

Submission to the Inquiry into the Child Protection System in the Northern Territory 2010

The Welfare Rights Outreach Project (**WROP**), on behalf of Central Australian Aboriginal Legal Aid Service Inc (**CAALAS**), welcomes the opportunity to provide a brief submission to the Inquiry into the Child Protection System in the Northern Territory (**the Inquiry**).

WROP is funded by the Commonwealth Attorney-General's Department to provide legal advice, casework, community legal education and policy input regarding welfare rights issues, in particular relating to the Northern Territory Emergency Response (**NTER**). The service is one of the main sources of information and advice for Aboriginal and Torres Strait Islander people in the Northern Territory on welfare rights issues.

This submission focuses on the interaction between the Commonwealth Government's proposed introduction of child protection income management as part of its 'redesigned' income management regime (referred to as the "Child Protection Initiative"), and the role of Northern Territory Families and Children (**NTFC**) in imposing income management onto individuals. This submission addresses the following key areas of the Inquiry:

- The roles of the two governments; and
- Legal matters

Child Protection Income Management

As part of the proposed changes to income management under the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 (**Welfare Reform Bill**), the Northern Territory will be declared a 'child protection State or Territory' pursuant to section 123TF of the *Social Security (Administration) Act 1999* (Cth). Consequently, income management will be offered to Northern Territory child protection authorities as "an additional tool in the management of child neglect".¹

Section 123 UC of the *Social Security (Administration) Act* enables a child protection officer (in a declared child protection State or Territory) to issue Centrelink with a notice requiring an individual be subject to the income management regime. As a result, 70% of the individual's fortnightly Centrelink payments will be income managed.

¹ Department of Families, Housing, Community Services and Indigenous Affairs, *New Income Management Questions and Answers*, p 9.
http://www.fahcsia.gov.au/sa/families/progserv/welfarereform/Documents/IM_questions_answers.pdf (accessed 10 March 2009)

There will be no exemptions available for this category of income management (unlike the proposed new categories of income management).

Whilst WROP has previously lent qualified support to the use of child protection notifications as a trigger for income management, we express grave concern at the proposed introduction of the Child Protection Initiative in the NT for the following reasons:

Absence of formal evaluation of the Child Protection Initiative trial in Western Australia

The Child Protection Initiative is currently being trialed in selected locations in metropolitan Perth and the Kimberly region in Western Australia. The WA trials have not yet been formally evaluated and as such, the efficacy or otherwise of the income management of individuals with children within the child protection system is unknown.

Differences between the Child Protection Initiative and the model proposed in the Northern Territory

The WA trials underpin compulsory income management with intensive case management undertaken by the WA Department of Child Protection, including Parent Support services and referrals to financial management services. The case management approach prioritises the provision of support services to work to ensure that families subject to child protection income management are assisted to address issues that are affecting their capacity to care for their children.

FaHCSIA indicated in a recent Ministerial and Departmental briefing to the National Welfare Rights Network that a similar approach of intensive case management may not be taken in the NT.²

Without a commitment to intensive case management and support services, we hold grave concerns as to whether the introduction of child protection income management in the Northern Territory will assist families experiencing difficulty in caring for their children.

Lack of detail regarding decision making principles

The *Social Security (Administration) Act* is silent on the decision making principles that should guide a NTFC child protection officer in making a decision as to whether an individual should be subject to the income management regime. We are concerned that this may lead to the arbitrary and unnecessary imposition of income management.

Further, there is no detail in the legislation as to the expiry period for a written notice, potentially allowing for a person to be subject to the income management regime at the behest of NTFC indefinitely. We note however that FaHCSIA has indicated that NTFC child protection officers will be granted the power to determine the period for the application of income management to a maximum 12 months.³

² National Welfare Rights Network, *NWRN Submission on Welfare and Social Security Appeals Tribunal Reforms*, February 2010, p12, http://www.aph.gov.au/Senate/committee/clac_cite/soc_sec_welfare_reform_racial_discrim_09/submissions/sub77.pdf (accessed 10 March 2010)

³ Above n1

There is also no detail provided on whether NTFC will review the utility of compulsory income management during the term of the notice.

Appeals of the issue of child protection income management notices

There is no detail in the legislation or the explanatory memorandum as to how an individual subject to a child protection income management notice would appeal the decision made by NTFC.

As the imposition of income management occurs on the provision of a written notice from a NTFC employee to the Secretary, it is difficult to see how an individual would appeal the issue of such a notice within the social security appeals framework.

The social security appeals framework allows for expeditious internal review of Centrelink decisions and external review by the Social Security Appeals Tribunal and the Administrative Appeals Tribunal.

FaCHSIA indicated in a recent briefing to CAALAS and other community organisations in Alice Springs that individuals would need to appeal the issue of a child protection income management notice through the Department of Health and Families internal review mechanism, as is the case in WA.⁴

In WA, administrative decisions can be appealed to the State Administrative Tribunal, an independent judicial body vested with the ability to make binding decisions.

We note with concern that administrative decisions of the NT Government, and therefore administrative decisions of the Department of Health and Families, are not subject to external judicial review; decisions can only be 'reviewed' by the NT Ombudsman.

The NT Ombudsman has no powers to compel agencies to accept its recommendations. Should an agency not take the action recommended by the NT Ombudsman, the only recourse for the Ombudsman is to report the matter to the relevant Minister and have the report tabled in Parliament.

In essence, this means that individuals subject to child protection income management have wholly different and inferior appeal rights available to them. This is particularly egregious given the human rights implications and the punitive nature of compulsory income management.⁵

Capacity of NTFC

It is clear from the commissioning of this Inquiry that NTFC is in severe crisis. Recent reports have indicated that NTFC is understaffed and lacks the capacity to undertake its core function of protecting children at risk.⁶

⁴ FaCHSIA Briefing to CAALAS and other Community Organisations on Income Management, 16 February 2010.

⁵ Human Rights Law Resource Centre, *Submission to Inquiry into the 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*, 1 February 2010
http://www.aph.gov.au/Senate/Committee/clac_ctte/soc_sec_welfare_reform_racial_discrim_09/submissions/sub76.pdf. (accessed 10 March 2010)

⁶ Natasha Robinson, *The Australian*, No safety net for children at risk in the NT, 6 February 2010,
<http://www.theaustralian.com.au/news/nation/no-safety-net-for-children-at-risk-in-the-nt/story-e6f96nf-1225826982569>. (accessed 7 February 2010)

We consider that imposing on NTFC employees the additional function of determining when a person is to be subject to income management and for how long to be beyond the current capacity of NTFC. Furthermore, the capacity for NTFC to engage in the level of intensive case management being undertaken in the WA trial areas appears to be severely circumscribed.

By all reports, NTFC is struggling with the basic management of the care and protection of children and young people in relation to their education, health and social and emotional wellbeing. We consider that the delegation of a further function to NTFC will impact on its already compromised ability to undertake its basic functions.

Recommendation

We urge the Inquiry to recommend that the NT government proceed carefully and cautiously in coming to an agreement with the Commonwealth government as to the implementation and operation of child protection income management in the Northern Territory. In particular, we ask the Inquiry to specifically advise the NT Government to proceed with child notification income management only when:

- Formal evaluation of the WA trials is available and then, only if the evaluation indicates that child protection income management is effective in addressing child neglect;
- The Inquiry has concluded and its findings have been handed down;
- The findings of the Inquiry, particularly regarding the capacity of NTFC to undertake its core functions, have been acted upon by the NT Government and NTFC stabilises;
- The Commonwealth Government commits to funding and supporting an intensive case management approach to child protection income management; and
- Sufficient detail is inserted in the legislation which outlines:
 - the decision making principles for NTFC employees in issuing a notice to the Secretary;
 - a maximum timeframe of 12 months for the expiry of the notice;
 - the ability to vary or revoke a notice; and
 - appeal rights in relation to the issue of a notice by NTFC.