8 August 2014

Welfare Review
C/- Welfare System Taskforce
Department of Social Services
PO Box 7576
Canberra Business Centre ACT 2610

By email: welfarereview@dss.gov.au

**Re: A New System for Better Employment and Social Outcomes – Interim Report of the Reference Group on Welfare Reform to the Minister for Social Services**

I make this submission as an academic with a disciplinary background in law whose research and teaching focuses on issues of public policy, social justice, human rights and Indigenous peoples.

It is timely that the Australian government gives consideration to the important issues raised in the McClure report. My submission will focus on the issue of income management. My concerns about income management have been raised in a number of publications to date,[[1]](#footnote-1) and more recently, at the Australian Institute of Family Studies conference in 2014.[[2]](#footnote-2)

In this submission I will outline several problems with income management and the direction outlined in the McClure Report.[[3]](#footnote-3) These include:

1. A faulty philosophical foundation based on reliance on new paternalism.
2. The lack of a robust evidence base in favour of income management.
3. Problems for Indigenous Peoples with the exemption process and administrative errors.
4. Problems in that income management is stigmatising, reduces autonomy, and fails to address structural inequality.
5. Problems with proposed sanctions and greater government coercion recommended in the McClure Report.
6. **A faulty philosophical foundation based on reliance on new paternalism**

Income management is underpinned by new paternalism, an approach to governing the poor which is based upon the idea that those who are poor suffer from defects of reason and/or character, and that they are less inclined to ‘follow the interests of society’.[[4]](#footnote-4) New paternalism emphasises the ‘obligations’ of welfare recipients ‘rather than their rights or needs.’[[5]](#footnote-5) This type of thinking influenced the initial development of income management in Australia as part of the 2007 Northern Territory Intervention. In the second reading speech for the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth) the government stated: ‘The government believes that the right to welfare comes with obligations.’[[6]](#footnote-6)

However, what started as an interim experimental welfare reform measure with a five year timeframe directed only towards Aboriginal welfare recipients in the Northern Territory has now been expanded considerably. The McClure Report provides a useful update on where income management currently applies.[[7]](#footnote-7) It applies disproportionately to Aboriginal communities who are targeted in terms of geographical locations selected by the government for income management.

The broader rollout of income management has meant that more Australian citizens are being subjected to the assumptions of inadequacy and deviancy underpinning new paternalism. Yet these assumptions are based upon a weak philosophical foundation. Clearly not all welfare recipients possess the character or behavioural problems asserted by new paternalist rhetoric. However, all welfare recipients subject to compulsory income management are unjustly demeaned by the new paternalism regardless of their actual character and budgetary capacity. This amounts to stigmatisation of people who are among the most economically disadvantaged and politically marginalised members of Australian society. Whilst this may be politically advantageous to the government of the day, the income management system is expensive to operate[[8]](#footnote-8) at $100 million per annum and there is little evidence to suggest that it achieves the goals outlined by the government. The one unequivocally positive (but unintended) outcome for all income managed welfare recipients to date is savings on bank fees due to the use of the fee-free BasicsCard.[[9]](#footnote-9) Yet, as I argue in a forthcoming publication in the *Sydney Law Review*, this outcome ‘could just as easily be achieved by less intrusive and less stigmatising means, such as via a government subsidy for bank fees for welfare recipients.’[[10]](#footnote-10)

1. **The lack of a robust evidence base in favour of income management**

The evidence base to support an expansion of income management is flimsy. I was therefore surprised that the McClure Report claims:

Overall … the evidence to date suggests income management has assisted individuals and families to stabilise their financial circumstances, helped them meet priority needs, particularly the needs of children, and can protect vulnerable people from financial harassment and exploitation.[[11]](#footnote-11)

This wording echoes the government’s stated purpose for introducing income management contained in the Parliamentary Debates and the Explanatory Memorandum accompanying the income management legislation,[[12]](#footnote-12) but repeating the government’s rhetorical assertions does not amount to evidence. Such a position glosses over the problems with income management and can only be justified by ignoring the evidence in numerous reports.

The claim in the McClure Report is in marked contrast to other findings in a range of government commissioned and independent reports. For example, the extremely thorough government commissioned report completed in 2012 concluded that ‘there is very little robust research evidence for the effectiveness (or otherwise) of income management more generally and NIM [new income management] in particular.’[[13]](#footnote-13) It found that ‘there is little indication that income management is itself effective in changing parenting behaviour, reducing addiction or improving capacity to manage finances.’[[14]](#footnote-14) Yet changing these factors has been repeatedly claimed by the government as the rationale underpinning income management. The same report found that ‘some participants say there is more financial harassment due to the reduced cash available to family members who have addictions’.[[15]](#footnote-15) Bray and others noted that for welfare recipients classified as ‘vulnerable’ under the new income management scheme, income management ‘is likely to … operate as a long term management tool, and not as an intervention that will build their capacity or change their behaviour.’[[16]](#footnote-16) After five years this does not constitute evidence of policy success; and it is concerning that the government is choosing to ignore the findings of government commissioned independent university-based research.

Another report on the impact of income management undertaken by the Equality Rights Alliance found that 85 per cent of the women surveyed did not change what they purchased as a consequence of income management.[[17]](#footnote-17) However, 53 per cent claimed that shopping with a BasicsCard was often more difficult.[[18]](#footnote-18) When asked how they felt about using the BasicsCard, ‘79% answered I do not like using the BasicsCard and want to stop using it now’.[[19]](#footnote-19) Again, this does not look like evidence of unequivocal success.

Despite the government and Cape York rhetoric that income management is about providing food for vulnerable children, research on the trial of income management in Cape York has shown that:

A large proportion of all income management clients (68%) were not recorded with Centrelink as the primary carers of a dependent child. … This indicates that income management was not primarily used as a method for ensuring that children were well cared for.[[20]](#footnote-20)

In Cape York the income management system can operate upon request or as a sanction imposed by the Family Responsibilities Commission. The 2012 Cape York Evaluation Report called into question the government’s claim that income management operates as an effective sanction to bring about behavioural change. The data was found to be ‘consistent with the hypothesis that people who have more recently been subject to income management are resistant to change and less likely to respond to the sanction of income management.’[[21]](#footnote-21) The Report concluded that ‘[t]here were no substantial differences in the characteristics of clients who had ceased being income managed and clients who were currently being income managed.’[[22]](#footnote-22) At best, the results from the Cape York trial can be described as ‘mixed’.[[23]](#footnote-23)

According to the Australian Indigenous Doctors’ Association, income management is a system that has caused unnecessary stress, trauma, and anger for Indigenous welfare recipients[[24]](#footnote-24) who remain grossly overrepresented among those whose income is managed.[[25]](#footnote-25) This raises an important question—when does income management stop being useful and when does it become harmful? Negative impacts on Indigenous peoples’ health and well-being run counter to the claim that income management is a beneficial policy.

Concerns about income management were also raised by the Australian Law Reform Commission (ALRC), who recommended that income management be avoided in the context of family violence, as it can lead to more problems. Given that the government’s rationale in implementing this system is to protect those who are most vulnerable, the recommendations of the ALRC are important in evaluating the effectiveness of income management. The Explanatory Memorandum for the *Social Security Legislation Amendment Act 2012* (Cth), which implements the 2012 extensions to the income management scheme, states:

The income management regime … operates as a tool to support vulnerable individuals and families. It provides a tool to stabilise people’s circumstances by limiting expenditure of income support payments on excluded items, including alcohol, tobacco, pornography, gambling goods and activities.[[26]](#footnote-26)

However, the ALRC pointed out that ‘[t]he vulnerable position of people experiencing family violence, and the complex needs for their safety and protection, suggest that a different response is required.’[[27]](#footnote-27) They noted that for Indigenous women who experience domestic violence ‘a mandatory income management regime may discourage reporting’.[[28]](#footnote-28) They suggested that limitations in the legislative definition of ‘priority needs’ may pose ‘particular difficulties for victims of family violence.’[[29]](#footnote-29) Women experiencing domestic violence require easily accessible funds for crisis accommodation and travel to get away from perpetrators of violence.[[30]](#footnote-30) Having to engage in complicated and time consuming bureaucratic procedures to spend income managed funds in ways that do not comply with the legislative definition of ‘priority needs’ can have the unintended consequence of impeding the achievement of these safety preserving objectives. Recommendation 10—1 of the ALRC report on Family Violence therefore advocates that:

The Australian Government should amend the *Social Security (Administration) Act 1999* (Cth) to ensure that a person or persons experiencing family violence are not subject to compulsory Income Management. The *Guide to Social Security Law* should reflect this amendment.[[31]](#footnote-31)

Recommendation 10—2 proposes that:

The Australian Government should amend the Social Security (Administration) Act 1999 (Cth) to create an ‘opt-in and opt-out’ income management model that is voluntary and flexible to meet the needs of people experiencing family violence. The Guide to Social Security Law should reflect this amendment.[[32]](#footnote-32)

The ALRC suggests that compulsory income management ‘runs counter to the theme of self-agency identified as a central theme’ in their Inquiry on Family Violence.[[33]](#footnote-33) They said ‘[s]takeholders argued strongly to similar effect—a problem arising from coercive and controlling conduct should not be met with a similar response.’[[34]](#footnote-34) They quoted the submission by the Good Shepherd Youth and Family Service who maintained that:

Family violence, the exercise of power and control of one person over another, is an attack on the individual autonomy, agency, and freedom of the victim. In this context, the risks of further disempowerment and loss of independence from compulsory income management are high. Replacing individual power and control with state power and control is at best stop-gap and at worst a further abuse.[[35]](#footnote-35)

The ALRC also refers to the tension between income management and human rights.[[36]](#footnote-36)

The tension between income management and human rights was explored in the 2013 report by the Parliamentary Joint Committee on Human Rights (PJCHR) when examining the *Stronger Futures* legislative package, which included amendment to the social security law and further expansion of income management.[[37]](#footnote-37) The PJCHR noted:

[T]he income management regime gives rise to a number of human rights compatibility issues. These include whether the income management regime in its various manifestations is consistent with the right to be free from discrimination on the ground of race or ethnic origin, the right to be free from discrimination on the ground of sex, the right to equal protection of the law, the right to social security, the right to an adequate standard of living, and the right to privacy.[[38]](#footnote-38)

The Committee stated that:

It is clear that while the measures have been extended to communities that are not predominantly Aboriginal, the measures still apply overwhelmingly to such Aboriginal communities. Accordingly, this means that they will fall within the definition of racial discrimination in article 1 of the ICERD, which refers to measures as racially discriminatory if they have 'the purpose or effect' of restricting the enjoyment of human rights. As such, in order to be non-discriminatory they will need to be shown to be based on objective and reasonable grounds and [be] a proportionate measure in pursuit of a legitimate objective.[[39]](#footnote-39)

The Committee concluded that:

[T]he government has not yet clearly demonstrated that:

* the income management regime to the extent it may be viewed as having a differential impact based on race, is a reasonable and proportionate measure and therefore not discriminatory; or
* the income management regime is a justifiable limitation on the rights to social security and the right to privacy and family.[[40]](#footnote-40)

The PJCHR also noted the importance of self-determination for Aboriginal communities—which is denied with the imposition of compulsory income management. They referred to:

The … critical importance of ensuring the full involvement of affected communities, in this case primarily Indigenous communities, in the policymaking and policy implementation process. The right to self-determination guaranteed by article 1 of each of the International Covenants on Human Rights, as well as the UN Declaration of the Rights of Indigenous Peoples, require meaningful consultation with, and in many cases the free, prior and informed consent of, Indigenous peoples during the formulation and implementation of laws and policies that affect them. This means ensuring the involvement of affected communities in decisions as to whether to adopt particular measures, in their implementation, and in their monitoring and evaluation. To do otherwise risks producing the disempowerment and feelings of exclusion and marginalisation that were revealed in the evidence presented to the Senate Community Affairs Legislation Committee and which are fundamentally at odds with the principles of respect for the dignity and autonomy of persons recognised in the human rights treaties and the UN Declaration on the Rights of Indigenous Peoples.[[41]](#footnote-41)

It is arguable that infringing the human rights of welfare recipients makes them more rather than less vulnerable, which is the antithesis of what the government claims to be trying to achieve with income management.

The continuation of compulsory income management is likely to contribute to further international criticism of Australia for flouting the international human rights obligations by which Australia has agreed to be bound.[[42]](#footnote-42) This will reflect poorly on Australia’s international reputation.

1. **Problems for Indigenous Peoples with the exemption process and administrative errors**

A troubling aspect of income management relates to the exemption process. It is unjust that Indigenous peoples are required to bear the burden of interpretative labour in navigating the complicated exemption process associated with income management. As the income management system currently stands, there are onerous procedures that have to be traversed by the most marginalised members of society in order for them to be accorded budgetary autonomy. Barriers faced by Indigenous welfare recipients in the exemption process include ‘lack of knowledge as to how to attain an exemption, difficulties in the exemption process, English language issues, inaccurate information provided by third parties, and lack of flexibility in the legislative exemption requirements.’[[43]](#footnote-43)

Via the exemption process associated with contemporary income management, Indigenous peoples can still be told that they must comply with certain Eurocentric benchmarks in order for them to be accorded the privilege of an exemption. This problem is very evident from the report undertaken by the Commonwealth Ombudsman’s office in 2012. This report found that resource sharing by Indigenous welfare recipients had been negatively perceived as ‘financial exploitation’ in a number of Centrelink cases they examined — there was a lack of understanding about the culturally complex differences between financial exploitation that can be a form of duress and generalised sharing.[[44]](#footnote-44) This meant that some applications for exemption were unjustly denied. This process of viewing sharing amongst Indigenous welfare recipients negatively is a form of ‘cultural racism’,[[45]](#footnote-45) because such practices often occur to meet highly valued kinship obligations based on reciprocity, rather than being negative forms of what is sometimes referred to as ‘humbugging’.[[46]](#footnote-46) Reciprocity can actually provide Aboriginal welfare recipients with an additional form of social security and inclusion, a form of bonding social capital, rather than being detrimental to their well-being.

In their 2012/2013 Annual report the Commonwealth Ombudsman’s office identified a number of remaining systemic problems in the administration of income management, including a lack of procedural fairness, problems with the exemption process for Indigenous peoples, and lack of timely reimbursement of money wrongly taken out of income managed accounts of Indigenous welfare recipients.[[47]](#footnote-47) This has happened on a number of documented occasions in relation to rental payments being wrongfully made by Centrelink to third parties on behalf of Indigenous welfare recipients who were not required to pay any such rent. Such wrongful payments have extended for lengthy periods of time, leaving impoverished people with less income to meet their daily needs, and it has taken a long time for affected welfare recipients to be properly reimbursed. The Commonwealth Ombudsman’s office refer to one incident of this type where the ‘complaint was resolved … after an 18-month investigation’ by their office.[[48]](#footnote-48) This highlights an important problem with income management—administrative errors can occur—albeit unintentionally. It is unjust that Australia’s poorest citizens be left to deal with the consequences. Welfare recipients are uncompensated for the time and energy it takes to unravel administrative errors. Indigenous welfare recipients in such circumstances may also face additional burdens due to English being a second or third language and due to previous disempowering encounters with Australia’s bureaucracy.

1. **Income management is stigmatising, reduces autonomy, and fails to address structural inequality**

The stigmatisation of welfare recipients as financially incompetent individuals or deviants indulging in anti-social behaviour has been a key rhetorical device used to justify increasingly punitive policies for those who are now subject to compulsory income management. This is connected to ‘market orientated “governance”’,[[49]](#footnote-49) where those who are not complying with the government’s preferred neoliberal framework are represented as defective. The welfare reforms advocated in the recent McClure Report, which include an expansion of income management, are clearly driven by the market as opposed to human need.[[50]](#footnote-50) However, an approach which ignores the needs of the most economically marginalised is likely to incur significant social costs both for them and society more generally.

The stigmatisation of welfare recipients which can arise as a result of income management has been noted on numerous occasions. One example of this is referred to by Bray and others where a Centrelink Officer stated:

When it came out … we had incidences in the supermarkets where the [sales assistant] would tell the customer, no, oh well you are on that card, you can’t have that steak. You go and get that other steak, that cheaper one. You are wasting your money.[[51]](#footnote-51)

This demonstrates the impact that negative stereotyping perpetuated by government rhetoric about income management can have on social attitudes towards income managed welfare recipients. Bray and others also reported that:

Many stakeholders spoke about people feeling embarrassed or shamed by having to use the BasicsCard for shopping. ... In Darwin some women were reported as doing their shopping away from their local area because they don’t want to be seen with their BasicsCard. It was suggested that some single mothers see it as providing a visible marker of being a bad parent. Similarly, some stakeholders reported that older women felt ashamed by the implications they cannot manage money or that they misuse alcohol or gamble. This problem was seen to be further exacerbated by some of the very negative media portrayals in Northern Territory about income management and the people who are on it, making it very shaming for many people.[[52]](#footnote-52)

Income management has negative ramifications for the autonomy of those subject to it. Evidence suggests there are welfare recipients subject to income management who resent ‘the associated loss of autonomy.’[[53]](#footnote-53) Bray and others stated that ‘[a] recurrent theme in many interviews was a desire of people for a sense of autonomy and control in their lives.’[[54]](#footnote-54) However, to deny that welfare recipients have the capacity to exercise budgetary autonomy is part of the punishment inherent in the new paternalist income management scheme. As Elizabeth Ben-Ishai explains, ‘the assumptions at the core of new paternalism—that of service users incompetence—reveals the autonomy constraining implications of such intervention, which is characterized by a lack of respect and recognition.’[[55]](#footnote-55) Compulsory income management assumes that all those subject to it are incapable or irresponsible when it comes to making economic choices about their own lives. Yet being unemployed should not be equated with a lack of budgetary capacity. There are many people unjustly characterised as lacking budgetary competence through the income management scheme who are perfectly capable of managing their meagre funds. For example, if a person is employed one day but unemployed the following day does this automatically eliminate their capacity to manage a budget? Does budgetary competence magically reappear if re-employment occurs within the next fortnight?

The income management scheme deliberately takes away economic freedoms for welfare recipients that other citizens enjoy. These freedoms include being able to purchase items of their choice through sellers of their choice.[[56]](#footnote-56) Bray and others found welfare recipients were concerned ‘that the limitations of the merchants where BasicsCard is accepted results in people missing out on better deals or fresher food which is available from markets where the BasicsCard is not accepted.’[[57]](#footnote-57) It also found that for some ‘instead of improving their spending, the inflexibility of the card made purchasing basics more expensive.’[[58]](#footnote-58) The limits imposed therefore extend beyond those of the legislatively prohibited use of income managed funds on alcohol, tobacco, pornography and gambling.[[59]](#footnote-59) The limits constrain the autonomy of welfare recipients in significant ways that differentiate their everyday experiences in Australia’s capitalist society and mark them as inferior. Income management therefore constrains individual liberties and arguably involves anti-competitive practices.[[60]](#footnote-60)

The long-term implications of income management in terms of individual self-management and autonomy remain to be evaluated. However, it has been suggested that ‘the lack of control from being income managed’ might actually be ‘a barrier to coming off income management.’[[61]](#footnote-61) Those who get used to the paternalistic intervention of the state via its control over domestic household purchases may struggle more to exercise their finances independently upon getting off income management. Bray and others note that an unintended negative consequence of income management ‘is that some people appear to have become passive in the management of their finances and dependent on income management.’[[62]](#footnote-62) In this sense income management could have the effect of entrenching dependency on the state rather than curing it, because it sets in place a system that perpetuates power imbalances and infantalises adults.[[63]](#footnote-63)

Australia’s income management scheme also fails to address structural reasons for poverty. This is a glaring omission at a time when global economic forces profoundly affect domestic markets and the employment prospects of those who are impoverished.[[64]](#footnote-64) This is yet another reason why the philosophical underpinnings of new paternalism in the income management sphere must be questioned. It is unjust that new paternalist policies give ‘conditional crumbs of comfort to the poor’,[[65]](#footnote-65) whilst leaving structural causes of inequality untouched and under-examined. As Guy Standing states:

If, as we should, we see unemployment as a mishap that is not the fault of individuals, we would wish to make the experience of unemployment as painless as possible, and neither stigmatizing nor humiliating. We would wish to provide a benefit to make dignified survival possible and provide services that people could use or not according to their perceived needs and aspirations. The trend away from that perspective must be reversed.[[66]](#footnote-66)

What new paternalism and the contemporary income management system fail to acknowledge it that ‘the probability of becoming or remaining unemployed has become increasingly non-random. People with certain characteristics – lack of qualifications, age, gender, disability, race, etc. – have much higher probabilities than others.’[[67]](#footnote-67) This means that those who have historically been most marginalised by society will be disproportionally reflected in compulsory income management categories, and this will lead to further negative impacts upon them. As Zoe Williams states, ‘[w]hen you relegate people to a world without money, you create a true underclass: a group whose privacy and autonomy are worth less than everyone else’s, who are stateless in a world made of shops.’[[68]](#footnote-68)

1. **Problems with proposed sanctions and greater government coercion advocated by the McClure Report**

The McClure Report employs the new paternalist rhetoric of ‘mutual obligations’.[[69]](#footnote-69) Although it claims that this promotes ‘norms and behaviours that benefit individuals, families and communities’,[[70]](#footnote-70) what this means in practice is state-sanctioned coercion of the most economically and politically marginalised. This is unmerited punishment for the poor. The Report advocates more sanctions for welfare recipients, stating:

Participation requirements should be accompanied by an appropriate and effective compliance framework. The current lag between non-compliance and the imposition of sanctions has been criticised for making the system ineffective. Effectiveness might be improved by giving employment service providers greater management of sanctions, including suspension and penalties.[[71]](#footnote-71)

This would involve travelling in the same misguided direction as the United States. As Loic Wacquant makes clear, this sort of system seeks to construct a ‘sacred border between commendable citizens and deviant categories, the “deserving” and the “undeserving” poor’.[[72]](#footnote-72) In critiquing similar welfare reforms in the US, Wacquant has written eloquently about ‘the colossal social cost and the irreversible debasement of the ideals of freedom and equality implied in the criminalization of social insecurity.’[[73]](#footnote-73) To impose sanctions and penalties upon those who are economically marginalised is a socially unjust course which unnecessarily bloats the bureaucratic infrastructure at the expense of providing more constructive services to those in need. It consumes scarce resources based upon an unproven assumption that welfare recipients are untrustworthy/deviant subjects who require constant paternalistic oversight. The McClure Report claims to be about ‘moving towards … rules which provide appropriate rewards for work.’[[74]](#footnote-74) However, the proposed system does not merely do that—it imposes stigmatising and impoverishing punishments for those who are not employed.[[75]](#footnote-75) That is a substantially different thing from encouraging people to work. The imposition of welfare ‘conditionality is not the same as encouragement’, and to suggest otherwise perpetuates a falsehood that will further disadvantage those already experiencing grave difficulties.[[76]](#footnote-76)

**Conclusion**

The McClure report claims the role of government includes ensuring that ‘taxpayer funds are well targeted.’[[77]](#footnote-77) However, this remains questionable in the compulsory income management context given the lack of convincing evidence to justify the continuation of the scheme and its extraordinary administrative cost. The estimated cost of income management is ‘$1 billion’ between ‘2005-06 to 2014-15’.[[78]](#footnote-78) Income management for welfare recipients living in remote areas has been estimated to cost approximately ‘$6600 to $7900 per annum’,[[79]](#footnote-79) which is ‘equal to 62 per cent of the $246-a-week Newstart payment.’[[80]](#footnote-80)

Objections to the excessive cost of the income management scheme have been raised in the recently released Forrest Review.[[81]](#footnote-81) The Forrest Review states that income management ‘comes with a cost that renders it unsustainable and unsuitable for broader application.’[[82]](#footnote-82) Whilst the Forrest Review has its own set of problems worthy of critical examination, it is not the purpose of this submission to detail its shortcomings. For the present, it is sufficient to note that Recommendation 5 for a ‘Healthy Welfare Card’ is based upon the same flawed philosophical foundation of new paternalism and would lead to the same problems of stigmatisation, reduction of autonomy and failure to address structural inequalities as the current income management system it proposes to replace. However, the point made in the Forrest Review about inefficient use of taxpayer funds via income management is well made. By requiring a large bureaucratic infrastructure, the income management reforms are unlikely to cut long term costs if that is the government’s aim.

What these reforms will do is demonize the poor and reinforce populist prejudice. This is not an admirable outcome for the most marginalised in our society who deserve a socially just welfare system based upon need not prejudice and the targeting of public funds to productively improve their livelihoods rather than unproductively vilify their generally imagined unacceptable behaviours. For a humane and dignified society ‘[m]oralistic social policy must be displaced by rights-based policy.’[[83]](#footnote-83) Only a rights-based approach will safeguard the position of those who are most disadvantaged. It is important that the government not abdicate its responsibility towards its most marginalised citizens by travelling down precarious pathways.

Yours sincerely,



Dr Shelley Bielefeld

School of Law

University of Western Sydney

Locked Bag 1797

Penrith South DC

NSW 2751 Australia

Email: S.Bielefeld@uws.edu.au

1. \* The author wishes to acknowledge the helpful comments of Professor Jon Altman on an earlier draft of this submission.

 Shelley Bielefeld, ‘History Wars and Stronger Futures Laws: A Stronger Future or Perpetuating Past Paternalism?’ (2014) 39(1) *Alternative Law Journal* 15-18; Shelley Bielefeld,‘Compulsory Income Management under the Stronger Futures Laws – Providing ‘Flexibility’ or Overturning Freedom of Contract?’ (2013) 8(5) *Indigenous Law Bulletin* 18-21; Shelley Bielefeld,‘Compulsory Income Management and Indigenous Australians – Delivering Social Justice or Furthering Colonial Domination?’ (2012) 35(2) *University of New South Wales Law Journal* 522-562. [↑](#footnote-ref-1)
2. Shelley Bielefeld and Peter Billings, ‘Structural Violence, Colonialism and Income Management’, 13th Australian Institute of Family Studies Conference, 30 July 2014; Shelley Bielefeld, Sally Cowling, and Greg Marston, ‘Tensions and contradictions in Australian social policy reform’, 13th Australian Institute of Family Studies Conference, 30 July 2014. [↑](#footnote-ref-2)
3. Department of Social Services, *A New System for Better Employment and Social Outcomes – Interim Report of the Reference Group on Welfare Reform to the Minister for Social Services* (June 2014). [↑](#footnote-ref-3)
4. Lawrence Mead, ‘The Rise of Paternalism’ in Lawrence Mead (ed), *The New Paternalism: Supervisory Approaches to Poverty* (Brookings Institution Press, 1997) 4, 33-34; Mark Kleiman, ‘Coerced Abstinence: A Neopaternalist Drug Policy Initiative’ in Lawrence Mead (ed), *The New Paternalism: Supervisory Approaches to Poverty* (Brookings Institution Press, 1997) 190; George Valliant, ‘Poverty and Paternalism: A Psychiatric Viewpoint’ in in Lawrence Mead (ed), *The New Paternalism: Supervisory Approaches to Poverty* (Brookings Institution Press, 1997) 280. [↑](#footnote-ref-4)
5. Lawrence Mead, ‘The Rise of Paternalism’ in Lawrence Mead (ed), *The New Paternalism: Supervisory Approaches to Poverty* (Brookings Institution Press, 1997) 21. [↑](#footnote-ref-5)
6. Commonwealth, *Parliamentary Debates*, House of Representatives, 7 August 2007, 2 (Minister Malcolm Brough, Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs). [↑](#footnote-ref-6)
7. Department of Social Services, *A New System for Better Employment and Social Outcomes – Interim Report of the Reference Group on Welfare Reform to the Minister for Social Services* (June 2014) 117. [↑](#footnote-ref-7)
8. Australian National Audit Office, *Administration of New Income Management in the Northern Territory* (Audit Report No. 19, 2012–13) 17. [↑](#footnote-ref-8)
9. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) 33. [↑](#footnote-ref-9)
10. Shelley Bielefeld, ‘Compulsory Income Management – Exploring Counter Narratives amidst Colonial Constructions of Vulnerability’ (2014) forthcoming/accepted for publication *Sydney Law Review* 1-31, 29. [↑](#footnote-ref-10)
11. Department of Social Services, *A New System for Better Employment and Social Outcomes – Interim Report of the Reference Group on Welfare Reform to the Minister for Social Services* (June 2014) 84. [↑](#footnote-ref-11)
12. Commonwealth, *Parliamentary Debates*, House of Representatives, 7 August 2007, 2, 4, 6 (Minister Malcolm Brough, Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs); Commonwealth, *Parliamentary Debates*, House of Representatives, 25 November 2009, 12786 (Minister Jennifer Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs); Commonwealth, *Parliamentary Debates,* House of Representatives, 23 November 2011, 13540 (Jennifer Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs); Explanatory Memorandum, Social Security Legislation Amendment Bill 2011(Cth) 2. [↑](#footnote-ref-12)
13. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) 9. [↑](#footnote-ref-13)
14. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) 267. [↑](#footnote-ref-14)
15. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) 229. [↑](#footnote-ref-15)
16. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) xx. [↑](#footnote-ref-16)
17. Equality Rights Alliance, *Women’s Experience of Income Management in the Northern Territory* (2011), 40 <www.equalityrightsalliance.org.au>. [↑](#footnote-ref-17)
18. Equality Rights Alliance, *Women’s Experience of Income Management in the Northern Territory* (2011), 40 <www.equalityrightsalliance.org.au>. [↑](#footnote-ref-18)
19. Equality Rights Alliance, *Women’s Experience of Income Management in the Northern Territory* (2011), 29 <www.equalityrightsalliance.org.au>. [↑](#footnote-ref-19)
20. Department of Families, Housing, Community Services and Indigenous Affairs, *Cape York Welfare Reform Evaluation* (2012) 206. [↑](#footnote-ref-20)
21. Department of Families, Housing, Community Services and Indigenous Affairs, *Cape York Welfare Reform Evaluation* (2012) 207. [↑](#footnote-ref-21)
22. Department of Families, Housing, Community Services and Indigenous Affairs, *Cape York Welfare Reform Evaluation* (2012) 207. [↑](#footnote-ref-22)
23. Department of Families, Housing, Community Services and Indigenous Affairs, *Cape York Welfare Reform Evaluation* (2012) 212. [↑](#footnote-ref-23)
24. Australian Indigenous Doctors’ Association (AIDA) and Centre for Health Equity Training, Research and Evaluation, University of New South Wales, *Health Impact Assessment of the Northern Territory Emergency Response* (2010) 23-25. [↑](#footnote-ref-24)
25. Senate Estimates, Parliament of Australia, House of Representatives, *Income Management Summary* – *27 December 2013* (February 2014) 1; J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) 254. [↑](#footnote-ref-25)
26. Explanatory Memorandum, Social Security Legislation Amendment Bill 2011(Cth), 2. [↑](#footnote-ref-26)
27. Australian Law Reform Commission (ALRC), *Family Violence and Commonwealth Laws – Improving Legal Frameworks*, Report No 117 (2011) 267-268. [↑](#footnote-ref-27)
28. Indigenous Law Centre, *Submission CFV 144* in Australian Law Reform Commission (ALRC), *Family Violence and Commonwealth Laws – Improving Legal Frameworks*, Report No 117 (2011) 271. [↑](#footnote-ref-28)
29. Australian Law Reform Commission (ALRC), *Family Violence and Commonwealth Laws – Improving Legal Frameworks*, Report No 117 (2011) 279. ‘Priority needs’ are defined by legislation, the *Social Security (Administration) Act 1999* (Cth) s 123TH(1) and include food, clothing, health, housing needs and certain household utilities. [↑](#footnote-ref-29)
30. This issue was addressed in Recommendation 10—3, Australian Law Reform Commission (ALRC), *Family Violence and Commonwealth Laws – Improving Legal Frameworks*, Report No 117 (2011) 18. [↑](#footnote-ref-30)
31. Australian Law Reform Commission (ALRC), *Family Violence and Commonwealth Laws – Improving Legal Frameworks*, Report No 117 (2011) 268. [↑](#footnote-ref-31)
32. Australian Law Reform Commission (ALRC), *Family Violence and Commonwealth Laws – Improving Legal Frameworks*, Report No 117 (2011) 18. [↑](#footnote-ref-32)
33. Australian Law Reform Commission (ALRC), *Family Violence and Commonwealth Laws – Improving Legal Frameworks*, Report No 117 (2011) 260. [↑](#footnote-ref-33)
34. Australian Law Reform Commission (ALRC), *Family Violence and Commonwealth Laws – Improving Legal Frameworks*, Report No 117 (2011) 260. [↑](#footnote-ref-34)
35. Good Shepherd Youth & Family Service, *Submission CFV 132* in Australian Law Reform Commission (ALRC), *Family Violence and Commonwealth Laws – Improving Legal Frameworks*, Report No 117 (2011) 260. [↑](#footnote-ref-35)
36. Australian Law Reform Commission (ALRC), *Family Violence and Commonwealth Laws – Improving Legal Frameworks*, Report No 117 (2011) 267. [↑](#footnote-ref-36)
37. Under the *Social Security Legislation Amendment Act 2012* (Cth). [↑](#footnote-ref-37)
38. Parliamentary Joint Committee on Human Rights (PJCHR), Commonwealth Parliament, *Examination of legislation in accordance with the Human Rights (Parliamentary Scrutiny) Act 2011: Stronger Futures in the Northern Territory Act 2012 and related legislation* (June 2013) 49. [↑](#footnote-ref-38)
39. Parliamentary Joint Committee on Human Rights (PJCHR), Commonwealth Parliament, *Examination of legislation in accordance with the Human Rights (Parliamentary Scrutiny) Act 2011: Stronger Futures in the Northern Territory Act 2012 and related legislation* (June 2013) 51-52. The ICERD is the *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969). [↑](#footnote-ref-39)
40. Parliamentary Joint Committee on Human Rights (PJCHR), Commonwealth Parliament, *Examination of legislation in accordance with the Human Rights (Parliamentary Scrutiny) Act 2011: Stronger Futures in the Northern Territory Act 2012 and related legislation* (June 2013) 61-62. [↑](#footnote-ref-40)
41. Parliamentary Joint Committee on Human Rights (PJCHR), Commonwealth Parliament, *Examination of legislation in accordance with the Human Rights (Parliamentary Scrutiny) Act 2011: Stronger Futures in the Northern Territory Act 2012 and related legislation* (June 2013) 75. The International Covenants on Human Rights referred to in this extract are the International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 November 1976) (ICESCR); International Covenant on Civil and Political Rights, opened for signature 16 December 1966, UNTS 171 (entered into force 23 March 1976) (ICCPR). [↑](#footnote-ref-41)
42. Such as those contained in the *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) Article 1 and the International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 November 1976) Article 9. [↑](#footnote-ref-42)
43. Shelley Bielefeld, ‘Compulsory Income Management and Indigenous Australians – Delivering Social Justice or Furthering Colonial Domination?’ (2012) 35(2) *University of New South Wales Law Journal* 522, 549; Equality Rights Alliance, *Women’s Experience of Income Management in the Northern Territory* (2011), 36 <www.equalityrightsalliance.org.au>; Australian Law Reform Commission (ALRC), *Family Violence and Commonwealth Laws – Improving Legal Frameworks*, Report No 117 (2011) 266. [↑](#footnote-ref-43)
44. Commonwealth Ombudsman, *Review of Centrelink Income Management Decisions in the Northern Territory: Financial Vulnerability Exemption and Vulnerable Welfare Payment Recipient Decisions* (June 2012) 30. [↑](#footnote-ref-44)
45. Cultural racism is a form of ‘racism based upon cultural differences’– Tariq Modood, ‘“Difference”, Cultural Racism and Anti-Racism’ in Werbner and Modood (eds), *Debating Cultural Hybridity: Multi-Cultural Identities and the Politics of Anti-Racism* (Zed Books, 1997) 154 in Margaret Davies, *Asking the Law Question* (Lawbook, 3rd ed, 2008) 296. [↑](#footnote-ref-45)
46. Jon Altman, ‘A Genealogy of “Demand Sharing”: From Pure Anthropology to Public Policy’ in Yasmine Musharbash and Marcus Barber (eds), *Ethnography & the Production of Anthropological Knowledge* (ANU E Press, 2011) 187, 191, 193–4. [↑](#footnote-ref-46)
47. Commonwealth Ombudsman, *Ombudsman 2012–2013 Annual Report* (October 2013) 43-45. [↑](#footnote-ref-47)
48. Commonwealth Ombudsman, *Ombudsman 2012–2013 Annual Report* (October 2013) 44. [↑](#footnote-ref-48)
49. Jamie Peck, *Constructions of Neoliberal Reason* (Oxford University Press, 2012) xiii. [↑](#footnote-ref-49)
50. Department of Social Services, *A New System for Better Employment and Social Outcomes – Interim Report of the Reference Group on Welfare Reform to the Minister for Social Services* (June 2014) 5. [↑](#footnote-ref-50)
51. Centrelink Customer Service Adviser quoted in J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) 94. [↑](#footnote-ref-51)
52. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) 169. [↑](#footnote-ref-52)
53. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) xviii. [↑](#footnote-ref-53)
54. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) 233. [↑](#footnote-ref-54)
55. Elizabeth Ben-Ishai, *Fostering Autonomy – A Theory of Citizenship, the State, and Social Service Delivery* (Pennsylvania State University Press, 2012) 21. [↑](#footnote-ref-55)
56. Shelley Bielefeld,‘Compulsory Income Management under the Stronger Futures Laws – Providing ‘Flexibility’ or Overturning Freedom of Contract?’ (2013) 8(5) *Indigenous Law Bulletin* 18, 19. [↑](#footnote-ref-56)
57. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) 92. [↑](#footnote-ref-57)
58. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) 230. [↑](#footnote-ref-58)
59. Prohibited items for income managed funds include alcohol, tobacco and pornographic material under s 123TI(1) of the the *Social Security (Administration) Act 1999* (Cth) and gambling services under s 123TI(2). [↑](#footnote-ref-59)
60. Competition and Consumer Act 2010 (Cth) s 45 prohibits ‘contracts, arrangements or understandings that restrict dealings or affect competition’. [↑](#footnote-ref-60)
61. Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) 233. [↑](#footnote-ref-61)
62. Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) 261. [↑](#footnote-ref-62)
63. Eva Cox, ‘Evidence-Free Policy Making? The Case of Income Management’ (2011) 12 *Journal of Indigenous Policy* 1, 87. [↑](#footnote-ref-63)
64. Guy Standing, *The Precariat – The New Dangerous Class* (Bloomsbury, first published 2011, 2014 ed)104-105, 112-114. [↑](#footnote-ref-64)
65. Guy Standing, *Beyond the New Paternalism – Basic Security as Equality* (Verso, 2001) 104. [↑](#footnote-ref-65)
66. Guy Standing, *A Precariat Charter – From Denizens to Citizens* (Bloomsbury, 2014) 225. [↑](#footnote-ref-66)
67. Guy Standing, *Beyond the New Paternalism – Basic Security as Equality* (Verso, 2001) 137. [↑](#footnote-ref-67)
68. Zoe Williams, ‘Nobody wants to have their groceries served with pity’, *The Guardian*, 28 March 2013, quoted in Guy Standing, *A Precariat Charter – From Denizens to Citizens* (Bloomsbury, 2014) 378. [↑](#footnote-ref-68)
69. Department of Social Services, *A New System for Better Employment and Social Outcomes – Interim Report of the Reference Group on Welfare Reform to the Minister for Social Services* (June 2014) 80. [↑](#footnote-ref-69)
70. Department of Social Services, *A New System for Better Employment and Social Outcomes – Interim Report of the Reference Group on Welfare Reform to the Minister for Social Services* (June 2014) 82. [↑](#footnote-ref-70)
71. Department of Social Services, *A New System for Better Employment and Social Outcomes – Interim Report of the Reference Group on Welfare Reform to the Minister for Social Services* (June 2014) 81. [↑](#footnote-ref-71)
72. Loic Wacquant, *Punishing the Poor – The Neoliberal Government of Social Insecurity* (Duke University Press, 2009) xvii. [↑](#footnote-ref-72)
73. Loic Wacquant, *Punishing the Poor – The Neoliberal Government of Social Insecurity* (Duke University Press, 2009) xxiii. [↑](#footnote-ref-73)
74. Department of Social Services, *A New System for Better Employment and Social Outcomes – Interim Report of the Reference Group on Welfare Reform to the Minister for Social Services* (June 2014) 9. [↑](#footnote-ref-74)
75. Department of Social Services, *A New System for Better Employment and Social Outcomes – Interim Report of the Reference Group on Welfare Reform to the Minister for Social Services* (June 2014) 10. [↑](#footnote-ref-75)
76. Guy Standing, *A Precariat Charter – From Denizens to Citizens* (Bloomsbury, 2014) 256. [↑](#footnote-ref-76)
77. Department of Social Services, *A New System for Better Employment and Social Outcomes – Interim Report of the Reference Group on Welfare Reform to the Minister for Social Services* (June 2014) 15. [↑](#footnote-ref-77)
78. Luke Buckmaster, Carol Ey, and Michael Klapdor, ‘Income Management: an Overview’ (Background Note, Parliamentary Library, Parliament of Australia, 2012) 34. [↑](#footnote-ref-78)
79. Australian National Audit Office, *Administration of New Income Management in the Northern Territory* (Audit Report No. 19, 2012–13) 17. [↑](#footnote-ref-79)
80. Patricia Karvelas, ‘Coalition bid to expand welfare quarantining’, *The Australian*, 1 October 2013, <http://www.theaustralian.com.au/national-affairs/coalition-bid-to-expand-welfare-quarantining/story-fn59niix-1226730353663>. [↑](#footnote-ref-80)
81. Commonwealth, *The Forrest Review* (2014) 27. [↑](#footnote-ref-81)
82. Commonwealth, *The Forrest Review* (2014) 27. [↑](#footnote-ref-82)
83. Guy Standing, *A Precariat Charter – From Denizens to Citizens* (Bloomsbury, 2014) 384-385. [↑](#footnote-ref-83)