



Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007

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Social Policy Section

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Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007

Date introduced: 7 August 2007

House: House of Representatives

Portfolio: Families, Community Services and Indigenous Affairs

Commencement:

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

This Bill contains essentially the changes to welfare payments and payment arrangements considered necessary by the government to support its response to the report of the Northern Territory board of inquiry into the protection of Aboriginal children from sexual abuse.¹ The legislative amendments presented contain new payment arrangements for individuals considered appropriate to have all or some of their welfare payment diverted. The Bill introduces a new concept into welfare assistance legislation – the Income Management Regime (IMR). Individual welfare payment recipients subjected to IMR arrangements may have their welfare payments paid to them directly reduced and the amount diverted paid into an IMR special account.

Background

The Bill was introduced to the Parliament along with four other Bills as a package on 7 August 2007. The other Bills are:

- Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007 (the Families Bill)

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1. Government of the Northern Territory, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse 2007, *Ampe Akelyernemane Meke Mekarle* “Little Children are Sacred”, Darwin, Australia, 15 June 2007.
<http://www.nt.gov.au/dcm/inquirysaac/>

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- Northern Territory National Emergency Response Bill 2007 (the Emergency Response Bill)
- Appropriation (Northern Territory National Emergency Response) Bill (No. 1) 2007-2008, and
- Appropriation (Northern Territory National Emergency Response) Bill (No. 2) 2007-2008.

Due to the short time-frame allowed for Parliamentary consideration, the Library produced an [interim Bills Digest](#) on the package of Bills on 7 August,² and is now issuing a separate Bills Digest on each Bill.

The Bill provides the legislative support for the measures announced by the Prime Minister and the Minister for Families, Community Services and Indigenous Affairs on 21 June 2007,³ in response to the *Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, 2007.⁴

The Bill proposes various measures to avoid being affected by the operation of the *Racial Discrimination Act 1975* (RDA). The Bill's various provisions are defined as 'special measures' under the RDA. This would mean that they are defined as being undertaken for the benefit of the communities involved and are not prohibited by the Act. However the Bill then goes on to suspend the operation of Part II of the RDA, which includes the operative provisions prohibiting racial discrimination. For further discussion of the provisions regarding racial discrimination see the Bills Digest for the Northern Territory National Emergency Response Bill 2007.

Welfare payments are inalienable

Generally, welfare payments are inalienable. This applies to the income support and income supplement payments provided under the *Social Security Act 1991* (SSA) and also to the family assistance payments provided under the *A New Tax System (Family Assistance) Act 1999* (FAA). It also applies to payments provided under the *Veterans' Entitlements Act 1986* (VEA).

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2. Law and Bills Digest Section and Social Policy Section, 'Northern Territory national emergency response Bills 2007—interim Bills Digest', *Bills Digest*, no. 18, Parliamentary Library, Canberra, 2007–08, <http://www.aph.gov.au/library/pubs/bd/2007-08/08bd018.pdf>.
 3. The Hon. Mr Mal Brough, MP, Minister for Families, Community Services and Indigenous Affairs, *National emergency response to protect Aboriginal children in the NT*, media release, Canberra, Australia, 21 June 2007. http://www.facs.gov.au/internet/Minister3.nsf/content/emergency_21june07.htm
 4. Government of the Northern Territory, *Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse 2007*, op. cit.

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Payments under various welfare acts are inalienable

Inalienability

Inalienability basically means that where a person is qualified to a payment and entitled to an amount of payment, the payment is their legal right and cannot be not provided, or provided to someone else.

This Bill will add another circumstance where, notwithstanding the current inalienability of payment provisions in the SSA, the FAA and the VEA, there will be circumstances where an individual qualified to receive a payment will not be provided with that payment, in whole or in part. This will be where the proposed IMR provisions in this Bill are to apply.

Inalienability under the SSA, the FAA and the VEA

Payments provided under the SSA are inalienable according to section 60 of the *Social Security (Administration) Act 1999* (SSAA).⁵

Section 61 of the SSAA allows the payment recipient to elect to pay some part of their payment (deductions) to another party, for example to an energy or electricity provider. Section 238 of the SSAA allows deductions to be made to the Taxation Commissioner for tax owed or to the Child Support Agency for maintenance owed. Sections 1231 and 1234A of the SSA allow deductions to recover debts; that is section 1231 for debts arising under the SSA and section 1234A for deductions for other debts with the person's consent. Other than these specific modifications, the inalienability provisions in the SSA mean that payments under the SSA must be provided to the qualified person and not be not provided.

There are also like provisions ensuring payments provided under the FAA are inalienable – see Section 66 of the *A New Tax System (Family Assistance) (Administration) Act 1999* (FAAA).⁶

5. Protection of social security payment

60. (1) A social security payment is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

60. (2) This section has effect subject to:

(a) sections 61 and 238 of this Act; and

(b) sections 1231 and 1234A of the 1991 Act.

6. Protection of payments under this Part

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As with the inalienability of payment provisions in the SSA and the FAA. Section 125 of the VEA provides for the inalienability of payments.⁷

Schedule 1 – Income management regime

Income Maintenance Regime provisions

Who are the IMR provisions to generally apply to

Broadly speaking, a person may become subject to the IMR provisions in this Bill for one of the following reasons:

- for the protection of a child of the person
- the person is subject to the jurisdiction of the Queensland Commission and the Commission request the IMR provisions to apply⁸
- the person is a resident of a specified area in the Northern Territory, or
- the person's child is subject to the 'unsatisfactory attendance at school' situation.

66.(1) Payments of the following are absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise:

- (a) family tax benefit;
- (b) family tax benefit advances;
- (c) maternity payment;
- (d) maternity immunisation allowance;
- (e) child care benefit;
- (f) payments of advances under section 219R;
- (g) one-off payment to families.

7. Pensions etc. absolutely inalienable

(1) Subject to this Act, a pension, allowance or other pecuniary benefit under this Act is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

8. The Cape York Institute launched its Welfare Reform Project in mid-2006. This produced Design Recommendations contained in the report [From Hand Out to Hand Up: Design Recommendations](#) which was released on 19 June 2007. See generally the Cape York Institute site: <http://www.cyi.org.au/welfarereform.aspx>, and information from the Minister for Families, Community Services and Indigenous Affairs http://www.facsia.gov.au/Internet/Minister3.nsf/content/cape_york_welfare_18jul07.htm

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IMR conditions to be spelt out by the Minister in Legislative Instruments

Introduction

Generally, the specific individual circumstance where a person might be considered for and subject to, the IMR provisions in this Bill are not set out in this Bill. The details of the circumstances where individuals might be subjected to the IMR provisions are to be set out in various different Legislative Instruments to be made by the Minister.

Use of Legislative Instruments

Historically, the use of Legislative Instruments attached to the SSA, the FAA or the VEA has been very minimal. Where there needs to be qualification or payment requirements spelt out, this has been placed inside the legislation, not in an attached Legislative Instrument. The culture has been one of; if you are to make payments to a person, the qualification requirements and the payment conditions should be spelt out in legislation. More recently this has changed. For example, the major legislation supporting the government's Welfare to Work initiatives was the *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005*.⁹ This Act did make extensive use of attached Legislative Instruments to spell out in more detail the conditions of payment eligibility, activity testing exemptions and other matters.

Perhaps Legislative Instruments are a feature in this Bill because of the very short lead time between when the Government announced the initiatives on 21 June 2007 and when legislation was presented to the Parliament on 7 August 2007. It may be that there hasn't been the time to develop and write the detailed provisions that might apply to trigger the IMR provisions in specific situations, especially considering the IMR arrangements presented in the Bill are unprecedented and very new. In this case, placing much of the detail in attached Legislative Instruments does allow more time for the government to work up the detail and provide it later in the Legislative Instruments.

Some administrators prefer Disallowable Instruments

Disallowable Legislative Instruments still get some scrutiny by the Parliament,¹⁰ but a second reading debate is not required and unless there is a motion of disallowance, there is no debate. Legislative Instruments can be favoured by administrators as they are more

9. Dale Daniels and Peter Yeend, *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Bill 2005*, *Bills Digest No. 70, 2005-06*, Parliamentary Library, Canberra, Australia, 6 December 2005.

<http://www.aph.gov.au/library/pubs/bd/2005-06/06bd070.htm#schedule>

10. Moira Coombs, *Legislative Instruments Bill 2003*, *Bills Digest No. 26 2003-04*, Parliamentary Library, Canberra, Australia, 8 September 2003.

<http://www.aph.gov.au/library/pubs/bd/2003-04/04bd026.htm#Contact>

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easily updated or changed than provisions in an act, which require amending legislation to be passed by the Parliament.

Categories of persons the IMR provisions might be applied to

For the protection of a child of the person

A person may be subject to the IMR provisions for reasons of protection of a child. The ‘child protection’ IMR provisions will require a State or Territory child protection officer to request the IMR provisions to be applied and then when applied, amongst other things, subject to principles to be set out in a Legislative Instrument to be made by the Minister. Unlike the specified areas in the Northern Territory (see below) and the also Queensland Commission referrals (see below), this child protection IMR category is not geographically specific and can refer to any person living anywhere.

The person is subject to the jurisdiction of the Queensland Commission

Where the Queensland Commission requests in writing that the Secretary¹¹ place the person under the IMR provisions, the IMR provisions are to generally be applied. The IMR provisions are to be applied unless the case involves circumstance where they should not be applied. These circumstances are not set out in the Bill but are to be set out in principles in a Legislative Instrument to be made by the Minister.

The person is a resident of a specified area in the Northern Territory

Where a person is a resident of a specified area in the Northern Territory (specified in this Bill), the Secretary can determine that a person is subject to the IMR provisions in this Bill. The Secretary must have regard to, amongst other things, principles to be set out in a Legislative Instrument to be made by the Minister. These principles are not set out in the Bill.

Child attendance at school

For the ‘child attendance at school’ provisions, the IMR provisions can be applied where it is considered there is an unsatisfactory school attendance situation. The Secretary will be empowered to declare the IMR should apply to a person subject to amongst other things, principles to be set out in a Legislative Instrument to be made by the Minister.

The Secretary will also be able to issue to a parent a requirement to provide documentary evidence about the child’s attendance at school. Where the notice is not complied with, the Secretary can determine the child has not been attending school, subject to provisions

11. Defined in the *Social Security Act 1991* as the Secretary to the Department of Families, Community Services and Indigenous Affairs.

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to be set out in a Legislative Instrument to be made by the Minister. Unlike the specified areas in the Northern Territory (see above) and the also Queensland Commission referrals (see above), this child attendance or enrolment at school IMR reason is not geographically specific and can refer to any person living anywhere.

Comment

The provisions in this Bill only really set out the broad circumstances where the IMR provisions are to be applied. The specific details of where an individual person can be subjected to the IMR provisions are yet to be seen as they are to be described in principles to be set out in a Legislative Instrument made by the Minister.

IMR withdrawal of payments and refunds

How long will IMR be applied

There is no set period set out in the Bill as to how long an IMR process is to apply to an individual. The period an IMR can be applied will be set out in principles to be set out in a Legislative Instrument to be made by the Minister.

Payment diversion amounts

There are various different payment diversion amount provisions in the Bill. The amounts to be diverted vary depending on whether the origins of the IMR for the individual refer to a Northern Territory resident, a request by the Queensland Commission, or a child protection case or a child non attendance at school case. The other main variable that determines the amount of diversion is the type and nature of payment to be diverted.

IMR diversion amounts to be placed in a IMR management account

Amounts of monies diverted from the person under the IMR processes are placed into a dedicated special IMR management account for that individual.

Refunds of deducted or withdrawn payments

The Bill provides for any remaining amount in an individual's IMR management account to be refunded to the person when they are no longer subject to the IMR process.

Debits from IMR accounts for priority needs

The Bill does empower the Secretary to authorise monies to be provided from a person's IMR management account for priority needs. The Bill does not specify what a priority need is, so presumably this will be described in policy guidelines approved by the Secretary. The Bill does specify that the Secretary is to have regard to the best interests of the children of the person.

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Account payments from the income maintenance account

The Bill does empower the Secretary to authorise the provision of monies from a person's IMR management account for expenses on goods and services by the person. These expenses are not described in the Bill, but are probably envisaged as essential debts such as electricity bills, rent etc.

Unrestricted debits from the income management account to the IMR person's bank account

The Bill empowers the Secretary to make debits from a person's IMR management account to their personal bank account. The Bill does not specify how much these debits can be for and for what purpose. The provisions are very open but they are to be subject to matters (if any) set out in a Legislative Instrument made by the Minister and other matters as specified in guidelines set out by the Secretary. It is probable that this is intended to cover cases where some monies are wanted to be handed back to the IMR affected person but they do not want to remove the IMR processes from the person.

Comment

The IMR regime provisions in this Bill, whereby welfare payments (whole or in part) are not paid to a person, have never been applied to welfare payments before. Accordingly, the very broad debit provisions in the Bill, to allow for the refund or payments of debits out of the amounts diverted are very flexible, without removing the person from the IMR processes.

Different diversion amounts for different types of cases

Most of the specified diversion amounts referred to in the Bill are either 50 per cent or 100 per cent. Whether 50 per cent or 100 per cent is diverted will depend on the origins of the case and the type of payment and also on the delivery of payment; that is regular instalments or a lump sum.

Child protection cases and school enrolment and attendance cases

Where the IMR provisions are to be applied as it is a case concerning either a child protection case or a school enrolment and attendance case, in most cases the Bill describes that the diversion of payment under IMR processes is to be 100 per cent. The child protection cases and school enrolment and attendance cases both refer to category I payments (as described in the Bill), which refers to virtually all income support and supplement payments provided under the SSA, the FAA and also the VEA¹². The category I payments refer to income support and supplement payments paid both incrementally (usually fortnightly) and also lump sum payments. Lump sum payments

12. The income support payments provided under the VEA are the age service pension, the invalidity service pension and the income support supplement.

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might refer to the arrears of payment owed to the person, or payment of FTB arrears owed after an end of year claim for FTB made in the tax assessment.

The Bill does allow for cases where less than 100 per cent of the Category I payment will be diverted, but the amount withheld is not specified in the Bill and is to be detailed in a Legislative Instrument, which is to be described by the Minister.

Comment

For these child protection or school enrolment and attendance cases, the Bill describes that the diversion of payment under IMR processes is to be 100 per cent (or lesser in some cases). This is pretty severe and is probably aimed at obtaining an immediate impact and response from the IMR person in the case where it is applied.

Relevant Northern Territory area cases

Where the IMR provisions are to be applied to people residing in a specified Northern Territory area, then the diversion amount can be either 100 per cent or 50 per cent. Generally, the IMR diversion amount is to be 50 per cent when the case refers to payments of:

- category B payments – that is referring to income support and supplement payment provided under the SSA and the FAA whether paid by instalments or by lump sum but not advance payments, or
- category F payments – that is referring to FTB paid by instalments and also double orphan pension, carer allowance or distance education payment under the Isolated Children Scheme paid by instalment or by lump sum.

The IMR diversion amount is to be 100 per cent when the case refers to payments of:

- category C and category G payments – that is advance payments and arrears payments of FTB and also mobility allowance and also payments that are usually paid as a lump sum, for example the Baby Bonus.

Queensland Commission referred cases

Where the IMR provisions are to be to people referred by the Queensland Commission, the diversion amount is to be set for the case by the Secretary in guidelines, but must not exceed 100 per cent of the payment. Unlike other references in the Bill to guidelines which are to be described in a Legislative Instrument by the Minister, Secretary's guidelines are not subject to any Parliamentary scrutiny.

The Bill details that Queensland Commission cases are to apply diversions to category Q and R classes of payments whether paid by instalments or by lump sum. Payments included in category Q and R payments includes category P payments, so this means

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virtually all income support and income supplement payments provided under the SSA, the FAA and the VEA are included.

Schedule 2 – Baby Bonus

Background

The Baby Bonus payment¹³ as described in this Bill was originally called the maternity payment. The name of the payment was changed from maternity payment to Baby Bonus with the passage of the *Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007*.¹⁴

The Baby Bonus (currently \$4 133 per child) is usually paid as a lump sum but paid in 13 fortnightly instalments to claimants aged under 18. The amendments to the FAA presented in **Schedule 2** will provide for the Baby Bonus to be paid in 13 fortnightly instalments to all recipients subjected to the IMR processes.

It should be noted that in **Schedule 2** of this Bill, payment withholdings and deductions are spelt out for persons subject to the IMR processes. In some cases withholdings can be 100 per cent and other cases 50 per cent or an amount to be determined by the Minister or in some cases by the Secretary. The Baby Bonus is one of the income supplement payments provided under the FAA that could be subjected to a 100 per cent, or 50 per cent or other deduction amount – the Baby Bonus is included in category C, G, I, Q and S payments.

The net effect of **Schedules 1 and 2** is that a person subject to the IMR processes who becomes entitled to the Baby Bonus will not be paid with a lump sum, only by instalments and then may be subjected to a 100 per cent, or 50 per cent or other deduction amount.

Schedule 3 – Northern Territory CDEP transition payment

Background

The Community Development Employment Projects (CDEP) programme commenced in 1977. Under the scheme, members of participating Aboriginal and Torres Strait Islander communities or organisations can forgo any Centrelink income support benefit (except Abstudy or full time student youth allowance) for a wages grant paid to the community. Although CDEP has been referred to as a ‘work for the dole’ scheme there are significant

13. The Baby Bonus payment is \$4,133. This payment rate is effective from 1 July 2007 and is only paid for babies born or adopted on or after 1 July 2004. Baby Bonus is paid as a non-taxable lump sum payment. From 1 July 2008 the Baby Bonus will be increased to \$5,000.

14. Dale Daniels and Kirsty Magarey, Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007, *Bills Digest No. 141 2006-07*, Parliamentary Library, Canberra, Australia, 7 May 2007. <http://www.aph.gov.au/library/pubs/bd/bd06-07.htm>

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differences including the ability of all welfare recipients to participate in CDEP activities and also a more generous income allowance on top of CDEP wages than available to newstart allowance recipients.

The government has been talking about changes to the Community Development Employment Project (CDEP) program arrangements for over two years. The government released a discussion paper, *'Building on Success'*, on the CDEP program arrangements in February 2005.¹⁵ This paper flagged proposed changes to the CDEP arrangements and was then followed up with a second discussion paper *'Indigenous Potential Meets Economic Opportunity'*, in November 2006.¹⁶ In February 2007 the government announced changes to the CDEP arrangements to take effect from 1 July 2007.¹⁷ The changes to CDEP arrangements feature the phasing out of CDEP arrangements and replacing them with more mainstream government welfare payments and Job Network assistance arrangements, especially in urban and regional areas with strong labour markets.¹⁸ The DEWR website states that:

in remote locations and regional locations with weaker labour markets, CDEP will continue to be funded in 2007–08 subject to the usual competitive funding process.¹⁹

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15. The Hon. Mr Kevin Andrews, MP, Minister for Employment and Workplace Relations, *Building on Success*, discussion paper, Canberra, Australia, 22 February 2005.
<http://mediacentre.dewr.gov.au/mediacentre/AllReleases/2005/February/CDEPDiscussionPaper2005BuildingOnSuccess.htm>
 16. The Hon. Mr Kevin Andrews, MP, Minister for Employment and Workplace Relations, *Indigenous Potential Meets Economic Opportunity*, discussion paper, Canberra, Australia, 6 November 2006.
<http://workplace.gov.au/workplace/Programmes/IndigenousProgs/CommunityDevelopmentEmploymentProjectsCDEPprogramme>
 17. The Hon. Mr Joe Hockey, MP Minister for Employment and Workplace Relations, *Indigenous Employment Services Reforms Announced*, media release, Canberra, Australia, 17 February 2007,
<http://mediacentre.dewr.gov.au/mediacentre/MinisterHockey/Releases/IndigenousEmploymentServicesReformsAnnounced.htm>
 18. Approximately 5,000 CDEP participants will be affected by moving urban and regional CDEPs to STEP and Newstart. The urban and regional CDEPs which will cease to be funded from 1 July 2007 are listed on the DEWR website at:
<http://www.workplace.gov.au/workplace/Category/SchemesInitiatives/IndigenousProgs/ListoflocationswhereCommunityDevelopmentEmploymentProjectsFundingWillCease.htm>about
 19. *Questions and answers for the outcome of the Indigenous potential meets economic potential consultation* http://www.workplace.gov.au/NR/rdonlyres/4743A694-541F-4613-B31D-EEA86554561D/0/CDEPQA_08.pdf

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However, as a result of the Northern Territory emergency response the 50 Northern Territory CDEP programs with approximately 8 000 participants, almost totally in remote locations, will be the exception.

The government also announced changes to the CDEP arrangements in the 2007-08 Budget.²⁰ These changes essentially featured:

- building an Indigenous workforce in government service delivery – essentially converting previous CDEP paid jobs providing government services to normal open employment arrangements,²¹ and
- Indigenous employment services – the replacement of CDEP employment training and assistance arrangements in strong urban labour markets with Job Network employment assistance arrangements like job brokerage servicing, Structured Training and Employment Project (STEP) assistance.²²

As part of the Northern Territory emergency response all Northern Territory CDEP programs were informed that from 1 July 2007 their funding agreements would be reduced from 12 to three months and on 23 July 2007, the government announced further changes to the CDEP arrangements in the Northern Territory including that the program will be replaced with ‘real jobs, training and mainstream employment programmes’.²³ However a more significant outcome, at least initially, will be the move from CDEP wages to income support, a requisite of the welfare payment reform provisions in the Bill. The fact sheet accompanying the media release states that:

moving CDEP participants onto income support will allow a single system of quarantining to apply to welfare payments. This initiative will stem the flow of cash going towards alcohol and substance abuse and ensure that money meant for children’s welfare is used for that purpose.²⁴

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20. Department of Treasury, Budget Paper No. 2 - Budget Measures 2007-08, *A better Future for Indigenous Australians*, Canberra, 8 May 2007, pp. 165, 167-168.
<http://www.aph.gov.au/budget/2007-08/bp2/html/index.htm>
 21. *ibid.*, p. 165.
 22. *ibid.*, p. 167.
 23. The Hon. Mr Mal Brough, MP, Minister for Families, Community Services and Indigenous Affairs, the Hon. Mr Joe Hockey, MP Minister for Employment and Workplace Relations, *Jobs And Training For Indigenous People In The NT*, media release, Canberra, Australia, 23 July 2007.
<http://mediacentre.dewr.gov.au/mediacentre/MinisterHockey/Releases/JobsAndTrainingForIndigenousPeopleInTheNT.htm>
 24. CDEP in the Northern Territory Response; Questions and Answers
<http://www.workplace.gov.au/NR/rdonlyres/31071644-F73A-46BF-82D2-59046CF5057D/0/CDEPNTQuestionsandAnswers.pdf>

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The Government also announced a transition payment to aid persons moving from CDEP wages to income support payments.

Northern Territory CDEP transition payment

The amendments to the SSA presented in **Schedule 3** feature the creation of a Northern Territory CDEP transition payment. The Explanatory Memorandum provides quite a good background to the purpose of the transition payment. It is to provide a financial assistance payment for those moving from closed CDEP payment arrangements to other mainstream income support payments provided under the SSA. These SSA payments will mainly be newstart allowance (NSA) but could also be parenting payment – partnered (PPP), parenting payment – single (PPS), age pension, disability support pension (DSP). The CDEP transition payment is to be paid to a person from the date the CDEP arrangements cease in the community of residence (this will vary between communities) up until 30 June 2008.

Why the need for a transition payment?

Persons being provided with CDEP wages are paid by a different method and often different amounts to those receiving mainstream income support payments under the SSA. There is no set rate or amount for CDEP wages and amounts paid to individuals and they vary for individuals inside CDEP communities and between CDEP communities. Some CDEP participants may be receiving more from CDEP wages (and also from other income sources like sale of art works) than they would otherwise receive when on an income support payment. Hence the need for a transition payment over a transition period to allow persons formerly in CDEP communities the time to adjust to the changed income support payment amounts and payment arrangements. Some individuals may have been resident in and involved in CDEP community processes and payment arrangements for many years.

Transition payment rates

The calculation of the transition amount for an individual will be the average CDEP wage in the community they were a participant plus their income support payment. From this combined amount their income support amount plus remote area allowance²⁵ amount will be deducted. Any residual amount will be the person's rate of transitional payment. The maximum that the transition payment will be is \$794.80 per fortnight. Where the person

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25. A person may qualify for Remote Area Allowance if they receive income support payment, that is a payment like newstart allowance, age pension, parenting payment (single), youth allowance or disability support pension and they usually live in ordinary Tax Zone A (including, with certain exceptions, Special Tax Zone A) and Special Tax Zone B. Remote Area Allowance is a non-taxable fortnightly payment of single \$18.20, couple \$15.60 each, plus \$7.30 for each dependent.

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will receive a higher rate of payments on an income support payment than they received on CDEP wages, the transition payment rate will be nil.

Comment

As said above, there will be cases where a former CDEP participant will have received more in CDEP wages (and other income sources) than they will receive on an income support payment. This transition payment is aimed at aiding these persons to make the financial transition to a lower rate of income support assistance. However, in the end, post 30 June 2008 the main stream income support payment will be their income source. The Bill has not specified that the CDEP transition payment will be subject to IMR diversions.

Main provisions

Schedule 1 – Income management regime

Item 17 inserts the new IMR provisions into the SSA. Features of these proposed new provisions are:

- **Section 123TA** - setting out the outline of the IMR provisions
- **Section 123TB** - setting out the objectives of the IMR provisions
- **Section 123TC** - detailing the IMR definitions featuring the grouping of payments into categories A to S, whose recipients may be subject to the IMR processes in different ways
- **Section 123TD** - which names areas in the Northern Territory for the application of the IMR provisions
- **Section 123TE** - which empowers the Minister to declare an area in the Northern Territory for the application of the IMR provisions
- **Section 123TH** – defining what are the priority needs of a person for the application of the IMR provisions
- **Section 123UB** – defining persons in a relevant Northern Territory area subject to the IMPR provisions
- **Section 123UC** – defining persons in a child protection situation subject to the IMR provisions
- **Section 123UD** – defining persons in a school enrolment situation subject to the IMR provisions
- **Section 123UE** – defining persons in a school attendance situation subject to the IMR provisions
- **Section 123UF** – defining persons subject to the Queensland Commission subject to the IMR provisions

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- **Sections 123XA to 123XQ** - setting out the amount of deductions to be taken from IMR subjected welfare recipients' payments in different situations
- **Sections 123YG and 123YI** – empowering the Secretary to make payments from IMR account credits for the person, and
- **Section 123YO** –empowering the Secretary to make payments back to the IMR subject person from the IMR account credits.

Schedule 2 – Baby Bonus

Item 2 inserts a new provision into the FAAA setting out that an IMR subject person aged 18 or more entitled to the Baby Bonus is to be paid by 13 instalments.

Schedule 3 – Northern Territory CDEP transition payment

Item 6 inserts new provisions into the SSA to provide for the Northern territory CDEP transition payment, the rate of the transition payment and the end date of 1 July 2008 for the payment.

Conclusion

The IMR provisions in this Bill present changes to the SSA, the FAA and the VEA that are unprecedented. Never before have provisions in these Acts provided for welfare income support and supplement payments to be withheld in part or in total. The SSA is a welfare act and the income support payments provisions in the VEA are welfare provisions, targeting income and asset tested income support payments to persons with lesser means to support themselves. Historically, welfare payments have been payable to the qualified person and to no other person and are not to be withheld, hence the inalienability sections in these Acts.

The child protection and child attendance at school IMR provisions entailing 100 per cent deductions of welfare payments are severe. They are severe probably intending to provide for an immediate impact and response in the case at issue. The child protection and child attendance at school IMR provisions are not geographically specific and can be applied to any person living anywhere.

The extensive use of Legislative Instruments in the Bill empowering the Minister to write principles as to how various classes of cases are to be considered and assessed for the IMR provisions is historically unusual for the SSA, the FAA and the VEA. As discussed, the use of Legislative Instruments empowering the Minister or the Secretary has become a feature more recently. Perhaps in this case, the very short lead time between when the initiative was announced on 21 June 2007 and when this 111 page Bill was presented on 7 August 2007, has lead to their extensive use. This would be especially so considering

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these IMR provisions are very new territory for legislators and administrators in the welfare payments area and there would be a desire for empowering legislation with flexibility.

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