These social security changes must be assessed whilst punitive, offering more targeted approaches to welfare reforms away from the racially-charged environment which characterised their introduction. The following article describes the differing elements within these latest social security changes and suggests amendments to improve them.

The welfare reforms in outline

Despite passage of the social security reforms against the backdrop of the (declared) Northern Territory emergency, the legislation covers reforms both within and outside of Northern Territory communities. At the heart of these reforms is the introduction of the ‘tool’ of ‘income management’, that is, the quarantining of welfare payments of affected recipients. The operation of income management, however, differs substantially according to the physical location of the income support and supplement recipients. The reforms delineate three discrete income management regimes:

1. (Indigenous) Northern Territory regime (applying to Northern Territory communities that are ‘declared relevant Northern Territory areas’);2
2. Cape York regime (intended to apply initially to four Indigenous Cape York communities); and
3. national regime (intended to apply to targeted welfare recipients in all other parts of Australia).3

As explained below, the NT regime (already operative and directed towards Indigenous Territorians) presents the most oppressive variant of the income management schemes. The Cape York and national models, whilst punitive, offer more targeted approaches to Commonwealth management of the poor. These social security changes must be assessed both against their stated objectives and wider social policy frameworks. In promoting its legislation the former Howard Government characterised income management as a ‘tool’ for child protection. Paradoxically however, despite the heightened concern over Indigenous child sexual abuse which prompted the Northern Territory-specific welfare measures (and related measures), it is the national model, not the (Indigenous) Northern Territory model, which mandates the tightest nexus between the risk of child neglect and the application of income management.4

Indeed there were other (longer-standing) drivers of the reforms. Thus the then Indigenous Affairs Minister, Mal Brough, identified the income management package as an extension of the Howard Government’s preference for the framework of mutual obligation in welfare reform.5 Earlier Welfare-to-Work reforms exemplified this policy of mutual obligation, with income support recipients obliged to demonstrate their deservingness (by meeting activity requirements) and thus earn their Allowance.6 Closer inspection of the current reforms — specifically, the divergence between the Northern Territory income management regime and the other two models — reveals the influence of two forces: firstly, the ongoing pervasive influence of ‘neoliberalism’; but secondly, an ethnocentric undercurrent borrowing heavily from Australia’s past colonial policies. The NT welfare regime is heavily informed by the latter and I argue that it is this aspect of the legislation which is in urgent need of amendment.

The next section explains the mechanism of income management before providing a compendious comparison of the three regimes. Subsequent paragraphs look to each of the three regimes in turn. In looking to each income management regime, I wish to draw out problematic policy assumptions and build the argument for amendment of this latest welfare reform package.

The mechanism of income management

Income management greatly circumscribes the discretion of welfare recipients to spend their money as they wish. A portion (or all) of the recipient’s payments is quarantined (sequestered into a separate account7), and only available to be spent on specified ‘priority purchases’.8 The legislation specifies ‘excluded goods’ and ‘excluded services’, such as alcohol and gambling, upon which quarantined funds may not be spent.9 The list of excluded goods and services may be extended by Ministerial legislative instrument.10 The object of income management, as pronounced by the legislation, is to redirect these managed funds to meet the ‘priority needs’ of the affected welfare recipient, his or her partner, children and other dependants.11 In this way, the use of income management is said to combat child neglect.

EMERGENCY WELFARE REFORMS

A mirror to the past?

JO SUTTON

REFERENCES

1. See Commonwealth, Parliamentary Debates, House of Representatives, 9 November 2005, at 8
2. The Northern Territory ‘emergency response’ package, enacted in the dying days of the former coalition government, marked a watershed in Commonwealth-Indigenous relations. A key element of the package was the welfare reforms of the Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007 (Cth), providing for the ‘quarantining’ of social security payments. With the defeat of the coalition, and the promise by the new Labor government for a review of the intervention, comes an opportunity to revisit these hastily enacted welfare reforms away from the racially-charged environment which characterised their introduction. The following article describes the differing elements within these latest social security changes and suggests amendments to improve them.

3. The welfare reforms in outline

Despite passage of the social security reforms against the backdrop of the (declared) Northern Territory emergency, the legislation covers reforms both within and outside of Northern Territory communities. At the heart of these reforms is the introduction of the ‘tool’ of ‘income management’, that is, the quarantining of welfare payments of affected recipients. The operation of income management, however, differs substantially according to the physical location of the income support and supplement recipients. The reforms delineate three discrete income management regimes:

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REFERENCES

1. See Commonwealth, Parliamentary Debates, House of Representatives, 9 November 2005, at 8
Under this new welfare package, income management employs a number of devices so as to narrow the discretion of welfare recipients and transform social security payments into in-kind benefits. When quarantining occurs, control over spending of welfare payments may be transferred to another person. Alternatively, the affected recipient may (somewhat notionally) retain control over his or her welfare payments but only access the managed funds via stored value cards or vouchers. These cards and vouchers can only be used at certain stores (such as Woolworths) and for certain goods (excluding cigarettes or alcohol).

The welfare reforms are already operative in many Indigenous Northern Territory communities, with the new Indigenous Affairs Minister having authorised an expansion of the scheme into further communities during her first months in office. The Cape York regime (assuming complementary passage of Queensland legislation) and elements of the national scheme are expected to commence in 2008.

Differing operation of income management

Notwithstanding the common central feature of income management (and its associated devices), the circumstances triggering the application of income management are significantly different under the Northern Territory regime when compared with the prospective Cape York and national regimes.

The NT regime prescribes a very crude basis for the application of income management: simply that of receipt of one of a host of social security payments, and overnight residence in one of the declared relevant Northern Territory areas (Indigenous communities). For welfare recipients within these communities, there is no threat of income management; rather the scheme mandates immediate and indiscriminate deprivation of personal discretion.

The other two regimes, however, emphasise the threat of income management against individuals. Under the national and Cape York regimes, a number of new obligations (broadly speaking, parenting obligations) will attach to welfare payments. Breach of any one of these new obligations then becomes the trigger for income management against the defaulting welfare recipient, as elaborated below. Importantly, under the national regime these obligations are imposed only upon those welfare recipients with a certain level of caring responsibility.

Under the Cape York regime, it seems likely that these parenting obligations, as I have loosely termed them, will be greater in number and will attach to nearly all welfare recipients within the nominated (Indigenous) communities. While the forthcoming Cape York regime adopts a more targeted approach than the current NT scheme, it is the national model which most closely aligns with the claims of the former Howard Government that the latest reforms enhance ‘parental responsibility’ and that quarantining is a child protection measure.

The Indigenous NT income management regime

Welfare recipients within declared relevant Northern Territory areas are subjected to a singularly oppressive regime. Blanket application of income management occurs against welfare recipients within these declared areas, regardless of the level of caring responsibility owed by the individual and without any need to demonstrate ‘poor parenting’. As already underway in many communities, 50 per cent of any income support and family assistance payments and 100 per cent of any advances and baby bonuses are quarantined for a minimum 12 months with possible yearly renewal of the scheme. In short, this regime creates a wholesale deprivation of personal discretion of Indigenous Australians and increases control on the part of Australian government agencies over the lives of Indigenous Territorians.

Whilst Prime Minister Rudd has expressed his support for the NT intervention, including the Territory welfare reforms, the Labor Government has foreshadowed a mid-2008 review, and emphasised that continuation of the intervention will proceed on an ‘evidence-based approach’. I hope that this review will overhaul the Northern Territory’s blanket quarantining model.

Additional features of the NT regime, as they currently stand, exacerbate the racially discriminatory nature of this Commonwealth policy and entrench Indigenous dependence upon government bureaucracy. Peculiar to this regime, Indigenous Northern Territorian welfare recipients are denied the right of external appeal that is afforded to dependents falling under the other two schemes. As the then Federal Government explained during passage of the Bill, Northern Territorian recipients living in declared areas are denied tribunal review of possible government error (if the decision relates to the quarantining of payments) on the flimsy basis that to preserve the standards of procedural fairness applied to others ‘would undermine the timing of the emergency response’. With normal avenues to challenge Commonwealth decisions ousted, the accountability of the responsible agencies is undermined. Departing from the approach of the former federal government, the new Labor government has begun consultation with affected Indigenous Territorians. But thus far, the Labor Government has given no indication of a desire to repeal this discriminatory provision.

The NT regime disempowers Indigenous Territorians and furthered the reach of Commonwealth agencies through the abolition of the Community Development Employment Projects (CDEP) program across all parts of the Territory. With the cessation of CDEP, formerly employed Indigenous Territorians were to be progressively transferred onto income support (such as Newstart Allowance), steering them into the blanket quarantine measures. Fortunately the incoming Labor government has imposed a moratorium on further abolition of CDEP, as it contemplates reinstatement of a modified CDEP scheme.
... can the immediate and indiscriminate deprivation of Indigenous Territorians’ discretion be differentiated from past legislation which reduced Indigenous Australians to the status of children?

In respect of the Northern Territory income management regime, the former federal government’s espousal of mutual obligation as a policy rationale was unconvincing. With its blanket application of income management, the NT regime deprives Indigenous Territorians of the opportunity to prove their deservingness — a key tenet of neoliberalism — and so preserve receipt of their income support in fully fungible form. Instead, Indigenous Territorians are irrevocably characterised as feckless squanderers and neglectful parents. In effect, within these new Northern Territory measures, Aboriginality is equated with incapacity.

While beyond the scope of this article, it is important to recognise that the approach of these reforms towards Indigenous Territorians echoes earlier colonial policies. The quarantining of payments invites clear comparisons of the Cape York measures becoming part of a pattern of Indigenous Territorians’ discretion be differentiated from past legislation which reduced Indigenous Australians to the status of children.48

Cape York income management regime

The legislation offers sparing detail of the intended operation of the Cape York regime except to outline that Centrelink will apply income management to the payments of particular welfare recipients at the direction of the Queensland Commission.39 The legislation, however, is designed to implement the welfare proposals of the Cape York Institute (led by Noel Pearson).40 Having regard to Pearson’s design recommendations, two features of the Cape York measures become apparent. Unlike the NT regime, under the proposed Cape York regime, income management will only be applied to those welfare recipients who fail to discharge any of the new obligations attached to social security payments.41 As a further point of differentiation, the Cape York regime aims to address child welfare as well as restoring Indigenous authority.42 The Labor government has indicated in-principle preference for this approach rather than endorsing recent calls for an expansion of Northern Territory-style measures (blanket quarantining) into these Indigenous Cape York communities.43 Under the Cape York proposals, new conditions, accompanied by income management upon non-compliance, will be imposed on the payments of nearly all welfare recipients living in nominated Indigenous communities.44 If Noel Pearson’s recommendations are adopted, the welfare recipient will be required to discharge the following obligations:

- securing the child’s school attendance (education trigger);
- preventing child neglect and abuse (child safety trigger);
- abstaining from committing drug, alcohol, gambling or family violence offences (judicial trigger);
- complying with tenancy agreements (tenancy trigger).

Where the Queensland Commission determines a breach of one of the conditions has occurred, it is proposed that the Commission may recommend the sanction of income management.45 Thus, unlike the NT regime, the Cape York variant will make use of the possibility of income management: behavioural requirements (in the form of welfare conditions) are prescribed; compliance is then induced using the ‘lever’ (or threat) of income management.

Consistent with a policy of mutual obligation, the Cape York reforms focus on the behaviour of the individual and his or her (perceived) deservingness of state assistance.46 By complying with the conditions attached to welfare payments, the dependent proves his or her deservingness and so ‘earns’ the ‘right’ to spend payments without state supervision. The conditionality of payments does not merely provide an avenue by which welfare recipients can prove their deservingness (and the welfare provider can differentiate the deserving from the undeserving poor). Conditionality also carries an implicit assumption: that Indigenous Australians (or at least some of them) living in these communities are capable of discharging their parenting obligations (as I have termed them) and meeting ‘social norms’.47 This assumption is clearly absent from the Northern Territory scheme. The focus on individuals under the Cape York reform proposals is affirmed by the Explanatory Memorandum and its emphasis that compliance with these new conditions will be assessed on a case-by-case basis by the Queensland Commission.48

In summary, Indigenous Australians from the Peninsula escape group characterisation as unable to govern themselves or others; instead, under this prospective regime, the application of income management will be determined by the perceived willingness of individual recipients to fulfil their responsibilities.

Under Pearson’s proposals, the establishment of part-Indigenous bodies — a Family Responsibilities

20. Welfare Payment Reform Act 2007 (Cth) Sch 1, Item 17 inserting Social Security (Administration) Act 1999 (Cth) s 123UB. A declared area must be a ‘relevant Northern Territory area’ which term is confined to the Emergency Response communities, Aputula and Wave Hill. Social Security (Administration) Act 1999 (Cth) s 123TD. This section also provides for the management regime, the former federal government’s Cape York Welfare Reform Project Design Recommendations” (May 2007), 8-9.

21. See the ‘National income management regime’ section.

22. See the ‘Cape York income management regime’ section.


26. Welfare Payment Reform Act 2007 (Cth) Sch 1, Item 17 inserting Social Security (Administration) Act 1999 (Cth) s 123UB.

27. Welfare Payment Reform Act 2007 (Cth) Sch 1, Item 17 inserting Social Security (Administration) Act 1999 (Cth) s 123UB.

28. Welfare Payment Reform Act 2007 (Cth) Sch 1, Item 17 inserting Social Security (Administration) Act 1999 (Cth) s 123UB.

29. Welfare Payment Reform Act 2007 (Cth) Sch 1, Item 17 inserting Social Security (Administration) Act 1999 (Cth) s 123UB.

30. Patricia Karvelas and Simon Kearney, “Labor Eyes Expanded NT Scheme”, The Australian (Sydney), 1 December 2007. This article suggests the expansion of the NT intervention into other parts of Australia. This suggestion has subsequently been rejected by the federal government.

31. Welfare Payment Reform Act 2007 (Cth) Sch 1, Item 17 inserting para 144(k)(a) into the Social Security (Administration) Act 1999 (Cth) Social Security (Administration) Act 1999 (Cth) s 144 (non-renewable decisions) prescribes the social security decisions that may not be reviewed by the social security appeals tribunal.

32. Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, Canberra, 10 August 2007, 16-17 (Robyn McKay).

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