
CONDITIONING SOCIAL WELFARE PAYMENTS:

SECURING LIBERTY FOR VULNERABLE CHILDREN AND ADULTS?

by Peter Billings

INCOME MANAGEMENT (NT)

Income management for social welfare recipients in prescribed parts of the Northern Territory ('NT') is synonymous with the Northern Territory Emergency Response now recast as 'Closing the Gap'.¹ The *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* ('WPRA') (that inserted Part 3B into the *Social Security (Administration) Act 1999* (Cth) ('SSAA') aimed 'to promote socially responsible behaviour, particularly in relation to the care and education of children' and to ensure a proportion of welfare payments (50%) and lump sums (100 per cent) were directed to meeting priority needs.² It enabled the indiscriminate management of defined welfare payments (typically, Newstart Allowance and Disability Support Pension)³ for people living in 73 prescribed areas.⁴

CAPE YORK WELFARE REFORM

Income management in the NT was one of several social welfare payment reform trials in Australia in the last three years. Accordingly, the WPRA provided the basis for a Queensland trial in four Indigenous communities that was progressed via the *Family Responsibilities Commission Act 2008* (Qld).⁵ The Family Responsibilities Commission ('FRC') is a regulatory body, comprised of a former Magistrate and local Indigenous leaders, that operates in tandem with a range of public agencies (education, child protection, housing, Centrelink, courts and police) and non-government bodies. It aspires to change particular individual (dysfunctional) behaviours and enable people to meet their social obligations. People come within the FRC's jurisdiction due to the occurrence of particular events. For example, where parents fail to ensure their children attend school regularly, or where Child Safety Services receive an allegation of harm or risk of harm to a child. Income management is one of a range of regulatory responses the FRC employs to promote its aims and it serves several purposes:⁶

1. as a compliance measure to enforce people's attendance at FRC conferences and conformity with agreements reached or orders made;
2. 'to assist the person to engage in socially responsible standards of behaviour ... including stabilising a

- person's circumstances, particularly where children or other vulnerable people are concerned';⁷ and
3. as a deterrent against socially irresponsible behaviour.

SCHOOL ENROLMENT AND ATTENDANCE MEASURE

Additionally, the *Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) Act 2008* (Cth)⁸ placed requirements on parents in receipt of income support in relation to the enrolment and attendance of their children at school. The Commonwealth stressed that the trial sites were not selected because of the number of Aboriginal students in the locations.⁹ During 2009 the trial commenced in six communities in the NT and several Queensland locations¹⁰ and aims 'to engender behavioural change in those parents who are reluctant to encourage their children to participate in school'.¹¹ Unlike the welfare reforms canvassed above, the regime permits the suspension and removal of entitlements.¹² Suspension of payments is used as a measure of last resort after repeated and sustained attempts to engage a parent.¹³ In principle, this is comparable to the Cape York trial where income management is used as an intensification of intervention for individuals who are proving hard to engage. Evidently, the suspension of welfare payments for parents failing to send their children to school has been used sparingly (five families in NT communities during 2009)¹⁴ perhaps reflecting resistance to the use of coercive measures among teachers and education officials.

INCOME MANAGEMENT AS A CHILD PROTECTION MEASURE

Compared to the abovementioned schemes another distinctive welfare trial, designed 'to restore norms in dysfunctional communities',¹⁵ has attracted less publicity. From November 2008 Labor has utilised the WPRA to trial income management as a child protection mechanism, extending it to 10 Western Australian districts in the Perth metropolitan area and the Kimberley region.¹⁶ The use of income management for child protection purposes was linked to two publications: *The Hope Report* – a coronial inquiry into the high suicide rates and deaths of 22 men and women from the Kimberley area;¹⁷ and *The Cost of*

Child Abuse in Australia.¹⁸ The *Hope Report* recommended that in cases of child neglect, compulsory income management should be made available to officers from the State Department of Child Protection ('DCP').

A child protection officer of a State or Territory may subject a person (with whom protection officers are already working) living in a declared area¹⁹ to income management in respect of specified welfare payments. The legislation permits the management of up to 100 per cent of all benefits, but in practice child protection authorities may request that Centrelink manage 70 per cent of parents' income support and family payments and 100 per cent of lump sum payments, to ensure the essential needs of children are met where they are, or may be, at risk of neglect.²⁰ The DCP determines a period of between three and 12 months for income management in any two year period, a period which may be reduced at the behest of the DCP.

Neglect is described as occurring when a child is not provided with: adequate food or shelter; effective medical, therapeutic or remedial treatment and/or care; and supervision to a severe and/or persistent extent.²¹ Child protection officers make referrals to Centrelink where neglect is occurring and income management is likely to be in the best interests of the child *or* the person with parental responsibility's use of available resources is a contributing factor to neglect, and income management is likely to improve the parent's use of available resources. Where children are in State care and the parent's current usage of financial resources is a barrier to reunification and likely to result in the child's neglect if returned, income management may be used where it will assist the parent to meet the child's needs.²²

Parents receive welfare payments through a BasicsCard which cannot be used to purchase excluded goods such as alcohol, tobacco, pornography or gambling products. Parents and care-givers that have their welfare quarantined may be referred to financial management support services, in order to develop their financial management skills, and to other support services. At 30 April 2010, 226 welfare recipients were subject to income management of which 69 per cent were located in the Kimberley, 83 per cent of *all* current and former income managed individuals were Indigenous, and, at the time, 79 per cent of clients were female.²³

Appeals based around the *operation* of income management – eligibility issues and the sum of money to be managed – may be subject to internal review by Centrelink with

onward appeals to the Social Security Appeals Tribunal and Administrative Appeals Tribunal, in principle. Aggrieved individuals may challenge *whether* income management was appropriate (and the proposed duration of such a measure) before local review bodies – the Case Review Panel (DCP) and State Administrative Tribunal.²⁴

TOUGH LOVE: BETTER OUTCOMES FOR COMMUNITIES AND FAMILIES?

Child protection officials ('WA') have identified income management as very useful as part of case management when: addressing neglect or other forms of abuse; assisting in the reunification of children with parents; and supporting children leaving the Department's care to achieve independence. Additionally, case managers have reported that parents are generally supportive once they understand how the process works.²⁵ One unintended consequence of income management has been the accrual of quarantined funds (the balance left after basic necessities have been met) and these 'savings' have funded purchases such as white goods.

An independent evaluation conducted by the Department of Families, Housing, Community Services and Indigenous Affairs on the use of income management in WA, for child protection purposes and voluntary income management, found that the trial generally had positive impacts on the wellbeing of individuals, children and families and was effective in helping people meet their priority needs and those of their children.²⁶ Specifically, a majority of stakeholders (public officials, financial management service staff and welfare/community groups) and subjects of the trial considered that income management had increased – to some degree – the amount of money being spent on meeting children's needs.²⁷ Positive impacts on children's wellbeing identified were: an increase in the amount of food eaten; better housing conditions; an increase in the quality and adequacy of clothing; greater access to items needed for school; and improvements in emotional wellbeing.²⁸ A decrease in drinking, violence, gambling and 'humbugging' was reported by participants from Indigenous communities.²⁹ However, welfare and community organisations were less positive about the impacts of the trial, compared to other stakeholders, because of insufficient evidence on which to base assessments.

In contrast to the evaluation of the WA trial, an independent review of the Cape York trial had little to report on emerging trends in regards to the child safety aspect of the FRC's work and pointed to the need for future evaluation of this matter.³⁰ However, due to the interconnectedness

of social issues, strategies in place to address alcohol and violence in communities may impact on children's wellbeing in ways that are difficult to measure, at least in the short term. Consequently, a Magistrate's Court referral to the FRC, of a person convicted of breaching an Alcohol Management Plan ('AMP'), may lead to an agreement or direction from the FRC for that person to attend alcohol counselling and/or a Parenting Program.³¹ This may gradually, if not linearly, lead to more socially responsible behaviour towards children and others. Indeed, in the trial community of Aurukun 'the closure of the Tavern was associated with decreased violence and improvements in parenting and family interactions',³² although this is not a uniform view; the Tavern had operated under highly restrictive licensing conditions.

A NEW ERA OF INCOME MANAGEMENT: CHILD PROTECTION AND BEYOND

From September 2010 the child protection measure (outlined above) is being progressively applied in the NT as part of Labor's national 'needs-based' social welfare reforms. This extension of the measure did not require new legislation, but its application followed the enactment of the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010* (Cth) ('Welfare Reform Act' hereafter).³³ The Welfare Reform Act repeals the race-based scheme of income management in the NT.³⁴ Instead, supplementing the child protection measure are three new categories of people who are subject to income management. These regimes, explained below, are designed to target and support especially vulnerable welfare recipients 'due to their high risk of social isolation and disengagement, poor financial literacy and participation in risky behaviours'.³⁵ Anti-discrimination laws are restored,³⁶ but the national reform agenda is not fully mainstreamed and is confined to the NT initially. The number of people captured by the reforms (approximately 20 000 residents or 9% of the total NT population)³⁷ will significantly comprise Indigenous citizens.³⁸

TARGETED INCOME MANAGEMENT – THREE NEW CATEGORIES

The measures are designed to target only the vulnerable, although in practice the difference to the numbers of Aboriginal people subject to welfare quarantining may be marginal. People who usually reside in 'declared income management areas'³⁹ are susceptible to income management in specific circumstances. Accordingly, income management may be triggered after a person is assessed as 'vulnerable': following a referral from a child protection agency,⁴⁰ or where a Centrelink social worker

considers that a person is vulnerable.⁴¹ Government responsibility flows from an individual assessment about a person's or families' circumstances in order to ensure that welfare payments are spent on the 'priority needs' of either children or the intended adult recipient of income support, mitigating expenditure on gambling, alcohol or drugs where applicable.

Additionally, income management applies *automatically* to two categories of welfare recipients irrespective of their expenditure patterns: 'disengaged youth'⁴² and long-term 'adult' welfare recipients.⁴³ This reform extends conditionality for the unemployed who are already required to meet participation requirements in order to retain welfare entitlements. Its focus is on youth 'who are likely to become entrenched in welfare dependency' and on addressing poor health and education among mature-aged long-term unemployed. The Commonwealth has also asserted: 'It is also more likely that there will be poor outcomes for children growing up in these circumstances, particularly for school attendance and educational attainment'.⁴⁴ Exemption from these categories is possible, where a person evidences participation in education or training, or where parental responsibility is demonstrated.⁴⁵ Decisions to place individuals on income management and regarding exemption are subject to internal and external merits review.⁴⁶

In principle, the new schemes do not capture as many categories of welfare support as the NTER scheme. People on age pension, disability support pension, widow allowance and veteran's service pensions are excluded. Over one-third of people on income support payments in prescribed NT areas were in receipt of an age or disability pension.⁴⁷ In practice, evidence is emerging of bureaucratic resistance to Indigenous people's requests to come off income management where they fall within the exempt categories.⁴⁸

CONCLUSIONS

The extension of income management reflects bipartisan political views that promote individual responsibility along with rights. Contemporary social welfare experiments have extended the mutual obligations philosophy beyond the employment context to the realm of child protection in Indigenous communities, and latterly to address the problem of passive welfare – protecting vulnerable welfare recipients and promoting social capital. The Commonwealth claims that extending income management to a wider range of disadvantaged individuals and communities than before is justifiable because the welfare trials to date suggest it is an effective tool to: reduce

levels of deprivation; promote personal and parental responsibility; and provide security for people over the expenditure of their welfare payments.⁴⁹ However, these are thorny issues; with community opinion in the NT polarised about the purported benefits realised by income management⁵⁰ and an equivocal evidence-base.

As part of a suite of measures to protect and support children, targeted income management seems reasonable where it diminishes the risk of placing neglected children into state care and assists in the reunification of children with their parents or care-givers.⁵¹ To alleviate uncertainty, it is critical that communities and families are provided with information in an appropriate form in order to comprehend what is considered neglectful behaviour by child safety officials and the process of income management. Moreover, the utility of this intervention is dependent on effective service delivery for families. To date, deficiencies in the provision and co-ordination of support services in both WA and Cape York trials have undermined the prospects of positive outcomes for people and communities.⁵²

While supportive of the child protection measure, the Northern Territory Government is also aware of the logistical challenges that may impede its effectiveness and mindful of the difficulties in investigating increasing numbers of child neglect notifications.⁵³ A recent inquiry established to review the child protection system observed that the system was overwhelmed.⁵⁴ The report's authors advocated a thorough reorientation of the child support apparatus, an approach that did not merely pay lip service to the need to support and enable families to care for their own children, and attentiveness to the voices of those affected by interventions.⁵⁵ Confronted with increased work-loads and stress levels, child protection authorities will face considerable challenges to ensure the fair and culturally competent administration of their discretionary powers, and effective engagement with their clients.

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1 J. Macklin, J.'Budget – Closing the Gap Between Indigenous and Non-Indigenous Australians' (13 May 2008) <www.fahcsia.gov.au/about/publications/articles/corp/BudgetPAES/budget2008-09/Documents/Ministerial%20Statement/default.htm>.

- 2 WPRA s 123TB(a).
- 3 Department of Families, Housing, Community Services and Indigenous Affairs ('FaHCSIA') *Closing the Gap in the Northern Territory – Monitoring Report* (July-December 2009) Part Two <www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/closing_gap_NT_jul_dec_2009/Pages/default.aspx>.
- 4 WPRA ss 123TB-123TE.
- 5 Enacted 13 March 2008. The Social Security (Administration) – Queensland Commission (Family Responsibilities Commission) Specification 2008 (Cth) provided that the FRC satisfied the definition of the "Queensland Commission" pursuant to SSAA s.123TC(b).
- 6 See, P. Billings, 'The Family Responsibilities Commission (Qld) - Facilitating Socially Responsible Standards of Behaviour in Cape York?' (2010) 7(16) *ILB* 3-7; and FaHCSIA, *Implementation Review of the Family Responsibilities Commission – FINAL REPORT* (September 2010) <www.atsip.qld.gov.au/government/families-responsibilities-commission/> for KPMG's review of the FRC.
- 7 Family Responsibilities Commission *Annual Report 2009-10* (2010) 45 <www.atsip.qld.gov.au/government/families-responsibilities-commission/>.
- 8 Inserting Part 3C (schooling requirement provisions) into the SSAA.
- 9 Commonwealth, *Parliamentary Debates*, House of Representatives, 4 September 2008, 7210 (J. Macklin).
- 10 Department of Education, Employment and Workplace Relations, 'Improving School Attendance and Enrolment Through Welfare Reform Measure', (2011) <www.deewr.gov.au/schooling/programs/pages/seam.aspx>.
- 11 Commonwealth, *Parliamentary Debates*, Senate, 15 September 2008, 4707-4708 (J. McLucas).
- 12 See P. Billings, 'School Enrolment and Attendance Measures: More Trials for Aboriginal Families?' (2009) 7(14) *ILB* 3-6.
- 13 Commonwealth, *Parliamentary Debates*, House of Representatives, 27 August 2008, 6299 (J. Gillard, Deputy Prime Minister).
- 14 L. Hall, 'Minister Says More Parents Should be Punished', *The Australian*, (19 June 2010) <www.theaustralian.com.au/politics/minister-says-more-parents-should-be-punished/story-e6frgczf-1225881259242>; and Hall, L., 'Few Children and Even Fewer Resources in Remote NT Schools', *The Australian*, (12 June 2010) <www.theaustralian.com.au/news/nation/few-children-and-even-fewer-resources-in-remote-nt-schools/story-e6frg6nf-1225878650497> detailing an alternative perspective that points to the 'problem' in education being the lack of properly equipped schools.
- 15 J. Macklin and M. McGowan, 'Income Management Rollout in Oombulgurri' (Press Release, July 21, 2008) <www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/oombulgurri_21jul08.htm>.
- 16 J. Macklin and R. McSweeney, "Income Management in Cannington and Kimberley" (Press Release, November 18, 2008) <www.fahcsia.gov.au/internet/jennymacklin.nsf/content/income_management_18nov08.htm>; and, R. McSweeney, 'Expansion of Income Management Trials in Western Australia' (Press Release, April 20, 2009) <www.mediastatements.wa.gov.au/Lists/Statements/DispForm.aspx?ID=131710>.
- 17 Coroner Alastair Hope, *Inquest into the deaths of (22 Indigenous people in the Kimberley)* (February 2008) WA (the 'Hope Report'); and J. Macklin, 'Rudd and Carpenter Governments to Deliver Income Management Trial' (Press Release, February 27, 2008) <www.jennymacklin.com>.

- fahcsia.gov.au/internet/jennymacklin.nsf/content/income_management_27feb08.htm>.
- 18 P. Taylor et al, *The Cost of Child Abuse in Australia* (Melbourne: Australian Childhood Foundation and Child Abuse Prevention Research Australia 2008) <www.stopchildabuse.com.au/.../Access%20Economic%20Report_Exec%20Summary_FINAL.pdf>.
 - 19 WPRA s.123TF.
 - 20 J. Macklin and R. McSweeney, above n 16.
 - 21 Senate Community Affairs Legislation Committee, *Reference: Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*, (22 February 2010) <www.aph.gov.au/hansard/senate/commtee/S12803.pdf> CA2 (F. Lander).
 - 22 Senate Community Affairs Legislation Committee, above n 21, CA2 (F. Lander); and, J., Strutt, 'Neglected Kids "Breaking into Homes for Food"', *The West Australian*, (15 January 2010).
 - 23 FaHCSIA, *Evaluation of the Child Protection Scheme of Income Management and Voluntary Income Management Measures in Western Australia – Report – September 2010*, 54, 56, 59. <www.fahcsia.gov.au/sa/families/pubs/cpsim_vim_wa/Pages/default.aspx>.
 - 24 The Panel reviews decisions taken as part of a care plan when a child is in the DCP's care.
 - 25 Senate Community Affairs Legislation Committee, above n 21, CA5 (F. Lander).
 - 26 FaHCSIA, above n 23, 17.
 - 27 FaHCSIA, above n 23, 116, 124-126.
 - 28 FaHCSIA, above n 23, 118.
 - 29 FaHCSIA, above n 23, 132.
 - 30 FaHCSIA, Implementation Review of the Family Responsibilities Commission – FINAL REPORT – (September 2010) 104, <www.atsip.qld.gov.au/government/families-responsibilities-commission/>.
 - 31 Qualitative analysis of income managed clients found that they were often experiencing multiple and often severe difficult life circumstances – alcohol and violence were frequently factors in the lives of people subsequently income managed and for some people there were issues around the wellbeing of children in their care (FaHCSIA, above, n 30, 79).
 - 32 FaHCSIA, above, n 30, 111. See N., Watson, 'Regulating Alcohol: One Step Forward, Two Steps Back?' (2009) 7(11) *ILB* 27 for a discussion of alcohol restrictions in Indigenous communities in Queensland and *Aurukun Shire Council v CEO Office of Liquor Gaming and Racing in the Department of Treasury* [2008] QSC 305.
 - 33 Revising SSAA Part 3B.
 - 34 *Welfare Reform Act* Sch.2 Part 1 (Relevant Northern Territory Area): item 11 (repealing 'relevant' and 'declared' NT areas); and, item 12 (repealing s.123UB: 'persons subject to the income management regime – relevant Northern Territory area').
 - 35 Australian Government, *Landmark Reform to the Welfare System, Reinstatement of the Racial Discrimination Act and Strengthening of the Northern Territory Emergency Response* (November 2009) <www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/policy_statement_nter/Pages/default.aspx> at 6.
 - 36 Sch.1 item 3, repeals WPRA ss.4-7, which, *inter alia*, 'deemed' income management provisions 'special measures', suspended the operation of Pt II *RDA 1975* (Cth) and excluded the operation of anti-discrimination laws in the NT and Queensland.
 - 37 Senate Community Affairs Legislation Committee, *Reference: Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*, 15 February 2010, <www.aph.gov.au/senate/committee/clac_ctte/soc_sec_welfare_reform_racial_discrim_09/hearings/index.htm> 2 (K. Davies).
 - 38 Australian Government, above n35, 7.
 - 39 Sch.2 Pt. 2 item 35, inserting s.123 TFA – Minister's legislative power to specify a State, Territory or area.
 - 40 SSAA s 123UC (as amended by the WPRA).
 - 41 SSAA s 123 UCA (as amended by the Welfare Reform Act).
 - 42 SSAA s 123UCB (as amended by the Welfare Reform Act). People under 25 on the main activity tested payments — youth allowance, Newstart and parenting payments for 13 out of 26 weeks at the 'test time'.
 - 43 SSAA s 123UCC (as amended by the *Welfare Reform Act*). Those people over 25, on activity tested payments, for 52 out of the previous 104 weeks at the 'test time'.
 - 44 Australian Government, above n 35, 6.
 - 45 SSAA ss 123UGB-UGD (as amended by the Welfare Reform Act).
 - 46 Social Security Appeals Tribunal can review decisions (SSAA s 140(1)(a)) with onward appeal rights to the Administrative Appeals Tribunal (SSAA s 181). Complaints about the decisions of NT child protection authorities may be submitted to the NT Ombudsman.
 - 47 FaHCSIA (2009) *Closing the Gap in the Northern Territory – Monitoring Report* (July-December 2009 Part Two), 37.
 - 48 P. Gibson, 'Business as Usual under Labor's "New" Income Management', *Crikey*, 20 September 2010.
 - 49 House of Representatives, *Explanatory Memorandum Social Security and Other Legislation Amendment (Welfare Reform and RDA Reinstatement) Bill 2009*, 12.
 - 50 Senate Select Committee on Regional and Remote Indigenous Communities, *Second Report 2009*, (25 June 2009) <www.aph.gov.au/senate/committee/indig_ctte/reports/2009/report2/report.pdf> 73.
 - 51 Senate Community Affairs Legislation Committee, above n 21, and, Strutt, J. above n 22.
 - 52 FaHCSIA, above n 23, 12; Family Responsibilities Commission *Annual Report 2008-09* (2009) 33; and Family Responsibilities Commission *Annual Report 2009-10* (2010) 51.
 - 53 Senate Community Affairs Legislation Committee, above n 37, 22 (C. Gardiner-Barnes).
 - 54 NT Government, *Growing Them Strong Together: Promoting the Safety and Wellbeing of the Northern Territory's Children*, (2010) <www.childprotectioninquiry.nt.gov.au/>.
 - 55 NT Government, above n 54, chapter 14.