
INCOME MANAGEMENT

IN THE CONTEXT OF FAMILY VIOLENCE

by Virginia Marshall

THE ALRC INQUIRY

The Attorney-General of Australia, the Hon Robert McClelland MP, requested that the Australian Law Reform Commission ('ALRC') inquire and report on the treatment of family violence in Commonwealth laws, including child support and family assistance law, immigration law, employment law, social security law, superannuation law and privacy provisions. As an aspect of social security law, income management forms part of the ALRC's inquiry. Income management is an arrangement under the *Social Security (Administration) Act 1999* (Cth) by which a proportion of a person's social security and family payments is quarantined to be spent only on particular goods and services, such as food, housing, clothing, education and health care.

The ALRC was requested to consider what, if any, improvements could be made to relevant legal frameworks to protect the safety of those experiencing family violence.

The ALRC concludes that the complexity of family violence and the intertwining of family violence in a number of the 'vulnerability indicators' that trigger the imposition of compulsory income management leads to serious questions about whether it is an appropriate response. The ALRC proposes that there should be a flexible and voluntary form of income management offered to people experiencing family violence to ensure that the complex needs of victims are provided for and their safety protected.

The ALRC also proposes a review of the voluntary income management measures and streams to provide welfare recipients experiencing family violence with a flexible opt-in and opt-out measure.

DEFINING FAMILY VIOLENCE

In 2010, the ALRC concluded a major inquiry with the New South Wales Law Reform Commission ('NSWLRC') into certain aspects of family violence, which focused on the interaction of laws across the federal and state divide. The final report contained 187 recommendations for

reform to improve legal frameworks and practice in responding to family violence.

A staggering statistic reported by the National Council to Reduce Violence Against Women and their Children was the estimate that, '[a]bout one in three Australian women experience physical violence and almost one in five women experience sexual violence over their lifetime'.¹ As the Council identified, violence 'knows no geographical, socio-economic, age, ability, cultural or religious boundaries'.²

The ALRC and the NSWLRC included in their recommendations that state and territory legislation should contain a provision that explains the nature, features and dynamics of family violence³, because family violence has a particular impact on Indigenous peoples, culturally and linguistically diverse, lesbian, gay, bisexual, transexual and intersex people, older people and people with disabilities. Incidences of family violence are underreported and continue to have a detrimental impact on children. In the current inquiry into the treatment of family violence under Commonwealth laws, the ALRC has examined the nature, features and dynamics of family violence across the range of laws under review—including the *Social Security Act 1991* and the *Social Security (Administration) Act 1999* (Cth).

The proposal is to adopt the following consistent definition of family violence:

violent or threatening behaviour, or any other form of behaviour, that coerces or controls a family member or causes that family member to be fearful. Such behaviour may include but is not limited to:

- (a) physical violence;
- (b) sexual assault and other sexually abusive behaviour;
- (c) economic abuse;
- (d) emotional or psychological abuse;
- (e) stalking;
- (f) kidnapping or deprivation of liberty;
- (g) damage to property, irrespective of whether the victim owns the property;
- (h) causing injury or death to an animal irrespective of whether the victims owns the animal; and

- (i) behaviour by the person using the violence that causes a child to be exposed to the effects of behaviour referred to in (a)–(h) above.⁴

FAMILY VIOLENCE AND INCOME MANAGEMENT

Income management was first introduced in 2007 as part of the Northern Territory Emergency Response ('NTER') to allegations of child abuse in specific Indigenous communities. Under the *Social Security and Other Legislation (Welfare Payment Reform) Act 2007* (Cth), the NTER imposed income management upon peoples receiving income support or family assistance payments in 73 prescribed communities.⁵

The Australian Government implemented the income management legislation as a 'special measure' for the purposes of the *International Convention on the Elimination of All Forms of Racial Discrimination*⁶ and the *Racial Discrimination Act 1975* (Cth) ('RDA').⁷ In 2010, the income management regime was amended,⁸ following legal challenges to the NTER legislation on the basis of racial discrimination against Indigenous peoples.⁹ From 1 July 2010, a person may be income managed under either the compulsory or voluntary measure, whereby a percentage of their payments is quarantined as 'priority needs' including food, rent and utilities.¹⁰ These measures change the way a person receives their payment through a BasicsCard system at approved stores.¹¹ The submissions received by ALRC cite serious flaws with the BasicsCard.

The Australian Government announced in the 2011–2012 Budget that income management will, from July 2012, apply to all Australians in a non-discriminatory manner and no longer be a part of the NTER policy;¹² irrespective of race or ethnicity.¹³ As the NTER is set to expire in August 2012, the government will be continuing a new phase of the intervention.¹⁴

COMPULSORY AND VOLUNTARY MANAGEMENT MEASURES

The compulsory quarantining of a person's welfare payment is controversial. 'Compulsory income management'¹⁵ involves around 30 to 100% of a person's social security payment being 'quarantined' for 'priority goods and services',¹⁶ including food, housing, clothing and education. The 'excluded goods' list includes alcohol and tobacco.¹⁷

Compulsory Income Management is implemented¹⁸ under the following measures: Vulnerable Welfare Payment Recipient, Parenting/Participation, Disengaged Youth, Long-term Welfare Payment Recipient, Child Protection¹⁹

School Enrolment and Attendance measure, the Cape York model, and the NTER.²⁰

Income management is commonly referred to as a 'conditional welfare' because it is devised to change social behaviour. 'Conditional welfare' programs include punitive and rehabilitative elements. Income management operates on both levels.²¹ The Voluntary Income Management measure is not flexible enough for people experiencing family violence. Under Voluntary Income Management a welfare recipient must remain on income management for a minimum of 13 weeks;²² an application to terminate the agreement, states that a period of 21 days must elapse before making a new agreement.²³

Both the voluntary and the compulsory forms of income management are too complex for people experiencing family violence.

THE VULNERABILITY 'TRIGGERS'

Compulsory income management may be triggered by the 'vulnerability' indicators set out in the *Guide to Social Security Law*. Family violence may be the overall context and cause of particular indicators assessed under these indicators, either individually or together.

The *Guide*²⁴ and the *Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2010* provide examples of such indicators, including financial hardship, financial exploitation, failure to undertake reasonable self-care, homelessness or risk of homelessness.²⁵ Centrelink staff must consider whether the person is experiencing an indicator of vulnerability and whether they are applying appropriate resources to meet some or all of priority needs. Income management is triggered by these indicators²⁶ and assessed.²⁷

There is no express reference to family violence as an indicator of vulnerability in the *Guide*²⁸ or the *Social Security (Administration) Act*. The *Guide* recognises links between the indicators of vulnerability and family violence.²⁹ For example, 'financial exploitation' subject to undue pressure, harassment, violence, abuse, deception or exploitation, including by family and community members'.³⁰ The decision-making principles in the *Guide* don't identify why, or how, income management may assist a person experiencing family violence.³¹

EXEMPTION PROCESS

The *Guide to Social Security Law* sets out some 'core principles' that should be applied in cases where a person seeks an exemption from income management.

These principles, in part, state that income management promotes personal responsibility and positive social behaviour. Exemptions are not available under all income management measures. Generally, the welfare recipient must provide evidence, preferably in writing, to apply for an exemption. A person applying for an exemption has to demonstrate that; they are not experiencing hardship or deprivation, that they can meet their priority needs and can budget, are not vulnerable to financial exploitation or abuse, and can demonstrate socially responsible behaviour, particularly in the care of children.

Exemptions from income management can be sought by people under various measures where the person is in a specified class, without dependent children or with dependent children, a full-time student or a school-age child. The availability of these exemptions is subject to meeting a range of conditions in the *Social Security (Administration) Act*.³² The Minister has discretion, under s 123UGB, to specify a class of welfare payment recipients as exempt from income management. For example, the School Enrolment and Attendance Measure is subject to Compulsory Income Management, where conditions are attached to income support and family assistance payments for enrolled children of compulsory school age who are not attending school regularly.³³ A person on income management may qualify for an exemption under s 123UGD of the *Social Security (Administration) Act* if the person has school-aged children who are enrolled and attending, or participating in other prescribed activities, and it can be 'satisfied that there were no indications of financial vulnerability in relation to the person during the 12-month period ending immediately before the test time'.

The general approach to exemptions from income management, as reflected in the core principles, would make it difficult for most people experiencing family violence to obtain an exemption, because the principles identifying the indicators of vulnerability also affect people experiencing family violence. The difficulty of meeting the requirements for exemption under the *Social Security (Administration) Act* are exacerbated where people experiencing family violence live in rural, remote or discrete communities, because they have limited access to and delivery of support services, limited access and provision of low income housing and temporary accommodation, as well as the high costs of goods and services that impose hardship on maintaining their priority needs.

DISCLOSURE ISSUES

The prospect of the imposition of income management may lead to non-disclosure of family violence, which may

be bound up in the vulnerability indicators. Victims of family violence may prefer not to disclose family violence for fear that income management is imposed; choosing to stay in an abusive relationship rather than to leave, which undermines the Crisis Payment.³⁴

AN ALTERNATE MODEL – THE CAPE YORK MODEL

The Cape York Welfare Reform model, legislated under the *Family Responsibilities Commission Act 2008* (Qld) ('FRCA'), is an alternate model under the *Social Security (Administration) Act*. It is described as 'conditional income management'³⁵ and has been trialled in the Cape York communities of Aurukun, Coen, Hope Vale, Mossman Gorge and associated outstations.³⁶

The FRCA establishes the Families Responsibilities Commission ('FRC'). The FRC may make decisions by agency referrals concerning matters including school attendance, enrolment and child safety.³⁷ The FRC has power to hold a conference hearing and may refer the person to Centrelink for income management.³⁸ The FRC may require a person be managed for at least three months, but not more than one year.³⁹ The FRC advises Centrelink on payments to be managed— usually 60 or 75 per cent of regular fortnightly payments, including advance and lump sum payments.⁴⁰

The main difference between the Cape York model and that of the *Social Security (Administration) Act* (Cth) is that the Cape York model does not impose the blanket quarantining of payments.⁴¹ This is reflective of the fact that income management is designed to meet the needs of individuals and community.⁴² The *Social Security (Administration) Act* and the FRCA have differing policy and legislative outcomes under the income management process. The FRCA is considered 'different' from the income management regime as it is based upon culturally appropriate community engagement,⁴³ where hearings are based upon the principles of natural justice,⁴⁴ procedural fairness and not bound by evidence rules.⁴⁵ Income management applies as a last resort.⁴⁶ Under the FRCA, when a person requests or is granted a termination of their voluntary, the FRC can refuse an amendment or the termination of the agreement.⁴⁷ Under the *Social Security (Administration) Act*, the person is not prevented in exercising their right to request and receive a termination.

CONCLUSION

Income management measures continue to be strongly debated and operate upon the most disadvantaged people in Australia, those who receive Centrelink support.

Government policy continues to operate on an assumption that income management improves wellbeing.

The ALRC considers that compulsory income management hinders access to welfare and support for victims of family violence and should be abolished. A more flexible 'opt-in and opt-out' voluntary approach to income management provides a more measured response. Future reform should focus on ensuring individual autonomy and respecting the core principles of human rights.

The ALRC acknowledges that the Cape York model provides some improvement with greater flexibility in some areas and a focus on the individual. In contrast with the *Social Security (Administration) Act* model, the Cape York model provides more engagement and empowerment of the individual, and the decision-making process. The ALRC considers that any compulsory measure should be abolished and a more flexible 'opt-in and opt-out' system for people experiencing family violence.

The ALRC recognises that the strategies and outcomes in the *National Plan to Reduce Violence against Women and Their Children (2010–2022)* sit in contrast with the national policy of income management by quarantining a person's income, eliminating choice and providing minimal flexibility for people experiencing family violence.⁴⁸ The ALRC's Final Report will provide further clarity on these issues.

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- 1 National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009–2021* (2009) 9.
- 2 National Council to Reduce Violence against Women and their Children, *Background Paper to Time for Action: The National Council's Plan to Reduce Violence against Women and their Children, 2009–2021* (2009) 16.
- 3 Australian Law Reform Commission, *Family Violence – A National Legal Response*, Final Report (2010) Vol. 1, 19.
- 4 Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence – A National Legal Response*, ALRC Report 114; NSWLRC Report 128 (2010), Recs 5–1, 6–1, 6–4.
- 5 *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth).
- 6 *International Convention on the Elimination of All Forms of*

Racial Discrimination, 7 March 1966, [1975] ATS 40 (entered into force on 04 January 1969) art1(4) and 2(2).

- 7 *Racial Discrimination Act 1975* (Cth) s 8.
- 8 *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of the Racial Discrimination Act) Act 2010* (Cth).
- 9 For example, in the High Court case of *Wurridjal v Commonwealth* (2009) 237 CLR 309 Kirby J observed that the *Northern Territory Emergency Response Act 2007* (Cth) 'expressly removes itself from the protections in the *Racial Discrimination Act 1975* (Cth) and hence, from the requirement that Australia, in its domestic law, adhere to the universal standards expressed in the *International Convention on the Elimination of All Forms of Racial Discrimination*, to which Australia is a party': [213]. See Department of Parliamentary Services, *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill* (2009) <<http://aph.gov.au/Library/pubs/bd/2009-1-10bd094.pdf>> , which included changes to the *Social Security Act 1991* (Cth), *A New Tax System (Family Assistance) Act 1999* (Cth) and *Veterans' Entitlements Act 1986* (Cth).
- 10 See Social Policy Research Centre, *Evaluation Framework for New Income Management* (2010), 7.
- 11 See Department of Families, Housing, Community Services and Indigenous Affairs, 'Voluntary Income Management (VIM)' (<http://www.fahcsia.gov.au/sa/families/pubs/income_factsheet/Documents/factsheet_8.pdf> .
- 12 Australian Government, *Stronger Futures in the Northern Territory* (2011), 5.
- 13 Department of Families, Housing, Community Services and Indigenous Affairs, *Evaluation Framework for New Income Management* (2010) <<http://www.fahcsia.gov.au/sa/families/pubs/nim/Pages/p2.aspx>> .
- 14 M Franklin and M Rout, 'No Retreat on Northern Territory Intervention', *The Australian* (22 June 2011) <<http://www.theaustralian.com.au/national-affairs/no-retreat-by-julia-gillard-on-northern-territory-intervention/>> . See also Australian Government, *Stronger Futures in the Northern Territory* (2011). From 1 January 2012 income management will target teenaged parents at various locations such as Bankstown, Wyong and Shellharbour in New South Wales, Playford in South Australia, in addition to Hume and Shepparton in Victoria, Burnie Tasmania, Rockhampton and Logan in Queensland and Kwinana in Western Australia.
- 15 The income management regime under the *Family Responsibilities Commission Act 2008* (Qld), passed on 13 March 2008, is described as 'conditional income management' in the legislation including both voluntary and compulsory measures.
- 16 *Social Security (Administration) Act 1999* (Cth) s123TH.
- 17 *Ibid* s 123TI.
- 18 *Ibid*; see ss123UC (CPSIM); 123UCA (Vulnerable Welfare Payment Recipients); 123UCB (Disengaged Youth); 123UCC (Long-term Welfare Payment Recipients); 123UD (School Enrolment); 123UE (School Attendance); 123UF (Queensland Commission in relation to the FRC).
- 19 Department of Human Resources, *Income Management in Cases of Child Neglect and by Voluntary Choice: Continuation of Trial* (2010) <www.dhs.gov.au/publications-policies-and-plans/budget/1011/me...> . Under the Child Protection IM a person is referred for compulsory income management by child protection authorities where 70% of their regular income support and family payments is income managed. Under VIM the person has an option, prior to signing the VIM agreement, to have their income support and family payments income managed.
- 20 Department of Families, Housing, Community Services and Indigenous Affairs, *Centrelink Administrative Data* (7 April 2011).

- 21 Social Policy Research Centre, *Evaluation Framework for New Income Management* (2010), prepared for the Department of Families, Community Affairs, Housing and Indigenous Affairs [2.1], [2.4].
- 22 *Social Security (Administration) Act 1999* (Cth) ss 123UM and 123UN.
- 23 *Ibid* s 123UO.
- 24 *The Guide to Social Security Law*.
- 25 Department of Families, Housing, Community Services and Indigenous Affairs, *Guide to Social Security Law* <www.fahcsia.gov.au/guides_acts/> (Indicators of Vulnerability).
- 26 *Social Security (Administration) Act 1999* (Cth) s 123UCA.
- 27 See Department of Families, Housing, Community Services and Indigenous Affairs, *Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles* (2010) and the Department of Families, Housing, Community Services and Indigenous Affairs, *Guide to Social Security Law* <www.fahcsia.gov.au/guides_acts/>.
- 28 Above n 24.
- 29 *Ibid*.
- 30 Above n 24. The *Guide* also recognises that family violence may lead to homelessness, in circumstances where the victim is forced to leave his or her home.
- 31 *The Guide to Social Security Law*.
- 32 *Social Security (Administration) Act 1999* (Cth) s 123UGB, under pt 3B, div 2, subdiv BB.
- 33 Department of Families, Community Services and Indigenous Affairs, *Improving School Enrolment and Attendance through Welfare Reform Measure* (2010) Commonwealth.
- 34 National Welfare Rights Network, *Analysis of the Exposure Drafts of Income Management Policy Outlines* (22 June 2010), 4.
- 35 Cape York Institute for Leadership and Policy, *Welfare Reform* (2010) <<http://www.cyi.org.au/welfarereform.aspx>>. The notion of conditional welfare as a tool of welfare reform takes a 'carrot and stick' approach to welfare recipients receiving government payments, which rewards or punishes the welfare recipient according to their behaviour or compliance to receiving welfare entitlements and payments.
- 36 Department of Families, Housing, Community Services and Indigenous Affairs, 'Cape York Welfare Reform' <<http://www.fahcsia.gov.au/sa/families/progserv/welfarereform/Pages/CapeYorkWelfareReform.aspx>>.
- 37 *Family Responsibilities Commission Act 2008* (Qld) s 40 (Notice about school attendance); s 41 (Notice About School Enrolment); s 42 (Notice about child safety and welfare measures).
- 38 *Ibid* s 69.
- 39 *Ibid* s 69(1)(b)(iv).
- 40 Department of Families, Housing, Community Services and Indigenous Affairs, 'Income Management for Cape York Welfare Reform' <<http://www.fahcsia.gov.au/sa/families/pubs/CapeYorkWelfareReform/Pages/IncomeManagement.aspx>>.
- 41 Cape York Institute, *Welfare Reform* (2010) Cape York Institute.
- 42 Family Responsibilities Commission, *Annual Report 2010-2011*, 1.
- 43 *Ibid* s 48; for the purpose of s 7(b) which defines who is a 'community member', s 48(a)-(f) provides further points to define whether a person is a community member, e.g. the frequency of duration spent in or outside the welfare reform community area.
- 44 *Ibid* s 56 (Procedure generally).
- 45 *Ibid* s 98(4)(c) (Constitution of commission).
- 46 P Billings, 'Social Welfare Experiments in Australia: More Trials for Aboriginal families?' (2010) 17 *Journal of Social Security Welfare* 164.
- 47 *Family Responsibilities Commission Act 2008* (Qld), see Part 10 'Voluntary Referrals to Commission' and s109 'Amendment or Ending of Voluntary Agreement'.
- 48 R Braaf and I Meyering, *Seeking Security: Promoting Women's Economic Wellbeing Following Domestic Violence* (2011) 100-102.

Old Camp Part 7 – Land of Gurigyn

Dorsey Smith

Acrylic on canvas
450mm x 920mm