



This Digest replaces an earlier version dated 5 February 2010 to delete one sentence in relation to end dates and make other minor clarifications.

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

Luke Buckmaster, John Gardiner-Garden and Matthew Thomas
Social Policy Section

Diane Spooner
Law and Bills Digest Section

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

Date introduced: 25 November 2009

House: House of Representatives

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Commencement:

- On Royal Assent: Sections 1-4
- 1 July 2010: Schedules 2-5 (items 1, 2, 5-7), 6 (items 1-49, 51-67) and 7
- a single day to be fixed by proclamation: Schedule 5 (items 3 and 4),¹ and
- the later of (a) 1 July 2010 and (b) the 28th day after receipt of Royal Assent: Schedule 6 (item 50).

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

The Bill seeks to amend several Acts relating to the Northern Territory Emergency Response (NTER) and income management arrangements under social security legislation.

The Bill proposes to:

- repeal provisions in the *Northern Territory Emergency Response Act 2007* (NTNER Act) which limited the application of the *Racial Discrimination Act 1975* (RDA) and State and territory anti-discrimination laws
- ensure that measures under the NTER and Cape York Welfare Reform Trials remain consistent with the RDA and state and territory anti-discrimination laws
- change a number of measures associated with the NTER—including income management—in order to improve aspects of its operation, and
- provide the basis for the extension of income management to disadvantaged regions throughout Australia, commencing with the Northern Territory (NT).

1. However, if any of the provision(s) in Schedule 5 (items 3 and 4) do not commence within the period of six months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.

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Background

The measures in this Bill have their roots in three different sets of Rudd Government policy commitments.

The first relevant policy commitment is to reinstate the RDA in relation to the operation of the NTER. The RDA was ‘uplifted’ (suspended) in the original tranche of Bills in which the Howard Government introduced the NTER in 2007. The commitment to reinstate the RDA was made by the then Rudd Opposition in the 2007 election campaign. In its October 2008 interim response to the review it commissioned into the NTER, the Rudd Government said it would introduce in the spring sittings of 2009, legislation removing the provisions in the NTER Acts that exclude the operation of the RDA.² In mid-2009 domestic and international pressure on the Government to introduce such legislation increased, especially with the United Nations High Commissioner for Human Rights Special Rapporteur, James Anaya, reporting at the end of an August 2009 visit to Australia that:

Of particular concern is the Northern Territory Emergency Response, which by the Government’s own account is an extraordinary measure, especially in its income management regime, imposition of compulsory leases, and community-wide bans on alcohol consumption and pornography. These measures overtly discriminate against aboriginal peoples, infringe their right of self-determination and stigmatize already stigmatized communities.

He further argued that:

... any special measure that infringes on the basic rights of indigenous peoples must be narrowly tailored, proportional, and necessary to achieve the legitimate objectives being pursued. In my view, the Northern Territory Emergency Response is not. In my opinion, as currently configured and carried out, the Emergency Response is incompatible with Australia’s obligations under the Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights, treaties to which Australia is a party, as well as incompatible with the Declaration on the Rights of Indigenous Peoples, to which Australia has affirmed its support.³

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2. J Macklin (Minister for Family Affairs, Housing, Community Services and Indigenous Affairs), *Compulsory income management to continue as key NTER measure*, media release, 23 October 2008, viewed 14 January 2010, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/nter_measure_23oct08.htm
 3. United Nations High Commissioner For Human Rights (UNHCHR), Statement of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, as he concludes his visit to Australia, UNHCHR website, 27 August 2009, viewed 14 January 2010,

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The Bill thus provides for the repeal of the provisions in the NTNER Act which limited the application of the *Racial Discrimination Act 1975* and some NT and Queensland anti-discrimination laws.

The second relevant policy commitment is to ‘closing the gap in the Northern Territory’ and to continue those NTER measures which contribute to that aim. In May 2009, with both the commitment to reinstate the RDA and the need to develop a new partnership with Indigenous Territorians in mind, the Government released a discussion paper entitled *Future Directions for the Northern Territory Emergency Response*.⁴

There then followed from June to August 2009, consultations on the ‘redesign’ of the NTER. Redesigned NTER measures would need to survive any legal challenges once the RDA was reinstated while fulfilling the expectations of all concerned. On 23 November 2009, the Department of Families, Housing, Community Services and Indigenous Affairs (FAHCSIA) released two reports on the NTER consultations—one, a FAHCSIA report, and the other, and an independent report it had commissioned from the Cultural and Indigenous Research Centre Australia (CIRCA).⁵

On 25 November 2009, the Government released a policy statement in which it set out its decisions (and the bases for them) and introduced the awaited Bill.⁶ The statement explained how NTER measures would be modified so that they might either not be deemed discriminatory or could be deemed beneficial forms of discrimination. The modifications to the income management provisions are in the first category and those to provisions concerned with alcohol, prohibited material, the acquisition of interests in land, the licensing of community stores and the powers of the Australian Crime Commission are in the second category.

<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/313713727C084992C125761F00443D60?opendocument>

4. Australian Government, ‘Future Directions for the Northern Territory Emergency Response’, FAHCSIA website, May 2009, viewed 14 January 2010, http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/future_directions_discussion_paper/Pages/default.aspx
5. Australian Government, ‘Northern Territory Emergency Response Redesign Consultations’, FAHCSIA website, November 2009, viewed 14 January 2010; CIRCA, *Report On the NTER Redesign Engagement Strategy and Implementation*, FAHCSIA website, November 2009, viewed 14 January 2010, http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/Documents/redesign_engagement_strategy/default.htm
6. Australian Government, *Policy Statement: Landmark Reform to the Welfare System, Reinstatement of the Racial Discrimination Act, and Strengthening of the Northern Territory Emergency Response*, op. cit. For a list of reports related to the NTER, see Australian Government, NTER Reports, FAHCSIA website, 15 December 2009, viewed 14 January 2010, http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/Pages/default.aspx

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The third relevant government policy commitment is to introduce major reforms to the welfare system ‘based on the principles of engagement, participation and responsibility’.⁷ Thus, on 25 November 2009, the Government announced that:

As part of major reforms to the welfare system, the Australian Government will introduce a new [national] income management system to protect children and families and help disengaged individuals.⁸

The extension of income management beyond Indigenous communities in the NT can thus be conceived not only as securing the scheme from RDA-based challenges, but as advancing the Government’s broader welfare reform agenda.

Indeed, it is notable that over time the Government’s rationale for its policies on the NTER and income management has shifted in emphasis from the need to ensure consistency with the RDA to expressing broader longer-term policy goals in Indigenous and social welfare policy. Thus the Minister for Families, Housing, Community Services and Indigenous Affairs, Jenny Macklin, at the beginning of her second reading speech placed the measures in the Bill in the context of the need to ‘tackle the destructive, intergenerational cycle of passive welfare’.⁹ Similarly, she suggested that the redesigning of the NTER was part of a new partnership with Indigenous Australians and part of guaranteeing better longer-term outcomes.¹⁰

Schedule 1—Repeal of laws limiting anti-discrimination laws

Schedule 1 makes amendments to various Commonwealth Acts to restore the operation of the RDA.

In committing to restore the RDA while at the same time retaining key elements of the NTER (including an expanded income management scheme), the Government faced the problem of ensuring that the redesigned NTER would not be inconsistent with the RDA.

7. J Macklin (Minister for Family Affairs, Housing, Community Services and Indigenous Affairs) and W Snowden (Member for Lingiari), *Major welfare reforms to protect children and strengthen families*, media release, 25 November 2009, viewed 14 January 2010, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/welfare_reforms_protect_children_25nov2009.htm

8. Ibid.

9. J Macklin, ‘Second reading speech: Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009’, House of Representatives, *Debates*, 25 November 2009, pp. 12 783–12 787, viewed 14 January 2010, [http://parlinfo.parlInfo/search/display/display.w3p;adv=:db=:group=:holdingType=:id=:orderBy=:page=:query=Dataset%3Ahansardr,hansards%20\(\(SpeakerId%3APG6\)\)%20\(Date%3A25%2F11%2F2009%20%3E%3E%20\);querytype=:rec=1;resCount=Default](http://parlinfo.parlInfo/search/display/display.w3p;adv=:db=:group=:holdingType=:id=:orderBy=:page=:query=Dataset%3Ahansardr,hansards%20((SpeakerId%3APG6))%20(Date%3A25%2F11%2F2009%20%3E%3E%20);querytype=:rec=1;resCount=Default)

10. Ibid.

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This problem was highlighted in the Bills Digest for the legislation that introduced the NTER in 2007:

However this package of legislation suspends part of the operation of the RDA. It treats people differently on the grounds of race (the reliance on geographic location as the feature differentiating among Australian residents would fall within the definition of prohibited ‘indirect discrimination’—i.e. the geographic feature will predominantly affect members of a particular race. It may still, arguably, qualify as direct discrimination). The general prohibition has always contained recognition that ‘special measures’ are legitimate to promote the position of members of a particular race when that race is disadvantaged. Special measures are also referred to as ‘affirmative action’ or ‘positive discrimination’.¹¹

In other words, the operation of the RDA was suspended in order to avoid the possibility that it might be regarded as having been contravened by elements of the NTER (either because they treat people differently on the grounds of race or cannot be regarded as special measures).

As such, restoration of the operation of the RDA brings with it the necessity to ensure that the revised NTER does not contravene that Act. Many of the changes introduced in the remaining schedules to this Bill (particularly those relating to income management) should be seen in the context of addressing this problem—that is, in ensuring that, as the Minister asserts in her second reading speech, the NTER measures ‘are either special measures under the RDA or non-discriminatory and therefore consistent with the RDA’.¹²

The question of what precisely constitutes a special measure is therefore of particular importance. Article 1(4) of the International Convention on the Elimination of All Forms of Racial Discrimination, from which the RDA’s special measures are derived, provides as follows:

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the

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11. Law and Bills Digest Section and Social Policy Section, *Northern Territory national emergency response Bills 2007—interim Bills Digest*, Bills Digest, no. 18, 2007–08, Parliamentary Library, Canberra, 2007, p. 8, viewed 14 January 2010, www.aph.gov.au/library/Pubs/bd/2007-08/08bd018.pdf
 12. J Macklin, ‘Second reading speech’, op. cit., p.12 784.

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maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.¹³

The Australian courts have interpreted this definition as containing four elements:

- a special measure must confer a benefit on some or all members of a class
- the membership of the class must be based on race, colour, descent, or national or ethnic origin
- a special measure must be for the sole purpose of securing adequate advancement of the beneficiaries in order that they may enjoy and exercise equally with others human rights and freedoms, and
- the circumstances of the special measure must provide protection to the beneficiaries which is necessary in order that they may enjoy and exercise human rights and freedoms equally with others.¹⁴

Furthermore a special measure must not be continued after the objectives for which it was taken have been achieved.

In attempting to meet these criteria, the Government, in the Bill, and in the supporting supplementary materials such as the Second reading speech and the Explanatory Memorandum, outlines why it considers that its NTER/income management measures will be either non-discriminatory or a special measure.

For example:

- the income management scheme is designed to apply in a non-discriminatory way to any citizen in the NT within the specified categories¹⁵
- the Bill removes provisions that deem certain things to be special measures,¹⁶ and
- the NTER measures that are special measures ‘are all time limited’.¹⁷

On this latter point for example, the Explanatory Memorandum in discussing the measures in relation to alcohol restrictions states:

13. Office of the United Nations High Commissioner for Human Rights, *International Convention on the Elimination of All Forms of Racial Discrimination*, viewed 14 January 2010, <http://www2.ohchr.org/english/law/cerd.htm>

14. Interim Bills Digest, op. cit., p. 8.

15. As outlined below, the income management regime will apply across the NT, for a trial period, before being rolled out to other disadvantaged regions.

16. J Macklin, ‘Second reading speech’, op. cit., p. 12 784.

17. Ibid.

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The Government understands the important decisions that need to be made before introducing special measures. The Government has given careful consideration to whether these laws are a necessary and appropriate way to address the problems affecting Indigenous people in the Northern Territory. These measures, as amended by this Schedule, will underpin the sustainable, long-term development phase of the NTER. The legislation that gives effect to these measures is time-limited, with a clear end date, and will cease in August 2012.¹⁸

The Explanatory Memorandum makes this point in relation to other measures in the Bill. Schedule 1 does not commence until the end of 31 December 2010, whereas most of the other Schedules will commence on 1 July 2010.

The decision to remove the deeming that measures 'are a special measure' reflects recommendations made by the Human Rights and Equal Opportunity Commission (HREOC; now known as the Australian Human Rights Commission) as part of the Northern Territory Emergency Response Review.¹⁹ The recommendation is to remove these provisions and replace them with provisions with language clarifying that measures are *intended* to constitute special measures. The Government has done this in several parts of the Bill by inserting an objects provision that uses words such as:

The object of the Part is to enable special measures to be taken to reduce alcohol-related harm in Indigenous communities in the Northern Territory.²⁰

However, although such specific attempts can be made to assert a measure is a special measure and beneficial, the test will of course be in the application and effect of the laws, and will be a question that is to be determined by a court, tribunal or the Australian Human Rights Commission on an evaluation of these matters.

The Australian Human Rights Commission has issued draft guidelines for ensuring income management measures are compliant with the RDA.²¹ The Commission poses three key questions:

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18. Explanatory Memorandum, *Social Security and other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009*, p. 5.
 19. HREOC, Submission of the Human Rights and Equal Opportunity Commission (HREOC) to the Northern Territory Emergency Response Review Board on the Review of the Northern Territory Emergency Response, 15 August 2008, viewed 14 January 2010, http://www.hreoc.gov.au/legal/submissions/2008/20080815_nt_response.html#app1
 20. See **new section 6A, Item 1 Schedule 3** of the Bill, and also **new section 98A, item 1 Schedule 3** of the Bill in relation to prohibited material, **new section 30A, item 1 Schedule 5** of the Bill in relation to acquisition of land, and **new section 91A, item 7 Schedule 6** in relation to licensing of community stores.
 21. Australian Human Rights Commission, *Draft guidelines for insuring income management measures are compliant with the Racial Discrimination Act*, 11 November 2009, viewed 14

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- where the measure is established by legislation, does it ensure equality before the law?
- is the measure implemented in a way that avoids both ‘direct’ and ‘indirect’ discrimination?, and
- is the measure a ‘special measure’?

(If a measure is non-discriminatory, it is not necessary to determine whether it is a special measure.)

The Commission notes that a measure that has a disparate effect on a particular racial group may be discriminatory. It is not necessary that the measure targets a group.

What matters is the practical effect of a measure. If in practice, it has a greater impact upon people of a particular race, then it may be discriminatory.²²

The Commission proposes a model that could comply with the RDA which would comprise the following features:

- it should be subject to the application of the RDA and state/territory anti-discrimination legislation
- it should not apply automatic quarantining—different options that should be considered may include allowing for a voluntary/opt in approach or a last-resort suspension approach for income management
- it should provide for a defined period of income management, where the time-frame for compulsory quarantining would be proportionate to the context and/or subject to periodic review
- it must allow for a review and appeal processes, and
- it should include additional support programs that address the rights to food, education, housing, and provide support for welfare recipients, safe houses for women and men, alcohol and substance abuse programs.²³

The first element will not be met immediately. As can be seen from the discussion of **Schedule 2** below, the income management scheme established by this Bill would not comply with the second element of the Commission’s model—that is, that the scheme should not apply automatically to particular classes of welfare recipient. Nor in all cases

January 2010,
http://www.hreoc.gov.au/pdf/race_discrim/RDA_income_management2009_draft.pdf

22. Ibid., p. 5.

23. Ibid., pp. 18–19.

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would it comply with the third element that the income management scheme should provide for a defined period of income management.²⁴

In relation to the fourth element, a determination by the Secretary is one of the requirements for a person or group of persons to be subject to income management under the scheme. This determination may be revoked by the Secretary on request by a person subject to the determination. Where income support recipients wish to apply for exemption from the new arrangements, evidence must be provided to justify this exemption. Any person in receipt of income support also has rights of review under Part 4 of the *Social Security Act 1991*. Thus, the scheme could be said to meet the fourth element of the Commission's model.

The fifth element in the model suggested by the Commission is consistent with evidence about the kinds of assistance necessary to bring about sustainable change in disadvantaged communities. As will be seen below, the model of income management outlined by the Government includes assistance for welfare recipients in the form of financial counselling and money management services. Further, the Howard and Rudd Governments have both provided assistance across most of the areas suggested by the Commission above. The difficult question is whether such assistance can be said to have been sufficient to have addressed the rights to such things as food, education, housing, safety and health care. There also does not appear to be any suggestion that expansion of income management across the NT will be accompanied by additional assistance in the form of social services. The new model proposed meets some but not all of these criteria.

Schedule 2—Income management regime

What is income management?

'Income management' is the term used by the Government to refer to arrangements whereby a percentage of the income support and family payments of certain people is set aside to be spent only on 'priority goods and services' such as food, housing, clothing, education and health care.²⁵ While the total amount owing to a person subject to income management is not reduced, that person loses the discretion to spend a percentage of their welfare income on things other than those deemed to be priorities by the Government.

Income management is also widely known as 'welfare quarantining'.

24. For example, vulnerable welfare recipient determinations remain in force for 12 months (**new section 123UGA**) but it is not clear whether time limits apply elsewhere.

25. Centrelink, 'Income Management', Centrelink website, 23 October 2009, viewed 14 January 2010, http://www.centrelink.gov.au/internet/internet.nsf/individuals/income_mgt_customer.htm

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Original Howard Government scheme

The *Social Security and Other Legislation (Welfare Payment Reform) Act 2007* (Welfare Payment Reform Act) introduced income management for those for whom it was deemed necessary to have some or all of their welfare payments diverted. The new arrangements allowed for welfare payments of certain individuals to be directly reduced and the amount diverted to be paid into a special account. Changes to establish income management were made to the *Social Security Act 1991* (Social Security Act), *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act) and *Veterans' Entitlements Act 1986* (Veterans' Entitlements Act).

According to the Explanatory Memorandum for the Bill introducing the Welfare Payment Reform Act, the purpose of the changes was to 'help address child neglect and encourage school attendance'.²⁶ Under the income management scheme the Government quarantines a specified amount of a person's welfare payments for use in paying for the 'priority needs of that person, their partner and their children'.²⁷ 'Priority needs' includes food, housing, clothing, education and health care.²⁸ Payments quarantined under income management may not be spent on alcohol, tobacco, pornography or gambling.²⁹

The Bills Digest for the *Social Security and Other Legislation (Welfare Payment Reform) Bill 2007* (Welfare Payment Reform Bill) argued that the income management provisions were 'unprecedented' because they changed the principle of 'inalienability' that hitherto applied to payments made under the Social Security Act, Family Assistance Act and Veterans' Entitlements Act.³⁰ The inalienability provisions in these Acts previously ensured that where a person qualifies for a payment, the payment is regarded as a legal right and cannot be either withheld from that person and/or provided to someone else.

Prior to the introduction of Commonwealth payments for people of working age after WWII, payments such as unemployment benefits (by the states) were frequently paid on a conditional basis—for example, the person had exhausted all other means of support (that is, was genuinely 'deserving' of assistance).³¹ At certain times, such as the Great

26. Explanatory Memorandum, *Social Security and Other Legislation (Welfare Payment Reform) Bill 2007*, p. i.

27. Ibid.

28. Centrelink, 'Income Management', op. cit.

29. Ibid.

30. P Yeend and C Dow, *Social Security and Other Legislation (Welfare Payment Reform) Bill 2007*, Bills Digest, 13 August 2007, no. 27, 2007–08, p. 17.

31. In some states during the Great Depression, people were expected to undertake work in return for government assistance. See for example S. Macintyre, 'Australian responses to unemployment in the last Depression', in J. Roe (ed), *Unemployment: are there lessons from history?*, Sydney, Hale and Ironmonger, 1985.

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Depression, assistance was provided in the form of goods (food and other necessities) rather than in cash. Such approaches were frequently a source of resentment from many of those requiring Government assistance. The principle of inalienability can be largely seen as an attempt to address such concerns.

The Welfare Payment Reform Bill that introduced income management changed the Social Security Act, Family Assistance Act and Veterans' Entitlements Act to include the provision that there will be circumstances where an individual qualified to receive a payment will not be provided with that payment, in whole or in part.

Thus, according to the Bills Digest for the Welfare Payment Reform Bill:

Never before have provisions in these Acts provided for welfare income support and supplement payments to be withheld in part or in total. The [Social Security Act] is a welfare act and the income support payments provisions in the [Veterans' Entitlements Act] 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.³²

Under the Welfare Payment Reform Act, a person receiving welfare payments may become subject to income management for one of the following reasons:

- the person is a resident of a specified area in the NT
- the person is subject to the jurisdiction of the Queensland Commission (now known as the Family Responsibilities Commission) and the Commission requests that the income management provisions apply
- a child under the care of that person is at risk of neglect, or
- a child under the care of that person is not enrolled at school or does not attend school regularly.

The first two categories apply only to specific geographic areas, while the second two can apply to a person living anywhere in Australia. The specific details according to which a person may become subject to income management were set out in legislative instruments made under the Social Security Act, Family Assistance Act and Veterans' Entitlements Act.³³ Currently, eligible people living in the Cannington area of Perth and in some locations in the Kimberley region of Western Australia (WA) may also volunteer for

32. P Yeend and C Dow, *op. cit.*, p. 17.

33. The Bills Digest noted at the time that '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 income management provisions is historically unusual for the [Social Security Act], the [Family Assistance Act] and the [Veterans' Entitlements Act]'. *Ibid.*

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income management.³⁴ As of 20 November 2009, 287 people were subject to voluntary income management in WA.³⁵

Northern Territory Emergency Response (NTER)

Under this category, income management applies to welfare recipients who are residents of any of 73 specified Indigenous communities and associated outstations in the NT. This was established as part of the NTER and has two primary aims:

- to stem the flow of cash that is expended on substance abuse and gambling, and
- to ensure funds that are provided for the welfare of children are actually expended in this way.³⁶

Under this category, 50 per cent of a person's welfare payments are quarantined.³⁷ As of 20 November 2009, 16 321 people were subject to income management as part of the NTER.³⁸

Family Responsibilities Commission

This category established income management as part of the Cape York Welfare Reform Trial (CYWRT). In December 2007, this trial was introduced in the communities of Hope Vale, Coen, Aurukun, Mossman Gorge and associated outstations. The purpose of the trial is:

... to rebuild social norms in these communities by linking the receipt of welfare payments to fulfilment of socially responsible behaviours. These behaviours focus in particular on the wellbeing education of children and seek to respond to concerns about truancy and child neglect.³⁹

The Welfare Payment Reform Act envisaged that decisions affecting welfare payments to residents in trial communities would be made by a statutory body created under

34. Centrelink, 'Voluntary income management', Centrelink website, 23 November 2009, viewed 14 January 2010,

<http://www.centrelink.gov.au/internet/internet.nsf/publications/co508.htm>

35. Email correspondence from Office of Jenny Macklin MP, 11 January 2010.

36. Explanatory Memorandum, Social Security and Other Legislation (Welfare Payment Reform) Bill 2007, p. 5.

37. Centrelink, 'Income Management for the Northern Territory Emergency Response factsheet', Centrelink website, 28 October 2009, viewed 14 January 2010, <http://www.centrelink.gov.au/internet/internet.nsf/publications/ah1549.htm>

38. Email correspondence from Office of Jenny Macklin MP, op. cit.

39. Explanatory Memorandum, Social Security and Other Legislation (Welfare Payment Reform) Bill 2007, p. 5.

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Queensland State legislation (the 'Queensland Commission'). This body, known as the Family Responsibilities Commission, was established on 1 July 2008.

Any person who is a welfare recipient living in one of the four CYWRT communities and fits into any of the following categories, can be referred to the Family Responsibilities Commission:

- the person's child is absent from school three times in a school term, without reasonable excuse
- the person has a child of school age who is not enrolled in school without lawful excuse
- the person is the subject of a child safety report
- the person is convicted of an offence in the Magistrates Court, or
- the 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.⁴⁰
- The FRC tells Centrelink what proportion of a person's payment will be quarantined (generally, 60 to 75 per cent) and for how long.⁴¹ As of 20 November 2009, 111 people were subject to income management as part of the CYWRT.⁴²

Children at risk of neglect

While child protection is generally a state and territory matter, this category was designed to provide a Commonwealth mechanism 'to help ensure that parents provide appropriate care for their children, and that the welfare income of these parents is managed so the needs of the children are met'.⁴³ That is, welfare payments would be 'directed to their intended purpose so children receive shelter, food and clothing'.⁴⁴

Under the Welfare Payment Reform Act, a child protection officer of any state or territory can require a person to be subject to the income management regime. However, this category of income management has only been formally introduced in Western Australia

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40. Centrelink, 'Family Responsibilities Commission', Centrelink website, 21 April 2009, viewed 14 January 2010, <http://www.fahcsia.gov.au/sa/families/pubs/CapeYorkWelfareReform/Pages/FamilyResponsibilitiesCommission.aspx>
 41. Centrelink, 'Income Management for the Cape York Welfare Reform Trial factsheet', Centrelink website, 24 November 2009, viewed 14 January 2010, <http://www.centrelink.gov.au/internet/internet.nsf/publications/ind172.htm>
 42. Email correspondence from Office of Jenny Macklin MP, op. cit.
 43. Explanatory Memorandum, Social Security and Other Legislation (Welfare Payment Reform) Bill 2007, p. 4.
 44. Ibid.

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(WA). This has been done in partnership with the WA Department for Child Protection (DCP) and is supported by a bilateral agreement between the Commonwealth and WA Governments.

Currently, a case manager from the WA DCP can refer a person to Centrelink to have their payments managed where it is believed that this will assist the person in 'providing for the priority needs of [their] children'.⁴⁵ Under income management for child protection, Centrelink quarantines 70 per cent of a person's payments for use in paying for priority needs. As of 20 November 2009, 173 people were subject to income management as part of the child protection category of income management in WA.⁴⁶

School enrolment and attendance

The purpose of this category was that a person may be declared subject to income management if they fail to ensure the enrolment or sufficient school attendance of their children. This does not appear to have been formally introduced as a separate category of income management anywhere in Australia. However, in 2008 the Government did introduce an initiative known as the School Attendance and Enrolment Measure (SEAM) that uses possible *suspension* of income support to ensure that children are enrolled in school and attend school regularly.⁴⁷ SEAM trials commenced from the beginning of the 2009 school year in six locations in the Northern Territory: Katherine, Katherine Town Camps, Tiwi Islands, Hermannsburg, Wadeye and Wallace Rockhole.

Operation of income management

Key features of income management in its current form include:

- amounts diverted from a person subject to income management are placed into a special management account for that individual
- the management account is used for the payment of expenses associated with priority goods and services

45. Centrelink, 'Income Management for Child Protection factsheet', Centrelink website, 10 November 2009, viewed 14 January 2010, <http://www.centrelink.gov.au/internet/internet.nsf/publications/co497.htm>

46. Email correspondence from Office of Jenny Macklin MP, op. cit.

47. FAHCSIA, 'Improving School Enrolment and Attendance through Welfare Reform Measure (SEAM)', FAHCSIA website, 21 April 2009, viewed 14 January 2010, <http://www.fahcsia.gov.au/sa/families/progserv/welfarereform/Pages/ImprovingSchoolEnrolmentAttendance.aspx>

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- those subject to income management may use a 'BasicsCard' to access their income managed money at approved stores and businesses using the EFTPOS system⁴⁸
- (as can be seen above) amounts diverted under income management vary depending on the category of income management being applied, and
- any remaining amount in an individual's management account is refunded to that person when they are no longer subject to income management.

Proposed Rudd Government income management scheme

On 25 November 2009, the Rudd Government announced that it will replace the existing income management scheme for prescribed NT Indigenous communities with a broader scheme targeted at 'vulnerable regions' and 'individuals at risk'.⁴⁹ Initially, from 1 July 2010, the new scheme will be introduced through the NT as a whole, including urban, regional and remote areas. According to the Government, this is to be the 'first step in a national roll out of income management in disadvantaged regions'.⁵⁰ By 'at risk', the Government means those people who are susceptible to social isolation and disengagement, possess few or poor financial literacy skills and/or participate in risky behaviours. Thus, the income management reforms are to apply to people in the following categories:

- people aged 15 to 24 who have been in receipt of Youth Allowance (other), Newstart Allowance, special benefit or Parenting Payment for more than 13 weeks in the first 26 weeks (disengaged youth)
- people aged 25 and above (and younger than pension age) who have been in long-term receipt of specified payments, including Newstart Allowance and Parenting Payment (long-term welfare payment recipients)
- people referred for income management by child protection authorities, and
- people assessed by Centrelink social workers as requiring income management due to vulnerability to financial crisis, domestic violence or economic abuse.⁵¹

Affected income support recipients will have 50 per cent of their regular payments and 100 per cent of lump sum payments quarantined in a separate account that may only be used for the purchase of 'the essentials of life', such as food, clothes and rent.

48. Centrelink, 'BasicsCard', Centrelink website, 23 November 2009, viewed 14 January 2010, <http://www.centrelink.gov.au/internet/internet.nsf/publications/co514.htm>

49. J Macklin and W Snowdon, op. cit.

50. Ibid.

51. Ibid.

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The stated objectives of the reforms are twofold. First, they are intended to ensure that more of income support recipients' money is spent on priority items and in the interests of children and families, rather than on alcohol and gambling. Second, the reforms seek to improve welfare recipients' ability to move out of welfare dependence and into economic and social participation. While the relationship between income management and the first objective is obvious, its relationship to the second objective is less clear. The Government's position appears to be that income management will 'foster individual responsibility' among welfare recipients which will then assist them in moving 'up and out of welfare dependence'.⁵²

Welfare recipients may be exempted from income management arrangements where they are able to demonstrate a record of 'responsible parenting' or participation in employment or study. This could include:

- a young person in full-time study or training or engaging in paid work
- a parent who can demonstrate that their children attend school regularly or have up to date immunisation, or
- a long-term Newstart recipient who has a history of engaging in work.⁵³

Additional features of the new scheme include:

- matched savings incentives for those subject to compulsory income management to help them budget and save. Those who complete an approved money management course and have a pattern of savings over at least 13 weeks will receive a contribution from the Government of up to \$500 and no more than 50 per cent of the costs of household items, such as whitegoods
- access by those subject to compulsory income management to financial counselling and money management services, and
- access by voluntary participants in income management to an incentive of \$250 for every six months that they remain in the scheme.⁵⁴

It appears that the existing income management trials in Cape York and WA will continue largely in their current form. However, there has been a change proposed to the Cape York scheme under another Bill, the Family, Housing, Community Services and Indigenous Affairs and other Legislation Amendment (2009 Measures) Bill 2009. Under that Bill, the Age Pension and Carer Payment are to be included in the category of welfare payments which may be subject to income management for welfare recipients living in one of the four CYWRT communities. For further information, see the relevant Bills Digest for that Bill.

52. J Macklin, 'Second reading speech', op. cit., p. 12 783.

53. Ibid.

54. Ibid.

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Comparing the Howard and Rudd schemes

There are several important differences between the Howard and Rudd income management schemes.

First, the Bill introducing the new income management scheme provides for a national scheme to replace the existing scheme based in prescribed NT communities. However, as noted above, initially it will be implemented in the NT only. There is no information available on when the national income management scheme is likely to be implemented beyond the NT. As such, initially at least, rather than a national scheme, the Rudd income management scheme will remain largely focused on the NT (whilst continuing the Cape York and WA trials). Therefore the extent to which the Rudd scheme will ultimately become truly national in scope remains to be seen.

Second, whereas the Howard scheme in the NT was compulsory for everyone living in a prescribed community, the Rudd national scheme is targeted to people deemed to be 'at risk' living in 'vulnerable regions'—that is, initially, anywhere in the NT. In other words, the Howard scheme in the NT was geographically based, while the proposed Rudd national scheme is based on a combination of geographical location and particular categories of welfare recipient. The Rudd scheme will not automatically include people in payments categories deemed to be less at risk, such as Age Pension, Disability Support Pension, Widow Allowance or Department of Veterans' Affairs Service Pension (unless on the basis of child protection authorities or Centrelink social worker referral). This will address to some extent the concerns of those in prescribed NT communities on these 'lesser risk' payments who believe that income management should not be applied to them.

On this basis, the Rudd scheme can be described as more directly targeted at people deemed to be at risk than the Howard scheme. Nevertheless, while *more* targeted, the Rudd scheme remains relatively broad in scope in that it will subject all people in the 'disengaged youth' and 'long-term welfare payment recipient' categories to income management (unless they are able to obtain an exemption). There are obvious administrative, cost and other benefits associated with including all welfare recipients in particular categories by default (with the opportunity to seek exemptions), rather than a case-by-case basis. Nevertheless, placing the onus on those who have become subject to income management to prove that they should be afforded an exemption may be regarded by some in this situation as not being significantly less arbitrary than the current scheme.⁵⁵

55. As John Falzon, Chief Executive Officer of the St Vincent de Paul Society, has argued, 'the Government is beginning with the assumption that welfare recipients are guilty until proven innocent'. J Falzon, 'Macklin's measures a far cry from fairness', *Canberra Times*, 1 December 2009, viewed 14 January 2010, http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/VRCV6/upload_binary/vrev60.pdf;fileType=application%2Fpdf#search=%22media/pressclp/VRCV6%22

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The more targeted Rudd income management scheme also raises the prospect of having two classes of welfare recipient in the same community—those ‘at risk’ recipients subject to income management and those lesser risk or exempted recipients who are not. This could have several unintended consequences. For example, it could be a source of tension between those on income management and those who are not. It could also create the grounds for increased ‘humberging’ (harassment for money) from those on income management to those who are not. This would potentially undermine an important objective of income management.

Third, as outlined above, the Rudd scheme contains a range of new incentives and services intended to change the behaviour of those subject to (or who volunteer for) income management. It will be important to monitor the utilisation and impact of these programs over time. In particular, given the Government’s emphasis on assisting people to move out of welfare dependency, it will be important to attempt to determine whether these programs are sufficiently funded and appropriately designed and delivered to have the desired effect.

Arguments for and against continuation/expansion of income management

The proposed introduction of a national income management scheme has been the subject of substantial debate and controversy. As noted above, the Howard Government NTER income management scheme represented an unprecedented shift away from the principle of welfare payment inalienability. The introduction of a national scheme would clearly indicate a significant shift in Australia’s approach to welfare payments. Australian Greens Senator Rachel Siewert has argued that it ‘represents the largest change in social policy by an ALP government in recent history’.⁵⁶

This section presents arguments for and against income management.

Arguments for income management

There are four main arguments that tend to be made in favour of income management of welfare payments. These arguments generally combine moral and practical concerns and refer to:

- the responsibility of governments to welfare recipients and the general community
- the responsibility of welfare recipients themselves to their families, local communities and the general community
- the notion of competing rights, and

56. R Siewert, ‘Labor brings welfare quarantining to a Centrelink near you!’, *Crikey*, 27 November 2009, viewed 14 January 2010, <http://www.crikey.com.au/2009/11/27/labor-brings-welfare-quarantining-to-a-centrelink-near-you/>

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- evidence that income management has had positive effects.

Note that each of these arguments relates to the concept of income management in general but do not constitute in themselves an argument for any particular model of income management. One could be generally in favour of income management in some form for any or all of the reasons outlined below but still object to a particular approach to income management. Indeed, prominent supporter of the idea of income management, Cape York community leader Noel Pearson, has argued for a targeted approach directed only at ‘people who are being irresponsible’.⁵⁷ This contrasts with both the Howard and proposed Rudd NT schemes which are applied in a blanket fashion across either defined geographical locations (Howard) or welfare payment categories (Rudd). This and related issues will be discussed in greater depth in the section below on arguments against income management.

Government responsibility

An argument implicit in the Rudd Government’s statements about income management is that governments have a responsibility to individuals and families in receipt of welfare payments to ensure that such payments are provided in a way that is most likely to provide the greatest benefit. This argument suggests that, if, as appears to be the case with some long-term welfare recipients, some people do not have important life skills such as budgeting and ensuring that priority needs are met, governments have a moral responsibility to ensure that structures are in place to ensure that the assistance they provide such people is spent appropriately.

In this respect, income management can be thought of as providing a ‘safety net’ to help ensure that some people avoid (potentially) catastrophic circumstances associated with accrual of significant debts (for example, housing and/or utilities) and expenditure on drugs, alcohol and gambling. When combined with other services designed to assist people in obtaining money management and related skills (as is the case with the proposed Rudd scheme), income management could also play a role in equipping people themselves with the skills necessary to avoid such catastrophic circumstances.

A related argument is that governments also have a responsibility to the *general community* to ensure that, as far as possible, welfare payments are spent appropriately—that is, on what the Rudd Government terms ‘priority needs’ such as food, clothing, housing, education and health care. Arguably, this is particularly important when the needs of children are at stake. Some may also argue that ensuring that welfare payments are spent appropriately is necessary to ensure continued community support for such payments.

57. L Sales, ‘Noel Pearson discusses the issues faced by Indigenous communities’, *Lateline*, transcript, Australian Broadcasting Corporation (ABC), 26 June 2007, viewed 14 January 2010, <http://www.abc.net.au/lateline/content/2007/s1962844.htm>

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Self-determination and responsibility

One argument made in favour of income management, mainly in relation to Indigenous communities, is that such an approach is necessary to assist individual Indigenous people and their communities to take greater responsibility for their lives. According to this argument, many of the social problems in Indigenous communities are a result of a decline in personal responsibility by people in these communities. This ‘collapse of responsibility’ is related by some to the unconditional provision of social security payments and other forms of welfare by Commonwealth, state and territory governments.⁵⁸

According to this argument, the key to bringing change to Indigenous communities is to restore responsibility in such communities through making welfare conditional on meeting certain obligations. Thus, for some, income management has an important role to play in assisting Indigenous people to take control of their lives. According to this view, while subjecting an individual to income management could be seen as violating that person’s right to spend their income as they see fit, income management offers the prospect of a more meaningful form of self-determination than is able to be provided by rights-based welfare payments. This view of self-determination is based around the idea of ‘people taking responsibility for themselves, for their own families and for their communities’.⁵⁹

If one accepts the view that unconditional welfare payments have played a role in undermining Indigenous self-responsibility, this could be seen as an additional argument for the need for the Commonwealth to take responsibility (through policies such as income management) for directly addressing problems that they have had some role in creating. That is, if it can be agreed that the form in which government assistance is paid has (in some cases) unintended detrimental consequences, then it could be argued that the Government has some responsibility to attempt to address those consequences. The question then is whether income management or some other form of intervention is the most appropriate approach.

A related argument refers to the responsibilities of welfare recipients to the general community. This argument suggests that welfare recipients owe certain obligations to the general community in exchange for the assistance they are provided. The basis of this argument is the idea that a kind of ‘social contract’ exists between welfare recipients and the general community—it is also central to the notion of ‘mutual obligation’ that has been behind many welfare reforms in recent years. According to this view, appropriate use of welfare income can be considered to be one of the obligations owed by welfare recipients. This is implied in the Rudd Government’s statements about income management as a way of ensuring that welfare is ‘spent where it is intended’—that is ‘on the essentials of life

58. Ibid.

59. Ibid.

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and in the interests of children'.⁶⁰ According to this view, the right to full individual discretion about how welfare income is spent is voided by failure to meet this obligation.

Competing rights

Some argue that the rights of other affected parties (in addition to the welfare recipient themselves) need to be considered in discussions about income management. This case is generally made in relation to immediate family members (usually women and children), extended family and other community members affected by such things as drug and alcohol abuse, violence, gambling and humbugging.

For example, in reference to the plight of children, Noel Pearson has suggested that critics of income management should:

Ask the terrified kid huddling in the corner, when there's a binge drinking party going on down the hall, ask them if they want a bit of paternalism ... Ask them if they want a bit of intervention, because these people who continue to bleat without looking at the facts, without facing up to the terrible things that are going on in our remote communities, these people are prescribing no intervention, they are prescribing a perpetual hell for our children.⁶¹

Thus, while it is often criticised as 'paternalistic', it could also be argued that state governments already undertake actions in defence of the rights of children that are, in some cases, far more paternalistic than income management.⁶² Perhaps the most paternalistic of these is the (relatively widely accepted) practice of removal of children from their families in child protection cases. While income management *does* represent a move in the direction of paternalism by the Commonwealth, it could be argued that it is perhaps not as dramatic a move as some have suggested—particularly if (as in the case of both the Howard and Rudd schemes) there is no overall reduction in the amount paid to the recipient. Further, it may also have a preventive function. That is, for example, if it assists in making sure that the needs of children are met, it may avoid the need for more paternalistic interventions.

60. J Macklin and W Snowdon, op. cit.

61. Quoted in 'Feed the children', *The Australian*, 13 March 2008, viewed 14 January 2010, <http://www.theaustralian.com.au/news/feed-the-children/story-e6frg72f-111115781865>

62. For example, the Australian Greens have described the Rudd Government income management scheme as a 'paternalistic approach' that will severely restrict the choices of the disadvantaged. S Dunkerly, 'Welfare sector slams govt's income plan', *The Sydney Morning Herald*, 25 November 2009, viewed 14 January 2010, <http://news.smh.com.au/breaking-news-national/welfare-sector-slams-govts-income-plan-20091125-jpj1.html>

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Evidence

The Rudd Government has argued that evidence obtained from various reports on the NTER provides support for the continuation and expansion of income management. The two main reports cited in this regard are:

- the *Report on the evaluation of income management in the Northern Territory* (August 2009), a joint FAHCSIA/Australian Institute of Health and Welfare (AIHW) report based on face to face interviews with 76 people subject to income management in four locations and focus groups with 167 stakeholders, and
- the *Report On the Northern Territory Emergency Response Redesign Consultations* (November 2009), a report based on Australian Government consultations with Indigenous people in the NT about future directions for the NTER.⁶³

In relation to the FAHCSIA/AIHW report, the Government has highlighted findings that more than half of parents interviewed reported that their children were eating more (62.5 per cent), weighed more (57.4 per cent) and were healthier (52.1 per cent).⁶⁴ Additional findings of this report included:

- around two-thirds of those interviewed (65.6 per cent or 42 individuals) had a positive view of income management, while one-third (32.8 per cent or 21 individuals) had a negative view
- more than half of those interviewed reported that there was less gambling (63.3 per cent or 30 individuals), less drinking/alcohol abuse (60.9 per cent or 28 individuals) and less humbugging or harassment for money (52.1 per cent or 25 individuals)
- three-quarters of those interviewed (75.3 per cent or 55 individuals) reported spending more on food, with half (50.0 per cent or 37 individuals) buying more fruit and vegetables, and
- just over half of those interviewed reported that the payment of rent (55.4 per cent or 41 individuals) or other bills (52.8 per cent or 38 individuals) had been easier since they had been on income management.⁶⁵

63. The consultations involved all communities and town camps affected by the NTER. There were more than 500 community consultations as well as workshops with regional leaders and Indigenous organisations in the Northern Territory.

64. J Macklin and W Snowdon, *Children eating healthier food in NTER communities*, media release, 15 December 2009, viewed 14 January 2010, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/children_eat_healthier_food_15dec2009.htm

65. Australian Government, 'The evaluation of income management in the Northern Territory', FAHCSIA website, 15 December 2009, pp. 4-6, viewed 14 January 2010, http://www.fahcsia.gov.au/sa/indigenous/news/Pages/nter_eval.aspx

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In relation to the NTER redesign consultations, the Government reported that ‘while there was a divergence of views, the majority of comments said that income management should continue’.⁶⁶ Additional findings of the report on the consultations included:

- participants identified that income management had delivered discernible benefits, particularly to children, women, older people and parents and families. These included more money being spent on food, clothing and school-related expenses; assisting with saving for large purchases such as fridges and washing machines; less money being spent on alcohol, gambling, cigarettes and drugs; reduced levels of humbugging; and improved capacity for household budgeting
- there was a divergence of views about future options for income management, including some who suggested that it should only be applied only on a voluntary basis
- some participants suggested that retaining the current model is necessary for income management to be workable and to protect vulnerable people from humbugging
- the majority of regional leaders and stakeholder organisations consulted expressed a strong and consistent view in support of voluntary and trigger-based models for income management. Suggested triggers included child neglect or abuse, failure to send children to school, convictions for alcohol or drug related offences, vulnerability to humbugging, or an express request to participate in income management, and
- participants also expressed a strong preference that communities themselves should actively be involved in making decisions about income management.⁶⁷

As will be discussed in the following section dealing with arguments against income management, there has been strong criticism of the Government’s use of evidence in support of income management—in particular, questions have been raised about the quality of the data in the reports and the Government’s selection and interpretation of that data.

However, it is important to note that, such problems aside, there are immense difficulties associated with evaluating the effectiveness of a policy intervention as complex as the NTER and its various components, including income management. For one thing, it is virtually impossible to isolate the various elements of the NTER (such as income management, alcohol prohibitions and increased policing) in a way that would make it possible to draw reasonable conclusions about the relationship between particular policy inputs and particular outcomes (such as improved health and education outcomes and

66. J Macklin, ‘Second reading speech: Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009’, op. cit., p. 12 786.

67. Australian Government, *Report on the Northern Territory Emergency Response Redesign Consultations*, 25 November 2009, p. 9, viewed 14 January 2010, http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/Pages/report_nter_redesign_consultations.aspx

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reductions in crime). This means that evidence provided for or against the NTER or any of its individual inputs will, at best, only ever partially clarify particular aspects of a complex situation.⁶⁸

There are probably two important points to take from this. First, it suggests that evidence used either in support of or against the intervention and income management should be treated with particular caution. Second, it raises questions about the relationship between evidence and policy-making. What types of evidence should be used by policy-makers? Should the absence of evidence constrain policy-makers from adopting particular policies?

Arguments against income management

Arguments against income management may be broadly categorised as falling into two (frequently overlapping) areas. First, there are those arguments that criticise income management on empirical grounds. These arguments have it that there is an insufficient evidence base to support income management as being beneficial either to affected welfare recipients, or to the community as a whole. Second, income management has been criticised on moral grounds. Some commentators maintain that income management is wrong in principle and should not be instituted under any circumstances. Others, whilst they are broadly opposed to the idea of income management, nevertheless support its use under limited and specific circumstances.

Limited evidence to support income management

Some argue that there is no (or limited or flawed) evidence to suggest that compulsory income management results in improved health or school attendance among children.⁶⁹ Other commentators have taken issue with the Government's evaluation of welfare quarantining in the NT, arguing that it has misused data which is itself methodologically flawed.

For example, social policy academic, Eva Cox, argues that Minister Macklin has over-promoted the results of an Australian Institute of Health and Welfare (AIHW) report into welfare quarantining. Rather than elaborate on the significant doubts raised by the AIHW in relation to the limited data, Cox argues that Macklin has declared—largely on the strength of anecdotal evidence obtained from only 76 people in only four out of 73

68. For an elaboration of this point, see I Katz, 'From the Director', *SPRC Newsletter*, Social Policy Research Centre, 102, May 2009, p. 3.

69. M Harris, E Harris, B Harris-Roxas and M Wise, 'Tough Love: has it ever worked?', *Croakey*, 27 November 2009, viewed 14 January 2010, <http://blogs.crikey.com.au/croakey/2009/11/27/tough-love-has-it-ever-worked/>

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communities—that income management has significantly improved living conditions for children and families in Indigenous communities.⁷⁰

Cox has also expressed the concern that consultations with Indigenous people in the NT about future directions for the intervention—including income management—were not genuinely consultative.⁷¹ Further, Cox has questioned Minister Macklin’s claims of Indigenous support for income management on the strength of feedback given through the consultation process. In doing so, she draws on the observations of the independent Cultural and Indigenous Research Centre Australia (CIRCA), which was charged with monitoring the openness and integrity of the consultations. In its report on the consultation process, CIRCA suggests that the Government’s summary of discussion and responses to income management did not accurately reflect the level of Indigenous opposition to this measure.⁷²

Due to the relative novelty of the policy, very few trials have been conducted of income management arrangements. Indeed, the only substantive evaluation of a scheme that links welfare payments to school attendance in Indigenous communities in Australia, for which the results are publicly available, is of a voluntary trial conducted in Halls Creek in 2006.⁷³ This evaluation found that the school attendance of children did not improve during the course of the trial. The research suggested that there was a range of reasons for children’s non-attendance. While lack of parental engagement or support for education was one factor that contributed to low attendance, the evaluation found that it was not sufficient to focus on forcing parents to make their children go to school. The key to improved attendance, it was determined, lay in creating an education environment that students wanted to be a part of.⁷⁴

70. E Cox, ‘Data without destiny: Macklin fudges evidence’, *Crikey*, 18 December 2009, viewed 14 January 2010, <http://www.crikey.com.au/2009/12/18/data-without-destiny-macklin-fudges-evidence/>

71. E Cox, ‘Margin Notes: Macklin hard of hearing’, *National Indigenous Times*, issue 192, 10 December 2009, viewed 14 January 2010, <http://www.nit.com.au/Opinion/story.aspx?id=19140>

72. See FAHCSIA, *Report on the NTER Redesign Engagement Strategy and Implementation Final Report*, September 2009, viewed 14 January 2010, http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/Documents/redesign_engagement_strategy/final_report_09_engage_strat.PDF

73. R McCausland, ‘A hard way to learn simple lessons’, *National Indigenous Times*, 29 May 2008, viewed 14 January 2010, <http://www.nit.com.au/Opinion/story.aspx?id=15086>

74. *Ibid.*, p. 18. Professor Larissa Behrendt has identified a range of non-punitive measures that have, she argues, been found to improve Aboriginal school attendance and retention rates. These include: breakfast and lunch programs for children from dysfunctional families; programs that provide a link between Aboriginal communities and the school environment (such as elder-in-residence programs); Aboriginal teachers and teacher aides who can

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In line with the above findings, some commentators have argued that there is scant evidence linking income management to improved school attendance and educational outcomes in relation to the NT intervention.⁷⁵ Moreover, Irene Fisher, the Chief Executive Officer of the Sunrise Health Service Aboriginal Corporation, maintains that income management has not reduced alcohol or drug consumption or stopped humbugging.⁷⁶

In the case of alcohol consumption, Fisher contends that the problem has simply been moved from prescribed communities into towns. Studies of communities east of Katherine and Alice Springs town camps, conducted in 2008, found that there was increased violence in Alice Springs and Katherine pubs, as well as increased drink driving.⁷⁷

Indeed, it is argued by Fisher, Behrendt and others that the blanket imposition of compulsory income management in the NT has had *negative* effects that have gone unrecognised or unacknowledged by the Government. For example, contrary to government statements, Irene Fisher argues that income management has not resulted in an increase in the consumption of fresh food.⁷⁸ This argument is supported by evidence of *increasing* rates of anaemia in children under the age of five since the commencement of the NT intervention. According to Behrendt, based on data collected by Irene Fisher and Sunrise Health Services, the early childhood anaemia rate in the Sunrise Health Services region has risen from a low of 20 per cent in the six months to December 2006 to 55 per cent by June 2008.⁷⁹

provide support to Aboriginal students and influence the curriculum and teaching methods; culturally appropriate curriculum that engages Aboriginal students; and, programs that help to promote self-esteem and build confidence. See L Behrendt, 'Rethinking indigenous policy', *The Age*, 25 August 2008, viewed 14 January 2010,

http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/VHCR6/upload_binary/vhcr62.pdf;fileType=application%2Fpdf#search=%22media/pressclp/VHCR6%22

75. I Fisher, 'Body of evidence: racism and the NT intervention', *National Indigenous Times*, vol. 8, no. 174, 2 April 2009, viewed 14 January 2010,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FOXLT6%22>

76. Ibid. There is evidence that BasicsCards have been sold as a means to purchase alcohol and take away food (at less than their face value). See Ibid. and S Kierney, 'Outback welfare cards sold for cash', *The Australian*, 30 November 2007, viewed 14 January 2010,

<http://www.theaustralian.com.au/news/outback-welfare-cards-sold-for-cash/story-e6frg6po-1111114999263>

77. See J Gibson, '[Welfare intervention working but needs rejig](#)', *Sydney Morning Herald*, 30 September 2008.

78. I Fisher, op. cit.

79. Behrendt notes that the World Health Organisation regards that levels of anaemia above 40 per cent as representing a severe public health problem. See L Behrendt, paper given at Crunch Time: Australia's Policy Future, 22 April 2009, pp. 17–18, viewed 14 January 2010,

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Behrendt also highlights evidence of an increase in low birth weight among babies in the Sunrise Health Services region. According to Sunrise Health Services health check data, low birth weight rates have risen from nine per cent in the six months prior to the intervention to 19 per cent by December 2008.⁸⁰ Thus, the region has gone from doing better than the national average for Indigenous babies (14.3 per cent) to doing far worse. While Behrendt concedes that there is no conclusive proof that the rise in anaemia rates may be causally linked to the intervention and its effects, she nevertheless argues that ‘it is clear that the Intervention has failed to address a severe health problem that appears to be further deteriorating. It also shows the critical need to investigate claims of improved diet as a result of welfare quarantining’.⁸¹

The Australian Indigenous Doctors Association (AIDA) has conducted, in collaboration with the Centre for Health Equity Training, Research and Evaluation, a Health Impact Assessment of the intervention. The Assessment found that the income management arrangements had resulted in humiliation, embarrassment and confusion among participants, as well as increased discrimination.⁸² AIDA argued that these effects have, in turn, impacted on affected people’s mental health, social and emotional well-being.⁸³

It is important to note that FAHCSIA monitoring reports measuring progress of intervention activities have themselves revealed a number of negative findings.⁸⁴ While it is not possible to draw a causal link between these findings and the income management component of the NT intervention, for reasons discussed above, the findings are still of some concern. Those findings that *may* be more or less related to the income management measure include an increase in the number of alcohol-related and domestic violence-related incidents reported to police and an increase in the number of substance abuse

<http://www.crunchtime.org.au/useruploads/files/L%20Behrendt%20-%20Crunchtime%20keynote%20address.pdf>

80. Ibid., p. 19.

81. Ibid., pp. 19–20.

82. AIDA, ‘It could be terminal ... Doctors’ Association takes the knife to NT intervention’, *National Indigenous Times*, 4 September 2008, viewed 14 January 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FU1PR6%22>

83. Ibid.

84. Australian Government, *Monitoring Report—Measuring Progress of NTER Activities August 2007 to 30 June 2008*, FAHCSIA website, 10 June 2009, viewed 14 January 2010, http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/mon_report/Pages/default.aspx, and Australian Government, *Monitoring Report—Measuring Progress of NTER Activities July 2008 to December 2008*, FAHCSIA website, 1 September 2008, viewed 14 January 2010, http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/Documents/monitoring_report/default.htm

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incidents. However, as noted above, there is no way of definitively determining whether or not this is the case. It should also be borne in mind that these findings may be the result of increased reporting, rather than an increase in actual incidents.

Income management an inappropriate means for promoting individual responsibility

The Rudd Government's representation of income management as a tool for the promotion of responsibility and for the development of positive social norms locates it squarely within the framework of mutual obligation.⁸⁵ According to the logic of mutual obligation, income support recipients are required to demonstrate that they are deserving of their allowance. Thus, not only must affected individuals meet their activity test requirements under the Social Security Act (that is, show that they are looking for work and participating in employment training or other approved activities), as was previously the case, but they must also, if they wish to avoid being subject to income management, show that they are using their allowances in a responsible fashion.

As some commentators see it, such demands amount to a breach of income support recipients' inalienable right to welfare support. For example, the political commentator, Guy Rundle, is philosophically opposed to the very notion of income management, along with the idea that it should be employed as a mutual obligation policy lever. In an assessment of the Cape York income management scheme, Rundle takes issue with the idea that it is possible to restore or inculcate a sense of responsibility in welfare recipients by quarantining their payments. This, he maintains, is to simply enforce in recipients a higher level of passivity and control.⁸⁶

85. The introduction of income management in the context of the NT intervention may be seen as a part of the Howard Government's broader move towards a policy of mutual obligation. The Rudd Government is similarly committed to the use of income management as a part of its own version of mutual obligation: 'Income management is a key tool in the Government's broader welfare reforms designed to deliver on our commitment to a welfare system based on the principles of engagement, participation and responsibility'. See J Macklin and W Snowdon, 'Major welfare reforms to protect children and strengthen families', *op. cit.*

86. G Rundle, 'Come the revolution', *Sunday Age*, 23 December 2007, viewed 14 January 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FQGJP6%22>. In an earlier article, Rundle is highly critical of state interventions which, rather than focusing on addressing bad conditions and situations, instead attempt to remake people themselves. By coercively fashioning people to meet the needs of the market through means such as income management, Rundle argues that the state effectively preserves the cultural and economic framework that is responsible for these people's disadvantage. Rundle is critical not just of the individual damage that 'the engineering of human souls' can cause, but also its social effects. The employment of coercion for redistributive purposes 'directed towards people—their habits, behaviours and conduct of everyday life—and short of any critical notion of the limited legitimacy of state and economic power...is a recipe, not for a progressive and enabled state, but for a corporatist

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Chief Executive Officer of the St Vincent de Paul Society, John Falzon, is similarly critical of the use of social security payments as a means to punish people or change their behaviour. Falzon argues against the idea that ‘people doing it tough can have a better life as a result of being treated in a paternalistic way’, through measures such as income management.⁸⁷ On the contrary, he argues that income management disempowers and denigrates and does not address any of the problems that people might have in their lives. Rather than ‘indulging in such a coercive and controlling approach’, Falzon maintains that the Government should ‘honestly look at the supports that people need, starting with a review of inadequate payments’.⁸⁸ On this view, then, income management can do significant damage, and cause more problems than it solves.

Indiscriminate application of income management as punitive and unfair

It should be noted that few commentators appear to take issue with the application of income management in certain, specific instances. In cases where parents are obviously not spending welfare payments on the basic needs of life and their children are suffering as a consequence, there would appear to be a general agreement that some form of intervention is necessary. (This is not only in the interests of children themselves but also their parents who are in danger of becoming further disadvantaged and dysfunctional. Crudely put, some people may need to be saved from themselves and/or their addictions using what has been described as ‘tough love’.) Likewise, many critics of the Government’s reforms are not averse to the basic principle of mutual obligation.⁸⁹

However, many commentators argue that where income management is applied on a relatively *indiscriminate* basis, this is punitive and unfair. Many income support recipients are quite capable of managing their (limited) finances without outside help and intervention—and despite falling into the Government’s ‘at risk’ categories. As John Falzon argues, ‘to suggest that exemptions will be available for some welfare recipients if they can demonstrate responsible behaviour is an indication that the Government is beginning with the assumption that welfare recipients are guilty until proven innocent’.⁹⁰

one leaching yet more trust and mutuality from social life in the name of enhancing it’. See G Rundle, ‘The light on the hill, the lamp on the desk and the fist in the glove’, *Arena Magazine*, no. 69, February–March 2004, p. 27, viewed 14 January 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FJINC6%22>

87. J Falzon, op. cit., p. 13.

88. Ibid.

89. Though welfare organisations do take exception to the extension of mutual obligation in welfare reforms where this results in reduced entitlements or inflicts a punitive regime on vulnerable income support recipients.

90. J Falzon, op. cit., p. 13.

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Some argue that this may have the unintended consequence of undermining individual responsibility for managing finances and decision making by placing it in the hands of administrators.⁹¹ Further, it could be argued that a ‘blanket’ approach to deciding who will be subject to income management is inconsistent with the Government’s social inclusion agenda, which is ostensibly about targeting welfare support and services to meet the complex needs of individuals. Minister Macklin has stated ‘the delivery of payments and ... services must take into account the different circumstances of the people they’re trying to help. They shouldn’t just fit the institutional frameworks from which they’ve developed’.⁹²

In relation to the above point, it is important to note a crucial distinction between the income management arrangements operating under the NT intervention and those instituted in Cape York Peninsula. While income management has been imposed indiscriminately on welfare recipients within declared NT areas (that is, on a geographical basis), in Cape York income management is only applied to those income support recipients who fail to meet certain obligations to their children and the community.⁹³ Where a person does not meet one or more of their obligations, the Family Responsibilities Commission may recommend that the sanction of income management be imposed on them. If the person is able to demonstrate that they have been complying with their obligations, then their right to manage their own payments may be reinstated.

According to lawyer, Jo Sutton, the Cape York approach to income management offers substantive advantages over the regime introduced as a part of the NT intervention.⁹⁴ The

91. See, for example, R McCausland, op. cit., p. 18.

92. J Macklin, ‘Australian Social Policy—Back in Business’, *The Sydney Papers*, vol. 20, no. 4, Spring 2008, p. 80, viewed 14 January 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FH1ET6%22>

93. As outlined above, these obligations fall under four categories: securing the child’s school attendance; preventing child neglect and abuse; abstaining from committing drug, alcohol, gambling or family violence offences; and complying with tenancy agreements. See J Sutton, ‘Emergency welfare reforms: A mirror to the past?’, *Alternative Law Journal*, vol. 33, no. 1, March 2008, pp. 27–30, viewed 14 January 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FIELQ6%22>

94. J Sutton, op. cit. Similarly, while Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, has been critical of the income management arrangements introduced in the NT, he is reported to have expressed his support for the approach adopted in WA. He has done so on the grounds that this approach is non-discriminatory; targeted to need; the result of proper engagement with affected communities; and maintains implicated people’s procedural rights. See P Karvelas, ‘Elder backs income-management trial’, *The Australian*, 21 November 2008, http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/VM5S6/upload_binary/vm5s60.pdf;fileType=application%2Fpdf#search=%22media/pressclp/VM5S6%22

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first of these is that the targeted approach adopted in Cape York does not characterise all income support recipients as being irresponsible and incapable of meeting their parental and/or community obligations. As intimated above, this is an important consideration, given evidence of the negative effects of such characterisations. Similarly, the more targeted approach in Cape York can be seen as affording a greater level of procedural fairness.

The second benefit of the Cape York approach is that it makes maximum use of income management as a mutual obligation policy lever. Income support recipients are encouraged to exercise responsibility (under threat of the sanction of income management) and to thereby demonstrate their right to manage their own finances. As Noel Pearson has it, ‘individuals in Cape York communities ... face clear incentives to retain control of their income by fulfilling their basic responsibilities to children and the community. At any time they can regain discretion over their income by acting responsibly’.⁹⁵

Finally, some have argued that a further benefit of the Cape York approach is that it emerged from the Cape York communities themselves. In other words, it was a local initiative, rather than one largely imposed by outsiders.⁹⁶ The program was introduced by the Bligh Government in Queensland after consultation with the Commonwealth and Noel Pearson’s Cape York Institute. Local elders who make up the Family Responsibilities Commission in each community also have a hand in the income management process and are reported to have assisted local people in avoiding the sanction of welfare quarantining.⁹⁷ Thus, the procedural rights of those income support recipients who are affected are retained.

The independent report of the Northern Territory Emergency Response Review Board recommended in September 2008 that that the blanket application of compulsory income management in the NT should cease. In its place, the Board recommended that income management be made available on a voluntary basis or, in instances where it was clearly necessary, by compulsion.⁹⁸

95. N Pearson, ‘Is the Indigenous Affairs revolution anti-liberal?’, *The Party Room*, no. 6, Winter 2008, p. 13, viewed 14 January 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FLFBR6%22>

96. See Editorial, ‘Tough love changes lives on Cape York’, *The Australian*, 1 October 2009, viewed 14 January 2010, http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/ZITU6/upload_binary/zitu60.pdf;fileType=application%2Fpdf#search=%22media/pressclp/ZITU6%22

97. Ibid.

98. Australian Government, *Report of the NTER Review Board*, October 2008, NTER review website, viewed 14 January 2010, http://www.nterreview.gov.au/docs/report_nter_review/default.htm

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Cost

A more targeted approach to income management than that outlined in the Rudd Government's proposed reforms would undoubtedly be more complex in terms of its administrative requirements, and could prove more expensive as a result. Nevertheless, given evidence about the benefits of such an approach outlined above, proponents of a targeted approach would argue that any additional expense would be money well-spent.

Income management is costly. The Government has estimated that the reforms will cost \$350 million over four years in the NT alone.⁹⁹ It is argued by some that these monies would be better spent on targeted and relevant programs that have been proven to help tackle the underlying causes of disadvantage. This, it is argued, would be to provide people with the opportunities and resources necessary to survive and to succeed, which, had they been provided in the first place, would have ensured that many of the people in receipt of income support would not have required this support.¹⁰⁰ As some see it, the provision of such opportunities and resources would simply amount to the Government's meeting its own neglected side of the unequal bargain when it comes to the mutual obligations compact.

National income management discriminates against lower socioeconomic status groups

The Government has made much of the non-discriminatory nature of the income management reforms. By extending the income management provisions beyond indigenous communities, such that it is possible to reinstate the operation of the RDA, the Government argues that the new reforms are non-discriminatory. This assumption has been questioned by some commentators, who argue that compulsory income management is discriminatory on the grounds of socioeconomic status.¹⁰¹ For example, Greens Senator, Rachel Siewert has argued that 'through this change in policy, the government is not so much moving away from discriminating against Aboriginal people as expanding its discrimination to include a wider group of low-income and disadvantaged Australians'.¹⁰²

99. J Macklin and W Snowdon, 'Major welfare reforms to protect children and strengthen families', op. cit.

100. See J Massola, 'Welfare bodies oppose income quarantining', *Canberra Times*, 26 November 2009, viewed 14 January 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FBZAV6%22>; R Siewert, 'Labor brings welfare quarantining to a Centrelink near you!', op. cit.; M Harris, E Harris, B Harris-Roxas and M Wise, op. cit.

101. M Harris, E Harris, B Harris-Roxas and M Wise, op. cit.; J Falzon, op. cit.

102. R Siewert, 'Labor brings welfare quarantining to a Centrelink near you!', op. cit. See also J Falzon, op. cit.

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Schedule 3—Alcohol

The April 2007 *Little Children are Sacred* report which triggered the NTER found that alcohol abuse was destroying communities and was the gravest and fastest growing threat to the safety of children.¹⁰³ Under the NTER, alcohol restrictions were introduced which banned drinking, possessing, supplying or transporting liquor in prescribed areas. However, the NTER also allowed for the continued operation of licensed premises and individual permits issued under the *Liquor Act 1978* (NT) for some recreational, tourism and commercial fishing activities, and monitored takeaway sales across the whole of the NT.

In its policy statement, the Government argued that consultations revealed a strong consensus that the alcohol restrictions should continue, though recognising that some people expressed concerns that alcohol-related problems had continued or even increased since the NTER started, with particular concern about changes in drinking patterns, including extensive use of ‘drinking paddocks’ outside prescribed area boundaries, and increased visits to regional towns to drink.¹⁰⁴ A further point raised at the consultations was that blanket alcohol restrictions do not encourage responsible drinking behaviours and have cut across previous locally-based alcohol controls. The Government has suggested that the reason the number of alcohol-related incidents reported to police across the NTER communities rose from 2271 in 2006–07 to 3047 in 2007–08 may be increased policing and police presence, and the widening of the scope of offences.¹⁰⁵

The Government proposes to continue alcohol restrictions, but to shift from a universally imposed measure to ‘alcohol management plans’ designed to meet the individual needs of specific communities. This is on the grounds that community solutions to restrict alcohol can be more effective than blanket restrictions. The new approach is to be based on an analysis of evidence about each community’s circumstances and consultation with the community. Where a proposed alcohol management plan for a community or region requires the variation of some of the existing NTER alcohol restrictions in the legislation for that area, the Government has undertaken to consider evidence about the level of alcohol-related harm in that area before approving changes, and, in the event of changes, to closely monitor trends in alcohol-related harm in communities. If necessary, the Minister will have the capacity to reimpose existing alcohol restrictions.

103. R Wild and P Anderson, *Ampe Akelyernemane Meke Mekarle, Little Children are Sacred*, Report of the Northern Territory Board Of Inquiry Into The Protection Of Aboriginal Children From Sexual Abuse, April 2007, viewed 14 January 2010, http://www.inquirysaac.nt.gov.au/pdf/bipacsa_final_report.pdf

104. Australian Government, *Policy Statement: Landmark Reform to the Welfare System, Reinstatement of the Racial Discrimination Act, and Strengthening of the Northern Territory Emergency Response*, November 2009, op. cit.

105. Ibid.

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The Bill will remove the provisions that applied to all prescribed areas that part of the *Police Administration Act 1978* (NT) (Division 4 of Part VII) which allowed areas to be treated as if they were public areas. It will replace those provisions with ones which oblige the Commonwealth Minister to specify by legislative instrument the prescribed area or part of prescribed area to which Division 4 of Part VII of the *Police Administration Act 1978* is to apply. The new provisions will also oblige the Minister to only make a declaration after a request from a resident of the area and after a process of community consultation (**item 10; proposed section 18 of the NTNER Act**).

The Bill will also remove the requirements for a licensee to record the sale of take-away liquor over \$100 or more than 5 litres of wine, as that requirement was considered ineffective (**item 13; repeal of Division 3A of Part 2 of the NTNER Act**).

In the Explanatory Memorandum and second reading speech, the Government argued that this measure is a special measure for the purposes of the RDA because the revised measures will:

- reduce the risk of alcohol-related harm involving women and children
- help improve health outcomes for Indigenous people in the relevant communities
- take into account the differing needs of communities, and
- allow for communities to have say in the form of alcohol restrictions.

Schedule 4—Prohibited material

The April 2007 the *Little Children are Sacred* report found that the exposure of children and the community to sexually explicit and very violent films, publications and computer games might be posing a health risk and recommended the investigation of strategies to restrict access to such material. The subsequent NTER included prohibitions on the possession and supply within prescribed areas of sexually explicit or very violent material distributed as publications, films or computer games.

In its earlier discussion paper on the NTER, the Government proposed that the NTER restrictions on prohibited material be lifted but that communities could apply to have restrictions retained.¹⁰⁶ However, the Government changed this position following the NTER consultations. According to the Government, there was a strong view from the consultations that sexually explicit and very violent material is not wanted in communities and that children need to be protected from it. Nevertheless, there was also a view that

106. Australian Government, *Future Directions for the Northern Territory Emergency Response*, op. cit.

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road signs notifying the restrictions on prohibited material are offensive and cause people to feel stigmatised.¹⁰⁷

In the end the Government decided that the current restrictions would remain in place, but the Bill provides that communities could make an application to have the restrictions lifted in their communities (**new section 100A**). The Minister, in considering such an application, needs to consider evidence about the prevalence of sexually explicit and very violent material in the community; the well-being of people in the community; the views of people in the community; and the advice of the relevant law enforcement authority (**new subsections 100A(6) and 100B(6)**).

A declaration to remove the restrictions on prohibited material under the NTER legislation would mean that these areas would be subject to the same restrictions on sexually explicit and violent material as apply in other parts of the NT.

In the Explanatory Memorandum and second reading speech, the Government expressed the belief that this measure is a special measure for the purposes of the RDA because:

- it will reduce the risk of children being exposed to pornographic material, the risk of child abuse and the problem of sexualised behaviour
- consultations revealed that members of the communities recognised these benefits and supported the measure
- the restrictions will be continued for the sole purpose of protecting children in the communities, and
- communities will (if they wish) be able to move to have the pornography restrictions lifted in their community.

Schedule 5—Acquisition of rights, titles and interests in land

Five-year leases were purportedly introduced as part of the NTER to provide the Government with tenure over lands and to allow access to facilitate the administration of the NTER. The underlying title of the land is unaffected by the leases, it still being owned by the traditional owners. In response to the NTER Review Board's recommendation that rent be paid to the Aboriginal owners of five-year leased land, the Government requested that the NT Valuer-General make a determination as to the amount of rent to be paid and rent payments have commenced for some communities.¹⁰⁸

107. Australian Government, *Policy Statement: Landmark Reform to the Welfare System, Reinstatement of the Racial Discrimination Act, and Strengthening of the Northern Territory Emergency Response*, November 2009, op. cit.

108. Australian Government, 'Five-year leases on Aboriginal townships', FAHCSIA website, 23 November 2009, viewed 14 January 2010,

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The five-year leases have been used to underpin the Community Clean Up Program, Government Business Manager accommodation, installation of safe houses, and reformed property and tenancy management arrangements. The Government currently holds five-year leases over 64 communities.¹⁰⁹

According to the Government, the NTER consultations revealed some misunderstanding about the five-year lease (for example, that the underlying title of the land is not affected by the leases, the Indigenous owners still own the land), some concern about rental payments for these leases, and some frustration at delays in delivery of housing renovations and long-term housing.¹¹⁰ However, the Government has also suggested that the consultations also revealed that many people in communities understood the benefits of five-year leases (upgrades and renovations to houses, improvements to community infrastructure, and associated creation of employment opportunities for local people).¹¹¹

The Bill retains the five-year leases until they expire in August 2012, but introduces some changes to help clarify their purpose and operation, including:

- making it clearer that the objectives of the five-year leases are to enable special measures to be taken to improve the delivery of services in Indigenous communities in the NT and promote economic and social development in those communities (**new section 30A**)
- defining the permitted use of leases as being directly related to achieving those objectives (**new subsection 35(2A)**)
- clarifying that exploration and mining are not permitted uses of the five-year leases (**new subsection 35(2B)**)
- requiring the five-year leases to be administered with regard to Indigenous culture (as it applies to the land covered by the lease) (**new section 36A**)
- facilitating the Government's commitment to move to voluntary leases by requiring the Government to negotiate the terms and conditions of the new leases in good faith where requested (**new section 37A**), and
- developing clear guidelines to better explain the land use approval process to ensure the transparent allocation of lots (**new section 35A**).¹¹²

http://www.fahcsia.gov.au/sa/indigenous/progserv/ntresponse/about_response/housing_land_reform/Pages/five_year_leases_aboriginal_townships.aspx

109. Ibid.

110. Australian Government, *Policy Statement: Landmark Reform to the Welfare System, Reinstatement of the Racial Discrimination Act, and Strengthening of the Northern Territory Emergency Response*, op. cit.

111. Ibid.

112. Ibid.

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In the Explanatory Memorandum and second reading speech, the Government expressed the belief that this measure is a special measure for the purposes of the RDA because:

- the leases enable the provision of services and other benefits to the communities
- the consultations revealed some recognition of these benefits, and
- the proposed legislative changes will limit the effect of the lease measure on existing rights.

The leases only operate until 2012, and in this period the Government plans to work towards transitioning to voluntary leasing arrangements.

Schedule 6—Licensing of community stores

The licensing of community stores was introduced under the NTER to improve the range and quality of food and groceries available in communities; to allow stores to take part in the income management arrangements; and to encourage them to better meet the nutritional and household needs for communities. Under the NTER, community stores are assessed for licence qualification on the basis that they:

- have a reasonable quality, quantity and range of groceries and consumer items available and promoted at the store, including healthy food and drinks
- demonstrate the capacity to participate in the requirements of the income management arrangements under social security law, and
- have sound financial structures, retail and governance practices.

According to the Government, the NTER consultations revealed that the range and quality of food and household items available from local stores had improved under the NTER, and that most felt that community store licensing should continue and be strengthened as the Government proposed. These proposals were:

- to establish a legislative link between community store licensing and the eligibility of a store to participate in the income management arrangements under the social security law
- to extend the scope of the licensing scheme to cover shops which are a key source of food, drink and grocery items for an Indigenous community, including takeaway or fast food shops and roadhouses, and
- to provide greater clarity and transparency in the focus of the licensing assessment process and the obligations of licence holders.

In its earlier discussion paper on the NTER, the Government proposed that the new licensing arrangements would include a power to require a store owner to appoint a new licensed store operator if the store was not being operated satisfactorily. In the arrangements provided for by the Bill, licences will be issued to owners (**new subsection 96(1)**) (rather than operators) to recognise their specific responsibility.

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The licence will also refer to conditions and obligations that are imposed on managers where the manager is not also the owner of the store (**new section 93C**). This change is thought to remove the need to provide for the transfer of licences between managers, and reduce the administrative burden when a store changes manager.

The Bill also provides for decisions made under the community store licensing scheme to be reviewed by the Administrative Appeals Tribunal (**new section 127A**), and removes the current provisions that permit the Australian Government to compulsorily acquire a community store's assets and liabilities (**item 49**).

In the Explanatory Memorandum and second reading speech, the Government expressed the belief that this measure is a special measure for the purposes of the RDA because:

- it assists in improving the health of people in remote Indigenous communities
- consultations reveal that most people in the communities recognise the measure's benefit and want it to continue
- the licensing arrangements will be continued for the sole purpose of improving food security and the health of people in those communities, and
- there will be consultation with the communities in relation to the operation of key elements of the scheme.

Schedule 7—Powers of the Australian Crime Commission

The *Little Children are Sacred* report found that people were reluctant to report concerns that a child may be experiencing violence, fearing violence against themselves if they did so. Under the NTER, the *Australian Crime Commission Act 2002* was amended to insert provisions to enable the Australian Crime Commission (ACC) Board to authorise a special intelligence operation/investigation into 'Indigenous violence or child abuse', which was defined as 'serious violence or child abuse committed by or against, or involving an Indigenous person'. The Government stated that most people who commented during consultations indicated support for the powers to be continued and monitored for effectiveness.¹¹³

The Government proposes to retain the ACC's special law enforcement powers but to make it clear that these powers are only in relation to serious violence or child abuse committed against an Indigenous person (**item 1**).

In its Explanatory Memorandum and second reading speech, the Government expressed the belief that this measure is a special measure for the purposes of the RDA because:

- the measure protects the rights of Indigenous people, especially children and women, by facilitating the reporting and investigation of crimes involving serious violence and

113. Ibid.

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abuse, the prosecution of such offences, and therefore the prevention of further serious violence and abuse

- the measure will be continued for the sole purpose of protecting Indigenous people, and
- the Bill will restrict the use of powers to instances in which serious violence or child abuse is committed against an Indigenous person.

Committee consideration

The Bill (along with the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009* and the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009*) has been referred to the Community Affairs Legislation Committee for inquiry and report by 9 March 2010. Details of the inquiry are at

http://www.aph.gov.au/Senate/committee/clac_ctte/soc_sec_welfare_reform_racial_discrim_09/index.htm

Position of significant interest groups/press commentary

The response by interest groups and press commentators to the provisions in this Bill has been mixed. The main area of controversy has been the Government's intention to introduce a national income management scheme.

Racial Discrimination Act

The repeal of NTER laws requiring the suspension of the operation of the RDA has been generally welcomed. For example, Australian Human Rights Commission Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, has said that this would send an important message that the Government was genuine in its commitment to resetting the relationship with Indigenous Australia.¹¹⁴

This change has also been publicly supported by the Law Council of Australia (LCA) and a range of community sector organisations such as the Australian Council of Social Service (ACOSS).¹¹⁵

114. S Smith, *Kids' plight forces Macklin's hand on income management*, 26 November 2009, viewed 14 January 2010, <http://www.abc.net.au/news/stories/2009/11/26/2753970.htm?site=indigenous&topic=latest>

115. Law Council of Australia, *Reinstatement of the Racial Discrimination Act a Welcome Move*, media release, 26 November 2009, viewed 14 January 2010, <https://www.lawcouncil.asn.au/media/news-article.cfm?article=2DA0BA42-1E4F-17FA-D293-101C8474447B>; Australian Council of Social Service (ACOSS), *Community sector statement on income management*, 22 December 2009, viewed 14 January 2010,

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Nevertheless, whilst welcoming the reinstatement of the operation of the RDA, some have argued that the NTER and income management provisions in the Bill will continue to have a discriminatory impact on those affected. For example, a joint statement on income management from ACOSS and 11 other community sector organisations has argued that:

... the extension of income management will indirectly discriminate against Indigenous Australians in disadvantaged areas across the country, who are likely to be disproportionately affected by the policy ... The proposed changes will also discriminate against income support recipients across the country on the basis of income source, duration of income support and geography. Income managed individuals will have to use a card to purchase groceries and other essentials. This card reveals an individual's income source to retailers and others and is likely to cause shame and discrimination, as it has to affected recipients in the Northern Territory.¹¹⁶

Not all observers have welcomed the Government's objective of reinstating the operation of the RDA. For example, former Howard Government adviser, David Moore, has argued that this objective is 'ideological' and 'puts at risk' the effectiveness of the NTER (given the changes to the various NTER measures necessary to ensure compliance with the RDA).¹¹⁷

Income management

The Rudd Government's decision to continue and extend income management has attracted a range of responses.

Some have welcomed the decision on the grounds that it has, in their view, benefited people in the NT and other areas in which it has been introduced. For example, child welfare officer, Mildred Inkamala, from the NT community of Hermannsburg, has argued for an expansion of income management because it has resulted in 'kids ... going to school, they're healthier, people are not spending all their money on grog'.¹¹⁸ Similarly,

http://acoss.org.au/images/uploads/ACOSS_-_sector_statement_on_income_management.pdf

116. Ibid. The 11 other organisations that were part of the joint statement are: Australians for Native Title and Reconciliation, Australian Association of Social Workers, Catholic Social Services Australia, People with Disability Australia, Family Relationship Services Australia, Jobs Australia, National Council of Single Mothers and their Children, National Ethnic Disability Alliance, National Shelter, St Vincent de Paul and UnitingCare.
117. D Moore, 'Tough love works best', *Australian*, 26 November 2009, viewed 14 January 2010, <http://www.theaustralian.com.au/news/opinion/tough-love-works-best/story-e6frg6zo-1225803899559>
118. Quoted in N Berkovic and S Elks, 'Jenny Macklin spells out welfare changes', *Australian*, 26 November 2009, viewed 14 January 2010,

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while Mission Australia chief executive, Toby Hall, has argued for a more sustainable approach ‘that addresses the issues that lie at the heart of a parent’s behaviour’, he has also argued that ‘positive results ... have been achieved as a result of income management in the NT and in other parts of the country’.¹¹⁹

Independent Member for the NT seat of Macdonnell, Alison Anderson MLA, has been reported as supporting compulsory income management—‘provided, she says, that it is extended to all welfare recipients regardless of race’.¹²⁰

Most critics of the Rudd Government scheme have not been against income management as such but (as was largely the case with the Howard scheme) rather have taken issue with the particular form in which income the scheme is to be implemented. For example, the *Joint statement on income management* by 12 community organisations called on the Government to withdraw the *compulsory* income management provisions of the Bill on the grounds that:

We support non discriminatory policies to help people manage their finances where this is necessary. However, any such policies must respect the rights and dignity of all income support recipients.

Our experience over many decades across Australian communities is that working with people to build the skills and expertise necessary to manage their finances and relationships well is the key to long term transformation in the lives of those most disadvantaged. Quick fixes don’t work. There is no evidence to suggest that micro managing people’s incomes empowers them or helps them to develop the necessary skills.¹²¹

The main concerns raised in the statement in relation to compulsory income management are that:

- the policy denies that the ‘vast majority of income support recipients budget effectively with the inadequate payments they receive’
- the absence of a sufficient consultation process with Indigenous communities in the NT in relation to compulsory income management under the NTER or broader consultation in relation to the Government’s plans to extend income management nationally
- the lack of an evidence base for the policy, and

<http://www.theaustralian.com.au/news/nation/macklin-spells-out-welfare-changes/story-e6frg6nf-1225803954669>

119. S Smith, op. cit.

120. Ibid.

121. ACOSS, op. cit.

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- resources committed to introducing compulsory income management ‘would be better spent on improving the adequacy of income support payments and effective services for struggling individuals and families’.¹²²

As a result of these concerns, the joint statement argues that the compulsory income management provisions in the Bill should be replaced with voluntary system. That is, a system that ‘people can opt into, on an individual or local community basis’.¹²³

Other measures

Australians for Native Title and Reconciliation (ANTaR) has criticised the proposed confirmation of the compulsory five-year leases as ‘special measures’ and legislating for transition to longer-term so-called ‘voluntary’ leases as being ‘directly against the wishes of Aboriginal communities’.¹²⁴ ANTaR National President, Dr Janet Hunt, has argued that ‘it could have the effect of denying Aboriginal people the right to control the development of their communities for generations to come’.¹²⁵ She has also argued that:

The continued government take-over of Aboriginal communities remains in breach of their right to self-determination and goes against established evidence that providing greater, not lesser control, to Aboriginal peoples results in better outcomes in terms of ‘closing the gap’ objectives.¹²⁶

ANTaR has also criticised what it describes as ‘the continuation of the stigmatising approach to prohibited material’ in the Bill.¹²⁷

Non-Government party policy position/commitments

The Coalition

Based on comments made by Tony Abbott MP, both in his capacity as Shadow Minister for Indigenous Affairs and Families and as Leader of the Opposition, the Coalition would

122. Ibid.

123. Ibid.

124. Australians for Native Title and Reconciliation, *Concerns remain about the Northern Territory Emergency Response*, media release, 25 November 2009, viewed 14 January 2010, http://www.antar.org.au/media/concerns_remain_about_the_NTER

125. Ibid.

126. Ibid.

127. Ibid.

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appear to be supportive of the Government's plan to expand the income management scheme to vulnerable regions and individuals at risk.¹²⁸

Abbott's position on welfare quarantining is perhaps most clearly elaborated in his recently published book. As Abbott sees it, welfare-dependent families with children under the age of 16 should generally be subject to income management. In response to the argument that this would inevitably include in the scheme families who are perfectly responsible in their spending, Abbott asserts that 'these families would already spend well over 50 per cent of their welfare income on the necessities of life, so they should not be affected or inconvenienced by such a change'.¹²⁹

While Abbott has not specifically commented on the extension of income management to those categories other than families who are deemed by the Government to be at risk, it may be inferred from his comments that he is, on the whole, supportive of general welfare quarantining. Such arrangements would, he argues, 'send the clearest possible message that people on welfare have obligations as well as entitlements'.¹³⁰

The Greens

As noted above, Senator Rachel Siewert has been scathing in her assessment of the Rudd Government's proposal to expand existing compulsory income management arrangements.¹³¹ Siewert is critical of the proposal on both empirical and moral grounds, arguing that 'there is no evidence to support the claims that this approach actually works—let alone that this morally dubious, expensive and administration-intensive approach can deliver outcomes that justify its complexity and cost'.¹³² As Siewert sees it, the policy proposal is paternalistic and discriminatory towards low-income and disadvantaged Australians and, as such, offers little in the way of encouraging or empowering these people. In Siewert's view, 'rather than attempting to punish struggling,

128. See 'Government should extend welfare restrictions', *The Sydney Morning Herald*, 24 May 2009, viewed 14 January 2010, <http://news.smh.com.au/breaking-news-national/govt-should-extend-welfare-restrictions-20090524-bj6v.html>

129. T Abbott, *Battlelines*, Melbourne University Press, Carlton, Victoria, 2009, p. 91.

130. Ibid.

131. See R Siewert, *Greens condemn Rudd Government move to nation-wide welfare quarantining*, media release, 25 November 2009, viewed 14 January 2010, <http://rachel-siewert.greensmps.org.au/content/media-release/greens-condemn-rudd-government-move-nation-wide-welfare-quarantining>; R Siewert, 'Labor brings welfare quarantining to a Centrelink near you!', op. cit.

132. Ibid.

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low-income families, the government should be dealing with the underlying causes of neglect and delivering proper support for families in crisis'.¹³³

Financial implications

The financial costs to the Government arising from the Bill are a result of additional resourcing from the changes to income management. As can be seen from the table below, the Government expects the total cost of the change between 2009–10 and 2013–14 to be \$401.7 million. This includes the cost of operating both the income management scheme itself and financial management support services associated with the scheme.¹³⁴

2009-10	2010-11	2011-12	2012-13	2013-14	Total
\$5.9 m	\$105.6 m	\$99.6 m	\$94.7 m	\$95.9 m	\$401.7 m

Source: Explanatory Memorandum

The financial impact of the remainder of the Bill is nil.

Main provisions

Division 2 of Part 1 of Schedule 2 to the Bill allows for a 12 months transition period—those subject to income management prior to 1 July 2010 will remain on income management until either transitioned to new scheme or moved off the scheme altogether. The transition period is 12 months from 1 July 2010, and **item 23** continues the operation of the income management regime to persons being managed under the to-be-repealed section 123UB of the *Social Security (Administration) Act 1999*. Section 123UB will be repealed by **item 12**.

New section 123TFA of the *Social Security Administration Act 1999* will allow the Minister to declare by legislative instrument that a state, a territory or a specified area is a 'declared income management' area.¹³⁵ The legislative instrument is a disallowable instrument.

Item 36 inserts **new sections 123UCA, 123UCB and 123UCC** to apply IM to vulnerable welfare payment recipients, disengaged youth and long-term welfare payment recipients.

Items 47 and 49 amend the Social Security Act so that voluntary income management agreements may be terminated, but the agreement must be in force for at least 12 weeks.

133. Ibid.

134. Email correspondence from Office of Jenny Macklin, 27 January 2010.

135. **New section 123TFA** is to be inserted by **item 35** of **Schedule 2** to the Bill.

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Other major main provisions are mentioned in the relevant areas throughout this Digest.

Concluding comments

The Bill provides for the repeal of provisions in the NTNER Act that limited the operation of the RDA. It also provides for re-designed NTER measures that would assist in meeting the Government's commitments to improving the lot of Indigenous Australians while not breaching the reinstated RDA. It remains to be seen whether or not those measures that have been retained as special measures and as beneficial to Indigenous people in the NT will prove to be so. Apart from the income management measure, the revised NTER measures have not been the subject of widespread public criticism.

The proposed income management measure has attracted a significant amount of public comment, much of which has been negative. It is perhaps unsurprising that the proposed income support changes should have proven to be controversial. For one thing, they represent a further shift away from the long-standing principle of welfare payment inalienability. For another, the measure necessarily involves the extension of compulsory income management arrangements beyond a largely Indigenous population to specified groups within the mainstream, non-Indigenous community.

That said, while the Government claims that the introduction of income management to the whole of the NT represents the precursor to a national roll-out of the scheme, it is by no means clear, based on available information, to what extent this will in fact be the case.

The Government is obliged to extend the income management scheme beyond largely Indigenous communities in the NT in order to retain the measure as a part of the NTER whilst not breaching the RDA. In doing so, while at the same time targeting groups of income support recipients deemed to be at risk, the Government may argue that it is ensuring that the measure is non-discriminatory and focused on areas of need. However, although the proposed new arrangements are *more* targeted than those introduced as a part of the NTER, they may still be regarded as arbitrary in that the new scheme includes entire categories of income support recipients, with the burden of proof placed on these recipients to demonstrate that they are socially responsible if they are to be excluded from income management.

A majority of commentators appear to see a role for some form of income management in particular circumstances. However, many commentators regard the relatively indiscriminate application of income management arrangements as detracting from, rather than supporting, income support recipients' ability to exercise responsibility. Most appear to agree that income management is appropriate under circumstances where it is clearly targeted at those in need, based on proper consultation with those people affected and accompanied by services that support struggling individuals and communities.

The proposed reforms to the NTER (most particularly, those relating to income management), have also been criticised on the grounds that the evidence presented by the

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Government in support of them has been questionable. To a degree, this has to do with the nature of the NTER itself, and the inherent difficulty in drawing causal relationships between particular measures and particular outcomes. All the same, a number of commentators have argued that the Government's evidence is in many instances flawed and misrepresented. Further, some maintain that in certain areas the evidence demonstrates that compulsory income management has had *negative* consequences for individuals and communities—consequences that the Government has failed to acknowledge.

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