internet.nsf/publications/ah1549.htm> (accessed 29 January 2010).

⁶⁰ Centrelink, *Indigenous Call Centre Card*, <http://www.centrelink.gov.au/internet/internet.nsf/publications/ind099.htm> (accessed 29 January 2010).

the ICC only apply from landlines. Calls from public pay phones and mobile phones are charged at a higher rate. There is a 1800 number for the BasicsCard, however this is not a free service from mobile phones which are increasingly relied upon in Aboriginal communities.

Case Study 5

Marjorie from Ampilatwatja needs to contact Centrelink once a week to change her allocations. She often has to wait a long time on the phone. She does not have a landline in her home and so has to purchase a \$5 phone card each time she contacts Centrelink, which is generally used up by the end of the phone call. When the phone card runs out, sometimes mid-call, she has to borrow a relative's mobile phone. She also gets charged money each time she wants to check the balance of her BasicsCard if she calls on a mobile phone.

These are costs borne by every person that is income managed which are not imposed on non-income managed social security recipients.

Limits on Appeal Rights

Appeal rights in relation to the income management regime were initially expressly circumscribed; from the inception of income management in 2007 to 24 June 2009 Aboriginal people subject to income management were unable to access external appeal mechanisms available to all other Australians in relation to decisions made pursuant to Part 3B of the *Social Security (Administration) Act 1999*. CAALAS is not aware of any action taken by Centrelink to educate Aboriginal people subject to income management about the reinstatement of their appeal rights.

The appeal rights that were reinstated were not retrospective, meaning that decisions made prior to 24 June 2009 are unable to be challenged. Whilst the appalling deficit in the legislation was corrected, in practice, the amendment has had little impact as the breadth of the powers provided to Centrelink and the Government under the current (and proposed) income management regime provide extremely limited opportunities under which review can be sought. In practice, CAALAS estimates that there will be a limited number of Centrelink recipients who are able to seek successful review of decisions under the income management regime (leaving aside the issue that in our experience, the overwhelming majority of Aboriginal people in the Northern Territory are unaware that Centrelink decisions can be challenged).

For example, a person living in a declared relevant area who wishes to be exempted from income management on the grounds that income management is cumbersome and impractical, they are capable of managing their money, and their children are adequately provided for, have no effective avenue for relief under the legislation.

Restrictions on the exercise of freedom of personal movement

Income management has placed restrictions on the exercise of personal movement on an Aboriginal population that is highly mobile.

This restriction was particularly acute prior to the introduction of the BasicsCard, where a person traveling outside of their community would need to contact Centrelink in advance to have their income managed funds transferred from the store in their community to the store they were traveling to. Often there were delays in the transfer of funds which meant they were not available until the person had returned to their community and the funds had to be transferred back.

Impediments on freedom of personal movement have been alleviated to some extent by the introduction of the BasicsCard, however BasicsCard merchants are not widely distributed outside the Northern Territory. This continues to restrict Aboriginal people's ability to travel interstate to visit family, attend medical appointments, attend cultural ceremonies, and be present on traditional lands.

To spend quarantined money outside of the Northern Territory, Aboriginal people must contact Centrelink to advise where they will be travelling to, identify BasicCard merchants in the locality, and in the absence of a merchant, ask Centrelink to make a payment to a third party, such as a supermarket, motel or petrol station. This requires a high degree of forward planning and is a significant administrative burden on those who are income managed. Further, Aboriginal people who arrive interstate after hours or on weekends are unable to access a Centrelink call centre or customer service office to make the above enquiries and accordingly, people become stuck without access to their income managed funds.

Case Study 6

Roxanne, a client of CAALAS, travelled to South Australia to attend a funeral and was unable to use her BasicsCard. She contacted the ICC to find out where she was able to shop in South Australia. The closest BasicsCard merchant was some distance away from where she was staying. Roxanne tried to call the ICC again that day, but the ICC is closed after 5pm. Roxanne was unable to purchase food from her income managed funds which are explicitly quarantined for that purpose; she had to rely on family members for assistance.

Recommendation 13:

That the Government amend the *Social Security (Administration) Act 1999* to allow people travelling outside of declared relevant areas, 'disadvantaged areas' and where income management is not in place to have their income management suspended for the duration of their travel.

Impact on individual's capacity to manage their financial affairs

The rhetoric surrounding income management suggests that it will increase Aboriginal people's capacity to manage their financial affairs, however CAALAS lawyers are frequently confronted with Aboriginal people who do not know how their income managed payment is being allocated or how much money there is on their BasicsCard. Aboriginal people do not have ready access to this information beyond contacting Centrelink or via their income management statement.

Income management statements, which detail all allocations made to the BasicsCard and third parties, such as Housing Services, are only provided to Aboriginal people every quarter. This provides Aboriginal people with limited opportunity to check that they have received the correct amount of income managed funds, that their allocations have been actioned as directed and their expenditure.

We note that the BasicsCard Customer Terms and Conditions (**T&Cs**) state that BasicCard statements which set out all transactions made using the BasicsCard be sent to social security recipients every six months. The T&Cs suggest that social security recipients keep copies of all sales vouchers, dockets, receipts and transaction records in order to check the balance of the BasicsCard Account is correct. In practice, this means that Aboriginal people are only afforded the opportunity to reconcile their expenditure against a statement every

six months, unless they directly request a statement from Centrelink. This provides Aboriginal people with limited opportunity to check for unauthorised transactions or review their spending habits.

As control is placed in the hands of Centrelink and income management was rolled out without associated budgeting and case management services, income management in itself does not improve a person's financial literacy, understanding of budgeting, savings and money management, or their numeracy skills. While there are clear legislative provisions to allow income managed monies to be released in circumstances where a person's priority needs are being met,⁶¹ Aboriginal clients report difficulties negotiating the release of income managed funds with Centrelink.

CAALAS notes that there are a number of less invasive options that would achieve the same goals as income management, such as educating social security recipients about the availability of mechanisms like Centrepay, periodical payments, store accounts and savings accounts as a way of managing their finances.

Similarly, the imposition of income management has removed the incentive to innovate with ways to help vulnerable people keep their money safe. For example, the option of weekly or even daily payments has not been thoroughly explored, despite anecdotal evidence that it has proved effective where it has been used. CAALAS considers that these options can offer a more sustainable pathway to financial literacy and independence.

There is a severe lack of services in Central Australia, particularly in remote communities, that provide budgeting and financial literacy training to Aboriginal people. Further, as discussed above, there are an extremely limited number of financial counsellors in Central Australia who are able to assist Aboriginal people manage their finances.

100% income management of lump sums and advance payments.

Despite an advance payment being simply a forward payment on a person's Centrelink payment, 100% of an advanced payment is income managed. There is no clear policy rationale for doing so. As advance payments are generally granted to cover for unexpected expenses, advance payments at most should be 50% income managed. To do otherwise is unnecessary and unfair.

A number of CAALAS clients have raised concerns with the 100% income management of lump sums, such as the Baby Bonus. These concerns were also raised by participants at the NTER Redesign Consultations⁶², who indicated that the current policy is unnecessarily restrictive. As with advance payments, there is no clear policy rationale why lump sums are 100% income managed.

Recommendation 14:

That the deductible amount for advance payments and lump sums be set at 50%.

Payment of Fines

Currently, the payment of fines issued by Courts, police, or by other means is not listed as a priority need. Non-payment of fines can lead to license suspension, deregistration of vehicles and imprisonment. Historically, income managed funds could not be used to pay off fines and Aboriginal people were required to use their 'discretionary' income to pay for

⁶¹ Section 123YO, *Social Security (Administration) Act 1999*.

⁶² *NTER Redesign Consultation Report*, p 83, 238, & 259.

their fines. There has been a policy change which allows people to pay fines from their income managed funds (depending on the payment), but this has not been adequately communicated to Aboriginal people and Centrelink staff and is not reflected in the governing legislation.

CAALAS considers that the legislation be brought into line with Centrelink policy by including fines issued by the Court, Police or by other means as a priority need.

(b) Lack of evidence of efficacy of income management

The Government has previously committed to the development of Indigenous policy being “driven by one single criterion – evidence”, with all policy and decision making “to be based on thorough forensic analysis of the facts and the evidence”.⁶³

However, there is a lack of baseline data which provides evidence that income management is achieving its stated objectives. Currently, the Government is relying on anecdotal evidence to support the expansion of income management at a cost of \$350 million to the taxpayer.

The Government consistently makes statements about the ‘achievements’ and ‘benefits’ of income management that have no, or deficient, evidentiary bases.

For example, the Government has stated that as at 29 June 2009, 70% of the money spent through the Basics Card was expended primarily on food and 19.8% on clothing.⁶⁴ It has not accounted for the remaining 10.2% of expenditure and whether it was on priority needs items. It is unclear how the Government has arrived at these figures given that it is unable to itemise expenditure on the BasicsCard. As BasicsCards can be used to purchase a wide range of goods which are not categorised as a ‘priority need’ (for example, a person can purchase DVDs, video games and CDs at Coles or Woolworths with their BasicsCards), it is questionable whether these figures are accurate.

In a Media Release in December 2009, The Hon Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs (**the Minister**) cited the Australian Institute of Health and Welfare’s *Report on the evaluation of income management in the Northern Territory (AIHW Report)* as “add[ing] to existing evidence that demonstrates that income management is meeting the Government’s objectives of ensuring payments intended to benefit children are being used for that purpose, and mitigating some of the harmful behaviours present in communities”.

Whilst the AIHW Report states that those interviewed reported that children were eating more, that they were spending more on food and that there was less gambling, drinking and humbugging, the Minister failed to draw attention to the criticisms of AIHW itself regarding the efficacy of its report.

In the report, AIHW states:

*The research studies used in the income management evaluation (point-in-time descriptive surveys and qualitative research) would all sit towards the **bottom of an evidence hierarchy**. A major problem for the evaluation was the lack of a comparison group, or baseline data, to measure what would have happened in the absence of income management” (emphasis added).⁶⁵*

⁶³ Speech to National Press Club, Hon Jenny Macklin MP, 27 February 2008, as reported by ABC Lateline, “Govt to quarantine WA Indigenous welfare payments”, <http://www.abc.net.au/pm/content/2008/s2174480.htm>, (accessed at 29 January 2010).

⁶⁴ *Closing the Gap Report*, p 57.

⁶⁵ AIHW, *The Evaluation of income management in the Northern Territory*, p iv.

The AIHW Report was based on face to face interviews with 76 income managed Aboriginal people in four communities – a small sample size when compared with the 15,500 Aboriginal people who are income managed across 73 communities and wider prescribed areas including outstations and town camps. The approach and methodology was developed by FaHCSIA, who also managed the data collection. The AIHW Report was written by AIHW based on this data collection.

Troublingly, a large proportion of clients (30 participants, or 33%) could not explain the purpose of income management, calling into question the ability of these participants to attribute any of their actions (or those of their community) to the implementation of the income management regime.

It is disingenuous for the Minister and the Government to use such reports to suggest that income management is working to achieve the Government's aims. Claims based on the AIHW Report, such as "children are eating more and healthier" and "more than 65% of those surveyed viewed income management positively", are entirely misleading when viewed in light of the deficiencies in methodology shown in the AIHW Report. The views of 76 people in four communities cannot be extrapolated by the Government to evidence the success of the income management regime.

The Government also heavily relies on the *Final Stores Post Licensing Report (Final Stores Report)* which notes that its findings to be based on subjective observations, perceptions and opinions. Many of the surveys cited in the Final Stores Report were conducted within 12 weeks of income management being rolled out in the community.⁶⁶

The Final Stores Report concludes that "store managers overwhelmingly reported that income management had a positive effect on the store and the community". This conclusion is based only on the operators' "subjective observation perceptions and opinions of the situation in the community"⁶⁷.

The lack of evidence was acknowledged by the NTER Review Board which concluded that:

*Apart from some initial scoping data, there was little evidence of baseline data being gathered in any formal or organised format which would permit an assessment of the impact and progress of the NTER upon communities. The lack of empirical data has proved to be a major problem for this Review and is an area that requires urgent attention.*⁶⁸

The Minister has also stated that "income management is putting food in children's stomachs and clothes on their backs".⁶⁹

Whilst some reports suggest a direct correlation between income management and the increased consumption of healthy food, reports also suggest that increased turnover in healthier food consumption is the result of a plethora of factors other than income management. It has been noted that:

*Several stores have noted a change in the reduction of junk food purchased 'although a number of these operators explain this in terms of changes to sales policies by stores, rather than IM.'*⁷⁰

⁶⁶ *Final Stores Post Licensing Report*, p 3.

⁶⁷ *Final Stores Post Licensing Report*, p 3.

⁶⁸ *Report of the NTER Review Board*, p 16.

⁶⁹ Media Release, The Hon Jenny Macklin MP, 'BasicsCard sales top \$100 million', 2 September 2009, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/basicscard_2sept2009.htm, (accessed 3 February 2010)

New management, more effective business practices, and upgraded ordering technology are just a few of the factors which may have collectively contributed to the higher turnover. For the Government to credit income management as being the sole factor is both misleading and a weak justification for its continuation.

The Government has also failed to collect or provide comparative data analysing the health status of children that demonstrates whether individual health outcomes have improved following the introduction of income management.

We refer the Committee to Recommendation 1.

PART I – Proposed ‘Redesign’ of Income Management

The proposed changes to the income management regime will alter the basis upon which people in the Northern Territory are income managed and will extend the application of income management to, at first instance, all welfare recipients within the Northern Territory. Around 20,000 people will be income managed.⁷¹ The Welfare Reform Bill contains additional provisions that will allow income management to be imposed in other identified ‘disadvantaged areas’ across Australia.

The proposed ‘non-discriminatory’ regime targets 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”.⁷² The proposed regime has a plethora of objects⁷³ which resist measure and aim to change the “culture of welfare dependence”.⁷⁴

While both versions of income management attempt to engender behavioural change, the focus has changed from a protection of children and child welfare rationale, to a broader focus aimed at reducing welfare dependence through encouraging workforce and educational participation.

Along with the significant change in objects, the proposed changes transform what was presented to the Australian people as an “emergency measure” with a finite, legislated time period of five years to untested, radical reforms to the entire social security system for an indefinite period.

Although the promotion of ‘socially responsible behaviour’ within the objects of the current and proposed legislation regarding income management, the term ‘socially responsible behaviour’ is not defined; there are no objective means to determine whether an individual is acting in accordance with the objects of the legislation. In relation to the proposed scheme, the only ‘socially responsible’ welfare recipients are those that are engaged in employment or study; a person on Newstart who is actively looking for work and managing their finances is not considered to be ‘socially responsible’.

⁷⁰ *Final Stores Post Licensing Report*, p 3.

⁷¹ Media Release, Jenny Macklin MP, “Major welfare reforms to protect children and strengthen families” 25 November 2009 http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/welfare_reforms_protect_children_25nov2009.htm (accessed 29 January 2010)

⁷² Welfare Reform Bill, *Explanatory Memorandum Outline*.

⁷³ The objects of the proposed regime are outlined in section 123TB of the Welfare Reform Bill as such: to reduce immediate hardship and deprivation by ensuring that the whole or part of certain social security payments are directed to meeting the priority needs of the recipient of the welfare payment, their children, their partner and any other dependents they may have; to ensure that recipients of certain welfare payments are given support in budgeting to meet priority needs; to reduce the amount of certain welfare payments available to be spent on alcoholic beverages, gambling, tobacco products and pornographic material; to reduce the likelihood that recipients of welfare payments will be subject to harassment and abuse in relation to their welfare payments; to encourage socially responsible behaviour, including in relation to the care and education of children; and to improve the level of protection afforded to welfare recipients and their families

⁷⁴ Smith, Suzanne, ABC News Online, *Kid’s plight forces Macklin’s hand on income management*, 26 November 2009, <http://www.abc.net.au/news/stories/2009/11/26/2753970.htm> (accessed 29 January 2010)

(a) Proposed new income management categories

Under the Welfare Reform Bill, income management will be applied to social security recipients in the Northern Territory who fall into five categories:

1. **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;⁷⁵
2. **Long-term welfare payment recipients:** people aged 25 but below Age Pension age who have been in receipt of Newstart Allowance, Special Benefit or Parenting Payment for more than 52 weeks in the last 104 weeks;⁷⁶ and
3. **Vulnerable welfare payment recipients:** people assessed by a Centrelink social worker as requiring income management for reasons including vulnerability to financial crisis, domestic violence or economic abuse.⁷⁷

People who fall into these new categories will be subject to the same scheme of income management that currently applies in prescribed areas in the Northern Territory.⁷⁸

4. **Voluntary income management:** this is not a new category but has not been available in the Northern Territory. People on all payment types can opt into an income management category whereby:
 - 70 per cent of income is income managed;
 - the minimum period for income management is 13 weeks; and
 - for every 26 consecutive weeks spent on the scheme, participants will be eligible for a “voluntary income management incentive payment” of \$250 (which will be 100 per cent income managed).⁷⁹
5. **Child protection category:** this is again not a new category, but Government has indicated that this will now be used in the Northern Territory.⁸⁰ Under this category, people are subject to income management at the request of child protection authorities (in the NT, this is the Northern Territory Families and Children (**NTFC**)). Seventy per cent of fortnightly payments are income managed under this category.

CAALAS expresses concern at the drafting of the Welfare Reform Bill, in particular the lack of definition of key terms, such as ‘socially responsible’, ‘vulnerable welfare payment recipient’ and ‘financial vulnerability’. The Welfare Reform Bill also leaves substantial provisions to unenacted legislative instruments that have not been provided in draft form. This circumscribes CAALAS’s ability to comprehensively analyse the possible effects of the Welfare Reform Bill before the Committee.

⁷⁵ Item 36, proposed s.123UCB, Welfare Reform Bill.

⁷⁶ Item 36, proposed s.123UCC, Welfare Reform Bill.

⁷⁷ Item 36, proposed section 123UCA, Welfare Reform Bill and Minister for Families, Housing, Community Services and Indigenous Services, Second Reading Speech, Welfare Reform Bill, 25 November 2009, p 13.

⁷⁸ Section 123UB, *Social Security (Administration) Act 1999*.

⁷⁹ Item 63, proposed sections 47(1)(fa).

⁸⁰ See Australian Government, *Future directions for the Northern Territory Response: A community guide to the proposed changes*, December 2009, p 3.

There is provision in the Welfare Reform Bill for exemptions from the disengaged youth and long-term welfare payment recipient categories. The criteria for exemption differ significantly between those with and without dependent children.

Of the 15,135 people subject to income management in the Northern Territory at 27 March 2009, 10,284 were in receipt of Newstart Allowance, Parenting Payment or Youth Allowance.⁸¹ Of this group, it can be assumed that a substantial proportion will be captured the criteria for income management under the disengaged youth and long-term welfare payment recipient categories. A further small number of people on Special Benefit will also be captured.

This leaves 4851 people, of whom 3178 are age, carer or disability support pensioners. While those in this group will not automatically be subject to income management, they may be caught by the vulnerable welfare payment recipient categories. ABSTUDY, Widow's Allowance and Family Tax Benefit recipients make up most of the balance and they too may find themselves deemed among the vulnerable.

The intention of the new income management scheme proposed in the Welfare Reform Bill is 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.*⁸²

CAALAS strongly doubts the extent to which income management reform can achieve the above goals. Put simply, if there are limited jobs and limited access to remote education and training throughout Central Australia, and barriers to jobs and education remain, welfare dependency will not decrease.

Income management will not solve the problems of disadvantaged communities. In practice, the proposed measures will arbitrarily subject large numbers of Aboriginal people to continued income management solely by virtue of the fact that they have been Centrelink recipients for an extended period of time. For such individuals, exemptions from income management will not depend on a person's ability to manage money and meet their needs, but whether a person has 'engaged' in work or study.

CAALAS's overarching position is that the proposed compulsory income management regime is abandoned in favour of a voluntary and trigger based income management regime based on the recommendations of the NTER Review Board.

The NTER Review Board noted that there was general support for a scheme that allowed people to take up income management voluntarily, with limited imposition of compulsory income management where clear triggers existed "for those who had demonstrated in some way that they were not meeting their family or community responsibilities, especially if the wellbeing of children was at risk or if alcohol and drugs were being abused to the detriment of the community".⁸³

Recommendation 15:

That voluntary income management be enabled and that the Government only apply compulsory income management on the basis of child protection, school enrolment and

⁸¹ Figure extrapolated from Centrelink administrative referred to AIHW *Report on the evaluation of income management in the Northern Territory*, p 19.

⁸² Welfare Reform Bill, *Explanatory Memorandum*, p 14.

⁸³ *Report of the NTER Review Board*, p 21.

attendance and other relevant behavioural triggers in line with the NTER Review Board recommendation and that the determination of 'other relevant behavioural triggers' be made in genuine consultation with communities.

Recommendation 16:

That the proposed income management categories of 'vulnerable welfare recipient', 'long term welfare payment recipient' and 'disengaged youth' be abandoned.

(b) Transition to the new system

It is intended that there will be a staged transition to the new system in the Northern Territory.⁸⁴ Persons subject to income management under the current system "will be able to transition to the new scheme or seek to exit from the existing scheme *once the new scheme is operational in their area*" (emphasis added)⁸⁵. CAALAS is concerned that the transitional provisions will negatively affect those who are no longer required to be income managed.

The staged process will mean that some people who are entitled to full payments will be kept on the existing, discriminatory income management system for a period of as long as one year from the date of commencement of the new scheme.

Recipients of payments such as the Age Pension, Disability Support Payment and Carer Payment will not be subject to the new compulsory income management system. Such people should be entitled to apply immediately to Centrelink for a determination that they should not continue to be subject to the new income management regime.⁸⁶

CAALAS is also concerned about the effects of proposed transitory provisions on residual amounts left in the income management account of those who have moved off income management. Currently, the legislation allows for any credit balance (termed a 'residual amount') in a person's income management account to be paid in a lump sum (if under \$200) or otherwise in instalments if the Secretary is satisfied that a person is not likely to become subject to income management in the next 60 days. The fact that a person may be compulsorily income managed in the future should have no impact on their right to access and control their income as soon as they are no longer subject to income management.

Proposed amendments provide that where a person is receiving the residual amount in instalment payments, these payments will cease if the person again becomes subject to income management.⁸⁷ CAALAS can see no justification for restricting access to the residual amount where it has been decided that a person is not required to be income managed.

Recommendation 17:

⁸⁴ Welfare Reform Bill, *Explanatory Memorandum*, p 14.

⁸⁵ Welfare Reform Bill, *Explanatory Memorandum*, p 14.

⁸⁶ Such a determination would be made under Item 23(5)(b), Welfare Reform Bill.

⁸⁷ Proposed section 123WJA, Welfare Reform Bill.

That the requirement in the *Social Security (Administration) Act 1999* that the Secretary be satisfied that a person is not likely to become subject to income management in the next 60 days before paying any residual amount be removed.

Recommendation 18:

That the *Social Security (Administration) Act 1999* be amended to require the Secretary to immediately pay any residual amount as a lump sum directly to the social security recipient when a person ceases to be subject to the income management regime.

Recommendation 19:

If Recommendation 16 is not adopted, that

- social security recipients who do not fall within the ‘disengaged youth’ and ‘long term welfare payment recipient’ categories be entitled to exit from the existing income management regime as soon as the legislation commences.
- Centrelink should provide information to affected social security recipients so that they are aware of their entitlement to be removed from income management from the commencement date.

(c) Compulsory Income Management Categories

(i) ‘Vulnerable Welfare Payment Recipients’

The Welfare Reform Bill proposes to compulsorily income manage people that the Secretary determines are ‘vulnerable welfare payment recipients’.⁸⁸

‘Vulnerable welfare recipient’ is not defined in the Bill, although s 123UGA(2) provides that a determination should be made in compliance with any decision-making principals set out in a legislative instrument. Without a definition of “vulnerable” appearing in the Bill, CAALAS is unable to provide more fulsome comments regarding the impact of this category.

Role of Centrelink in determining ‘vulnerability’

In practice, it appears from the Second Reading Speech and Explanatory Memorandum that Centrelink social workers will make assessments regarding vulnerability based on reasons such as financial crisis, domestic violence or economic abuse.⁸⁹

Currently, Centrelink social workers perform the following functions:

- provide counselling and support to Centrelink customers with difficult personal or family issues;
- provide information about, or refer customers to, community support services; and

⁸⁸ Proposed s123 UGA, Welfare Reform Bill.

⁸⁹ Welfare Reform Bill, *Explanatory Memorandum*, p 13.

- help with claims for payments from Centrelink

Centrelink social workers assist:

- young people without family support
- people who have experienced or who are at risk of domestic or family violence
- people who have recently separated from a partner or experienced a bereavement
- people who are full-time carers of a child or an adult with a disability or severe medical condition
- people having difficulty with independent living
- people in financial crisis who may lose accommodation or essential services.

If Centrelink social workers are charged with determining 'vulnerability', CAALAS considers that people will be less likely to seek social work assistance from Centrelink as they will be at risk of becoming income managed as a result of disclosure of personal information.

We consider that this will undermine the vital role of Centrelink social workers and will have consequent negative impacts on the wellbeing of social security recipients.

Efficacy of income management of 'vulnerable' persons

We do not consider that compulsory income management will alleviate financial crisis or domestic violence; rather it will place additional administrative burdens on persons least able to shoulder them.

Full ability to manage any income can be particularly important to victims of domestic violence who are seeking to escape violence. Any restriction on a victim's use of social security payments may limit a victim's ability to travel or find alternative accommodation, exacerbated by the inflexibility of BasicsCard as outlined above.

In regards to persons from suffering economic abuse, we consider that existing mechanisms discussed above, such as Centrepay, can provide appropriate protections for people experiencing economic abuse.

Request to Reconsider Circumstances

CAALAS notes that proposed section 123UGA(8) enables a person subject to a determination that they are a 'vulnerable welfare payment recipient' to seek reconsideration of their circumstances and the variation or revocation of the determination. However, proposed section 123UGA(9) precludes a person from making such a request if they have already requested a reconsideration during the preceding 90 days. The Welfare Reform Bill's Explanatory Memorandum says that the right to request reconsideration exists "in addition to" review rights under Part 4 of the *Social Security (Administration) Act 1999*.

CAALAS is concerned that the reconsideration provision will delay a person's ability to move off income management in the event that their circumstances have changed.

Further, CAALAS doubts the necessity of section 123UGA(8) and is concerned that it will detract from social security recipients' awareness of their right of review under Part 4 of the *Social Security (Administration) Act 1999*, will exacerbate the lack current lack of awareness of appeal rights amongst our clients and Aboriginal people in general, and will lead to the

perception that the specific 'reconsideration' rights apply to the exclusion of rights under Part 4.

Recommendation 20:

If Recommendation 16 is not adopted:

- that a definition of 'vulnerable welfare recipient' be incorporated into the legislation which restrictively defines a 'vulnerable welfare recipient' as a person experiencing 'economic abuse' together with a definition of 'economic abuse'. These amendments must be released for comment prior to enactment;
- that the proposed section 123UGA(9) be withdrawn, allowing 'vulnerable welfare recipients' to exercise their appeal rights under Part 4 of the *Social Security (Administration) Act 1999* in the usual way;
- If the proposed section 123UGA(9) is not withdrawn, that the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 is to state that a right to request reconsideration of a determination under section 123UGA(9) in no way restricts rights of review made under Part 4 of the *Social Security (Administration) Act 1999*, specifically in relation to determinations of 'vulnerability'.

(ii) Disengaged Youth and Long Term Welfare Payment Recipients

A large proportion of those currently compulsorily income managed will be subject to continued income management due to meeting the definition of a 'disengaged youth'⁹⁰ or 'long term welfare payment recipient'.⁹¹

The Explanatory Memorandum to the Welfare Reform Bill states:

*The categories are chosen on evidence that indicates a range of negative outcomes for people with early or long term dependence on income support payments, including poor social and health outcomes and financial vulnerability, as well as the risks of long term exclusion and the intergenerational transmission of welfare dependency. Children growing up in these circumstances are also at high risk of poor outcomes.*⁹²

The Government has chosen to ignore the factors beyond income support payments which impact on social and health outcomes. This essentially characterises welfare dependence as a cause of poverty, not a manifestation of poverty.

Further, the categories of 'disengaged youth' and 'long term welfare payment recipient' and the exemptions set out below do not take into account a person's obligations under the current compliance regime. Since the lifting of Remote Area Exemptions in 2006, all persons in the Northern Territory in receipt of activity tested payments (eg Newstart, Youth Allowance) must engage in job seeking, training and other activities to remain qualified for their payments. If a person does not meet their activity requirements, their payment will be suspended and ultimately cancelled. If a person, despite meeting all activity requirements is unable to secure employment, then the imposition of income management will do little to change this circumstance. It appears that the Government believes that the majority of long

⁹⁰ Proposed s. 123UCB, Welfare Reform Bill.

⁹¹ Proposed s. 123UCC, Welfare Reform Bill.

⁹² Welfare Reform Bill, *Explanatory Memorandum*, p 13.

term welfare recipients are unwilling to work, rather than simply being unable to do so, despite their best efforts.

Case Study 7

Ned is 16 years old and had lived in Papunya his whole life. He completed year 8 at Papunya School. There are no schools in Papunya which provide post year 8 education so Ned had to move away from his family and community to attend Yirara College, a boarding school in Alice Springs.

Ned found it extremely difficult to be away from his parents, siblings and extended family. At the end of year 9, Ned was so unhappy in Alice Springs he decides to return to Papunya. Ned has not completed any further formal education and is now receiving Youth Allowance and regularly attends his Job Network Provider. Because of his low literacy levels, there are very limited job and educational opportunities.

He does not drink or smoke or gamble. He gets occasional CDEP work, when it is available, but it is not enough to amount for more than 15 hours per week. Ned continually seeks work in and around Papunya, but with no success. Despite Ned's best efforts to get a job, he is now subject to income management.

The ability for Aboriginal people in the Northern Territory to successfully apply for exemptions to compulsory income management will be circumscribed by the existing lack of opportunities for, and barriers to, employment and education.

(d) Exemptions to income management

(i) Persons without dependent children

There are two ways persons without dependent children who are considered to be long term welfare recipients or disengaged youth may be exempted from compulsory income management, as set out below.

- *Proposed section 123UGC(1)(b)(i) – full time student or New Apprentice at the test time*

A person will be considered a full time student for the purposes of the exemption if at the test time they are in receipt of Youth Allowance and undertaking full time study⁹³ or is a New Apprentice.⁹⁴

- *Proposed section 123UGC(1)(b)(ii) – work at the test time*

A person will be exempt from income management if during the preceding 12 month period, they have worked for at least 15 hours a week for at least 26 weeks on wages at or above the minimum wage.

In practice, the requirement to have worked for at least 15 hours per week to qualify for an exemption will disadvantage casual and seasonal workers, or workers who for a variety of other reasons (leave, study, training, illness, family responsibilities, cultural obligations) do not always work for at least 15 hours per week in the qualifying period.

Activities Specified by the Minister

⁹³ As defined in section 541B of the *Social Security Act 1991* (Cth).

⁹⁴ As defined in section 23(1) of the *Social Security Act 1991* (Cth).

Section 123UGC(1)(a) enables the Minister to specify, in a legislative instrument, activities which would qualify a person for an exemption.

CAALAS suggests that this exemption could be used to exempt people who are unable to fulfil the conditions of the exemption in s. 123UGC for example:

- people with caring responsibilities who are not eligible for Carer's Payment but whose caring responsibilities prevent them from accessing the above exemptions;
- CDEP participants. That the new scheme should not acknowledge their contribution to their community and their engagement in the workforce is manifestly unfair and at odds with Government's aim of encouraging engagement in social and economic activities;
- those who undertake voluntary work;
- part time students;
- part time or casual workers; and
- people undertaking a combination of the above activities.

Recommendation 21:

That the 15 hour requirement specified in section 123UGC(1)(iii) be averaged over the 26 week period to account for variations in weekly working hours.

Recommendation 22:

That CDEP, voluntary work, part time study, part time or casual work, caring responsibilities and combinations of these activities be specified by the Minister as activities allowing for exemption from income management under proposed section 123UGC. Any proposed legislative instrument should be released for public comment before it is made.

(ii) Efficacy of the exemption categories

CAALAS is concerned that, absent a broad casting of 'activities', Aboriginal people will not be able to take advantage of the exemptions due to the lack of educational facilities and employment opportunities in Central Australia and the Northern Territory.

CAALAS sets out the following evidence to illustrate the dearth of opportunities available to Aboriginal Central Australians in the educational and employment fields.

Employment opportunities

The Indigenous employment rate in the Alice Springs region (spanning from Kulgera to Ampilatwatja) is 31.7%. In the Tenant Creek region (Barrow Creek to Elliott) it is 33.5%.⁹⁵

An audit of employment opportunities for Indigenous people in 52 remote communities in the Northern Territory revealed the existence of only 2,955 real jobs across the 52 communities. According to the Audit Report, these positions were allocated across a reported population of 37,070 persons of which 2,722 were non-Indigenous.⁹⁶

In Alice Springs, the three dominant industries are government administration and defence, health and community services and retail trade. Whilst the Government's Labour Market Information Portal states that at any one time there is a minimum of 145 job vacancies in Alice Springs listed on the internet, the majority require a minimum of one years experience, professional skills and officially recognised qualifications, many requiring tertiary qualifications.⁹⁷

Non-Indigenous people are twice as likely as Indigenous people to have a non-school qualification (53% compared with 26%) and more than four times as likely to have a Bachelor Degree or above (21% compared with 5%) and twice as likely to have an Advanced Diploma or Diploma (9% compared with 4%).⁹⁸

Educational opportunities

The schools in the majority of remote communities in Central Australia offer little by way of post primary education. Community Education Centres exist in a minority of communities such as Utopia, Mutitjulu and Kintore. Generally, young people who wish to attend high school must move away from their family and community and enrol in a boarding school. Whilst the ABSTUDY scheme provides financial assistance for students who relocate for schooling, many young people in rural and remote Central Australia wish to remain in their community.

The lack of educational facilities means that many young people in Central Australia do not complete (and in many instances, do not start) secondary schooling.

Whilst the ABSTUDY scheme provides financial assistance for students who relocate for schooling, many young people in rural and remote Central Australia wish to remain in their community. With over 52% of the Aboriginal population in southern Central Australia aged 24 or under, young people are "regarded as the lifeblood of their communities by their families ... and are central to the ongoing vitality of unique Aboriginal identity."⁹⁹

Apprenticeship Programs

Lack of supervision by suitably experienced staff is a problem facing many apprentice programs in regional and remote areas. Many young people, whilst showing high skill levels

⁹⁵ Australian Government Labour Market Portal <http://www.workplace.gov.au/lmip/EmploymentDataNew/NorthernTerritory/> (accessed 4 February 2010)

⁹⁶ Local Government Association of the Northern Territory, *Audit of Employment Opportunities in Indigenous Communities in the NT*, 2006, available online at: http://www.workplace.gov.au/NR/rdonlyres/8ECC6349-A689-4685-A954-663A3E29D977/0/nt_FINALREPORT.pdf, accessed 1 February 2010

⁹⁷ <http://www.workplace.gov.au/lmip/EmploymentDataNew/NorthernTerritory/AliceSprings?cid=ESAEmploymentByIndustry|ESA|NTAS|ESA|anon|2006%20Census> (accessed 20 January 2010)

⁹⁸ AHRC, A statistical overview of Aboriginal and Torres Strait Islander peoples in Australia, Chapter 7 http://www.hreoc.gov.au/Social_Justice/statistics/index.html#Heading342 (accessed 26 January 2010).

⁹⁹ Fietz, P. A Good Practice Model For Youth Program Development in Southern Central Australia, Appendix A, Central Australian Youth Link Up Service, Submission to Senate Committee on Regional and Remote Indigenous Communities May 2008 p 54.

and interest with the practical aspects of their trade struggle with the theoretical components of the course due to limited literacy and numeracy

Apprentices are often required to travel to Tennant Creek or Alice Springs to complete learning modules away from their family, native language and other support. The high rotation of training staff creates a disruptive learning environment and deprives trainees of the opportunity to develop a long-term relationship with their trainers throughout the duration of their course.

Barriers to employment and education

Literacy and Numeracy

The fundamental barrier to Aboriginal people accessing the limited educational and employment opportunities in Central Australia is a lack of the necessary skills to do so. The Northern Territory Department of Education's *Learning lessons: An independent review of Indigenous education in the Northern Territory* noted many instances where Indigenous people wanted to access interesting, full-time, and well-paid jobs provided by willing employers, but were prevented from doing so by low literacy skills.

The Report details a submission from a major employer peak body which cites low literacy skills as the first, second, and third barrier inhibiting greater employment of local Indigenous people in their industry. Industry, union, denominational and Government agency submissions repeated the theme.¹⁰⁰

Literacy and numeracy is also identified by community stake-holders as one of the main barriers preventing Indigenous youth from completing middle and senior levels of schooling. In 2008 the apparent retention rate for Indigenous students from year 7/8 to year 12 was 46.5% compared to 75.6% for non-Indigenous students.¹⁰¹

Lack of training opportunities

The sanction based 'Earn or Learn' initiative introduced by the Government in July 2009 indicates that income management will not be an effective tool to address long term unemployment if there exists a lack of training and job opportunities in remote communities.

Whilst 'Earn or Learn' was designed to increase enrolments in senior schools and training programs, the practical application of this scheme has been limited due to:

- there being no training reasonably available; and
- a lack of capacity to undertake the training that is available (commonly due to literacy and numeracy deficiencies, remoteness and insufficient technology).¹⁰²

CAALAS has consulted with a wide range of Government and community service providers throughout Central Australia regarding education, training and employment opportunities accessible to the youth population. Whilst a range of programs and training opportunities are offered throughout Central Australia, many youth services are "ad hoc, irregular, and

¹⁰⁰ Northern Territory Department of Education, *Learning lessons: An independent review of Indigenous education in the Northern Territory*, Darwin 1999, p 18. CAALAS notes the age of this Report, but considers it still relevant to current circumstances.

¹⁰¹ Australian Bureau of Statistics (2009) *Schools, Australia, 2008*, Canberra, p4[http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/3D1C059F24BE9E80CA2575AE00273795/\\$File/42210_2008.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/3D1C059F24BE9E80CA2575AE00273795/$File/42210_2008.pdf), accessed 28 January 2010.

¹⁰² Welfare Rights Network, *Fact Sheet, Earn or Learn*, December 2009, http://www.welfarerights.org.au/Factsheets/fs_ear-or-learn.doc (accessed 24 January 2010).

based on the assumption that young Aboriginal people have the same aspirations, needs, and interests as mainstream Australian kids.¹⁰³

Furthermore, a report produced by the Department of Education and Training found that Indigenous graduates are less likely to be employed and more likely to be unemployed:

*What is clear is that training by itself may enhance employment prospects but it does not necessarily lead to meaningful employment.*¹⁰⁴

Whilst service providers in Central Australia commented to CAALAS that vocational training providers endeavour to visit communities every 6 weeks, a shortage of accommodation in communities places restrictions on when such visits can be made. In addition, training providers often set minimum enrolment numbers before commencing a program in certain areas preventing individuals from partaking in a program of their choice. On the other spectrum, local shires have expressed concerns about people getting certificates for training programs that people didn't complete.

There is very limited public access to computers in most remote communities.¹⁰⁵ This makes it impossible for students without access to a personal computer to keep up to date with course work between on-campus sessions or to enrol in distance education or online courses.

Lack of infrastructure & services

CAALAS considers that the conditions of infrastructure and support services in remote communities to be a significant impact on people's ability to engage in employment and education.

Christine Nicholls, former Principal of Lajamanu School for 10 years notes:

*And while I still believe that education is of key importance, after many years of engagement in this area, I've come to the realisation that the issues of housing, health and employment need to be equal, simultaneous and concurrent foci of Government and private attention before education can bring about real and lasting change. These are by no means autonomous fields.*¹⁰⁶

Many youth and training services throughout Central Australia attribute low participation rates in education and employment to the lack of ESL teaches and the endemic housing shortage:

*The desperate shortage of affordable housing in the Northern Territory is the single greatest problem facing the adult and training sector, It is difficult to support an individual into employment or education if they are not in safe, long-term accommodation.*¹⁰⁷

¹⁰³ Central Australian Youth Link Up Service, *Submission to Senate Committee on Regional and Remote Indigenous Communities*, May 2008.

¹⁰⁴ Northern Territory, Department of Education and Training "Understanding Us" Young People of Alice Springs and Employment Options, November 2008, p 18.

¹⁰⁵ See, for example, the discussion of Census data about internet access in Daly, "Bridging the Digital Divide: The Role of Community Online Access Centres in Indigenous Communities" CAEPR Discussion paper 273/2005.

¹⁰⁶ Nicholls, C. "Radical Hope: Correspondence", *Quarterly Essay*, Issue 36, 2009, p 93-102, p 94.

¹⁰⁷ Northern Territory Council of Social Services Inc, 2009-2010 Pre-Budget Submission, p 8, <http://www.ntcoss.org.au/sites/www.ntcoss.org.au/files/Pre-Budget%20Submission%202009-10%20Final.pdf> (accessed 2 February 2010).

It is of fundamental importance that essential services, namely housing, health, employment and education are accessible throughout the Northern Territory in a culturally appropriate manner.¹⁰⁸

Recommendation 23:

That the Government:

- invest in reducing barriers to employment and study by funding adult literacy and numeracy courses, developing community based employment, and addressing the causes of Aboriginal disadvantage.
- recognise and act on its positive obligation to provide appropriate and accessible options for work and study in remote communities.

(iv) Persons with dependent children

A person can gain an exemption from compulsory income management pursuant to section 123UGD(1) if at the test time:

- the person has one or more dependent children;
- that each child of school age is enrolled at a school and the child has no more than 5 unexplained absences in each of the 2 school terms ending immediately before the test time; or
- the child is being educated under an alternative schooling arrangement such as home schooling; and
- there are no indications of financial vulnerability in the 12 months prior.
- We draw the Committee's attention to the CAALAS and NAAJA's Joint Submission on Senate Community Affairs Committee on the Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) Bill 2008¹⁰⁹ and note that many of the issues raised in that submission are relevant to the Bill in question.

We acknowledge that there are a multitude of complex factors as to why children are absent from school and note that simple attendance at school does not guarantee improvement in educational outcomes; schools need to be properly resourced to do so.

We seek information on how the Secretary will be appraised of the information regarding enrolment and are concerned about potential privacy breaches as a result. We are also concerned that relationships of trust between parents and school staff will be impaired if it is conceived that the school is an agent in the decision to compulsorily income manage a person.

Financial Vulnerability

What Centrelink considers to be an indicator of financial vulnerability is not elucidated in the Welfare Reform Bill or in extrinsic material. The Explanatory Memorandum provides no

¹⁰⁸ Nicholls, C. Quarterly Essay, Issue 36, 2009, pg 96

¹⁰⁹ Available at:
http://www.aph.gov.au/Senate/committee/clac_ctte/soc_sec_vets_entitle_schooling_requirements/submissions/sublist.htm

guidance and merely states that this exemption criteria is “related to the provision of evidence of responsible parenting”.¹¹⁰

The Welfare Reform Bill provides for decision making principles in relation to financial vulnerability to be set out in a legislative instrument made by the Minister, however no draft legislative instrument has been made public. Without a definition of “indications of financial vulnerability” appearing in the Bill, CAALAS is unable to provide detailed regarding the impact of this category. We seek information and evidence from the Government regarding the assumed nexus between ‘financial vulnerability’ and ‘responsible parenting’.

The low level of security payments¹¹¹ means that social security recipients often require assistance from Centrelink to meet unforeseen expenses.

CAALAS is concerned that a person will be considered ineligible for an exemption because they have sought a hardship advance payment, an urgent payment or an advance payment in the 12 months before application. Social security recipients utilise such payments, often not because of poor financial management or any reasons of ‘irresponsible parenting’ but because of an unforeseen or unexpected event, such as a death, illness, accident or medical emergency.

We consider that raising social security payment rates as opposed to compulsorily income managing payments would do more to achieve a reduction of immediate hardship and deprivation for social security recipients.¹¹² It is imperative that the Government address this issue as a matter of urgency.

Recommendation 24:

That the proposed section 123UGD(1)(d) which allows the Secretary to refuse to grant an exemption to persons with dependent children on the basis that there were ‘indications of financial vulnerability’ in the previous 12 month period be abandoned.

Recommendation 25:

In the event that Recommendation 24 is not adopted, that a definition of ‘financial vulnerability’ be inserted into the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009, and made available for public comment before enactment.

Interaction with SEAM

The Government has not disclosed its intentions in relation to the School Enrolment and Attendance Measure (**SEAM**), currently being trialled at Hermannsburg and Wallace Rockhole in Central Australia.

SEAM allows for the suspension or cancellation of a parent’s social security payment if the parent does not enrol their children or the child does not attended school sufficiently. That is, if a parent cannot demonstrate that they are actively trying to improve their child’s school

¹¹⁰ Welfare Reform Bill, *Explanatory Memorandum*, p 14.

¹¹¹ Australian Council of Social Service, “Who is missing out? Hardship among low income Australians”, *ACOSS Info Paper* (December 2008).

¹¹² Welfare Reform Bill, section 123TB.

attendance and they do not have a reasonable excuse or special circumstance which prevents them from doing so, their income support payments may be suspended and then cancelled.

It is CAALAS's understanding that no suspensions or cancellation of payment have occurred at either of the Central Australian trial sites. The Government has not indicated how the continuation of SEAM will interact with the proposed income management regime and exemption category established at section 123UGD.

Activities for those with dependent children under school age

Section 123UGD(4) states that in relation to persons with children under school age, the Minister must specify the number and kind of activities that person or child participates in. The activities may relate to a child's intellectual, physical or social development as per section 123UGD(4).

Where the Minister is to specify activities (eg enrolment in pre-school or attendance at a health clinic for regular check ups), the Minister would need to ensure that all activities specified in the legislative instrument were available to residents of remote communities, town camps and those persons living in remote centres such as Tennant Creek and Alice Springs.

If those activities are not available, Aboriginal people will be prevented from accessing the above exemption.

Recommendation 26:

That the Minister consider the availability of activities 'relating to a child's intellectual, physical or social development' to residents of remote communities, town camps, outstations and those persons living in remote centres such as Tennant Creek and Alice Springs prior to their specification in a legislative instrument.

Inclusion in specified class

At this stage there has been no indication of the classes of people for whom it is envisaged section 123UGD(1)(iii) will be used. CAALAS requests clarification on the classes of people to which the Government intends to apply this provision.

Care of dependent children

We note with concern section 123GE which states that a child can be the dependent child of only one person at a time. In practice this means that only one parent can gain an exemption pursuant to section 123UGD.

The rationale for section 123GE appears to be based on a concept of parenting that assigns the duties to ensure a child or children attends school and management of the family finances in a socially responsible manner to only one person. In reality, that responsibility is often shared and it is manifestly unfair to arbitrarily limit access to section 123UGD to one person in circumstances where care is shared.

The section is in contrast to the provisions of Part 3C of the *Social Security (Administration) Act 1999*, which provides for the cancellation or suspension of a social security payment of the "schooling requirement person". In practice Part 3C is drafted to allow for the suspension or cancellation of the social security payments of both the mother and father of the child; all section 124B requires is that the child be a dependent child of the person.

Recommendation 27:

That the Welfare Reform Bill be amended to reflect that a 'dependent child' can be the responsibility of more than one person, and allow more than one person to apply for an exemption pursuant to proposed section 123UGD.

(v) Lack of evidence that sanction based systems work

There is no available Australian or international evidence which demonstrates that sanction based measures like those proposed in the Welfare Reform Bill will work to improve employment or educational outcomes for Aboriginal people in the Northern Territory.¹¹³

Campbell and Wright undertook a study of evaluations conducted on seven programs in the United States which linked a family's welfare payments to their children's satisfactory school attendance. They found that programs that did not simultaneously expand case management services did nothing to improve school attendance. Those programs which combined sanctions with case management, supportive services and positive financial incentives were found to have only limited positive results.¹¹⁴

Importantly, evaluations showed that it was case management rather than sanctions that was the most critical variable in determining attendance. Improvements observed were in increased enrolment rather than on improved rates of attendance, graduation or long-term economic well-being.¹¹⁵

There has been no discernable change in long term welfare dependence in the Northern Territory over the two and a half years income management has been in force, and indeed, the amount of people on income management has stabilised since August 2008.¹¹⁶ We consider that income management has been ineffective and will continue to be ineffective in addressing long term welfare dependence in the Northern Territory due to social and economic realities which the Government chooses to ignore.

There have been no evaluations of SEAM, the Western Australian child protection and voluntary income management trial, or the Family Responsibilities Commission provided to date. These evaluations would provide valuable insight into the effectiveness of the proposed regime.

(vi) Indirect discrimination

Under section 9(1A) of the RDA, indirect discrimination will occur where a term, condition or requirement is imposed *generally*, and this term, condition or requirement is *not reasonable* and has a *disparate impact* on people of a particular race.

CAALAS is concerned that while technically the redesigned income management measures will meet the requirements to be non-discriminatory, in practice the new income management measures will effectively amount to a form of indirect discrimination by virtue of the fact that they will target and affect Aboriginal people.

Many Aboriginal people in Central Australia and other remote parts of the Northern Territory will automatically fall within one of the new income management categories, and do not and

¹¹³ Larissa Behrendt and Ruth McCausland, "Welfare Payments and School Attendance: An Analysis of Experimental Policy in Indigenous Education," Jumbunna Indigenous House of Learning, University of Technology Sydney, August 2008, p 23.

¹¹⁴ David Campbell and Joan Wright, "Rethinking Welfare School-Attendance Policies", *Social Service Review*, March 2005, Volume 29, No 1.

¹¹⁵ Above n117, p 4.

¹¹⁶ *The Evaluation of Income Management*, p 17.

will not have the means available to them to meet the requirements to be exempted from income management.

As set out above educational and employment opportunities in Central Australia, and particularly in remote communities, are severely limited or non-existent. This has a twofold effect in relation to the potentially discriminatory nature of the 'long term welfare recipient' category. Firstly, Aboriginal people will be more likely to meet the definition of a long term welfare recipient, due to the lack of alternatives to receiving full income support. Secondly, Aboriginal people will be unable to take advantage of the exemptions for long term welfare recipients, due to the lack of employment and educational opportunities.

Similarly, the 'disengaged youth' category is likely to disproportionately impact on Aboriginal young people, particularly those in remote communities, due to the lack of higher secondary school providers, no (or minimal) educational and training facilities, and a lack of employment opportunities.

While CAALAS acknowledges that those living in remote communities may have a stronger claim to indirect discrimination in relation to the implementation of income management, we are concerned that other matters such as low school attendance and completion rates, low literacy and numeracy levels, and high levels of alcohol and drug dependencies represent severe barriers for Aboriginal people wishing to access the much wider range of employment and educational opportunities in 'urban' Central Australia.

CAALAS contends that the terms setting out the categories of income managed welfare recipients, and the conditions that must be met to access exemptions to income management cannot be considered to be reasonable having regard to the circumstances faced by Aboriginal people in Central Australia, and therefore constitute indirect discrimination.

In addition to our concerns regarding indirect discrimination, CAALAS is concerned that the redesign of income management does not work to alleviate the negative impact of the current income management regime on Aboriginal people's right to receive social security in particular and other human rights.

(e) Voluntary Income Management

The Welfare Reform Bill retains the option of entering into a voluntary income management agreement (**VIM agreement**) for those who will not be covered by the proposed categories for compulsory income management. CAALAS supports the option of voluntary income management and notes that there has been widespread expression of support for a voluntary option,¹¹⁷ but expresses concerns in respect to:

- The deductible amount for voluntary income management being set at 70%;
- The 13 week minimum time period; and
- The voluntary income management incentive payment.

The deductible amount

Existing s. 123XPA(3) of the *Social Security (Administration) Act 1999* provides that the deductible amount for voluntary income management is 70%, and that the Minister may specify a lower percentage in an instrument. There is currently no instrument in place, and no indication in the Bill or extrinsic material that this percentage will change.

¹¹⁷ *Report of the NTER Review Board*, p 20-21.

In practice, this will mean that people who are currently compulsorily income managed and choose to enter into a VIM agreement under the new system will have a significantly larger proportion of their social security payments income managed.

CAALAS can think of no legitimate reason why a person who volunteers to be income managed should be subject to a higher percentage. CAALAS considers that an amount of 50% or less would be preferable.

13 week minimum time period

The proposed amendments insert a new provision that mandates that a person cannot request to be taken off a VIM agreement unless it has been in place for at least 13 weeks.

Again, CAALAS can see no reason why a person who volunteers to be income managed should be subject to a minimum time period. CAALAS submits that a person should be able to cancel a VIM agreement at any time.

Voluntary income management incentive payment

For every 26 consecutive weeks a person remains on the voluntary income management scheme they will be eligible to receive a “voluntary income management incentive payment” (**Incentive Payment**) of \$250.¹¹⁸ The Incentive Payment will be 100% income managed.

As set out above, a voluntarily income managed person will have a further 20% of their social security payment income managed. CAALAS is concerned that the Incentive Payment does not adequately reflect the extra imposition placed on a person who volunteers for income management. The fact that the Incentive Payment is 100% income managed also belies its description as an ‘incentive’ or reward for voluntarily participating.

Case Study 8

Sadie lives at Anthepe Camp, south of Alice Springs. Sadie receives Disability Support Pension (with Remote Allowance) and is income managed under the current regime. \$345.05 goes to her income management account, and \$345.05 to her bank account per fortnight. Sadie likes having a portion of her DSP income managed, and enters into a voluntary income management agreement under the new regime. Now, \$483.07 goes to her income managed account, and \$207.03 to her bank account.

Centrelink did not explain to Sadie that the amount of money income managed would change. Sadie doesn't have enough money to pay for daily taxis to attend support services in town. Sadie says that if she knew how much money would be income managed, she would not have volunteered. Despite the difficulties she is having on voluntary income management, Sadie must wait 13 weeks before she can cancel her agreement.

There is a significant lack of understanding in communities about the operation of the income management system. For example, the NTER Review Board noted that when income management was implemented:

*People were required to master new, complex and often changing procedures with a minimum of information or explanation. This led to confusion and anxiety, especially because the vast majority of recipients speak English as a second language.*¹¹⁹

¹¹⁸ Item 61, proposed ss. 1061W in Welfare Reform Bill.

¹¹⁹ *Report of the NTER Review Board*, p 20.

It is imperative that such confusion and anxiety is avoided in the implementation of any new income management measures, in particular those measures that will change the status quo for an individual.

CAALAS is concerned that the higher deductible amount and the minimum 13 week voluntary income management period may not be properly communicated to social security recipients who request to be voluntarily income managed. This may mean that Aboriginal people used to the current income management system may volunteer to be income managed without fully appreciating the fact that the income managed percentage will change, and without being given the opportunity to make a proper assessment of the impact on their lives of having only 30% of their income freely available.

Recommendation 28:

That the deductible amount in relation to Voluntary Income Management be set at 50% or a different amount at the direction of the social security recipient.

Recommendation 29:

That the proposed amendment to section 123UO(1) preventing a person from requesting the termination of a voluntary income management agreement until the agreement has been in force for 13 weeks be abandoned.

Recommendation 30:

That Centrelink staff be compelled to comprehensively explain the voluntary income management scheme to Aboriginal people in a way that:

- emphasises the change in percentage amount;
- explains the difference in actual dollar amounts;
- explains the minimum time period of 13 weeks; and
- explains that the Incentive Payment is only available after 26 weeks and that it is 100% income managed.

(f) Child protection category

CAALAS notes that it has recommended the introduction of trigger-based income management, in line with widespread calls for such a system to be implemented.

However, we wish to qualify this recommendation in relation to the use of a child welfare notification trigger, given recent reports that the Northern Territory Families and Children (NTFC), which rests under the Department of Health and Families, is in crisis. Recent reports have indicated that NTFC is understaffed and lacks the capacity to undertake its core functions of protecting children at risk.¹²⁰

We consider that delegating to NTFC employees the additional function of determining when a person is to be subject to income management to be beyond the current capacity of NTFC and ask that the Government proceed with caution in activating this category in the Northern Territory. Further, the Western Australian child protection trials have not been evaluated and as such, the efficacy or otherwise of child protection categories is unknown.

The current legislation is silent on the decision making principles that should guide a NTFC employee in making a decision as to whether a person should be subject to the income management regime. We consider that this may lead to the arbitrary and unnecessary imposition of income management. Further, as the imposition of income management occurs on the provision of a written notice from a NTFC employee to the Secretary, it is difficult to see how a person would appeal the issue of such a notice within the current appeal mechanisms available to social security recipients.

There is no detail in the legislation as to the expiry period for a written notice, potentially allowing for a person to be subject to the income management regime at the behest of NTFC indefinitely.

Recommendation 31:

That the Government delay the activation of the child protection category until:

- The Northern Territory Families and Children (NTFC) stabilises; and
- sufficient detail is inserted in the legislation which outlines:
 - the decision making principles for NTFC employees in issuing a notice to the Secretary;
 - a maximum timeframe of 12 months for the expiry of the notice;
 - the ability to vary or revoke a notice; and
 - appeal rights in relation to the issue of a notice by NTFC.

¹²⁰ Natasha Robinson, *The Australian*, No safety net for children at risk in the NT, 6 February 2010, <http://www.theaustralian.com.au/news/nation/no-safety-net-for-children-at-risk-in-the-nt/story-e6frg6nf-1225826982569>, (accessed 7 February 2010)

(g) Matched savings scheme (income management) payment

Proposed Part 2.25E allows for a person subject to compulsory income management to apply to access a 'matched savings scheme (income management) payment'. Under the scheme, the Government will make a one off payment of the same amount of a person's savings (up to \$500). This payment will be 100% income managed.

To access the payment, a person must complete an 'approved course' (to be approved by Centrelink, on decision making principles to be set out in a legislative instrument) and demonstrate to Centrelink that they have maintained a pattern of regular savings in their personal bank account for a period of at least 13 weeks.

CAALAS is concerned that the Government has again left substantial aspects of the scheme to a legislative instrument, giving little guidance as to what will constitute an 'approved course' and 'a pattern of regular savings'.

As set out above, financial counselling and money management courses are in short supply in Central Australia and particularly in remote communities. CAALAS is concerned that, due to an inability to access an 'approved course', many Aboriginal people will be precluded from accessing the matched savings scheme.

The lack of guidance as to what will be deemed a 'pattern of regular savings' raises questions as to what income managed people will be expected to demonstrate in order to fulfil this criterion. When considered in light of the low rate of social security payments,¹²¹ CAALAS believes many social security recipients will find it difficult to save money as well as meet their basic needs. CAALAS questions whether this one off payment will encourage any change in budgeting or savings habits.

Like the voluntary income management incentive payment, the fact that the matched savings (income management) payment is 100% income managed, can only be applied for once, and may be as little \$50 belies its characterisation as an 'incentive'. CAALAS suggests that a more long-term initiative, with planned goals, educational support and real incentives would more readily "assist those on compulsory income management to improve their financial literacy".¹²²

Recommendation 32:

That in relation to the 'matched savings scheme (income management) payment':

- qualification requirements for the payment should be clearly set out in the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009, including a definition of 'pattern of regular savings' and 'approved courses'; and
- The Government ensure the availability of 'approved courses' in all communities and remote centres to ensure that all social security recipients are able to access the matched savings (income management) payment scheme.

¹²¹ For further information, see Australian Council of Social Service, "Who is missing out? Hardship among low income Australians", *ACOSS Info Paper* (December 2008).

¹²² Welfare Reform Bill, *Explanatory Memorandum Outline*.

PART J - HUMAN RIGHTS CONTEXT

The ostensible reason for the previous Government's implementation of the NTER measures was in order to protect the rights of Aboriginal children as per its obligations under the *Convention on the Rights of the Child*,¹²³ despite the measures clearly impacting on the right to non-discrimination (amongst others). This was justified as being appropriate, in the context of the emergency response, when the obligation to protect the rights of the child was 'balanced' against the obligation to eliminate all forms of racial discrimination.¹²⁴

As the Aboriginal and Torres Strait Islander Social Justice Commissioner noted in the *Social Justice Report 2007*, "it is not appropriate to claim that discriminatory measures are justified as they have been 'balanced' against the objective of protecting children from violence".¹²⁵

While the reinstatement of the RDA will go some way to alleviate the discriminatory nature of the NTER regime, the proposed NTER redesign still raises a wide range of human rights issues, including equality before the law, non-discrimination and special measures; the rights to be free from violence and abuse; and the rights to effective participation in decision-making and self-determination.¹²⁶ Specific rights, such as the right to health, education, an adequate standard of living, and to social security are also impacted by the current and proposed NTER legislation.

The Government has failed to acknowledge that human rights are universal and indivisible; this indivisibility means that all rights are of equal importance – there can be no hierarchy of rights or determination of some rights as being more or less important than others. A Government cannot, therefore, favour the enjoyment of one right over another or justify restrictions on particular rights by stating that it is furthering another right.¹²⁷

It is imperative that the Government ensures that any measures introduced to meet Australia's human rights obligations themselves respect and uphold human rights. It is disingenuous to suggest that to do so is not possible, and that rights can be 'balanced' against each other.

(a) Human Rights and Income Management

The income management regime raises concerns in relation to Australia's obligations to protect and uphold the right to social security as set out in the Article 9 of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*¹²⁸, which recognises the right of everyone to social security. The ICESCR requires state parties to refrain from engaging in any practice or activity which denies or limits equal access to adequate social security.

This right is further articulated in the *Universal Declaration of Human Rights*, which states at Article 22 that "everyone, as a member of society, has a right to social security" and, at Art 25(1), that "everyone has the right to...security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his

¹²³ Northern Territory Emergency National Response Bill 2007, Explanatory Memorandum, p 76.

¹²⁴ Senate Standing Committee on Legal and Constitutional Affairs, *Report on Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory national emergency response*, August 2007.

¹²⁵ *Social Justice Report 2007*, p 250.

¹²⁶ These broad thematic areas were identified in the *Social Justice Report 2007*, p 238.

¹²⁷ Article 5, *International Covenant of Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force on 23 March 1976)

¹²⁸ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976)

control". The *Convention on the Rights of the Child* also recognises the right of children to benefit from social security¹²⁹.

The right to social security offers protection to the most vulnerable members of society, by guaranteeing that everyone is provided with the minimum goods and services to ensure a dignified life. This right and the right to an adequate income are necessary to ensure the realisation of other human rights including the right to health, sufficient food and water, education, housing and participation¹³⁰.

The Australian Human Rights Commission notes that, where income management measures are established by law, the measures should ensure that human rights are enjoyed equally by all racial groups, as required by section 10 of the *RDA*¹³¹.

CAALAS is concerned that the quarantining of social security payments will continue to have ramifications for Aboriginal people's enjoyment of other inalienable human rights, in particular the right to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions¹³².

Part K – Other models

In the second reading speech to the Welfare Reform Bill, Minister Macklin states:

To assist future decision making, the Government will also be offering a limited number of interested Aboriginal communities in the Northern Territory the opportunity to consider the development of an additional community-based approach to re-establishing social norms, drawing on the learnings from the Cape York welfare reform trial.¹³³

CAALAS notes that the proposed legislative scheme before the Committee provides no opportunity for a scheme similar to the Cape York trials to operate in the Northern Territory.

Part L – Other legislative changes

(a) ***Proposed s. 123WL(3) – Payment of Residual Amounts in income management accounts of deceased persons***

Under the current system, Centrelink can direct any residual amount towards funeral expenses, and can reimburse others who have incurred the expenses. Centrelink policy is, however, that funeral expenses are to be limited to:

the expenses incurred directly in relation to the deceased individual (such as funeral parlour fees, the cost of a casket, and the transport costs in relation to the

¹²⁹ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1249 UNTS 13 (entered into force on 2 September 1990)

¹³⁰ Freedom Respect Equality Dignity: Action – NGO Submission to the UN Committee on Economic, Social and Cultural Rights, April 2008, <http://www.hrlrc.org.au/files/MP9JMGYX55/Final.pdf> accessed 29 January 2010, p 71.

¹³¹ AHRC *Draft Guidelines*, p5.

¹³² Article 11(1), *International Covenant on Economic, Social, and Cultural Rights*.

¹³³ Macklin, Jenny, Minister for Families, Housing, Community Services and Indigenous Affairs, Social Security and other Legislation Amendment (Welfare Reform and Reinstatement Of Racial Discrimination Act) Bill 2009, Second Reading Speech, House of Reps Hansard, 25 November 2009; <http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/2009-11-25/0046/hansard_frag.pdf;fileType=application%2Fpdf>.

deceased etc), rather than to expenses incurred by people in attending the funeral, cultural activities or a wake.

Funeral expenses are often a significant and reoccurring cost for Aboriginal families. Cultural obligations often mean that families and communities are obliged to make financial contributions to assist with the high costs associated with transporting family members, who are located throughout the Northern Territory. Often the funeral service can last many weeks, and financial assistance is needed to support those who are visiting the community for that period.