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PROFESSOR JON ALTMAN

Centre for Aboriginal Economic Policy Research

Hanna Neumann Building 021

ACT Australia 0200

T: +61 2 6125 2858

F: +61 2 6125 9730

E: Jon.Altman@anu.edu.au

Australian Senate  
Senate Standing Committee on Community Affairs  
Parliament House  
Canberra ACT 2600

## **RE: Inquiry into Indigenous Welfare Reform and Reinstatement of the RDA**

I wish to make a brief submission to your Inquiry into Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 and the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 along with the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009. This is primarily because this proposed welfare reform will fundamentally alter a citizen rights based approach to welfare replacing it with one that is skewed towards a far higher level of state governance of citizens. However, rather than analyse the voluminous set of proposed laws, I would like to focus on a number of the specific questions raised by this Committee's Statement of Reasons for Referral of the Bills as well as the bigger picture *Policy Statement Landmark Reform to the Welfare System, Reinstatement of the Racial Discrimination Act and Strengthening of the Northern Territory Emergency Response* (released by the Australian Government in November 2009), henceforth the Policy Statement. I structure my submission with a brief background followed by specific comments on the issues identified by this Senate Standing Committee, some comments on the Policy Statement, three recommendations and three concluding observations.

### **Background**

The need to introduce these reforms has arisen from the Rudd Government's desire to retain income management (or quarantining) in the Northern Territory, but to make these laws compatible with the Racial Discrimination Act, what I have referred to in another context as the ultimate legal Houdini Act (*The Australia Institute News*, vol 60, December 2009, p.4).

I should note at the outset that I have opposed measures to quarantine the welfare incomes of people residing in prescribed communities since their proposal in June 2007 and their enactment in law in August and September 2007. I did so for two reasons.

First, there is no reliable evidence, especially from the USA where this issue has been researched, that such measures generate positive benefits especially given the high cost of establishing income management regimes and monitoring the spending of beneficiaries.

Second, as these income management measures are non-discretionary for Indigenous people, but to date have not been applied on a blanket basis to non-Indigenous Australians, they are discriminatory. It is assumed that all Indigenous parents who are welfare recipients are feckless spenders whose incomes must be quarantined and controlled. At the very least, on grounds of equity with the broader community, policy should assume that all Indigenous parents, like Australian parents more generally, are good parents and allow welfare authorities the discretion to quarantine payments only if the opposite proves to be the case (see Opening comments to Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Provisions of the Northern Territory Emergency Response Bill 2007 and

Associated Bills at

[http://www.anu.edu.au/caepr/system/files/Publications/topical/Altman\\_Senate.pdf](http://www.anu.edu.au/caepr/system/files/Publications/topical/Altman_Senate.pdf)).

### **Statement of reasons for referral of the Bills**

I agree with the Senate Select Committee that the reforms to welfare policy proposed in these Bills are far reaching and will potentially affect a large number of disadvantaged Australians if implemented. I make brief comment on the Committee's questions in italics in this section.

The Committee seeks an assessment of the effectiveness of the amendments proposed in the Bills to:

1. improve the social and economic conditions, social inclusion and life outcomes of all the disadvantaged individuals and communities affected by the measures, including but not limited to the Northern Territory;  
*Despite a number of attempts to assess the impact of income quarantining (or management) by the NTER Review, the Australian Government in Closing the Gap in the Northern Territory, January 2009 to June 2009 Whole of Government Monitoring Report, and the commissioned Report on the Evaluation of Income Management in the Northern Territory by the Australian Institute of Health and Welfare there is no unequivocal evidence available that demonstrates improvement. There is certainly evidence that the requirement of store licencing (in order to implement income management) has improved community access to a better range of food and other goods as documented in the Parliamentary Report Everybody's Business: Remote aboriginal and Torres Strait Islander Stores (November 2009). This is a positive outcome directly but coincidentally linked to income management.*
  2. deliver measurable improvements in protecting women and children, reducing alcohol-related harm, improving nutrition and food security, promoting community engagement and strengthening personal and cultural sense of value in all affected communities, including but not limited to Indigenous communities in the Northern Territory;  
*As above there is no unequivocal evidence of improvements in any of these areas as a result of income management and hence some questions must be asked about its continuity. The Closing the Gap in the Northern Territory, January 2009 to June 2009 Whole of Government Monitoring Report is the first report to provide some before and after Intervention comparative statistics and while interpretation of these data is open to debate, there is again no clear evidence of improvements. (See my initial assessment at <http://www.crikey.com.au/2009/11/09/after-the-nt-intervention-violence-up-malnutrition-up-truancy-up/>).*
  3. reinstate the *Racial Discrimination Act 1975* and deliver on our international commitments under the UN Convention on the Elimination of All Forms of Racial Discrimination in the operation of relevant legislation, particularly the Northern Territory National Emergency Response Act 2007.  
*The proposed amendments will in my view reinstate the RDA in a technical and legal manner by extending measures now targeting Aboriginal people in the NT only (and possibly in Cape York) to other Australians. However, until the law is amended and applied even more broadly in my view Australia remains in breach of the RDA. I make recommendation to deal with this unacceptable situation later.*
- Assess the evidence that the proposed measures will deliver their stated policy objectives in an appropriate and cost effective manner.

*This question is addressed briefly below in discussion of the Australian Government's Policy Statement.*

- Consider the relative merits of alternative measures in achieving these outcomes. *There are three broad alternatives available. First, is to default to have no income management as is currently the case for almost all Australian welfare beneficiaries. The second is to have income management, but on an opt-in voluntary basis and with welfare recipients deciding on the proportion of their income to be managed as currently possible with Centrepay. The third is to proactively offer welfare recipients access to income management capacity building programs, like the Family Income Management Scheme (FIMS) that has been operating for some years now. It is difficult for me to assess the relative cost/benefits of these three options but given that FIMS has historically been evaluated, data for undertaking some evidence based comparative analysis should be available to the Australian Government.*

Assess the likely direct and incidental costs of the proposed measures including:

1. the cost of administration and delivery of the measures;  
*I do not have the exact figures on hand for establishment and administration costs of income management (Basics Card) in the NT, it is well in excess of \$100 million. While the Australian Government may generate some efficiency dividends from the application of income management to Indigenous people in prescribed communities as a welfare reform 'greenfields', the sheer scale of the proposed expansion suggests that administration of proposed measures will be significant. Because there is no evidence that the measures will generate better outcomes, there is no guarantee of offsets from improved health, education or employment status.*
2. additional costs incurred by those subject to the measures;  
*The costs that will be incurred by those subjected to the measures can be conceptualized in two ways: tangible and intangible costs. Tangible costs would include the possibility that the cost of income management will be passed onto those subject to the measures e.g. through higher prices in stores licenced to operate Basics Cards. Intangible costs would include the loss of freedom to choose how to expend one's welfare income. It is surprising that the extent of tangible costs as outlined above have not been assessed to date.*
3. the costs incurred by businesses complying with the Basics Card and potential losses of businesses excluded from the scheme.  
*This issue was addressed in part in the report Everybody's Business. Initially, Basics Card compliance costs were met by the Australian Government, although whether this remains the case or is proposed to be the case with the extension of income management is not clear. It is certainly likely that any additional costs will be passed on to consumers, as occurs regularly with the banking sector and interest rate increases. Businesses excluded from any income management licencing system are likely to experience loss of turnover and reduced commercial viability. Arguably, licencing is a form of regulation that is anti-competitive and has the capacity to create monopoly in situations that were competitive.*

Assess the effectiveness of the amendments proposed in the Bill in meeting the Government's policy objectives to:

1. address the social and economic disengagement arising from long term welfare dependence in disadvantaged regions, and in particular across the whole of the Northern Territory;

*This question is addressed briefly below in discussion of the Australian Government's Policy Statement.*

2. improve the engagement, participation and responsibility of certain welfare recipients; *This question is addressed briefly below in discussion of the Australian Government's Policy Statement.*
3. continue and strengthen the measures to protect women and children, including reduce alcohol-related harm, improve food security, ensure appropriately secure tenure for the delivery of government services, promote personal responsibility and rebuild community norms in Northern Territory Indigenous communities; *As noted above there is no unequivocal evidence of improvements in any of these areas as a result of income management and hence some questions must be asked about its continuation.*
4. reinstate the Racial Discrimination Act 1975 (RDA) in the operation of relevant legislation, particularly the Northern Territory National Emergency Response Act 2007. *As noted above, the proposed amendments could in my view reinstate the RDA in a technical and legal manner into the NTER Act 2007.*

### **Some Comment on the Policy Statement**

The hallmarks of the Rudd Government in Indigenous policy to date have been threefold: it has set concrete targets to Close the Gap; it has highlighted the need for evidence-based policy making; and it has committed substantial additional funding to Indigenous affairs in the next decade, via the COAG National Indigenous Reform Agreement and a series of National Partnership Agreements signed off in 2009.

The legislative changes proposed in the Bills are a response to this broader policy agenda, as well as a more specific welfare reform agenda outlined in *Policy Statement: Landmark Reform to the Welfare System, Reinstatement of the Racial Discrimination Act and Strengthening of the Northern Territory Emergency Response*.

As will become apparent, there are aspects of the Policy Statement, particularly in relation to the purported benefits of income management, that appear to me at best to be inconsistent and thus poor policy making, at worst to jeopardise prospects to improve the marginal status of Indigenous Australians. It is noteworthy that much of this inconsistency is reflected in the very structure of the Policy Statement that has three sections, an Introduction (that discusses policy directions in the NT and elsewhere in Australia), a Part 1 that outlines the Government's future position on the NTER, and a Part 2 that reiterates the raft of budgetary measures taken by the Australian Government to Close the Gap in the Northern Territory. I will focus my comments only on elements of the Introduction (titled *Policy Statement Landmark Reform to the Welfare System, Reinstatement of the Racial Discrimination Act and Strengthening of the Northern Territory Emergency Response*) that focus on this Committee's Inquiry (pps 1–2) and of Part 1 (titled *Australian Government's Position on Future Directions for the Northern Territory Emergency Response*) that relate to the RDA and Income Management (pps 4–7). These are the government's policy objectives referred to by the Senate Standing Committee above.

The Policy Statement raises issues for debate because much of its focus is on the asserted negative impacts of welfare dependence without enough

contextualisation about the structural determinants of disadvantage. Hence, while the COAG approach is purportedly whole-of-governments, we already see policy statements focused on discrete policy areas, in this case welfare reform that will now include non-Indigenous Australians. This strikes me as messy policy making, neither Indigenous specific nor truly mainstreaming. And it seems to me that throughout we see predetermined proposed policy solutions to problems that are highly diverse and only partially defined.

Two key questions arise. First, are these welfare reform measures the right instruments to Close the Gap and if so where is the evidence base? And second, are we targeting the right people, assuming that there are some who are assessed according to some consistent criteria to be irresponsible and hence need to have their income managed, at least according to the values of the government of the day?

Just three examples from the Policy Statement might clarify my concerns.

- 1 at p1 it is asserted that 'The Government's welfare reforms tackle the destructive, intergenerational cycle of passive welfare' supposedly by quarantining income to ensure that it is spent ... in the best interests of children; and by allowing people exemptions from income management if they participate in education and training'. But this language is just abstract assertion. There is nothing in the income management regime that requires expenditure on children, rather a requirement that a Basics Card is used to purchase a range of goods in licenced stores; and there is no cogent link that I am aware of between income management and participation in education and training, indeed the policy language here presents income quarantining as a punitive measure that might be lifted if welfare recipients take personal initiative not to manage their income responsibly but to participate in education or training.
- 2 At p.1–2 it is stated that the operations of the new income management scheme will be carefully evaluated to inform future national roll out to other severely disadvantaged regions. Later at p.6 it is stated that 'Implementation in selected locations elsewhere in Australia will then proceed as informed by evidence developed from the Northern territory experience'. But surely if the careful evaluations and evidence from the NT indicate negative outcomes there would be no further roll out but rather abolition of existing income management measures. Outcomes from the reforms are being predetermined which makes a mockery of any notion of evidence-based policy making.
- 3 At p.2 it is stated that 'A central requirement is a heightened focus on respectful engagement with Indigenous people, and close community involvement in developing and managing long term solutions'. From my personal observations and readings it does not seem that the NTER redesign consultations were based on such respectful engagement in that the range of options provided did not include abolition of income management and did not seek community involvement in policy design.

The absence of any cogent argument for income management, let alone any evidence that it is making a difference, can be demonstrated from the following hypothetical example. If a person moves from welfare to employment their income is automatically exempt from income management. However, if they lose their employment and go back onto welfare their income is again managed. These changes would occur irrespective of the person's expenditure patterns when

employed or unemployed. Exactly the same could be demonstrated with the income management of an employed and unemployed person: the employed person could expend income irresponsibly while the unemployed might expend income responsibly, and consequently income management would target the wrong person.

I see no evidence base provided to support the proposed welfare reforms that suggest that they constitute the right instruments to Close the Gap nor that they are constructed in a manner that will target the right people for income management (if there was evidence that this made a difference).

### **Recommendations**

In making three recommendations to the Senate Standing Committee I am acutely aware that the welfare reforms proposed in the Bills under consideration are likely to have bipartisan political support, they are the product of the late Howard Government's NTER legislation policy framework that has been adopted relatively unchanged by the current Rudd Government. I am also aware that considerable bureaucratic effort and taxpayer dollars have been invested in a machinery to manage the incomes of welfare recipients: there is likely to be considerable resistance to change the emerging policy framework and implementation architecture. These factors though do not make the new policies right and there is no certainty that they will deliver positive social outcomes. Under these circumstances I feel compelled to make the following three recommendations to the Senate Standing Committee:

1 All the available evidence collected by the NTER Review, government agencies and by AIHW on a consultancy basis for FaHCSIA, as well as international studies, provide either no or limited support for the proposed measures. Prior to making such far-reaching welfare reforms, **it is incumbent on the Australian Government to properly gather and analyse the evidence to assess the impacts of income management that should now be available two years on. Such an exercise will take time and effort.**

2 While such evidence is being gathered and analysed in an impartial manner by an independent and reputable research body (national, or international if none that is suitably independent can be found in Australia) that does not pre-empt outcomes, social security income management should be made voluntary for all. To not do so, to apply measures without discretion, is tantamount to pre-emptively judge social security recipients, the most vulnerable and powerless in our society as guilty rather than being accorded the presumption and dignity of innocence until proven guilty. To continue with the status quo of blanket measures as is happening in the NT continues to flaunt the RDA and principles of horizontal equity. **It is recommended that the Minister use her discretion to immediately un prescribe communities and allow for opt-in income management measures to proceed using the existing array of institutional arrangements.**

3 At present, too much policy attention and implementation is focusing on welfare recipients who can be technically governed by the Australian Government via the Centrelink payments system. **The Australian Government should focus on implementing more challenging structural social policy measures like the provision of public services in housing, health and education to Aboriginal communities that the Australian state is currently struggling to deliver for a complex set of institutional and structural reasons.**

## Concluding observations for the Committee's consideration

1 There is no evidence, either from Australia or overseas, that punishing and demeaning the poor and the vulnerable, and in the case of the NT Intervention the ethnically different, through draconian measures like income management makes a difference. Indeed, first-hand experience I have had in NT prescribed communities suggests that if anything such measures have resulted in community disempowerment and demoralisation. There is no doubt that the Australian Government is making unprecedented financial commitments to address Indigenous disadvantage. But are these investments of the right type. The policy intent to normalise Aboriginal people could have some perverse outcomes and this is of great concern. For example, in the USA, sociologist Loic Wacquant in *Punishing the Poor* (Duke University Press, 2009) has made a persuasive case that the escalating rate of imprisonment of the poor and the black in the USA has been linked to welfare reform influenced by neoliberalism principles that began during the Clinton era.

2 As I have argued elsewhere (<http://www.anu.edu.au/caepr/Publications/WP/2009WP54.php>) the Closing the Gap policy framework is based on what eminent British political philosopher John Gray terms 'values monism', that is an expectation that the social norms of the mainstream society, that have become increasingly individualistic and materially acquisitive, can be applied universally including to societies that remain predominantly kin-based. Such an approach based on universalism and ease of administration might suit the state, but it ignores the plural values of Australian society, especially with respect to Indigenous Australians.

3 While I am not a supporter of the universalism generally espoused by the American political philosopher John Rawls, I do condone the early Rawlsian position that in making reform we should always consider whether we would find these reforms acceptable if we were born into the particular circumstances being assessed, in this case of an Indigenous person whose welfare support is to be 'managed' for their improvement? Would the approach proposed here be acceptable to the general population (many of whom expend income unwisely) rather than just being applied to those who are most deprived and most vulnerable?

I think that these sorts of broad philosophical considerations should guide policy making in a liberal democratic society as well as the deliberations of this Committee.

Yours sincerely

ARC Australian Professorial Fellow

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