SUBMISSION TO SENATE COMMUNITY AFFAIRS COMMITTEE INQUIRY INTO

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

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

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

NATIONAL WELFARE RIGHTS NETWORK

FEBRUARY 2010

National Welfare Rights Network

The National Welfare Rights Network (NWRN) is an incorporated national peak body representing Welfare Rights Centres throughout Australia. NWRN's members are specialists in Social Security law and policy and its administration by Centrelink and provide direct advice, assistance and representation to clients on a daily basis facing Social Security and Centrelink related problems. The NWRN draws on this daily casework experience to analyse systemic problems and trends, legislation and service delivery issues and raises these with Centrelink, relevant Government Departments and Ministers in order to achieve reform and a better system for all.

Based on the experience of clients of NWRN members, the Network also undertakes research and analysis, develops policies and position papers, advocates for reforms to law, policy and administrative practice and participates in campaigns consistent with its aim to reduce poverty, hardship and inequality in Australia and to build a fair, inclusive and sustainable Australia underpinned by a comprehensive, rights based Social Security safety net for all.

The NWRN advocates that the Social Security system in Australia should be characterised by an uncompromising recognition of the following rights:

- the right of all people in need to an adequate level of income support which is protected by law;
- the right of people to be treated with respect and dignity by Centrelink and those administering the Social Security system;
- the right to accessible information about Social Security rights and entitlements, obligations and responsibilities;
- the right to receive prompt and appropriate service and Social Security payments without delay;
- the right to a free, independent, informal, efficient and fair appeal system;
- right to an independent complaints system;
- the right to independent advice and representation; and
- the right to natural justice and procedural fairness.

Our submission to this review has been informed by the casework experience and Social Security expertise of our 14 community legal centre members throughout Australia. This is particularly relevant in light of the planned changes to the Social Security Appeals Tribunal (SSAT) which is an aspect of this current inquiry.

Our submission also draws on the findings of a scoping project to the Commonwealth Attorney General's Department that NWRN undertook in partnership with the National Association of Community Legal Centres. The scoping study was designed to determine how

best to support the service delivery of legal services in the Northern Territory dealing with Welfare Rights issues arising out of the Northern Territory Emergency Response (NTER). This involved an analysis of the actual experience on the ground of these measures. As a result of this scoping project funding was provided by the Commonwealth Attorney General's Department initially for 2008/2009. This has now been extended for the next four years to place four Welfare Rights workers in the Northern Territory with the Aboriginal and Torres Strait Islander Legal Services (ATSILS) to address the wide range of income quarantining and related Welfare Rights issues because of the NTER.

Since the commencement of this project, NWRN has provided active ongoing support to the Welfare Rights workers from Darwin Community Legal Service (DCLS), Northern Australian Aboriginal Justice Agency (NAAJA) and Central Australian Aboriginal Legal Aid Service (CAALAS) who are working with those impacted by the NT Intervention on the ground. These workers have also encountered the impact of the initial trials of the Schooling Enrolment and Attendance Measures (SEAM) in six Indigenous communities in the Northern Territory, which commenced from 2009. Over the last eighteen months NWRN has actively pursued issues raised by the NT Welfare Rights workers in its lobbying and law reform activities with Government to address both practical service delivery, as well as legislative and policy issues which have presented as a result of the on the ground experience in the Northern Territory.

Apart from the experience gained of the impacts of income quarantining and SEAM in the Northern Territory our member centres have worked with those affected by other elements of "Welfare Reform" including specifically the current trials being conducted in the Cape York involving the Queensland Family Responsibilities Commission and in Western Australia with Child Protection and Voluntary Income Management. Additionally at the start of the 2010 school year, a further trial of SEAM has recently commenced in its first metropolitan and non Northern Territory site in Logan in Queensland.

Introduction

NWRN welcomes the opportunity to provide a submission to the Senate Community Affairs Committee in relation to the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*, *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009*, and *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009*.

In our submission to this inquiry, the NWRN will address provisions of the legislation, which fall within our specialist area of Social Security and Family Assistance law.

Outline of the Bills

The *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009* was introduced to Parliament on 25 November 2009 and incorporates a range of measures, which include:

- Repeal of the existing NT Income Management category "the old NT measure" with transitional arrangements to move people on the old NT measure to the new scheme or off income management by 1 July 2011 (within 12 months of the commencement of the new scheme);
- New model of income management to be implemented initially in the Northern Territory (in urban, regional and remove areas) from 1 July 2010 "aimed at supporting disengaged and vulnerable welfare recipients in the most disadvantaged locations across Australia" [1] with future national roll out subject to the findings of an evaluation progress report expected in 2011/12;
- Income management model to include three new income management categories:
    - Category 1: Disengaged youth ('under 25s'): 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.
    - Category 2: Long term welfare payment recipients ('over 25s'): people aged 25 but below Age Pension age who have been in receipt of Youth Allowance, Newstart Allowance, Special Benefit or Parenting Payment for more than 52 weeks in the last 104 weeks; and
    - Category 3: Vulnerable welfare payment recipient: people assessed by a Centrelink Social Worker as requiring income management for reasons including vulnerability to financial crisis, domestic violence or economic abuse.
- Limited exemptions provided for disengaged youth and long term welfare payment recipient categories related to meeting study/employment criteria for people without dependent children and for people with dependent children meeting 'responsible parenting' criteria;
- Existing Child Protection Income Management category and Voluntary Income Management to be rolled out in the Northern Territory;
- Introduction of a Voluntary Income Management Incentive Payment of $250.00 to encourage people to enter into and remain subject to voluntary income management agreements for at least 26 weeks; and
- Introduction of a one-off Matched savings scheme (income management) payment for people subject to compulsory income management and who undertake an

[1] *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009, Explanatory Memorandum*, p1-2

approved financial management or money management course and accumulate savings.

The *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009* was introduced to Parliament on 25 November 2009 and incorporates a range of measures, which include:

- Queensland Family Responsibilities Commission: Extend the payments which can be income managed under this income management category to Age Payment and Carer Payment;
- General income management provisions: Restrict the payment of unpaid amounts in a person's income management account on the person again becoming the subject of income management and widen the options to facilitate the payment of the residual balance in a person's income management account after their death;
- Social Security Appeals Tribunal (SSAT): make procedural changes to the Tribunal including extending its powers to enable it to convene a pre hearing conference for Social Security and Family Assistance law appeals and if the parties reach an agreement empower the Tribunal to make a decision in accordance with that agreement under the banner *"improving the operation of the SSAT across its social security, family assistance and child support jurisdictions"* [2];
- Disposal of assets (gifting provisions): Amend Division 2 of Part 3.12 of the *Social Security Act* (Disposal of assets provisions) to clarify that deprivation should not apply where the disposed asset or consideration for the value of the asset is returned to the person. The proposed amendments also extends to any portion of the asset that has been reacquired;
- Private trusts: Amend the controlled private trust provisions in Part 3.18 of the Social Security Act in light of the Full Federal Court decision in *Secretary, Department of Families, Housing and Community Services and Indigenous Affairs v Elliot* [2009] FCAFC 37 (24 March 2009) and the decision of *Cocks; Secretary, Department of Family and Community Services* [2002] AATA 1179 (1 November 2002) regarding the requirements for an individual to pass the control test in relation to a controlled private trust;
- Baby Bonus and Family Assistance law: Introduce a new requirement for an individual to notify if a child for whom the baby bonus is paid leaves the individual's care within 26 weeks beginning on the day of the child's birth or the day the child is entrusted to care and address a current anomaly in Family Assistance law for claimants who are income support payment recipients and are not entitled to Family Tax Benefit based on an estimate because of the application of the new section 32AE

[2] *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 Explanatory Memorandum*, p.1

by removing the requirement for them to make an instalment claim with their past period claim for Family Tax Benefit in order to be paid for the past period; and

- Consequential amendments and redundant provisions: Make consequential amendments to maintenance income definitions in the Family Assistance Act flowing from the Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008 and make amendments to the Social Security law to repeal redundant provisions and references and to correct certain cross references.

The *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009* was introduced to the Senate on 29 0ctober 2009 and incorporates a range of measures, which amends the *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory Territory National Emergency Response and Other Measures) Act 2007, Northern Territory National Emergency Response Act 2007 and Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* so that:

- Provisons of the *Racial Discrimination Act 1975* prevail over those Acts;
- Those Acts do not authorise conduct inconsistent with the *Racial Discrimination Act 1975*;
- Those Acts and any acts done under them 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 *Racial Discrimination Act 1975.*

Inalienability of Social Security Entitlements and Evidence Base

From the outset, NWRN wishes to express its opposition to major elements of the Bills before this committee as it provides for an expansion of Income Management, which breaches well established principles of Social Security and Family Assistance law based on the inalienability of these entitlements, subject to limited exceptions. Section 60 of the *Social Security (Administration) Act 1999* provides principal protection of a person's legal right to receive a Social Security payment where they are qualified and entitled to the payment. Inalienability enshrines the person's legal right to the payment, as it cannot be given to someone else. The principle gives legal force to the intention that the payments are designed to provide income support.

The Minister for Families, Housing, Community Affairs and Indigenous Affairs in her second reading speech set out that this legislation:

introduces landmark reforms to the welfare system which, over time, will see the national roll out of a new scheme of income management of welfare payments in disadvantaged regions across Australia. Income management is a key tool in the Government's broader welfare reforms to deliver on our commitment to a welfare system based on the principles of engagement, participation and responsibility. [3]

NWRN has been critical since legislation to permit income management was first passed in 2007 that there is no evidence base to support that income management schemes work. Further we question how the planned rollout of income management will address the issues which the Government has called "the destructive, intergenerational cycle of passive welfare".[4]

NWRN argues that rather than being passive that the current welfare system includes significant requirements and obligations and financial penalties for recipients particularly those with participation or "earn and learn" requirements which includes most who are in receipt of working age payments. Additionally making welfare payments somehow conditional upon moral or behavioural imperatives harks back to a system of income support from another era, such as when the Age Pension was first introduced in 1908 which excluded "Asiatics (except those born in Australia), or aboriginal (sic) natives of Australia, Africa, the islands of the Pacific or New Zealand" and required "that he (sic) is of good character". [5] At a time when the Government has prioritised and embraced a social inclusion agenda it is a slippery slope that the Government is taking us on with this Bill by further excluding some of the most disadvantaged within our community.

NWRN notes as a further concern that the stated objectives for the new income management measures, as set out in the Bill, are general in nature and provides no specific targets or criteria against which the effectiveness of the proposed model is to be assessed. The objectives include amongst other things, the goal of reducing immediate hardship and deprivation by ensuring that Social Security payments are directed to meeting priority needs and to reduce the amount of certain Social Security payments available to be spent on alcoholic beverages, gambling tobacco products and pornographic material.

Yet as far as NWRN is aware there is no quantitative data available on how Social Security payments were directed prior to income management or whether the groups targeted under this proposed scheme are less likely to meet these objectives. In our experience, the vast majority of Social Security recipients budget effectively to meet their and their families' essential needs (housing, clothing, food etc) surviving on very low incomes.

[3] The Hon Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, *Second Reading Speech*, *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*, 25 November 2009

[4] Ibid

[5] Wilson, J, Thomson, J & McMahon, A, 1996, *The Australian Welfare State: Key Documents and Themes*, MacMillan Education Australia Pty Ltd, South Melbourne.

The Australian Institute of Health and Welfare in its report on the evaluation of the income management category introduced as part of the Northern Territory Emergency Response (NTER) highlighted the lack of comparison data as a major problem for the evaluation. [6] The lack of empirical data was also cited as a major problem for the NTER Review Board. [7]

NWRN is concerned that from a qualitative perspective the evidence base has relied too heavily on statements made to the Minister during visits to communities. What happens to those who do not have an opportunity to mix with the Minister and express their views on the NTER. Additionally an over reliance on surveys conducted with Community Store Owners and Government Business Managers conducted by FaHCSIA would be of questionable value as an evidence base. Both of these parties have a clear vested interest in the continuation of an Income Management Regime in the Northern Territory. The NTER has become big business for some and Commmunity Stores would be loath to lose their monopoly or captive market as a result of a discontinuation of income management.

Rather than embark on wholesale income management the path the Government must instead travel is to provide support, services and solutions that deal with the problems which lead to ill health, addiction, homelessness, disadvantage, social exclusion, poverty and unemployment. Unproven, expensive and ill-conceived policies that penalise and stigmatise vulnerable income support recipients is not the response we need to overcome disadvantage and poverty in this country.

Consultation

A justifiable criticism made in relation to the initial introduction of the NTER was that there was no consultation with Indigenous communities prior to the former Government's introduction of the range of provisions permitted under the intervention. The Minister has argued that the Government consulted with Aboriginal people in the Northern Territory in relation to their "Future Directions Discussion Paper" and states that the "consultations were unprecedented in scale and conducted intensively over more than three months." [8] However, a number of flaws in the process have been identified relating to the lack of Indigenous involvement in its design, the absence of interpreters, insufficient notice of the consultations, inadequate explanation of the NTER measures and the belief that the consultations were undertaken as a means to justify predetermined decisions. [9] Whilst more

[6] Australian Institute of Health and Welfare, *Report on the evaluation of income management in the Northern Territory*, 20 August 2009 at page iv.
[7] NTER Review Board, *Northern Territory Emergency Response – Report of the NTER Review Board*, October 2008, p16
[8] The Hon Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, *Second Reading Speech*, *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*, 25 November 2009
[9] The Hon Alastair Nicholson AO RFD QC, Larissa Behrendt, Alison Vivian, Nicole Watson and Michelle Harris, *Will they be heard – a response to the NTER consultations June to August 2009*, Research Unit, Jumbunna Indigenous House of Learning, November 2009

than 500 meetings were held, no information has been forthcoming regarding the numbers who actually participated in these meetings. [10] Additionally, the Final Report on the NTER Redesign Engagement Strategy and Implementation commissioned by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) to scrutinise the engagement process of Tier 2 and Tier 3 consultations highlights some deficiencies in the consultation and engagement process with those to be impacted by the new changes including not explaining future plans for income management where there was criticism of NTER income management. [11]

Apart from research conducted on the consultations, NWRN questions the approach used by FaHCSIA for the consultations and feedback from those working directly in affected NTER communities. There have been reports of the following issues:

- appropriate interpreters not always available at meetings;
- feedback was only provided through meetings with FaHCSIA and particularly the Government Business Managers;
- many of those in attendance at meetings were workers and not subject to income management;
- little or no notice of meetings;
- meetings not advertised well for example by radio;
- not all communities were represented;
- people not being aware of the purpose of the consultation;
- inadequate advice to encourage people to register for workshops (including that there was financial support available to assist attendance at meetings);
- the concern that those attending the meetings were handpicked; and
- the location of the meetings in 6 central and 6 Top End sites meant many affected by Income Management unable to provide feedback. [12]

Income Management a further model

The new national income management categories contained in the Bill seeks to repeal the current NTER Income Management Category from 1 July 2010 permitting a 12 month transition from the old to a new system of income management. The new income management categories will apply to “disengaged youth”, “long term income support recipients” and “vulnerable income support recipients”. The new income management categories will be rolled out in the first instance in the Northern Territory in urban, regional and remote areas as it contains “the highest proportion of severely disadvantaged

[10] Ibid
[11] Cultural & Indigenous Research Centre Australia, *Report on the NTER Redesign Engagement Strategy and Implementation – Final Report*, September 2009
[12] Feedback provided to and observations of NT Welfare Rights Outreach Project Workers during period of consultations.

communities in Australia." [13] With the changed targeting for income management, those impacted by the former two income management categories will be on working age payments whereas the category of "vulnerable income support recipients" could include individuals across the sprectrum of Centrelink welfare payments.

Whilst there is some limited capacity for exemptions from the coverage of the new income management categories NWRN would question the broad applicability for both "disengaged youth" and "long term income support recipients" gaining exemptions. The grant of exemptions for these specific categories (with the exception of parents) is linked to participation in education and employment, which may not be as available in some remote and rural locations where this regime will be in force. For parents within these two categories to gain exemption from income management it is necessary to prove "parental responsibility".

Child Protection Income Management in the Northern Territory

Concomitantly as these new categories of income management are being rolled out in the Northern Territory another of the original national income management categories is to begin with the commencement of Child Protection Income Management in the Northern Territory. There does not need to be any additional legislative change to commence Child Protection Income Management as it is permitted once the Minister declares that "the State or Territory is a declared child protection State or Territory". [14] The commencement of Child Protection Income Management in the Northern Territory is also to occur prior to the completion or the provision of any evaluation of the first trials of this income management category conducted in metropolitan Perth and the Kimberley in Western Australia.

The Western Australian trials have followed a cautious approach, which was underpinned firmly by an intensive case management approach undertaken by the WA Department of Child Protection. As part of the case management approach it was a priority for there to be a range of support services provided to ensure that the family subject to Child Protection Income Management was assisted in addressing issues, which affected their capacity to care for their children. In a recent Ministerial and Departmental briefing it was suggested that the same cautious approach of intensive case management may not be taken in the Northern Territory. [15] If this were to occur the NWRN has major concerns as to whether the model of Child Protection Income Management to be introduced in the Northern Territory

[13] The Hon Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, *Second Reading Speech*, *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*, 25 November 2009

[14] Section 123UC of the *Social Security (Administration) Act 1999*

[15] Ministerial and FaHCSIA Departmental Briefing for NWRN and other Community Organisations on Welfare Reform, December 2009

will provide the requisite supports and services to families to address issues which brought them under this regime.

Incentive Payment for Voluntary Income Management

Apart from the new income management categories, the Bill includes financial incentives by way of a Voluntary Income Management Incentive Payment of $250.00 to those who have been on a Voluntary agreement for 26 weeks. This provision will provide a financial inducement for those who have been subject to Compulsory Income Management, as part of the NTER (who will not come within the new Income Management Categories), to go onto Voluntary Income Management in order to qualify for the bonus. Additionally qualifying for additional bonuses every 26 weeks may provide reason for continued agreement to Voluntary Income Management even where the individual may prefer not to be involved with income management per se. According to the ordinary meaning of voluntary is that in law it is "made without return in money or or other consideration." [16] NWRN would question as to whether the financial incentives attached to the new incentive payment make this scheme of income management truly voluntary.

Matched Savings Scheme for the Compulsorily Income Managed

NWRN is uncertain how quarantining a person's income support payments will lead to the person learning how to manage their family budget. The income management regime undermines a person's opportunity to acquire skills in managing their finances. Over recent years, Centrelink has been promoting the use of Centrepay, which helps people budget their fortnightly payments and is a useful tool in assisting people to manage their finances. Quarantining payments simply undermines this. Additionally many of those now subject to the NT income management category already had in place Centrepay deductions to ensure that their and their family's priority needs such as rent and utility expenses were being paid.

Included in the Bill are provisions for a matched savings scheme for those who are compulsorily income managed and who undertake approved financial management or money management courses and accumulate savings over a 13 week period from their discretionary funds. Whilst encouragement to save may seem appropriate, it does not reflect the reality that those who will be subject to income management under the new categories will routinely be on lower allowance payments, which are well below the poverty line. Inducements to save from discretionary funds may result in individuals not providing for essential items of expenditure, which may not be categorised as "priority needs" but which are important such as fines and lay bys.

[16] *The Australian Concise Oxford Dictionary Third Edition*, Oxford University Press, 1997. p. 1537

Transition from 1 July 2010 and the introduction of the new Income Management categories across the Northern Territory

The transition and introduction of the new categories of income management are to be rolled out in the Northern Territory from 1 July 2010 with the aim of having all those currently on NT income management switched over to the new systems by 31 December 2010. This rollout is likely to be completed on a geographic basis from area to area across the Northern Territory through the communities, town camps and outstations which have been subject to the NTER. [17] There has been no indication as to how the new income management categories and voluntary income management is to be extended to the remainder of the Northern Territory, as it is aimed at the whole of the territory including metropolitan, regional, rural and remote locations. With the passage of this legislation there will be the potential for any location or postcode in the country to be declared disadvantaged under this new regime following the Minister declaring a region to be subject to these provisions.

For any who have not been moved to the new scheme by December 2010 the legislation permits continuation of NT income management until 30 June 2011 until the old scheme is switched off. The long lead time will be critical for any who have been subject to the old scheme and who may not be subject to the new regime so that with the turning off of the old scheme they are not left with deductions and payments not being made.

From 1 July 2010 those in the Northern Territory could be potentially subject to the old NT income management, new income management for "disengaged youth", "long term income support recipients" and "vulnerable income support recipients", voluntary income management, child protection income management or suspended under the Schooling Enrolment and Attendance Measure (SEAM). Additionally at the same time as some individuals are being moved onto compulsory income management (incuding the new categories and child protection) they will be encouraged to attend financial literacy courses and show a pattern of savings for a 13 week period. It seems inconsistent that at the same time that their ability to manage their own money is being taken away with compulsory income management that the Government is expecting individuals to save money from their discretionary funds.

A key criticism from the Commonwealth Ombudsman's Office in a recent progress report on the NTER was that "(i)t has been more than two years since the NTER commenced and yet, a consistent source of complaints continues to be concerns from people that they do not fully

[17] Ministerial and FaHCSIA Departmental Briefing for NWRN and other Community Organisations on Welfare Reform, December 2009

understand the workings of Income Management and the Basics Card." [18] It is questionable how those in the Northern Territory who have been impacted over the last two and a half years by confusion about income management will understand that from 1 July 2010 that they may no longer have to be income managed. Some may well not comprehend that they do not have to be income managed and that they do not have to go onto voluntary income management.

Reinstatement of the *Racial Discrimination Act 1975*

The Bill seeks to reinstate the coverage of the *Racial Discrimination Act 1975* in relation to the provisions of the NTER and honours a commitment made by the current Government. The NWRN consider the restoration of these rights as long overdue, but remains concerned that the Bill still permits the existing suspension of rights under the special measures provisions of the *Racial Discrimination Act 1975* for a further 6 months up to 31 December 2010, as part of the transition to the new income management regime to be rolled out in the Northern Territory. As such, Indigenous communities in the Northern Territory will continue to be subjected to discriminatory measures that impact upon other fundamental human rights until such time as the *Racial Discrimination Act 1975* is fully restored and Australia complies with its Human Rights obligations.

The Minister has argued that because the new income management categories can be rolled out in any disadvantaged areas in the country that it is non discriminatory and consistent with the *Racial Discrimination Act 1975*. The new income management categories will initially be trialled in the Northern Territory with any further rollout subject to the first evaluation report, which is expected in 2011/12. [19] As with the existing NT income management category the new provisions will unfairly target Indigenous people and extend the scope beyond those living in declared communities, town camps and outstations to include those living in urban areas in the Northern Territory. As such, we consider the new provisions proposed in this Bill are a form of indirect discrimination which will impact disproportionately on Indigenous people living in the Northern Territory as occurred with the NTER.

NWRN Recommendation:

That the *Racial Discrimination Act 1975* be reinstated in its entirety immediately and that the "special measures" clause be removed so that Government policy and action can no longer be racially discriminatory.

[18] FaHCSIA, *Closing the Gap in the Northern Territory – Whole of Government Monitoring Report Part 2 January 2009 to June 2009 Progress by Measure*, November 2009

[19] The Hon Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, *Second Reading Speech*, *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*, 25 November 2009

Lack of Detail and Reliance on Legislative Instrument

NWRN remains concerned that there is a lack of detail in relation to some of the key provisions of the proposed Bill relating to the "welfare reform" changes, as they will be reliant upon legislative instrument and Ministerial determinations, which will underpin the new income management provisions. Far too many critical and important details are not found within the legislation but are to be decided by the Minister, whose decisions may not be subject to public scrutiny or review.

As with a number of recent pieces of legislation which will have far reaching effects there is a dearth of detail about how the changes are to be implemented on the ground by Centrelink and the relevant Departments, Department of Education, Employment and Workplace Relations (DEEWR), FaHCSIA and Department of Human Services (DHS) during the transition period and beyond July 2011. The fundamental lack of detail about how the new income management will work in practice, makes it difficult to undertake a comprehensive analysis of the impacts of the arrangements on Social Security recipients.

The Bill leaves the following critical matters to legislative instruments or various Ministerial determinations:

- the declared income management areas where the proposed new measures will operate;
- matters relevant for determining whether a person is a vulnerable welfare payment recipient, the duration of the determination, variation and revocation of determinations;
- matters relevant for determining that a person is an exempt welfare payment recipient – inclusion in specified class;
- matters relevant for determining the activities required to be undertaken to be exempted from the disengaged youth and long term welfare payment recipients categories for persons without dependent children;
- matters relevant for determining exemptions under the disengaged youth and long term welfare payment recipients categories for persons with dependent children, for example, required number and kinds of activities to be undertaken, alternative activities for school age children, activities relating to dependent children (other than school age children), decision making principles relating to financial vulnerability; and
- matters relevant for determining whether a person has satisfied the criteria for the matched savings scheme (income management) payment, eg what is an approved course, what constitutes a pattern of regular savings.

NWRN recommendation:

The proposed new compulsory income management measures be expunged from the Bill. In the alternate, in the event of the passage of Parts 2 and 3 of the Bill, that the Committee recommend that FaHCSIA and Centrelink, consult with key stakeholders on the legislative instruments and Ministerial determinations which will underpin the new income management and other provisions.

Cost

In Indigenous communities there is an urgent need for funds to provide much needed services such as mental health, financial counselling, drug, alcohol and gambling addiction programs, which could make a real difference to the lives of disadvantaged and vulnerable Australians. The only certainty with the rollout of the proposed changes to the expected 20,000 who will be income managed in the Northern Territory under the new provisions (including new categories and voluntary income management) is that there will be substantial administrative resource costs attached to the replacement and rollout of the new scheme. The Explanatory Memorandum sets out that over the next four years $395.8 million is expected to be outlayed by all portfolios to provide the income management aspect of the Bill as there are no financial impacts from the remainder of the Bill. [20] This would equate to an amount of $4,947 per annum per person for the 20,000 expected to be income managed under these reforms. NWRN is sceptical that this will be yet another Government intervention, which will bring with it minimal additional resources for services and programs on the ground in Indigenous communities with correlating massive administration costs.

NWRN is confident that the cost of broadening these provisions beyond the Northern Territory has not been factored into the costings for this Bill. NWRN requests that the Committee seek clarification on this matter.

Residual Amounts in Income Management Accounts following Death

We commend the Government for responding to issues raised by NWRN and other organisations, such as NAAJA and CAALAS relating to dispersal of residual amounts held in income management accounts following death. The provisions in the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009* are likely to be more responsive to the needs of those who will bear

[20] Explanatory Memorandum, *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*

responsibility for funeral and other costs potentially reducing the red tape which provided a significant hurdle with the existing provisions in the *Social Security (Administration) Act 1999*.

Changes to the Social Security Appeals Tribunal

In relation to the proposed changes to the Social Security Appeals Tribunal (SSAT) contained in the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009* the NWRN is supportive of some of the administrative measures but it is strongly opposed to the pre hearing provisions contained in the Bill. These provisions will undermine the accessibility of the SSAT to Centrelink and Family Assistance Office clients. The provisions in this Bill cannot be isolated from other legislation, namely the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Measures) Bill 2008* which to date has not passed the Senate but introduced fundamental changes to the operation of the SSAT to permit the Department to make submissions and be represented at hearings and to permit the SSAT to not provide written reasons for decisions.

In addition, the move to introduce pre hearing conferences may add an additional level of formality to the SSAT and NWRN has concerns that this could deter unrepresented clients from appealing decisions. Whilst cognisant that there has been a dramatic increase in the numbers of appeals in the Centrelink and Family Assistance Office jurisdiction to the SSAT over the last two years. NWRN are of the view that a number of the provisions in the proposed Bill as well as the provisions of *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Measures) Bill 2008* will directly interfere with the articulated objective of the SSAT as outlined in section 141 the *Social Security (Administration) Act 1999* and the statement of Intent of the SSAT to be “fair, just, economical, informal and quick". [21]

The Current Context – Income Management and Conditional Welfare before the new Bill

The current context of what has come to be known as “welfare reform” was instigated by the former Government with the announcement of the Northern Territory Emergency Response (NTER) on 21 June 2007. [22] The legislation was made operative on 17 August 2007 after having been rushed through Commonwealth Parliament in early August 2007 without any genuine consultation and examination having been only subject to a one day Senate

[21] Section 141 of the *Social Security (Administration) Act 1999*

[22] *About the Northern Territory Emergency Response*, http://www.fahcsia.gov.au/sa/indigenous/progserv/ntresponse/about_response/overview/Pages/about_nter.aspx

Inquiry (with only three days notice). It resulted in far reaching consequences for Indigenous people and their communities in the Northern Territory. The legislative provisions are contained within the *Social Security (Administration) Act 1999* and there were in total 5 income management categories provided for in the initial legislation which included:

- Declared Relevant Northern Territory area;
- Queensland Commission;
- Child Protection;
- School Enrolment; and
- School Attendance.

Within the initial legislation appeal rights to the Social Security Appeals Tribunal (SSAT) were denied to those who came under the Northern Territory Income Management category. The inability to appeal to the SSAT similarly denied any access to challenge these types of decisions to the Administrative Appeals Tribunal (AAT). Additionally the *Racial Discrimination Act 1975* was suspended in relation to both the Northern Territory and Queensland Commission income management categories as it was deemed a special measure.

An additional category of voluntary income management was permitted with the passage of the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Budget and Other Measures) 2008* which received Royal Assent on 30 June 2008. The current Government rather than using the school enrolment and attendance income management categories provided for in the original legislation introduced a new approach of payment suspensions for welfare recipients to be used in planned trials in Cannington and the Northern Territory. The Schooling Enrolment and Attendance Measures were contained in the *Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) Bill 2008* which received Royal Assent on 11 December 2008. The current Government introduced legislation to restore the ability of people subject to income management under the NTER to appeal to the Social Security Appeals Tribunal (SSAT) and the Administrative Appeals Tribunal (AAT). The *Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Act 2009* received Royal Assent on 24 June 2009.

NT Income Management

NT income management has been rolled out in the Northern Territory over the last two and a half years and as at 30 June 2009, there were 15,182 individuals in 73 communities, their associated outstations and 10 town camps subject to income management. [23] NWRN has

[23] FaHCSIA, *Closing the Gap in the Northern Territory – January 2009 to June 2009 Whole of Government Monitoring Report Part One Overview of Measures*.

closely followed the rollout of income management in the Northern Territory through our involvement with our Member centre[24] in that state and the Welfare Rights Outreach Project workers based in Darwin, Katherine and Alice Springs over the last eighteen months. The feedback is that there has been a significant variation in response to income management indicating that if it is to be retained it should be on a voluntary basis only.

Cape York Trial

The Family Responsibilities Commission (FRC) commenced operation on 1 July 2008 as part of the Cape York Welfare Reform Trial and is due to cease operation on 1 January 2012. Four Cape York Communities are within the Commission's jurisdiction. The communities covered are Aurukun, Coen, Hope Vale and Mossman Gorge. The triggers for referral to the FRC are:

- a person's child is absent from school 3 times in a school term, without reasonable excuse,
- a person has a child of school age who is not enrolled in school without lawful excuse;
- a person is the subject of a child safety report;
- a person is convicted of an offence in the Magistrates Court or
- a person breaches his or her tenancy agreement – for example, by using the premises for an illegal purpose, causing a nuisance or failing to remedy rent arrears. [25]

The approach taken by the FRC is predicated on a case management approach and as at 30 June 2009, there were 314 clients being case managed. As part of the case management approach clients are provided with a range of support services with cases being reviewed on a regular basis to make sure that they are complying with the plans put in place. The FRC has taken a careful approach to Compulsory Income Management (CIM) and "the Commission only uses measures such as CIM when the client's non-compliance prevents assistance." [26] According to the FRC Annual Report:

> *Sometimes a referral to Conditional Income Management is made, if the Commission forms the view that this is the best way to stabilise a person's circumstances, particularly if children or other vulnerable people are concerned. … The Commission re-schedules a conference if the client fails to attend the first conference. If the client fails to attend a second conference the*

[24] Darwin Community Legal Service
[25] Queensland Government, Aboriginal and Torres Strait Islander Partnerships, *Family Responsibilities Commission,* http://www.atsip.qld.gov.au/government/families-responsibilities-commission/
[26] Family Responsibilities Commission Annual Report 2008-09

> *Commissioners are able to make orders in their absence. Typically, an order for Conditional Income Management is made in these circumstances.* [27]

This approach has seen a relatively low number of income management orders taken against the number of trigger notifications. In 2008-09, the FRC received 2,791 notifications about 715 clients. It should be noted that of the notifications received 901 were outside of the jurisdiction of the FRC. Out of the 715 clients where notifications to the FRC had occurred only 89 clients were subject to conditional income management orders. Additionally 3 clients went onto voluntary income management. It remains unknown as to how many of the 715 clients who were subject to notifications were within the FRC's jurisdiction. [28]

Child Protection Income Management

The initial trials of Child Protection Income Management in Western Australia were announced by the Minister for Families, Housing, Community Services and Indigenous Affairs on 27 February 2008 and relied upon an agreement between the Federal Government and Western Australian Government. The trial sites for Child Protection Income Management were in the Cannington and Kimberley Department of Child Protection (DCP) Regions and commenced from 24 November 2008. [29] Child Protection Income Management is based on an intensive case management approach where those subject to Compulsory Income Management (CIM) are provided:

> *Within a suite of services addressing child neglect including maintaining tenancy, drug, and alcohol issues, parenting issues, intergenerational trauma and psychological issues. CIM as a child protection measure can be used in a case management plan to prevent neglect from re-occurring or as part of a reunification plan, to enable a child to return home safely.* [30]

Unlike the NT Income Management Category the amount to be income managed under the WA Trial was to be 70% as it was regarded that the amount would ensure that the priority needs of a child were provided for. All who are referred to Child Protection Income Management in Western Australia are given a referral to a Financial Counsellor although participation is voluntary. As part of the trial initially one community organisation was provided with additional financial counselling and emergency relief funding to assist those participating in the Child Protection Income Management trial.

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[27] Ibid, p 39
[28] Ibid, p 26
[29] Robyn McSweeney, Minister for Child Protection; Community Services; Seniors and Volunteering; Women's Interests, *Income Management in Cannington and Kimberley*, 17 November 2008.
[30] Department of Child Protection Western Australia, *Child Protection Income Management Information Sheet*,May 2008

For the Western Australian trial a cautious approach was taken by the Western Australia Department of Child Protection (DCP). After the trial had been underway for a number of months there were very low numbers who had been referred and placed on Child Protection Income Management. The trials were then extended across the broader Perth Metropolitan area. Trial sites now include the DCP regions of Joondalup, Midland, and Mirrabooka and are to be extended further in early 2010 with the rollout to the DCP Regions of Armadale, Perth, Fremantle and Rockingham.

As at 2 October 2009 there were 60 families subject to Child Protection Income Management in Western Australia. [31] The cost of the Child Protection Income Management trial in Western Australia for the Federal Government is $18.9 million over two years. There is clearly considerable cost in setting up such trials including the associated administrative costs. However, at its most simplistic this initiative which is just over half way through its two year trial as at October 2009 was income managing 60 families on income support at a pro rata cost of $144,900 per family.

The trial "will be evaluated to provide evidence for the Government's broader welfare reform agenda".[32] To date there has been no formal evaluation of the current Western Australian trials. Whilst no data has been provided publicly in relation to those who have been made subject to Child Protection Income Management anecdotally there have been significant numbers of families from both Indigenous and refugee backgrounds subject to this intervention.

Voluntary Income Management

Voluntary Income Management was a new category of income management introduced as a result of the trials of Child Protection Income Management in Western Australia. The rationale for the introduction of this category of Income Management in specific areas was to deidentify those who may be involuntarily participating in the Western Australian Child Protection Income Management Trials. Unlike the Northern Territory where it was assumed all Indigenous people were child abusers and child neglecters there was an active move to protect those subject to the Child Protection Income Management Category in the trial site.

The rollout of Voluntary Income Management has followed the expansion of the Child Protection Income Management initially in Cannington and the Kimberley but which has been extended across most of the Perth Metropolitan area. There has been a significantly

[31] The Hon Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, *Income Management expanded across Perth*, 2 October 2009 and Robyn McSweeney, Minister for Child Protection; Community Services; Seniors and Volunteering; Women's Interests, *Income management trials to be expanded across the Perth metropolitan area*, 2 October 2009.

[32] Ibid

higher uptake of Voluntary Income Management in Western Australia than those subject to compulsory Child Protection Income Management. As of 2 October 2009 there were 220 families across Western Australia who were being income managed by Centrelink on a voluntary basis. [33]

Similar to Child Protection Income Management the amount income managed in Western Australia is 70% of income support payments and 100% of some lump sum payments. There has been however capacity for those subject to voluntary income management to have the proportion income managed reduced to 50% as occurs with NT income management. Whilst from a policy perspective this has been permitted the Centrelink system does not have the capacity to do this automatically. As such there has to be system manipulation to achieve the policy capacity.

NWRN would question the voluntary basis under which some have signed onto these agreements when it may have been a precondition for the provision of some other community services such as community housing or other emergency and financial assistance. Additionally some interested in voluntary income management was based on the mistaken belief that those subject to income management received more money from the Government so that it was an extra allowance on top of income support payments.

Julie is a 28 year old Indigenous woman on Newstart Allowance recently separated and whose seven children live with their father, so he receives Parenting Payment Single and Family Tax Benefit. Julie's former partner (who has been violent in the past) regularly comes and leaves the children for her to look after for days at a time. Julie does not have enough money for food for her children, so goes to the Department of Child Protection (DCP) for some financial help. As a result of accessing DCP for financial assistance, Julie is put onto income management. Julie does not know whether or not she is on compulsory Child Protection Income Management or Voluntary Income Management. She just knows that each fortnight there is even less money than when she sought help in the first place. Julie also does not want to do anything about claiming shared Family Tax Benefit as it may result in further violence or in her not seeing her children.

Schooling Enrolment and Attendance Measure (SEAM)

Initial trials of the SEAM initiative were announced to commence from the beginning of the 2009 school year for Cannington in Perth and six Indigenous communities in the Northern Territory who were already subject to the NTER with the expectation of a further metropolitan trial to be announced. Prior to the commencement of the Western Australian

[33] Ibid

trial the State Government withdrew support for the trial to take place. SEAM commenced in the six Indigenous communities in 2009 with the initial trials concentrating on the enrolment aspect of the initiative. Subsequent to the initial rollout of SEAM in the Northern Territory further trials have commenced in Logan and Mornington Island. Unlike income management SEAM uses a system of suspension of the primary benefit (schooling requirement payment) of a parent if their child is not enrolled or attending school for up to 13 weeks.

The practical outcomes of the SEAM measures are difficult to gauge as to NWRN's knowledge there have been no payments suspended or cancelled under the trial. School attendance is a complicated issue and it would be difficult to link any improvements in attendance with this trial given the operation of local initiatives aimed at improving school attendance.

There was a lack of public consultation around the SEAM measure and despite the majority of trial sites being in the Northern Territory public hearings were only held in Perth and Canberra. Importantly there was no consultation with communities affected by the trial. SEAM was trialled in a racially discriminatory manner as all trial areas except Katherine town are Indigenous communities and Katherine has a large Indigenous population.

The introduction of the trial did little to alleviate concerns with Centrelink being unable to conduct face to face interviews with all affected by the trial as intended. Letters sent by Centrelink to parents and carers of children were also not in plain English. According to the NTER Monitoring Report although in the period from June 2007 to June 2009 there was an increase in the number of NTER school enrolments up by 610 for the same time the average attendance across primary and secondary school reduced from 63.1% to 63%. [34] SEAM appears to have been an expensive and time consuming trial and the practical outcomes are difficult to measure.

Schedule 2 – New Income Management Regime and New Social Security Payments [35]

NWRN prefaces the following comments with our view that the compulsory income management provisions should be expunged from the Bill and that the alternative approach as advocated by ACOSS in its submission to the Inquiry should be adopted.

[34] FaHCSIA, *Closing the Gap in the Northern Territory – Whole of Government Monitoring Report Part 2 January 2009 to June 2009 Progress by Measure*, November 2009

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

NWRN does not adhere to the view that the Social Security system should be manipulated to effect broader social or behavioural change or as a blunt response to entrenched economic and social disadvantage. NWRN concurs with ACOSS that this belief is contrary to the role of the Social Security system, which should be exclusively directed to the reduction of poverty through providing adequate levels of income support and employment assistance where this is a proper response to an individual's circumstances. In our view, additional and sustained investment in increasing Social Security payments, specialist community based case management services and employment assistance programs is needed to support the most disadvantaged people not punitive compulsory income management schemes which stigmatises and alienates people through the imposition of arbitrary and unreasonable restrictions on access to Social Security payments. The proposed introduction of the new categories of income management to be trialled in the Northern Territory will mean that once again Indigenous Australians will bear the brunt and shame of another ill conceived social policy experiment.

The proposed new income management measures will also mean an additional layer of complexity above and beyond the existing income management models. People in the Northern Territory will not only be forced to navigate their way around the new income management measures but also the SEAM and the rollout of Voluntary Income management and the Child Protection Income Management.

Added to the multiple categories of income management measures is another layer of complexity because the principles and rules underpinning each category both vary and are inconsistent. Some have exemptions, whilst others do not. The exemptions for each category vary. Some rely on Centrelink discretionary powers while others do not. The matched savings scheme applies to the compulsory income management categories whereas the voluntary income management incentive payment applies to the voluntary income management scheme. There are also additional mechanisms of review for someone who is determined to be a "vulnerable welfare payment recipient".

The complexity of the system will significantly reduce a person's capacity to understand the basis on which they are being income managed or as to when they can appeal or request an exemption. For example, a mother, over twenty five years old on Parenting Payment Single with school age children could be subject to SEAM, child protection, "vulnerable welfare recipient" (domestic violence) or as a "long term welfare payment recipient" if having been on payment for over 26 weeks. This will increase the risk of people being inappropriately income managed through a failure to apply for exemptions or appeal discretionary decisions made by Centrelink.

Likely effects contrary to stated aims

Far from achieving its stated broad aim of supporting "disengaged youth" and vulnerable individuals particularly women and children[36], the experience of the NTER has shown that compulsory income management has given rise to a range of practical difficulties and administrative burdens, which has adversely impacted upon individuals and their families.

The problems have included[37]:

- difficulties accessing income management funds whilst interstate;
- delays in transfers of income management funds;
- increased financial costs associated with the use of the Basics Cards;
- inability to access available funds due to limits on daily expenditure on Basics Cards;
- discrimination against people using the Basics Cards;
- reduced consumer choice and convenience, as the designated Basics Card merchants are generally limited to supermarket and department store chains rather than through less formal ways of shopping, eg at farmers' markets, second hand shops, open markets and garage sales;
- restrictive access to Basics Card account balances which can only be checked at local Centrelink offices or via telephone. This has proved expensive for people who are reliant on mobile phones and may use all available credit finding out their balance or arranging for funds to be transferred onto the Basics Card;
- difficulty keeping track of funds especially for people who shopped often and use a number of stores/merchants;
- the lack of a facility to check the Basics Card balances at the point of sale has resulted in shame, humiliation and embarrassment when the card has been rejected due to insufficient funds;
- technical issues have at times resulted in people not being able to use their Basics Card as planned causing distress and hardship; and
- the assessment and reassessment of priority needs can be a time consuming, invasive and demeaning process.

NWRN warns that an unintended consequence of extending income management could be that clients who have been denied access to half of their limited Social Security incomes seek out high cost credit options, such as pay day lenders and pawn shops. Additionally moving addresses and locations to escape the income management regime may become a common feature of life on income support. However, unemployed people who do so may

[36] *Explanatory Memorandum to the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009* at p.11

[37] Based on the experiences of clients of the Northern Territory Welfare Rights Outreach Project. The Project is located at the North Australian Aboriginal Justice Agency (NAAJA) and the Central Australian Aboriginal Legal Aid Service (CAALAS) in the Northern Territory.

risk an additional penalty of facing a 6 month Social Security preclusion penalty if they move to an area that reduces their chances of finding employment. Loss of total payments would run counter to and contribute to even greater hardship and deprivation.

New income management categories

Clause 36: establishes the new income management categories of ''vulnerable welfare payment recipient", "disengaged youth" and "long term welfare payment recipient". Rather than blanket income management there are particular client groups who will be targeted for income management under the new income management scheme operating in the Northern Territory from 1 July 2010. Whilst the Minister has suggested the specific targeting is to somehow ward off welfare dependence there is no objective evidence that income management will be any determinant on whether or not someone becomes welfare dependent.

The Government with its move to introduce this legislation has singlehandedly reinforced community attitudes and notions toward the unemployed and sole parents and artificial classifications, which paint them as the undeserving poor. It is questionable at a time when the numbers of unemployed have increased, as a result of the global financial crisis that the Government is again back to scapegoating the unemployed and sole parents. These proposed measures blame the individual for their circumstances, whereas 12 months ago community and Government attitudes softened so that if someone found themselves unemployed they were provided with additional assistance and somehow became more acceptable to the broader community. This new regime will see that those who live in the Northern Territory and are reliant on working age payments, will be treated differently by virtue of their location.

The reality is that the numbers of long term unemployed have increased in this country. Currently of the unemployed 56% (291,114) had been on payments for 12 months or more.[38] There was also a 30% increase in the numbers of people receiving unemployment benefits in the 12 month ending November 2009. Over the same period there was a 12.7% increase in the number of long-term job seekers out of work for more than 12 months, with the numbers increasing from 288,158 to 366,179. If this new income management system were to be rolled out across Australia the numbers who would potentially fall into the categories of "disengaged youth" and "long term welfare payment recipient" would be a significant and increasing proportion of those receiving allowance payments. The administrative cost of rolling out income management to this population would be prohibitive.

[38] Department of Education, Employment and Workplace Relations, *Labor Market and Related Payments – a monthly profile*, December 2009.

Disengaged Youth

The new category of "disengaged youth" relates to a person under 25 years of age in receipt of Youth Allowance, Newstart Allowance, Special Benefit or Parenting Payment for 13 of the last 26 weeks. It seems that to be labelled and treated,as a "disengaged youth" a person only has to have been on Centrelink payments for as little as 13 weeks. The Government has stated in the Explanatory Memorandum to the Bill that young people are included because "of their high risk of social isolation and disengagement, poor financial literacy, and participation in risky behaviours". [39] Further, the Government claims that income management "can provide the foundations for pathways to economic and social participation through helping to stabilise household budgeting" [40] although there is no detail provided of how this is to occur.

Income Management may actually reduce the capacity of a young person to learn money management skills, at the time in their lives when other young people in work or study are learning skills which can assist them in later years. There are likely to be issues for young people who live at home with their parents subject to compulsory income management on minimal income support payments but whose priority expenses are already met through the payment of board and lodgings to their parents.

Young people on Youth Allowance are already required to complete varying educational requirements depending on their academic achievement in order to receive payments, as part of the Government's "earn or learn" agenda. The Government has provided some limited exemptions for these requirements recognising that education may not be appropriate for all young people and particularly vulnerable young people who may have limited capacity to participate. Conscripting these young people into study will be a waste of scarce educational resources.

There are limited circumstances in which a young person can gain exemption from the income management provisions. To gain an exemption from the income management provisions a young person has to be participating in full time education. For young people in the Northern Territory particularly those who live in rural and remote areas significant difficulties can arise for participating in education due to local availability. Additionally for young people who have become disengaged from the education system the prospect of school attendance may not be a viable option. The requirement for participation in full time education is inconsistent with the options available under Job Services Australia where a young person can choose to combine work and study to meet their obligations.

[39] *Explanatory Memorandum to the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*
[40] Ibid

The example provided in the Explanatory Memorandum suggests that a new mother under 25 on Parenting Payment will after three months be determined to be a "disengaged youth" and subject to the income management provisions. In this example to gain exemption from income management a parent has to prove that they are a "responsible parent". According to a Ministerial and Departmental Briefing, a parent will be able to prove they are a "responsible parent" by ensuring that their child is up to date with immunisations, that their child has regular child health checks, and through participation in daycare and playgroups. Exemptions from income management will be granted for a 12 month period.[41]

It is clear that what has not been considered is the extra, and unwarranted, administrative burden which will be imposed on young people who are already in difficult circumstances.

Long Term Welfare Payment Recipient

The new category of "long term income support recipients" relates to a person who is over 25 years of age and is in receipt of Newstart Allowance or Parenting Payment for 26 of the last 52 weeks. The likelihood of individuals falling into this category is even more likely as the Government phases out CDEP in Indigenous communities over the next two years and new participants to the program from 1 July 2009 are required to go on income support rather than CDEP wages and Top up payments. At the time of the change NWRN cynically suggested that a rationale for this change was so that more within declared NT Indigenous communities would be on income support as CDEP wages were not able to be income managed by the Government.

In order to gain exemption from income management under this new category it is necessary for a person to show a regular pattern of working at least 15 hours per week. It is unlikely that many will gain exemption via this method due to the lack of employment opportunities, which exist for Indigenous people in rural and remote communities. The most likely path for exemption is likely to be for parents who are able to demonstrate that they are a "responsible parent". For those with children over preschool age the path to prove responsible parenting will be through children's school enrolment and attendance. It will therefore be that potentially school enrolment and attendance of children could impact the same individual under the income management provisions and SEAM. The two measures do not fit comfortably together.

[41] Ministerial and FaHCSIA Departmental Briefing for NWRN and Community Organisations on Welfare Reform, December 2009.

Vulnerable Welfare Payment Recipient

Under this category, Centrelink will be empowered to impose income management on people assessed as "vulnerable welfare recipients", for example because of financial crisis, domestic violence or economic abuse. Yet no persuasive argument has been made that women fleeing domestic violence would benefit from having less control over their money. Furthermore, there is no evidence to show that an elderly or disabled person facing physical or economic abuse will not be discouraged from seeking help because they fear they may be put on income management.

We are extremely concerned that the potential to be deemed a "vulnerable welfare payment recipient" may also discourage job seekers from disclosing sensitive information to Centrelink regarding their personal circumstances, for example, domestic violence or other barriers or issues which impact on their work capacity for fear of being income managed. Additionally it may also result in some choosing to stay in abusive relationships rather than claim a payment, such as Crisis Payment, which is usually determined by a Social Worker.

The reality is that many components of the Social Security system rely on the capacity and willingness of Social Security recipients to disclose personal issues and barriers, which adversely impact on their economic and social participation, for example, physical, psychological and intellectual disabilities, homelessness, family breakdown, family violence, financial problems, health problems and social isolation.

Critically this information is required to assist in making correct determinations or providing access to other support services within the community in relation to:

- appropriate type of Social Security payment;
- participation and activity test exemptions;
- establish special circumstances for debt waiver applications;
- Crisis Payment;
- advance or urgent payment of entitlement;
- financial counselling;
- emergency relief;
- material assistance;
- emergency and refuge accommodation;
- health and welfare services; and
- application of the compliance provisions.

As a result, a person may be less likely to get connected to the supports and assistance they need to overcome their difficulties, get ready for work or to take up an offer of employment. Worse still, failure to disclose this information may result in a person being

subjected to the compliance system and the possibility of incurring financial penalties, which may include an eight week non payment period.

Voluntary Income Management in principle

Under the proposed income management regime, which is intended to apply from 1 July 2010 across the Northern Territory, people will be given the option to opt into a voluntary income management agreement. Whilst voluntary income management has been used in conjunction with the Child Protection trials in Western Australia and the Queensland Commission (Cape York) trials in Queensland it was not a feature of the NTER.

One of the recommendations of the NTER Review Board in relation to income management was that "income management be available on a voluntary basis to community members who choose to have some of their income quarantined for specific purposes as determined by them." This recommendation was based on the findings of the NTER Review Board that there had been a variety of experiences with income management and whilst some individuals and communities have had very negative experiences others had welcomed it as a "new opportunity manage their income and family budgets in a way that they wanted to see continue." [42]

In light of this evidence, NWRN cautiously supports voluntary income management. However, we question the rationale for why the default for the deductible portion of a person's Social Security payments is 70%, whereas for the compulsory income management categories the default is 50%. In our view, individuals opting into the voluntary income management scheme should be empowered to determine the percentage of payment they wish to be managed and for it to be not subject to Ministerial Declaration varying from place to place. This would be a positive step, which would encourage individuals to take greater control of their finances. There have been assurances from Ministerial Advisers and the Department that the amount for Voluntary Income Management in the Northern Territory will be 50% and that the Centrelink computer systems are being updated in line with this variation. [43]

Voluntary income management should also be supported by training in money management and should not be promoted at the expense of other less intrusive options, such as Centrepay. In addition, we are concerned that income management may remove the incentive for Government to implement other options that build the capacity of Social Security recipients, for example, weekly payments. For a number of years NWRN has

[42] NTER Review Board *Northern Territory Emergency Response – Report of the NTER Review Board*, October 2008

[43] Ministerial and FaHCSIA Departmental Briefing for NWRN and Community Organisations on Welfare Reform, December 2009

championed the option of weekly payment of Centrelink benefits as an additional option for individuals who experience difficulties in managing their budgets.

In response to a question on notice in relation to the evaluation of weekly payments, the Government stated:

> *Trial weekly payments have been in place in a limited geographical area and for specific payments since 2001. Qualitative research conducted from October 2005 to April 2006 showed that individuals coped better on weekly payments and were in a better position to manage their financial, health and personal circumstances and were better able to participate in the labour market or education and training to improve their capacity to participate. Trial shows a significant decline in the incidence of breaches, suspensions, debts and a reduction in debt levels per participant for people on weekly payments. Issues related to any legal impediments or requirements for legislative amendments and the development of a stakeholder communication strategy are being considered by the inter agency working group.*[44]

Despite the significant benefits the weekly payment trials have delivered, to date little progress has been made although the expansion of weekly payments is a Government initiative to combat homelessness and those at risk of homelessness. NWRN would advocate the expansion of the availability of weekly payments, along with increased use of Centrepay and access to financial counsellors could prove particularly useful for disadvantaged people. This would also appear to be a cost effective option especially when compared to the cost of the proposed income management scheme.

NWRN recommendations:

That the Bill be amended to enable people to self select the percentage of income managed funds under the voluntary income management category. In the alternate that the Bill is amended to explicitly, state that the default position is 50% for the deductible portion of Social Security payments under the voluntary scheme.

That the Committee recommend the availability of weekly payments for Social Security payments, increased use of Centrepay and financial counselling to assist with budgeting for income support recipients.

[44] *Senate Community Affairs Committee Answers to Estimates Questions on Notice, Families, Housing, Community Services and Indigenous Affairs Portfolio 2009-2010*, Supplementary Estimates, 22 October 2009, Outcome Number:2, Question No: 276

Voluntary Income Management Incentive Payment

In NWRN's view, it is not acceptable to take advantage of a person's financial hardship to coerce them into taking up voluntary income management.

Item 61 provides for a voluntary income management incentive payment. The proposed new section 1061W provides that a person is qualified for a voluntary income management incentive payment if the person has accrued a "qualifying incentive payment period". A person accrues a qualifying incentive payment period after the person has been subject to a voluntary income management agreement for a 26 week period. The voluntary income management incentive payment is $250. The amount is not subject to indexation. There is no limit on the number of payments a person receives. The Explanatory Memorandum provides the example, of a person who is subject to a voluntary income management agreement for 78 consecutive weeks (following commencement of this provision) can receive three different payments of voluntary income management incentive payment: that is, one for each of three consecutive 26 –week periods.[45]

We believe that the policy is inherently flawed. Rather than promoting the capacity of people to manage their finances independently, the incentive payment is likely to result in people well able to budget effectively opting into the system at the expense of more independent and flexible options, such a Centrepay. People struggling on very low incomes will find it very difficult to forgo the additional income of $500 per year and will feel compelled to lose control over their budgets. People will become reliant on the incentive payments and remain trapped in a dependency based system. This will reduce their capacity to manage their own finances in the long term.

Matched Savings Scheme Payment

Item 61 also introduces a matched savings scheme payment scheme to apply to most of the compulsory income management categories: child protection, "vulnerable welfare payment recipients", school enrolment, school attendance, "disengaged youth" or "long term welfare payment". It is not clear why the Queensland Commission (Cape York) income management is not included in this proposed scheme.

The matched savings scheme is less generous than the voluntary income managed incentive payment. There is a $500 upper limit on the quantum of the matched savings scheme payment and it can only be paid once. Monies that are in their income management account can not constitute a person's matched savings. But the matched savings scheme

[45] Explanatory Memorandum to the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*

payment will be paid as a lump sum into a person's income management account. Under the new section 1061WG a person is qualified for the payment if the Secretary is satisfied that throughout the "qualifying savings period" the person has maintained a regular and consistent pattern of savings and that the person has a "qualifying savings amount". Immediately prior to the commencement of the "qualifying savings period", a person is required to have completed a course, such as a financial management or money management skills course.

The scheme is both complex and misguided. The scheme requires a person to complete a course first and then to maintain a pattern of regular savings of at least 13 consecutive weeks. What is meant by pattern of regular savings is left to a legislative instrument.

The scheme fails to recognise the inadequacy of income support payments and the multiple levels of deprivation that Social Security recipients experience. [46] The reality is that the current inadequate levels of payments mean that even amongst the most frugal and thrifty there is very limited capacity to save. Our concern here is that people may experience increased levels of deprivation in the short term in a desperate attempt to increase their income by qualifying for the matched savings scheme. NWRN considers that the Government is disingenuous, as the very limited capacity to save will also mean that very few people will be able to take advantage of the maximum payment of $500.

To qualify for the maximum matched saving amount a person would have to save $83.33 per fortnight (only six instalments over the minimal 13 week period) from their discretionary funds. For a single person on Newstart Allowance who receives $456.00 per fortnight who is compulsarily income managed potentially receives $228.00 in discretionary funds per fortnight and would be expected to save $83.33 would be left with $144.67.

An alternative approach: Address the inadequate rates of Social Security payments

In our view, the financial investment would be better targeted to addressing the inadequate rates of Social Security payments. Whilst we commend the Government for its recent historic increase to pension rates additional measures are now required to lift hundreds of thousands of unemployed people out of poverty. The NWRN has long championed the need for Government to address payment rates as a central foundation of its social inclusion agenda. As indicated above, unemployed people and single parents are much more likely to experience financial hardship than the general community. By international standards, the level of support for unemployed people is very low with Australia's unemployed being the

[46] ACOSS, 2008. *Who is Missing Out?*: www.acoss.org.au (go to publications).

poorest of the thirty OECD countries. The single rate of Newstart Allowance is $456 per fortnight. Payment rates for Youth Allowance is even lower as those aged 18 and over at home $248.10 per fortnight and aged 18 and over away from home at $377 per fortnight . A starting point in addressing the inadequate payment rates would be to increase unemployment and student payments by $45 per week and restore the link between the rate of Parenting Payment (Single) and Age Pension.

Deceased estates[47]

NWRN welcomes the proposed amendments to the provisions dealing with the payment of residual income management amounts on a person's death. In particular, NWRN welcomes the expansion of the options available to facilitate the payment of the residual balance in a person's income management account after their death and the removal of the provision requiring amounts of more than $500 to be paid to the legal personal representative of the person.

Under the proposed new section 123WL (3), residual amounts will be able to paid to the legal personal representative of the person and to the credit of the deceased's bank account without qualification. However, in respect of payments to third parties the Secretary must be satisfied that the person has carried out or are carrying out an appropriate activity in relation to the estate or affairs of the person. Appropriate activity is not defined. However we note the concerns of the Welfare Rights outreach project that the policy currently limits funeral expenses to those 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 deceased etc) rather than to expenses incurred by people in attending the funeral, cultural activities or a wake. The facilitation of payment of the residual balances particularly in remote communities would be assisted through making direct payments to immediate family members to cover the travel costs etc incurred by family members attending the funeral, cultural activities or a wake where appropriate.

NWRN recommendation:

That section 123WL(3) is amended to allow the payment of expenses incurred by family members in attending the funeral and related activities of the deceased to be made directly to immediate family members in appropriate circumstances.

[47] *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009*, items 6-10

Private Members Bill to Restore the Operation of the Racial Discrimination Act 1975

The *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009* seeks to provide coverage under the *Racial Discrimination Act 1975,* as measures under the NTER and Cape York Trial were provided with special reasons exemptions from the operation of that Act. NWRN see it as a priority for the coverage of the *Racial Discrimination Act 1975* to be restored fully and immediately for those who are subject to NT Income Management and Queensland Commission Income Management and who have been without that protection since 2007.

Schedule 3– Changes to Social Security Appeals Tribunal (SSAT) [48]

The Bill proposes a number of significant and unwelcome changes to the operation of the Social Security Appeals Tribunal.

The major problem with the proposed changes

NWRN has serious concerns about the proposed pre-hearing conferencing provisions. This proposal must be considered within the context of a broader set of reforms proposed for the Social Security and Family Assistance jurisdiction of the SSAT discussed below which have been justified on the basis of aligning this jurisdiction with its Child Support jurisdiction. This desired alignment fails to recognise the fundamentally different nature of the two jurisdictions. Unlike its Social Security and Family Assistance jurisdiction, the SSAT operates as the only tier of external merits review in the Child Support system. In the Social Security and Family Assistance jurisdiction, the dispute is primarily between the Department/Centrelink agency and an individual in contrast to the child support jurisdiction, which is usually between individual parties although the Child Support Agency is a party to the proceedings.

The current exclusion of Departmental/Centrelink participation in the SSAT hearing process recognises the inherent power imbalance between the agency as a repeat participant and the review applicant for whom it will be a new experience. In fact, the entire hearing process was designed and adapted to deal with first tier unrepresented applicants who would not be facing a represented respondent, namely the Department. It is our submission, applicants appearing in the Social Security and Family Assistance jurisdiction are

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

also likely to be more disadvantaged than those appearing in other jurisdictions (including child support) due to poverty, poor health (physical, intellectual or psychiatric disability), education, literacy, age, work experience, language and matters consequent on differing cultural backgrounds and life circumstances.

NWRN is justifiably apprehensive that the proposed reforms will undermine the features that have made the present system so successful. It is of most concern that the Government would move to alter longstanding and respected procedures in the Social Security and Family Assistance jurisdiction simply to align them with the Child Support jurisdiction, which deals with a substantially lower number of appeals, is still relatively new and to our knowledge has not been evaluated at this stage. We also note that whilst these changes are being argued on the basis of achieving efficiencies in the operation of the SSAT, it is their Child Support jurisdiction which has struggled to meet standards of timeliness because of adjournments.

It is critical that the Social Security and Family Assistance external merits review system provides a mechanism for review that is accessible and responsive to the needs of people using the system. Each day Centrelink makes millions of decisions under the *Social Security Act 1991* and *Family Assistance Act 1999* and related legislation, which have a direct impact on the daily lives of individuals. Whilst the decisions appealed are small in proportion to the number of decisions made, the outcome of the appeals lodged has consistently revealed over many years a high rate of error at the primary decision making stage. In 2008/09, Centrelink internal review officers changed 30.8% of the decisions reviewed and the SSAT changed approximately 29.9% of finalised decisions.[49]

On or about 25 November 2008, the Government introduced the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Miscellaneous Measures) Bill 2008* ("the 2008 Bill")into the House of Representatives. The 2008 Bill was passed in the House of Representatives on 4 February 2009 but, as at the date of this submission, has not yet passed in the Senate.

The 2008 Bill contains a set of measures, which NWRN believes will significantly disadvantage Social Security and Family Assistance recipients due to increased procedural complexity and the substantial elevation of the role of the respondent Department(s) in the SSAT review process. In particular, the 2008 Bill if passed will allow the SSAT to direct Centrelink to make oral submissions at the hearing and allow Centrelink to request permission to make both oral and written submissions to the SSAT. Whilst the SSAT has argued that the powers will be used sparingly the lack of specificity about the nature and scope of the powers, gives the Department/Centrelink a pathway to actively participate in the SSAT hearing process traversing both matters of fact and law.

[49] Centrelink Annual Report 2008-09

The only constraint on the Department's participation is that it is subject to the Tribunal being satisfied that such submissions would assist in the consideration of the case. The 2008 Bill also allows the SSAT to give oral reasons for decisions in cases where the Tribunal has affirmed the decision of Centrelink.

In proposing these changes, the Government has failed to take into account the current value of the two tiered external system of Social Security administrative review. Currently, the roles of the two external review tribunals are complementary and appropriately adapted to the needs of users.

The SSAT operates as an intermediate level of review and is designed to achieve an accessible, informal and relatively expeditious means of review. Its current processes enable review applicants to put the merits of their case in a factual and straight forward way. The means of achieving this is the non-adversarial process for case determination. The specialised features of the SSAT include:

- the non-adversarial format consequent on non attendance by the Department which puts its reasons for decision in writing;
- the multi-skilled panel comprising welfare, legal and administrative skills suited to the combination of a complex area of law and very disadvantaged review applicants;
- the relative speed with which matters are resolved appropriate to matters of basic income support; and
- the inquisitorial and private nature of the hearing given disadvantaged persons may be required to reveal highly sensitive information concerning their health or personal relationships.

The SSAT has been able to develop these features because of the availability of a further tier of review as a right for either the Social Security recipient or the Department at the Administrative Appeals Tribunal (AAT) level. The second tier of review permits the SSAT to balance the interests of timeliness, informality and financial efficacy against the interests of achieving a perfect decision in every case. It frees the Department from devoting resources to each ordinary request for review by enabling it to select from the detailed written decisions of the SSAT which matters it is appropriate to appeal to the AAT. It enhances access to external review by allaying the fears of clients that they will have to deal with complicated processes and also cope with the presence of a Departmental participant.

In contrast, the AAT, as the final review tribunal is designed to provide an opportunity not only for individual cases to be considered in greater depth but also for consideration to be given to the development and enunciation of principles of general application for the future guidance of primary decision makers and the intermediate review body. As a consequence the AAT processes are more formal and the Department has a right of appearance, which it uses in every case before the Tribunal. The increased procedural formality is suited to the

matters, which come before it as they usually have complex evidence or require examination of technical provisions. There seems no doubt that the AAT is looking to build a collective jurisprudence around the interpretation of Social Security and Family Assistance laws. The Department's presence in these cases and this jurisdiction contributes to that function of the AAT, whereas it would not have a similar effect in the SSAT, and nor does the Tribunal have a similar public policy role.

The SSAT and AAT review model has evolved to achieve a coherent system of independent external review which properly addresses the needs of its clientele in the Social Security and Family Assistance jurisdictions at both ends of the review spectrum. Any changes which fundamentally alter this balance must be viewed with caution. The adoption by the SSAT of more formal processes which increase the involvement of the Department in the review system risks the SSAT becoming an inferior imitation of the AAT. As a result its value and effectiveness as an intermediate level of review will be reduced because the addition of "AAT like" processes will diminish its capacity to meet its statutory objectives to provide a fair, just, economical and informal form of review.

The Social Security Appeals Tribunal in perspective

The SSAT was established in 1975. It principally reviews decisions under the Social Security and Family Assistance law and since 1 January 2007 it has had responsibility for reviewing most decisions made by the Child Support Agency. In 2008-2009 there was a substantial increase in the workload of the SSAT. The number of appeals in the Social Security and Family Assistance jurisdiction increased by 15.8% to over 13,000 applications, the highest number of appeals in decades. There was also an increase in child support appeals to just under 3,000 cases. [50] Contextually this followed on from dramatic surges in the numbers of Centrelink and Family Assistance appeals in 2007-2008 where there had been a 35% increase. [51] Overall the SSAT had increased its finalised cases by almost 5,000 or 60% over the two year period from 2007-2009. [52]

The SSAT has the following important features for disadvantaged and usually unrepresented people:

- costs free;
- receives applications by telephone;
- provides interpreters and pays reasonable transport costs;
- receives all relevant papers from Department;
- receives the Department's reasons for decision (Authorised Review Officer Statement of Decision)in writing;

[50] Social Security Appeals Tribunal, Annual Report 2008-09
[51] Social Secutiry Appeals Tribunal, Annual Report 2007-08
[52] Social Security Appeals Tribunal, Annual Report 2008-09

- hearings conducted in person, on the papers, by videoconference or by telephone;
- hearings are private, enhancing access for unrepresented persons;
- Department does not appear at hearing, enhancing access for unrepresented persons;
- operates quickly and informally, no pre hearing processes to negotiate;
- constituted by multi-member and multi-skilled panel;
- perceived to operate independently;
- inquisitorial approach and can take in other evidence eg telephone a person's doctor; and
- provides decision and reasons in writing to both the person and the Department.

SSAT hearings usually take between 1 and 2 hours and do not permit the time to hear complex evidence from multiple witnesses or complex arguments. The hearing often provides the first real opportunity in the administrative review process for the applicant to put their case forward in an independent forum. This is assisted by the informal and inquisitorial processes adopted by the SSAT and through providing the applicant with all relevant papers from the Department prior to the hearing in most instances.

Most applicants are unrepresented. The process can be completed in 6-8 weeks.

The Administrative Appeals Tribunal in perspective

Legislation establishing the AAT was passed in 1975. The Tribunal commenced operations in 1976 and has broad jurisdiction over a range of Commonwealth Government decisions affecting individuals.

Either the Social Security/Family Assistance recipient or the Department can lodge a review application to the AAT against the decision of the SSAT and the time limits to do so are stricter. The AAT is slower and more formal than the SSAT. Its procedures include the use of preliminary conferences to settle issues and to help parties prepare for hearing where settlement is not possible. Where matters require a hearing, the process can take around 6-9 months, however at times the process can take much longer. Hearings are generally open to the public and decisions are publicly available.

There are a number of matters for which this style of proceeding is appropriate. These are matters which have complex evidence or require examination of technical provisions which are unsuited to the speedy resolution procedures of the SSAT. Social Security and Family Assistance law is frequently amended and the AAT is regularly called upon to interpret new provisions or to examine the application of policy within the legislative framework. In these matters the hearing of legal argument from the Department and the client perspective is appropriate. In practice, these reported decisions have precedent value and are followed by the SSAT. The decisions also provide guidance to decision makers at the primary level.

Value of the present SSAT –AAT process

As Social Security and Family Assistance law and the Department's administrative practices are complex and technical, a tension arises between the need for early decisions and the need for a thorough examination of complex matters. This is complicated by the fact that the majority of review applicants in the jurisdiction are ill equipped to undertake the requisite preparation and there are inadequate resources for legal services to assess the level of complexity and to meet the need for assistance in every case.

The current two tiered system is adapted to meet the varied needs of Social Security recipients. It does this by enabling the bulk of review applicants to undertake a first relatively quick review procedure, conducted by the SSAT in a manner conducive to their needs as disadvantaged and usually unrepresented persons, while keeping the safety net of a further right of appeal to the AAT, a more formal body with pre-hearing and settlement procedures. **This is a composite picture across the two-tiers. The process works because of the interaction of its key features:**

- the first tier (SSAT) operates quickly, informally and privately, in the absence of a Departmental representative;
- the first tier has multi-member and multi-skilled panels enabling high quality relatively independent and fair review which can be negotiated by unrepresented persons. Its procedures conform to procedural fairness principles, including provision of all relevant papers and are accessible, certain, clear and relatively uncomplicated;
- the second tier (AAT) is completely independent and provides slower more deliberate review with external scrutiny through reportable decisions. A more formal style of proceeding is appropriate given that it operates as a second tier level of review; and
- the Department only appears in person at the second tier, but has a right of appeal to that second tier making its appearance at the first tier unnecessary.

The controversial proposals examined

Pre hearing conferences

The SSAT's current focus upon a single hearing without any preliminary steps is appropriate to it being a quick and effective level of review. Whilst a pre hearing conferencing process is very useful in a more adversarial system, it is completely at odds with the SSAT's informal and inquisitorial processes. It will also have the effect of splitting the process into two separate components, which differ widely from and contradict each other. For this instance,

this may mean that the Department/Centrelink is involved in the pre hearing conference which will by necessity be a more formal and adversarial process but not be involved in the actual hearing. The actual hearing may therefore be non adversarial and relatively informal.

We can not see any real value in this proposal in the context of this jurisdiction. This proposal fails to recognise that the majority of persons appearing in the Social Security and Family Assistance jurisdiction are unrepresented. As the pre hearing conference will allow settlements to be negotiated and agreed, Departmental/Centrelink participation will by necessity be required in the process. It is far from certain how this would occur but could result in further delays if Centrelink were required to obtain instructions from the Department before settlement, as is the current practice in the AAT jurisdiction.

The pre hearing conference may add an unnecessary layer of complexity to the SSAT proceedings, which will deter review applicants from pursuing their appeal rights. It will significantly disadvantage unrepresented applicants who will not be able to counter arguments put by the Department concerning the merits of their case. It is also unfair and unreasonable to insist on a pre hearing process that expects review applicants to be settlement focused when the available evidence suggests that in a significant number of decisions that go to external review Centrelink has got the facts and or law wrong, or did not have sufficient information to make a reasonable decision based on the available evidence at hand. It is only after the SSAT has conducted an independent and in depth exploration of the issues that these facts and circumstances come to light. Reforms directed to improving the quality of the decision making at the primary level is where the Government's focus should be rather than backing reforms which create a high risk of inappropriate settlements being reached to the detriment of unrepresented applicants.

We note that the above points were also made by the SSAT itself in its 2009 submission to the National Alternative Dispute Resolution Advisory Council (NADRAC). [53] In its submission to NADRAC, in relation to Alternative Dispute Resolution (ADR) in the Civil Jurisdiction, the SSAT argued that pre-hearing processes at SSAT level based on an Alternative Dispute Resolution (ADR) model would lengthen the average Centrelink appeal's timeline. The SSAT argued that ADR would have limited utility as:

> *(m)any fundamental issues in the Centrelink jurisdiction do not lend themselves to ADR, for example it is not possible to negotiate or mediate whether a person is an Australian resident, whether a person is in 'severe financial hardship', whether an asset is in Australia, whether a person has commenced employment and not notified of that event, etc.* [54]

[53] *SSAT Submission to NADRAC*, http://www.nadrac.gov.au/www/nadrac/rwpattach.nsf/VAP/(3A6790B96C927794AF1031D9395C5C20)~Submission+-+Social+Security+Appeals+Tribunal+-+PDF.PDF/$file/Submission+-+Social+Security+Appeals+Tribunal+-+PDF.PDF,2009

[54] Ibid

Further the SSAT suggested that ADR processes were more appropriately placed earlier in the review and appeal process. [55] FaHCSIA in their submission to the same issues paper indicated that they did "not support the introduction of any form of mandatory ADR requirement at any stage of the dispute process." Further FaHCSIA proferred that:

> *(w)hilst technically not ADR, processes that encourage open communication with the customer and flow of information between the parties)(sic) are useful, particularly at the earliest stages of a dispute. Information from Centrelink indicates that a significant percentage of decisions made by the original decision maker are in fact changed or varied by the ARO. It is likely that some matters which had reached the stage where the customer had appealed to the SSAT or AAT could have been avoided had the exchange of certain information occurred earlier*. [56]

The SSAT also made the point that, from an applicant's perspective, most would feel intimidated by such a process. [57]

The proposed provisions will also empower the Tribunal to make directions in relation to a range of material to be provided prior to the hearing. The Principal Member will be able to give directions at the conference requiring written submissions, witness statements etc to be provided to the SSAT. These directions are not limited to review applicants and could extend to a Departmental/Centrelink representative, which would significantly increase their participation in the proceedings. This process will clearly favour the Department/Centrelink to the detriment of unrepresented litigants. It is unlikely to assist unrepresented applicants in putting their case forward as most have limited capacity to reduce their case to writing but will also slow down the review process whilst this additional information and evidence is provided. Worse still, unrepresented applicants frustrated by the legalistic requirements will discontinue their matters.

Agency participation and representation

In our view any benefits that may arise from the Department's direct involvement in the SSAT hearing process are far outweighed by its disadvantages. The lack of procedural certainty in the hearing process will be a critical issue for review applicants who often decide whether or not they wish to appeal, wish to attend a hearing or wish to seek

[55] *SSAT Submission to NADRAC*, 2009, http://www.nadrac.gov.au/www/nadrac/rwpattach.nsf/VAP/(3A6790B96C927794AF1031D9395C5C20)~Submission+-+Social+Security+Appeals+Tribunal+-+PDF.PDF/$file/Submission+-+Social+Security+Appeals+Tribunal+-+PDF.PDF.

[56] *FaHCSIA Submission on NADRAC issues paper: Alternative Dispute Resolution in the Civil Justice System*, 2009 http://www.nadrac.gov.au/www/n... and+Indigenous+Affairs.DOC

[57] *SSAT Submission to NADRAC*, 2009, http://www.nadrac.gov.au/www/nadrac/rwpattach.nsf/VAP/(3A6790B96C927794AF1031D9395C5C20)~Submission+-+Social+Security+Appeals+Tribunal+-+PDF.PDF/$file/Submission+-+Social+Security+Appeals+Tribunal+-+PDF.PDF

representation on the basis of their knowledge of the extent of the Department's participation. The provision for the Department to be able to appear at the first tier of external review to put oral submissions to the SSAT, will deter review applicants for fear of retribution by an agency and also fear of speaking out in front of a person from the Department. Unrepresented review applicants in particular are likely to be intimidated by the Departmental presence and inadequately put their case or discontinue their appeal. This was the effect in the Student Assistance Review Tribunal (SART) in the 80s and 90s where the Department was represented. The Student Assistance jurisdiction was eventually subsumed into the SSAT as the preferred model of first tier review.

In their submission to NADRAC the SSAT questioned whether or not with the numbers of Centrelink appeals, namely 13,000 in the applicable year, that Centrelink could effectively participate in that number of appeals. Further they have stated that:

> *Applicants are generally very happy to have the SSAT consider their appeal independently of any further Centrelink involvement. Also, rather than participate in ADR, Centrelink might prefer to have the SSAT consider the matter and then consider whether it wishes to appeal* to *the AAT. …The SSAT's applicant surveys continually show that the great majority of applicants are satisfied with the performance of the SSAT – applicants receive a fast, cheap process which gives them an opportunity to be heard together with a full set of reasons for the Tribunal's decision.* [58]

We would also point out, the Department is well able to put its case in writing. If the Department needs to appear to clarify/support its decision, then it is submitted that there has been a failure in the primary decision making process. Any concerns the SSAT has regarding deficiencies or ambiguities in the information the Department has provided to justify its decision would be better addressed through making the necessary improvements to the primary decision making process within Centrelink/Family Assistance Office. The Department is well able to draw on its extensive resources and experience upon which to construct its decision and reduce it to writing.

The presence of a Departmental representative will necessarily formalise the proceedings and create the need for adjournments while review applicants seek assistance or their own representation after being notified of the Department's intention to participate. This will slow down the process and undermine the Tribunal's effectiveness to deliver a quick form of review. It also risks increasing both the perception and the actual risk of the Tribunal becoming a captive of the agency. This risk would be greater at the SSAT due to the inquisitorial nature of the proceedings and the frequency with which it deals with unrepresented review applicants.

[58] *SSAT Submission to NADRAC*, http://www.nadrac.gov.au/www/nadrac/rwpattach.nsf/VAP/(3A6790B96C927794AF1031D9395C5C20)~Submission+-+Social+Security+Appeals+Tribunal+-+PDF.PDF/$file/Submission+-+Social+Security+Appeals+Tribunal+-+PDF.PDF,2009

Reduced access to written reasons (2008 Bill)

Removing the mandatory requirement on the SSAT to provide written reasons for decisions in all cases will diminish the quality of the administrative review process and disadvantage review applicants. This has been justified on the basis of the need for a quick decision, yet already a statutory requirement is imposed on the SSAT to give written reasons for a decision within 14 days of the decision being made. In those "set aside" cases where Social Security clients would genuinely benefit from a quicker response because the Tribunal has set aside a preclusion or waiting period which had prevented a person from receiving a Social Security payment, the SSAT will still be required to provide written reasons.

One of the key strengths of the SSAT's process is the provision of a detailed written statement of reasons, which clearly articulates the facts relied upon, the law and the policy applied and the reasons for the decision reached. This is often the first time the review applicant has had the benefit of a full written explanation of the decision and assists the review applicant to fully understand the reasons for the decision and to seek legal advice on its effect and their appeal rights, which is especially crucial where the Tribunal has affirmed Centrelink's decision. This helps to instill public confidence in the review process. Only providing oral reasons also obviates the discipline which writing of reasons produces and thus diminishes the quality of the decision making process.

A further difficulty with oral decisions is that applicants will often be too anxious to hear and understand what is being said by the Tribunal and to absorb the reasons for the decision. The ability of the parties to ask for written reasons does, to some extent, mitigate the difficulties but it should be recognised that a significant number of people will not ask for written reasons within the prescribed time limits but may realise they need written reasons for the decision at a later time. This will be compounded by the requirement that the request for written reasons must be in writing. This requirement is inconsistent with the client friendly SSAT practice, which allows appeals to be lodged over the telephone and also will discriminate against people who cannot write in English or write at all. The fact that there is no requirement on the SSAT to advise the review applicant in writing of their right to request reasons will further reduce access.

We view the timeframe of 14 days for seeking written reasons as far too short and could well have the unintended effect of review applicants lodging appeals to the AAT having missed the time frame for seeking written reasons for decision. This will become a significant problem for the AAT in its decision making process. The timeframe should be at least 28 days in line with the AAT time limits to remove any confusion that may otherwise occur as a result of the differing time limits. This sort of multiplicity of time limits has made the migration jurisdiction very inaccessible. It would also reduce the risk of appeals being lodged to the AAT based only on oral decisions of the SSAT.

A person without a written decision will generally find it difficult to obtain advice about the outcome of their SSAT appeal, if they are left to describe the SSAT's reasoning and outcome by themselves. Anyone requiring advice about their further appeal rights will clearly need a written decision to show their solicitor, advocate or other advisor.

Failure to obtain written reasons for decision is also likely to become an administrative problem for the Department/Centrelink. Without written reasons on file, it will be difficult to satisfy a disgruntled review applicant that an appropriate review decision was made at the time. It will also create additional hurdles for review applicants to obtain legal advice as to the nature and effect of the decision.

NWRN recommendations:

That the provisions relating to pre hearing and settlement procedures are withdrawn from the Bill.

That the Committee recommend to the Senate not to pass those aspects of the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Miscellaneous Measures) Bill 2008* relating to reduced access to written reasons for decision and the increased participation of the Department/Centrelink in the SSAT's proceedings through oral submissions.

Single member panels

Under current legislation, up to four members of the Social Security Appeals Tribunal can hear a review. Although it appears to differ from State to State, the experience of NWRN is that the SSAT is usually constituted by two members. Three member panels may be used in complex matters or to facilitate learning for new members and when the Tribunal travels to non-metropolitan areas. Members are allocated particular hearings on the basis of their expertise, whether it is legal, medical or other. In our experience it is rare for single member panels to be used and it appears to be limited to expediting urgent matters.

The proposed amendments to subclauses 10(1) to (3) of Schedule 3 of the *Social Security (Administration) Act 1991* makes specific provision for single member panels. Whilst it is arguable that the intent of the amendment is simply to clarify the existing practice, we would strongly oppose any trend towards greater use of single member panels.

In our view, collaborative decision making by multi-member panels is a key strength of the SSAT process. In terms of fairness, multiple member panels have the advantage of an inbuilt peer-review process. Multiple member panels mean that frequently the issues are better

defined, the research is undertaken more thoroughly, there is fairer and more objective fact finding and the process of writing decisions is speedier since decisions are shared between panel members. This is because multi-member panels are able to use their skill mix to take into consideration all relevant matters including legal, medical, administrative and social issues that affect a person from the applicant's background. Multi-member panels are less likely to be subject to external pressures or bias and are perceived to be more independent. Further the evidence of the SSAT shows that such panels can operate in a cost effective manner so a reduction to single member tribunals represents no savings.

NWRN recommendation:

Accordingly, NWRN recommends the provision is amended to limit single member panels to cases where it is necessary to expedite the hearing of an urgent matter and the review applicant consents to a single member hearing.

Other changes

In respect to the other changes, NWRN fully supports the extension of the powers of the SSAT in its Social Security and Family Assistance jurisdiction to correct obvious errors in decisions or statements of reasons which arose from an accidental slip or omission. NWRN agrees that these measures will improve the quality of the administrative review process by providing a quick remedy to amend statements of reasons or orders which do not correctly state what was decided and intended without the need for a further appeal.

NWRN does not take issue with the proposed changes in titles of SSAT members, the provisions which remove the requirement for the Principal Member to chair panels by empowering the Principal Member to designate any member of the panel to be the Presiding Member and the provisions relating to the protection of SSAT members. These changes do not impact directly on the quality of the administrative review process and are regarded as uncontroversial.

The Bill provides the SSAT with its own information gathering powers. It inserts new sections 165A, 165B and 165C into the *Social Security (Administration) Act 1999* which empowers the SSAT to require a person to give information or a document to the SSAT removing the need to go through the Secretary. These sections are mirrored in proposed new sections 128A to 128C of the *Family Assistance (Administration) Act 1999*. Accordingly our comments about the proposed new sections 165A and section 165C are applicable to sections 128A and 128C of the *Family Assistance (Administration) Act 1999* respectively.

We accept the stated rationale for these provisions. However as the new section 165A is a penal provision, it needs to have an ameliorating provision which provides for a reasonable excuse to not comply with a request for information. As the section is currently drafted any failure to comply with a notice given under the section to provide information and/or a document to the SSAT is an offence with a penalty of imprisonment of 6 months. Section 165(4)(b) should be expressed in terms that the offence is committed if the person "fails to comply with the notice without reasonable excuse". This would cover such issues as legal professional privilege or where complying with the notice might lead to self incrimination. We would also recommend an additional requirement in relation to section 165(C) which relates to the retention of documents produced under section 165A. Section 165(C)(2) should have the additional requirement that the person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Principal Member to be a true copy and a list of any documents taken into possession by the Tribunal. This will then mirror the rights in respect of documents taken under warrant.

NWRN recommendations:

That section 165(4)(b) of the *Social Security (Administration) Act 1999 and* section 128A(4)(b) of the *Family Assistance (Administration Act) 1999* should be expressed in terms that the offence is committed if the person "fails to comply with the notice without reasonable excuse".

That section 165A of the *Social Security (Administration Act 1999)* and section 128A of the *Family Assistance (Administration) Act 1999* include an additional requirement that the person is provided with a list of any documents taken into possession by the Tribunal and a certified copy of any document.

Miscellaneous Measures: Social Security and Family Assistance amendments

Disposal of Assets rules

We commend the Government on the proposed amendments to Division 2 of Part 3.12 of the *Social Security Act 1991* dealing with disposal of assets.

Under current Social Security law, if a person disposes of one or more assets with a total value in a single year of more than $10,000 or $30,000 over a five-year period, the value of the disposed asset is counted as an asset for Social Security purposes (a deprived asset) for 5 years from the date of the disposal and is subject to the income deeming rules. Currently,

the deprivation provisions continue to apply even if the disposed assets are subsequently returned to the person or the person later receives adequate consideration for the asset.

The proposed amendments are intended to make it clear that where the disposed asset, or consideration for the value of the asset, is returned to the person, deprivation should not apply. The proposed amendments also cover the situation of where a person partially reacquires an asset so that deprivation does not apply in relation to the portion of the asset that has been reacquired.

Whilst NWRN has broader concerns regarding the application of the Social Security hardship provisions, we acknowledge that the proposed amendments will overcome the unfairness inherent in the current rules which continues to penalise people even after the asset is returned or they receive consideration for the value of the asset.

Controlled private trusts

NWRN makes no comment on these proposed amendments.

Other proposed Amendments

NWRN makes no comment, except to note that the majority are intended to address minor anomalies and technical errors.

Summary of Recommendations

1. That the *Racial Discrimination Act 1975* be reinstated in its entirety immediately and that the "special measures" clause be removed so that Government policy and action can no longer be racially discriminatory.
2. The proposed new compulsory income management measures be expunged from the Bill. In the alternate, in the event of the passage of Parts 2 and 3 of the Bill, that the Committee recommend that FaHCSIA and Centrelink, consult with key stakeholders on the legislative instruments and Ministerial determinations which will underpin the new income management and other provisions.
3. That the Bill be amended to enable people to self select the percentage of income managed funds under the voluntary income management category. In the alternate that the Bill is amended to explicitly, state that the default position is 50% for the deductible portion of Social Security payments under the voluntary scheme.

4. That the Committee recommend the availability of weekly payments for Social Security payments, increased use of Centrepay and financial counselling to assist with budgeting for income support recipients.

5. That section 123WL(3)is amended to allow the payment of expenses incurred by family members in attending the funeral and related activities of the deceased to be made directly to immediate family members in appropriate circumstances.

6. That the provisions relating to the Social Security Appeals Tribunal (SSAT) pre hearing and settlement procedures are withdrawn from the Bill.

7. That the Committee recommend to the Senate not to pass those aspects of the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Miscellaneous Measures) Bill 2008* relating to reduced access to written reasons for decision and the increased participation of the Department/Centrelink in the SSAT's proceedings through oral submissions.

8. Accordingly, NWRN recommends the provision is amended to limit single member panels to cases where it is necessary to expedite the hearing of an urgent matter and the review applicant consents to a single member hearing.

9. That section 165(4)(b) of the *Social Security (Administration) Act 1999 and* section 128A(4)(b) of the *Family Assistance (Administration Act) 1999* be amended to be expressed in terms that the offence is committed if the person "fails to comply with the notice without reasonable excuse".

10. That section 165A of the *Social Security (Administration Act 1999)* and section 128A of the *Family Assistance (Administration) Act 1999* include an additional requirement that the person is provided with a list of any documents taken into possession by the Tribunal and a certified copy of any document.