9 March 2015

The Executive Director

Australian Law Reform Commission

GPO Box 3708

Sydney NSW 2001

**Re: Review of Commonwealth Laws for Consistency with Traditional Rights, Freedoms and Privileges**

I welcome the opportunity to make a submission to the ALRC on the encroachment upon traditional rights and freedoms. I make this submission as an academic with a disciplinary background in law whose research focuses on issues of public policy, social justice, human rights and Indigenous peoples.

This submission addresses concerns about welfare reform, namely, the development and expansion of income management and the Improving School Enrolment and Attendance through Welfare Reform Measure (SEAM). Income management was introduced in 2007[[1]](#footnote-1) in the Northern Territory with the rationale that it would:

[H]elp … stem the flow of cash going towards substance abuse and gambling and ensure that funds meant to be for children’s welfare are used for that purpose … to minimise the practice known as ‘humbugging’ in the Northern Territory, where people are intimidated into handing over their money to others for inappropriate needs, often for alcohol, drugs and gambling.[[2]](#footnote-2)

This rationale of intended benevolence was maintained in subsequent income management amendments, under the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010* (Cth) and the *Social Security Legislation Amendment Act 2012* (Cth).[[3]](#footnote-3) Most welfare recipients subject to income management have 50 per cent of their payment income managed, the amount is 70 per cent if there is a child protection issue, and 100 per cent of lump sum payments are income managed.

The Improving School Enrolment and Attendance through Welfare Reform Measure (SEAM) initially commenced in 2008, under the *Social Security and Veterans’ Entitlements Legislation Amendment (Schooling Requirements) Act 2008* (Cth). It has since been extended as part of the Stronger Futures legislative package, under Schedule 2 of the *Social Security Legislation Amendment Act 2012* (Cth). SEAM can lead to suspension of welfare payments for parents if they do not ensure their children enrol and attend school according to government criteria.

Income management and SEAM both involve significant interference with traditional freedoms for welfare recipients without evidence that such measures are appropriately justified. This submission will address the following rights:

1. The right to freedom of contract
2. The right to freedom of movement
3. The right to social security
4. The right to be free from racial discrimination
5. The right to procedural fairness

**Freedom of contract**

Compulsory income Management is a policy which encroaches upon the long embedded common law doctrine of freedom of contract, in my view, without justification. The doctrine of freedom of contract holds that:

(1) contracting parties should be free to agree to whatever agreement they wish; and (2) people should be free to decide to enter into contracts with whoever they please and should not be compelled to enter contractual relationships.[[4]](#footnote-4)

There has long been support at common law for freedom of contract, thus Sir George Jessel MR in *Printing and Numerical Registering Co v Sampson* declared that:

[I]f there is one thing which more than another public policy requires it is that men [sic] of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by Courts of justice.[[5]](#footnote-5)

As elaborated upon in one of my recent publications, which I attach as Appendix A, compulsory income management amounts to unwarranted interference with the contractual freedom of welfare recipients.[[6]](#footnote-6) Compulsory income management limits:

[T]he range of merchants and service providers with whom welfare recipients can spend their managed income using the BasicsCard. This restricts their freedom of contract, as they are no longer free to purchase goods and services of their choice from merchants of their choice. The BasicsCard can only be spent at government approved stores on government approved ‘priority needs’. This has the effect of eliminating some more economically efficient outlets for welfare recipients and adding to the overall cost of their groceries. This is a serious side effect for those who are struggling to survive on low incomes. The limitations on where the BasicsCard can be spent can also result in some welfare recipients needing to travel further to reach government approved retailers, which involves additional cost for these welfare recipients. Extra money needs to be spent on fuel to accommodate this paternalistic endeavour, and yet the government does not provide extra income for this purpose, leaving welfare recipients in a difficult situation where they are required to do more with less income. It is unjust that welfare recipients be burdened with these additional costs when they receive such meagre government allowances.[[7]](#footnote-7)

In their 2012 government commissioned report on the operation of income management in the Northern Territory Bray et al stated:

One problem was that the BasicsCard could not always be used where it was most convenient for people to shop or where they would prefer to shop. This was especially the case for farmers markets and other outlets that may sell fresh, cheap food, but that did not have a contract with Centrelink to accept the BasicsCard.[[8]](#footnote-8)

This continues to be a problem for numerous welfare recipients. For example, in the extremely thorough government commissioned 2014 Northern Territory income management report, a welfare recipient opined that they ‘[c]annot make purchases at certain stores which may have cheaper options’ which is ‘very frustrating’ because they are ‘a bargain shopper.’[[9]](#footnote-9)

Evidence shows that some retailers and real estate agents/landlords do not want to be involved with income management,[[10]](#footnote-10) which has the effect of shrinking the market of goods and rental housing available for those on low incomes. This perpetuates injustice for the poor, who in addition to the challenge of surviving on a small income now have to contend with forming contracts in an unfree market due to the anti-competitive nature of government imposed paternalism. Section 45 of the Competition and Consumer Act 2010 (Cth) prohibits ‘contracts, arrangements or understandings that restrict dealings or affect competition’, yet this is precisely what occurs through the compulsory income management scheme. It is a tragic irony that it does so in the name of benevolence.

Even when people can use their BasicsCard, at times a surcharge is imposed, adding to the cost of goods and services for those who can least afford to bear such a burden.[[11]](#footnote-11) Again, no additional funds are provided by the government to welfare recipients in such circumstances, who are left to endure additional costs and are consequently pushed further into poverty.

The changes to contractual freedom wrought via compulsory income management are inconsistent with other circumstances in which the state has removed this right. The context in which the government has previously interfered with contractual freedom has been limited to circumstances: a) where there has been an abuse of power,[[12]](#footnote-12) or b) where there has been an issue with capacity for minors or those deemed mentally incompetent.[[13]](#footnote-13) It is arguable that the government has created a new class of incapacity in contractual relations by limitations placed upon welfare recipients through compulsory income management. However, this development has not been based upon rigorous analysis or evidence that such curtailment of contractual freedom is reasonable, proportionate, or necessary. It should not be presumed by the government, without evidence, that welfare recipients are poor planners who are incapable of spending their limited income sensibly.

In 1988 in *Biotechnology Australia Pty Ltd v Pace*, Kirby P stated ‘[i]t is an attribute of a free society … that it is generally left to parties themselves to make bargains.’[[14]](#footnote-14) If this be the case, then what we are seeing in Australia is an increasingly unfree society. Punitive welfare reforms that curtail the consumer choices of the most socio-economically disadvantaged citizens are founded in new paternalism, which originated in the United States, but has gradually been spreading in influence across a range of western nations.[[15]](#footnote-15) New paternalism 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’.[[16]](#footnote-16) New paternalism emphasises the ‘obligations’ of welfare recipients ‘rather than their rights or needs.’[[17]](#footnote-17) This type of thinking influenced the initial development of income management in Australia as part of the 2007 Northern Territory Intervention. For example, in the second reading speech for the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth) it was said that: ‘[t]he government believes that the right to welfare comes with obligations.’[[18]](#footnote-18) Implicit in this narrative was the notion that Indigenous welfare recipients were irresponsibly failing to fulfil their obligations to society.

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 2014 report on income management in the Northern Territory provides a useful update on where income management currently applies.[[19]](#footnote-19) 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 now 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. As Bray and others state:

A central rationale for income management is to reduce the amount of welfare funds available to be spent on alcohol, gambling, tobacco products and pornography … The majority of survey participants reported that none of these issues were a problem for their family.[[20]](#footnote-20)

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. The policy logic behind income management assumes that the poverty of welfare recipients can be effectively addressed if they are clothed in constraint. However, evidence suggests that the reason for financial stress experienced by many welfare recipients is inadequate income. In their 2014 report on poverty, the Australian Council of Social Services observed that ‘61% of people below the poverty line relied upon social security as their main income’.[[21]](#footnote-21) ACOSS noted that ‘many social security payments fall below the poverty line, even with Rent Assistance and other supplementary payments added to household income.’[[22]](#footnote-22) Most of the remainder below the poverty line, 33%, were the working poor, whose poverty level wages were inadequate to meet basic necessities.[[23]](#footnote-23) This demonstrates that urging the poor to take up jobs – regardless of how poorly paid – is not an effective solution to poverty.

Whilst stigmatising and disparaging the poor may be a politically advantageous scapegoat for the government of the day, the income management system is expensive to operate[[24]](#footnote-24) at approximately $100 million per annum[[25]](#footnote-25) and there is little evidence to suggest that it achieves the goals outlined by the government.[[26]](#footnote-26) 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.[[27]](#footnote-27) Yet as I argue in a recent publication attached as Appendix B, 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.’[[28]](#footnote-28)

Encroachment upon freedom of contract through income management has significant autonomy costs for welfare recipients. The Australian Psychological Society has observed that ‘[a]utonomy is a core human need.’[[29]](#footnote-29) Autonomy theorists maintain that ‘liberal societies should be especially concerned to address vulnerabilities of individuals regarding the development and maintenance of their autonomy.’[[30]](#footnote-30) Denial of autonomy can create or exacerbate other problems. For some time now the government has had access to evidence that compulsory income management has created serious stress related health issues and depression for some welfare recipients,[[31]](#footnote-31) yet they have not addressed this. Wellbeing is an ongoing concern for many welfare recipients subject to income management. Numerous welfare recipients interviewed in the 2014 Northern Territory income management report stated that income management led to an increase in financial hardship, ‘with half the group reporting that income management directly impacted on their emotional wellbeing.’[[32]](#footnote-32) One Indigenous woman explained that ‘It makes life a lot harder actually. I was already suffering from depression and that just made it worse.’[[33]](#footnote-33) This mirrors concerns expressed in the 2012 Northern Territory income management report, when another welfare recipient stated that: ‘One thing I find is your depression and other added stresses from it (income management). It is making it harder and [people are] stressed when not … able to get to funerals [which is] causing depression from not having closure.’[[34]](#footnote-34) This issue is connected to the restrictions now placed upon the right to freedom of movement.

**The Right to Freedom of Movement**

Australia has international human rights obligations regarding freedom of movement under Article 12 of the *International Covenant on Civil and Political Rights* (ICCPR).[[35]](#footnote-35) Freedom of movement can be limited ‘to protect national security, public order, public health or morals or the rights and freedoms of others’.[[36]](#footnote-36) None of these permissible limitations justify restrictions on freedom of movement through income management. The restrictions on contractual freedom through the BasicsCard have impeded the freedom of movement of numerous welfare recipients. The 2014 report on income management in the Northern Territory contained statements of welfare recipients which indicate that this is an ongoing concern.[[37]](#footnote-37) For example, one welfare recipient who participated in the research stated ‘[w]hen I went to Adelaide for a holiday I couldn’t pay [for] certain stuff because [the] BasicsCard wasn’t accepted.’[[38]](#footnote-38) Now that this person is aware of these limitations it will likely affect future travel plans. Another said they could not travel ‘in Queensland because they don’t have the BasicsCard facility down there’.[[39]](#footnote-39) This can prevent welfare recipients from social interaction with family and friends, leading to increased social isolation and associated problems. It could also affect ability to attend job interviews. Another person commented that they were unable to purchase a vehicle, stating they wanted ‘[a] car, we had the money but it was all in the BasicsCard.’[[40]](#footnote-40) Yet another noted the problems ‘getting fuel in NSW’ with the BasicsCard.[[41]](#footnote-41) Another person was ‘[u]nable to buy car essentials’ which impeded their movement.[[42]](#footnote-42) For some, there is also a sense that their presence is unwelcome in certain shops which do not accept the BasicsCard. This is poignantly expressed by Rachel McDinny in a visual essay by artist Therese Ritchie.[[43]](#footnote-43)





**The Right to Social Security**

Australia has long had international human rights obligations regarding the right to social security. For example, the right to social security is contained in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 5(e)(iv) of the *International Convention on the Elimination of All Forms of Racial Discrimination*.[[44]](#footnote-44) The Attorney-General’s Department observes that:

The right to social security requires a social security system be established and that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

The UN Committee on Economic Social and Cultural Rights has stated that social security, through its redistributive character, plays an important role in poverty reduction and alleviation. It has also stated that social security prevents social exclusion and promotes social inclusion.[[45]](#footnote-45)

In terms of whether this right can be limited, the Attorney-General’s Department note that:

Article 4 of ICESCR provides that countries may subject economic social and cultural rights only to such limitations ‘as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society’. The UN Committee has stated that such limitations must be proportional and the least restrictive alternative where several types of limitations are available, and even where such limitations are permitted, they should be of limited duration and subject to review. Measures that are retrogressive to the realisation of economic, social and cultural rights must also be properly justified. A retrogressive measure is one that reduces the extent to which an economic, social and cultural right is guaranteed.[[46]](#footnote-46)

Through increased welfare conditionality, the Australian government has lowered the bar in terms of the right to social security, but we must set our sights higher if we are to create a socially just society. Australia needs ‘an ambitious plan to redress injustice’ rather than ‘simply managing inequality with the latest tools from economists and technocrats.’[[47]](#footnote-47) Income management and SEAM fall into the latter category.

*Compulsory Income Management*

Compulsory income management interferes with the right to social security, as shown above, it has led to increased financial hardship, social exclusion and social insecurity for many welfare recipients who have been subject to it. In 2013 the Parliamentary Joint Committee on Human Rights (PJCHR) stated that:

[T]he income management regime involves a significant intrusion into the freedom and autonomy of individuals to organise their private and family lives by making their own decisions about the way in which they use their social security payments. The committee considers that the imposition of conditions restricting the use that may be made of such payments enforced through the BasicsCard system represents both a restriction on the right to social security and the right not to have one’s privacy and family life interfered with unlawfully or arbitrarily.[[48]](#footnote-48)

The committee stated that: ‘the burden lies on the government to justify that such limitations are justifiable, namely that they are a rational and proportionate means of pursuing legitimate objectives.[[49]](#footnote-49) Thus far the government has not demonstrated that such limitations on the right to social security are justifiable. The dominant and indeed bipartisan government narrative about income management has often been rather self-congratulatory, however the plethora of reports and evaluations of income management reveal that there are alternative ways of knowing and experiencing income management. There have been a range of reports in recent years that show that income management is largely ineffective.[[50]](#footnote-50) Even a government evaluation of the politically lauded Cape York trial observed 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.’[[51]](#footnote-51) In other words, there was no substantial behavioural change. In addition, some of the key findings of the 2014 Final Evaluation Report on the operation of income management in the Northern Territory were that:

* The evaluation could not find any substantive evidence of the program having significant changes relative to its key policy objectives, including changing people’s behaviours.
* There was no evidence of changes in spending patterns, including food and alcohol sales, other than a slight possible improvement in the incidence of running out of money for food by those on Voluntary Income Management, but no change for those on compulsory income management. …
* There was no evidence of any overall improvement in financial wellbeing, including reductions in financial harassment or improved financial management skills. …
* More general measures of wellbeing at the community level show no evidence of improvement, including for children. …[[52]](#footnote-52)

Interference with the right to social security via compulsory income management is not producing the outcomes featured in the government’s rationale for the scheme. It is arguable that infringing this right makes people receiving welfare payments more rather than less vulnerable, which is the antithesis of what the government claims to be trying to achieve with income management.

In assessing the proportionality of income management it also seems appropriate to consider other budgetary management alternatives which could achieve the same objective the government claims to want to achieve, but in a less stigmatising manner. Since the BasicsCard was initially introduced as part of the Northern Territory Emergency Response, there is an intense social stigma attached to its use for numerous welfare recipients.[[53]](#footnote-53) This is especially so in regards to the numerous compulsory income management categories operating in the NT. The 2014 APY Lands report sets out a range of voluntary budgetary management tools which may be useful for welfare recipients as alternatives to the BasicsCard:

* The Key Card is a card issued by a financial institution (e.g. bank) used by account holders to access their money. Community members can set up direct debit payment arrangements with the financial institution to transfer funds to a store or make bill payments via BPAY. The Key Card gives people direct access to the available cash in their account. Particular amounts can be allocated per day so that the person can only spend up to that amount per day and therefore money can be spread over the payment period. This is arranged with the financial institution.
* The Centrepay system is a free bill paying service people can use to make payments to registered organisations directly from their Centrelink payments. Centrepay has been in place for several years prior to the introduction of income management.
* Store accounts or Store Cards. People can arrange for funds to be paid to the store under a pre-paid account system. Some stores will provide clients with a Store Card where these funds are uploaded. The client can arrange payments to the store through Centrepay or through a direct debit arrangement with their financial institution.
* Many people hold accounts in financial institutions which may or may not have Key Card access. People can allocate their funds by arranging direct debits and making bill payments via BPAY.[[54]](#footnote-54)

*Voluntary Income Management - Freedom to ‘Choose’?*

In 2011, the ALRC pointed out that some stakeholders objected to the form of ‘voluntary income management’ introduced in 2010, and said it ‘was not a truly “voluntary” scheme, in form or substance.’[[55]](#footnote-55) I agree with this assessment. In my view, four changes are necessary to properly assess whether welfare recipients genuinely want to volunteer for income management. First, get rid of the compulsory income management categories, which are currently looming in the shadows for many of those who do not ‘volunteer’. Second, remove the current financial incentive of $500 per year which can be paid to welfare recipients who ‘choose’ income management.[[56]](#footnote-56) This payment made to those who ‘volunteer’ for income management reveals that there are ‘serious problems in terms of how the government conceptualises choice and voluntariness.’[[57]](#footnote-57) The 2014 report on the operation of income management in the Northern Territory reveals that this incentive payment has been an instrumental factor in the ‘choice’ of some of those who are on voluntary income management, even where they ‘do not appear to need to be on income management in order to budget effectively’.[[58]](#footnote-58) Given that so many welfare recipients are currently living below the poverty line,[[59]](#footnote-59) this incentive payment involves a measure of economic coercion for people living in poverty to choose voluntary income management. Third, the government would need to ensure that all welfare recipients are presented with adequate information to make a free and informed decision about the nature of voluntary income management. This information must be communicated in language they understand rather than simply provided on government websites and should be communicated in a culturally appropriate way. The 2014 report by Bray et al noted that:

A number of participants from the money management and financial counselling services, particularly servicing remote areas, reported that there was a great deal of confusion for some people subject to income management about differences between Voluntary Income Management and the compulsory measures. They also reported that some of the people they worked with who were on the voluntary measure think they are not allowed to come off it at all. Many of these were clients who had been on income management ‘since day one’, during the NTER. Interview participants who worked in legal services also said that some of their clients who were on Voluntary Income Management did not understand that they could choose to come off income management:

The people on Voluntary Income Management that we see don’t identify with it being voluntary. (Legal service)[[60]](#footnote-60)

Finally, for an income management scheme to be voluntary, welfare recipients should be able to determine the proportion of their income they want managed, rather than a mandatory 50 per cent. Implementation of these four changes would be the only way of genuinely ascertaining voluntariness. Without them, the right to social security is arguably still compromised.

There is also the issue of whether voluntary income management is actually effective. Bray et al note that those who are on voluntary income management in the Northern Territory appear ‘to be motivated primarily by the perception that being on income management makes their life easier’, and yet there is ‘scant evidence to suggest that being on Voluntary Income Management has any significant impact on outcomes.’[[61]](#footnote-61) There have also been issues with voluntary income management in other jurisdictions where it has been introduced.

The 2014 government commissioned university based research detailed mixed outcomes regarding the voluntary income management scheme operating in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands. Communities in the APY Lands had requested voluntary income management as a means of addressing a range of concerns, including humbugging.[[62]](#footnote-62) The 2014 APY Lands report noted that ‘[t]he majority of community members and other stakeholders who participated in this study were positive about income management being introduced into the APY Lands.’[[63]](#footnote-63) However, the report states that ‘[w]ith less cash available, some of the ‘humbugging’ has reportedly been transferred from humbugging for money to humbugging for food.’[[64]](#footnote-64) Although the data in this report is presented as tentative,[[65]](#footnote-65) with further research required, it noted that ‘people on income management appear to be more likely to run out of money than those not on income management.’[[66]](#footnote-66) This issue of those on voluntary income management being more likely to ‘run out of money’ than those not subject to income management was also raised in the government commissioned Deloitte May 2014 report on place based income management.[[67]](#footnote-67) This raises questions about the efficacy of voluntary income management.

*SEAM*

The Parliamentary Joint Committee on Human Rights (PJCHR) concluded in 2013 that SEAM constituted ‘a limitation on the enjoyment of the right to social security.’[[68]](#footnote-68) As such, ‘the burden lies on the government to justify that such limitations are permissible, namely that they are rational, reasonable and proportionate means of pursuing a legitimate objective.’[[69]](#footnote-69) To date, evaluations of SEAM are not reassuring. Although initially there was evidence of ‘some small improvements in school attendance levels, these often proved temporary.’[[70]](#footnote-70) There are a range of complex factors affecting school attendance in the Northern Territory, including racial discrimination in schools and lack of public transportation,[[71]](#footnote-71) and these are not dealt with via SEAM.

The recent Audit of SEAM released in 2014 revealed that in 2013, 254 welfare recipients had their welfare payments suspended due to the enrolment aspect of SEAM, and 60 under the attendance requirement.[[72]](#footnote-72) Although parents who have their income suspended can later receive backpay if they comply with SEAM,[[73]](#footnote-73) the period of the suspension imposes severe economic hardship on families throughout its duration. As I state in a recent publication, many of those affected seem to lack understanding about SEAM:

The North Australian Aboriginal Justice Agency has been contacted by Indigenous people whose payments have been ‘suspended under SEAM’ who ‘do not understand why their payment has been suspended, or what they need to do to have their payment restored.’ It perpetuates a grave injustice to suspend the income of remote living Aboriginal welfare recipients who have not, due to English literacy issues, understood the reason for the suspension of their income under SEAM.

I submit that income suspension is a harsh measure which is unjustifiable as a means of seeking to promote the right to education. There are other ways in which the government could promote educational objectives which do not result in impoverishment for Indigenous families. One example is the ‘learning through country’ approach.[[74]](#footnote-74) SEAM should be repealed and less punitive alternatives supported.

**The right to be free from racial discrimination**

Australia has international human rights obligations to eliminate racial discrimination under Article 2 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD).[[75]](#footnote-75) Article 1 of the ICERDrefers to measures as racially discriminatory if they have ‘the purpose or effect’ of restricting the enjoyment of human rights.

*Income management*

There has long been critique over the racially discriminatory nature of income management as it affects Indigenous peoples.[[76]](#footnote-76) The discrimination in the 2007 income management scheme was blatant, as it involved suspension of the *Racial Discrimination Act 1975* (Cth) under sections 4(3) and 6(3) of the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth). Yet there are ongoing concerns about racial discrimination in terms of the disproportionate effect that income management continues to have on Indigenous peoples.[[77]](#footnote-77)

Recent data shows that Indigenous peoples are still overwhelming overrepresented in the income management scheme, and the vast majority are subject to compulsory income management rather than voluntary income management. The 2014 Northern Territory report by Bray et al states that as of ‘December 2013 18,300 people were income managed.’[[78]](#footnote-78) They note that ‘90.2 per cent of those being income managed are Indigenous.’[[79]](#footnote-79) Close to 80 per cent of those on income management in the NT are subject to compulsory forms of income management as ‘disengaged youth’, ‘long-term’ or ‘vulnerable’ welfare recipients, or under child protection income management. It is also well documented that Indigenous welfare recipients face a range of barriers in obtaining exemptions from income management.[[80]](#footnote-80)

The 2013 PJCHR report raised concerns about ongoing racial discrimination in the income management scheme due to its disproportionate impact on Indigenous welfare recipients. 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.[[81]](#footnote-81)

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.[[82]](#footnote-82)

I submit that that the government still has not clearly demonstrated that income management meets these criteria. The government evaluations of income management to date show mixed results at best,[[83]](#footnote-83) and matters of extreme concern at worst.[[84]](#footnote-84)

Although a key reason why income management was originally introduced was to address demand sharing or humbugging, as Bray and others pointed out in 2012, ‘the reduction in cash in communities has reduced financial harassment for many, but has in some cases increased harassment for others.’[[85]](#footnote-85) They observed that people can still ‘“humbug” for the BasicsCard.’[[86]](#footnote-86) As mentioned previously, the persistence of demand sharing was also confirmed in the September 2014 APY Lands report.

Another matter to consider is that there are unique cultural issues that can arise for Indigenous welfare recipients’ subject to compulsory income management. The history of colonisation, which has involved micromanaging the finances of Indigenous peoples, means that these intrusive forms of governance can trigger trauma for Indigenous peoples,[[87]](#footnote-87) who, unlike other Australian welfare recipients have a history of being given rations instead of cash and having their incomes controlled (at times fraudulently) by third parties. Compulsory income management also has implications for Indigenous forms of resource distribution based on kinship networks, and can affect whether Indigenous welfare recipients can obtain an exemption from compulsory income management.[[88]](#footnote-88) This can have an impact upon Indigenous cultural values regarding reciprocity, because these values have wrongly been seen as ‘financial exploitation’ by numerous Centrelink decision makers when assessing exemption requests made by Indigenous welfare recipients.[[89]](#footnote-89) I analyse this issue in Appendix B. I also note that reciprocal sharing of resources which is mutually beneficial for Indigenous welfare recipients is to be distinguished from humbugging.

Finally, it is important to examine who bears the cost of racial discrimination embedded in the income management scheme. The Australian Psychological Society has observed that ‘[t]here is compelling evidence of a link between ethnic and race-based discrimination and poor mental health and wellbeing.’[[90]](#footnote-90) They also note that there is ‘plenty of evidence to indicate that racism has a detrimental impact in physical health.’[[91]](#footnote-91) The government states that it is concerned about poor health disparity experienced by Indigenous Australians,[[92]](#footnote-92) and yet it persists with law and policy which are known to have a racially discriminatory impact on Indigenous peoples. This has to change.

*SEAM*

The government states that SEAM is an educational measure and not a race based measure.[[93]](#footnote-93) However, this does not mean that it is non-discriminatory. As the PJCHR stated:

Even though the measures are not expressly based on race, they still appear to apply overwhelmingly to … Aboriginal communities. Accordingly … this means that they will potentially fall within the definition of racial discrimination in article 1 of the ICERD which refers to measures as racially discriminatory because 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.[[94]](#footnote-94)

As mentioned above, SEAM is not a proportionate measure for addressing disparate educational outcomes for Indigenous peoples. There is no compelling evidence that impoverishing families through income suspension improves educational outcomes for the children of these families.[[95]](#footnote-95) Indeed, as Jon Altman wryly observes, ‘kids, even in remote Indigenous Australia, do not live by school attendance alone, they also need food.’[[96]](#footnote-96)

**The right to procedural fairness**

*Income management*

Income management has resulted in numerous welfare recipients experiencing a lack of procedural fairness in the form of lack of information provided for administrative decisions, inaccurate information given to welfare recipients about the exemption process, and decisions not based upon evidence.[[97]](#footnote-97) This is discussed in Appendix B, so I will not elaborate in detail on those arguments here. This article draws upon the 2012 Commonwealth Ombudsman *Review of Centrelink Income Management Decisions in the Northern Territory: Financial Vulnerability Exemption and Vulnerable Welfare Payment Recipient Decisions*.[[98]](#footnote-98)

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.[[99]](#footnote-99) 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.[[100]](#footnote-100) 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.

*SEAM*

SEAM continues a disturbing trend of giving unaccountable bureaucrats the power to make life altering determinations about the right to social security.[[101]](#footnote-101) The PJCHR drew attention to several concerns about SEAM, including ‘the possibility that the payment of benefits could be suspended for relatively trivial failures and the decision to suspend a payment could in effect be delegated to a truancy officer.’[[102]](#footnote-102)

**Conclusion**

The welfare state had previously been regarded by many as compensation ‘for the most flagrant inadequacies of the logic of the market’.[[103]](#footnote-103) However, the punitive welfare reforms now seen in Australia inappropriately apply the logic of the market to the most socio-economically disadvantaged of Australia’s citizens. Welfare recipients are being victimised by the economic Darwinism characteristic of neoliberalism.[[104]](#footnote-104) Yet the purpose of the welfare system is to provide income support to those in need in order to ensure a dignified means of survival—not to serve the dictates of the market. The creep of neoliberal benchmarks into the current welfare system and the government’s adoption of this language[[105]](#footnote-105) reveal a welfare system that has lost sight of its central purpose—the relief of human suffering.

The welfare reforms examined in this submission demonstrate that ‘the risk of having one’s rights violated is not universal.’[[106]](#footnote-106) The poor are more likely to experience violation of traditional rights and freedoms and they are disadvantaged when it comes to seeking effective remedies for violation of their rights. New paternalists fail to acknowledge 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.’[[107]](#footnote-107) This means that those who have historically been most marginalised by society will be disproportionally affected by punitive welfare reforms.

Although the stated intention of the government is that income management and SEAM are to be beneficial, there are significant freedoms overtured for those subject to these measures. These are costly burdens for those affected by these measures, and as Erich Fromm states, ‘freedom is the fundamental condition for any growth.’[[108]](#footnote-108) For the reasons elaborated above, I submit that the suite of regressive welfare measures should be repealed. These welfare reforms show that Australia is currently governing poverty with impoverished governance.

Unfortunately, further punitive welfare measures are currently being considered by the Federal Government. After the release of the 2014 Northern Territory income management report, then Minister for Social Services, Kevin Andrews, claimed that income management had not worked in the Northern Territory because ‘income management at 50% is too low to achieve the positive social outcomes that income management can bring’.[[109]](#footnote-109) Instead, he asserted that a higher percentage of income subject to income management would lead to better outcomes—a view with no evidence to substantiate it. However, this view is in accordance with the recommendation made by the 2014 Forrest Review for a ‘Healthy Welfare Card’, which aims to implement ‘a cashless welfare card system’ with 100 per cent income management.[[110]](#footnote-110) As I stated in my submission to the Forrest Review, some of the implications of welfare recipients not having cash to pay for goods and services are as follows:

* They would be unable to purchase many second-hand goods, which would unjustly force those with the lowest income to purchase new goods at higher prices. For example, purchase of second-hand clothing at markets for cash, purchase of second-hand motor vehicles from private sellers for cash, and purchase of second-hand textbooks for students for cash from private sellers would all be excluded.
* Online purchases, which often allow goods to be purchased at more competitive prices, would be curtailed and in some instances prohibited altogether – which would arguably foster unlawful anti-competitive conduct. Restrictions on online purchases could also preclude welfare recipients from obtaining necessary medicinal treatment, for example, Endovan for treating endometriosis, which can only be purchased from the United States.
* Some service providers, such as gardening services for example, are often paid in cash, and welfare recipients (especially those with physical disability issues) could be affected by more limited service provision in this area if there was a cashless welfare system.
* It would negatively impact upon welfare recipients who live in share house accommodation – as current arrangements frequently involve subtenants paying a proportion of the rent in cash to the head tenant who then has responsibility for paying rent to the landlord/real estate agent. Share house accommodation is necessary in Australia due to the lack of affordable housing for those on low incomes, and if such arrangements were impeded by the ‘Healthy Welfare Card’ one unintended consequence could be a significant increase in homelessness.
* Welfare recipients who are parents could not pay a babysitter in cash to have a few hours respite on occasion, which is arguably something that all parents need.[[111]](#footnote-111)

The recommendation 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. Cashless welfare transfers lead to increased social stratification, and can have a significant impact on the social interactions of welfare recipients in society. 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.’[[112]](#footnote-112)

However, on Saturday 14 February 2015 it was reported that the government is looking into implementation of the Healthy Welfare Card,[[113]](#footnote-113) delivering a message of ‘tough love’ for the poor on Valentine’s Day. These reforms will demonise 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.’[[114]](#footnote-114) 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,

cid:image001.png@01CF647E.606C7050

Dr Shelley Bielefeld

School of Law

University of Western Sydney

**Appendices**

**Appendix A**

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.

**Appendix B**

Shelley Bielefeld, ‘Compulsory Income Management – Exploring Counter Narratives amidst Colonial Constructions of Vulnerability’ (2014) 36(4) *Sydney Law Review* 695-726.

1. Under the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth). [↑](#footnote-ref-1)
2. Commonwealth, *Parliamentary Debates*, House of Representatives, 7 August 2007, 6 (Malcolm Brough). [↑](#footnote-ref-2)
3. Commonwealth, *Parliamentary Debates*, House of Representatives, 25 November 2009, 12786 (Jennifer Macklin); Commonwealth, *Parliamentary Debates*, House of Representatives, 23 November 2011, 13540 (Jennifer Macklin); Explanatory Memorandum, Social Security Legislation Amendment Bill 2011 (Cth) 2. [↑](#footnote-ref-3)
4. J W Carter, *Cases and Materials on Contract Law in Australia* (LexisNexis Butterworths, 6th ed, 2012) 6-7. [↑](#footnote-ref-4)
5. *Printing and Numerical Registering Co v Sampson* (1875) LR 19 Eq 462, 465. [↑](#footnote-ref-5)
6. 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. [↑](#footnote-ref-6)
7. Shelley Bielefeld, ‘Income Management and Indigenous Peoples – Nudged into a *Stronger Future*?’ (2014) 23(2) *Griffith Law Review* 285, 299. [↑](#footnote-ref-7)
8. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) 91. [↑](#footnote-ref-8)
9. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: The Final Report* (Social Policy Research Centre UNSW, September 2014) 137. [↑](#footnote-ref-9)
10. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) 92; J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: The Final Report* (Social Policy Research Centre UNSW, September 2014) 137, 198. [↑](#footnote-ref-10)
11. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: The Final Report* (Social Policy Research Centre UNSW, September 2014) 136. [↑](#footnote-ref-11)
12. Such as misrepresentation: *Derry v Peek* (1889) 14 App Cas 337; unconscionability: *Commercial Bank of Australia v Amadio* (1983) 151 CLR 447; undue influence: *Johnson v Buttress* (1936) 56 CLR 113; or duress: *Crescendo Management Pty Ltd v Westpac Banking Corp* (1988) 19 NSWLR 40. [↑](#footnote-ref-12)
13. At common law, the concept of necessaries has been significant in determining cases of this type: *Nash v Inman* [1908] 2 KB 1; G*ibbons v Wright* (1954) 91 CLR 423. Legislation regarding minors varies by jurisdiction, under s 19 of the *Minors (Property and Contracts) Act 1970* (NSW) the court considers whether the contract was for the benefit of the minor. [↑](#footnote-ref-13)
14. *Biotechnology Australia Pty Ltd v Pace* (1988) 15 NSWLR 130, 133. [↑](#footnote-ref-14)
15. Matthew Thomas and Luke Buckmaster, ‘Paternalism in social policy –when is it justifiable?’ (Research Paper No. 8, Parliamentary Library, Parliament of Australia, 2010) 1. [↑](#footnote-ref-15)
16. 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-16)
17. Lawrence Mead, ‘The Rise of Paternalism’ in Lawrence Mead (ed), *The New Paternalism: Supervisory Approaches to Poverty* (Brookings Institution Press, 1997) 21. [↑](#footnote-ref-17)
18. 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-18)
19. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) 92; J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: The Final Report* (Social Policy Research Centre UNSW, September 2014) 7. [↑](#footnote-ref-19)
20. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) 185. [↑](#footnote-ref-20)
21. Based upon 50% of the medium income with housing costs deducted beforehand, Australian Council of Social Services, Poverty in Australia 2014 (2014) 8 <http://www.acoss.org.au/images/uploads/ACOSS\_Poverty\_in\_Australia\_2014.pdf>. [↑](#footnote-ref-21)
22. Australian Council of Social Services, Poverty in Australia 2014 (2014) 10 <http://www.acoss.org.au/images/uploads/ACOSS\_Poverty\_in\_Australia\_2014.pdf>. [↑](#footnote-ref-22)
23. Australian Council of Social Services, Poverty in Australia 2014 (2014) 8 <http://www.acoss.org.au/images/uploads/ACOSS\_Poverty\_in\_Australia\_2014.pdf>. [↑](#footnote-ref-23)
24. Australian National Audit Office, *Administration of New Income Management in the Northern Territory* (Audit Report No. 19, 2012–13) 17. [↑](#footnote-ref-24)
25. Luke Buckmaster, Carol Ey and Michael Klapdor, ‘Income Management: an Overview’ (Background Note, Parliamentary Library, Parliament of Australia, 2012) 3, 34. [↑](#footnote-ref-25)
26. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: The Final Report* (Social Policy Research Centre UNSW, September 2014) xxi, 306. [↑](#footnote-ref-26)
27. 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-27)
28. Shelley Bielefeld, ‘Compulsory Income Management – Exploring Counter Narratives amidst Colonial Constructions of Vulnerability’ (2014) 36(4) *Sydney Law Review* 695, 724. [↑](#footnote-ref-28)
29. Australian Psychological Society, Submission to the Human Rights Policy Branch of the Attorney-General's Department, *Proposal to Amend the Racial Discrimination Act 1975*, April 2014, 6. [↑](#footnote-ref-29)
30. Joel Anderson and Axel Honneth, ‘Autonomy, Vulnerability, Recognition, and Justice’ in John Christman and Joel Anderson (eds), *Autonomy and the Challenges of Liberalism: New Essays* (Cambridge University Press, 2005) 127, 127. [↑](#footnote-ref-30)
31. 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) 25; Equality Rights Alliance, Women’s Experience of Income Management in the Northern Territory (2011), 19 <http://www.equalityrightsalliance.org.au/projects/womens-experience-incomemanagement-

    northern-territory>; J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) 94; J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: The Final Report* (Social Policy Research Centre UNSW, September 2014) 113, 199. [↑](#footnote-ref-31)
32. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: The Final Report* (Social Policy Research Centre UNSW, September 2014) 199. [↑](#footnote-ref-32)
33. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: The Final Report* (Social Policy Research Centre UNSW, September 2014) 199. [↑](#footnote-ref-33)
34. 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-34)
35. Opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976). [↑](#footnote-ref-35)
36. Article 12(3) of the ICCPR; Australian Government, ‘Right to freedom of movement’, Attorney-General’s Department <http://www.ag.gov.au/RightsAndProtections/HumanRights/PublicSectorGuidanceSheets/Pages/Righttofreedomofmovement.aspx#5can>. [↑](#footnote-ref-36)
37. As does the APY Lands report: Ilan Katz and Shona Bates, *Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands* (Social Policy Research Centre UNSW, September 2014) 18. [↑](#footnote-ref-37)
38. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: The Final Report* (Social Policy Research Centre UNSW, September 2014) 137. [↑](#footnote-ref-38)
39. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: The Final Report* (Social Policy Research Centre UNSW, September 2014) 137. [↑](#footnote-ref-39)
40. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: The Final Report* (Social Policy Research Centre UNSW, September 2014) 137. [↑](#footnote-ref-40)
41. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: The Final Report* (Social Policy Research Centre UNSW, September 2014) 137. [↑](#footnote-ref-41)
42. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: The Final Report* (Social Policy Research Centre UNSW, September 2014) 137. [↑](#footnote-ref-42)
43. This first appeared in published form in Therese Ritchie, ‘All dressed up and nowhere to go’ (2012) 118 *Arena Magazine* 30, 30-31. [↑](#footnote-ref-43)
44. International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) (ICESCR); *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) (‘ICERD’). [↑](#footnote-ref-44)
45. Australian Government, ‘Right to Social Security’, Attorney-General’s Department <http://www.ag.gov.au/RightsAndProtections/HumanRights/PublicSectorGuidanceSheets/Pages/Righttosocialsecurity.aspx>. [↑](#footnote-ref-45)
46. Australian Government, ‘Right to Social Security’, Attorney-General’s Department <http://www.ag.gov.au/RightsAndProtections/HumanRights/PublicSectorGuidanceSheets/Pages/Righttosocialsecurity.aspx>. [↑](#footnote-ref-46)
47. Paul Farmer, *Pathologies of Power – Health, Human Rights, and the New War on the Poor* (University of California Press, 2005) 244-245. [↑](#footnote-ref-47)
48. Parliamentary Joint Committee on Human Rights, 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) 60. [↑](#footnote-ref-48)
49. Parliamentary Joint Committee on Human Rights, 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) 52. [↑](#footnote-ref-49)
50. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) 267; Equality Rights Alliance, *Women’s Experience of Income Management in the Northern Territory* (2011), 40 <http://www.equalityrightsalliance.org.au/projects/womens-experience-income-management-northern-territory>; Australian Indigenous Doctors’ Association (AIDA) and Centre for Health Equity Training, *Health Impact Assessment of the Northern Territory Emergency Response* (Research and Evaluation, UNSW, Australian Indigenous Doctors’ Association, 2010) 23-25. [↑](#footnote-ref-50)
51. Department of Families, Housing, Community Services and Indigenous Affairs, *Cape York Welfare Reform Evaluation* (2012) 207. [↑](#footnote-ref-51)
52. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: The Final Report* (Social Policy Research Centre UNSW, September 2014) xxi. [↑](#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) 94; Bev Manton, ‘Perpetuating Neglect’, *Koori Mail*, 11 August 2010, Edition 482, 25. [↑](#footnote-ref-53)
54. Ilan Katz and Shona Bates, *Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands* (Social Policy Research Centre UNSW, September 2014) 19-20. [↑](#footnote-ref-54)
55. Australian Law Reform Commission (‘ALRC’), *Family Violence and Commonwealth Laws —*

    *Improving Legal Frameworks*, Report No 117 (2011) 272. [↑](#footnote-ref-55)
56. Made in two $250 payments for each six months: Australian National Audit Office, *Administration*

    *of New Income Management in the Northern Territory* (Audit Report No 19, 2012–13) 14. [↑](#footnote-ref-56)
57. Shelley Bielefeld, ‘Income Management and Indigenous Peoples – Nudged into a *Stronger Future*?’ (2014) 23(2) *Griffith Law Review* 285, 302. [↑](#footnote-ref-57)
58. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: The Final Report* (Social Policy Research Centre UNSW, September 2014) 246-248. [↑](#footnote-ref-58)
59. Australian Council of Social Services, Poverty in Australia 2014 (2014), 8, 10 <http://www.acoss.org.au/images/uploads/ACOSS\_Poverty\_in\_Australia\_2014.pdf>. [↑](#footnote-ref-59)
60. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: The Final Report* (Social Policy Research Centre UNSW, September 2014) 238. [↑](#footnote-ref-60)
61. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: The Final Report* (Social Policy Research Centre UNSW, September 2014) 261. [↑](#footnote-ref-61)
62. Ilan Katz and Shona Bates, *Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands* (Social Policy Research Centre UNSW, September 2014) 1. [↑](#footnote-ref-62)
63. Ilan Katz and Shona Bates, *Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands* (Social Policy Research Centre UNSW, September 2014) 1. [↑](#footnote-ref-63)
64. Ilan Katz and Shona Bates, *Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands* (Social Policy Research Centre UNSW, September 2014) 19. [↑](#footnote-ref-64)
65. Ilan Katz and Shona Bates, *Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands* (Social Policy Research Centre UNSW, September 2014) 2. [↑](#footnote-ref-65)
66. Ilan Katz and Shona Bates, *Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands* (Social Policy Research Centre UNSW, September 2014) 22. [↑](#footnote-ref-66)
67. Deloitte Access Economics, *Place Based Income Management – Baseline Evaluation Report* (May 2014) 68. [↑](#footnote-ref-67)
68. 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) 67. [↑](#footnote-ref-68)
69. 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) 67. [↑](#footnote-ref-69)
70. Australian National Audit Office, *The Improving School Enrolment and Attendance through Welfare Reform Measure* (Audit Report No. 51, 2013–14) 19. [↑](#footnote-ref-70)
71. Shelley Bielefeld, ‘Conditional Income Support under SEAM: Human Rights Compatibility Issues’ (2013) 8(9) *Indigenous Law Bulletin* 17, 19. [↑](#footnote-ref-71)
72. Australian National Audit Office, *The Improving School Enrolment and Attendance through Welfare Reform Measure* (Audit Report No. 51, 2013–14) 18, 42. [↑](#footnote-ref-72)
73. Australian National Audit Office (ANAO), *The Improving School Enrolment and Attendance through Welfare Reform Measure* (Audit Report No. 51, 2013–14) 46. [↑](#footnote-ref-73)
74. Bill Fogarty, ‘Country as Classroom’ in Jon Altman and Sean Kerins (eds), *People on Country – Vital Landscapes – Indigenous Futures* (Federation Press, 2012) 83, 87. [↑](#footnote-ref-74)
75. *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). (ICERD). [↑](#footnote-ref-75)
76. Barbara Shaw and Valerie Martin, ‘Talking up the Territory’ (Speech delivered at Gnibi College of

    Indigenous Australian Peoples, Southern Cross University, 19 March 2009); Paddy Gibson, ‘Return to the Ration Days — The NT Intervention: Grass-roots Experience and Resistance’ (Jumbunna Indigenous House of Learning, University of Technology, 2009) 11–13 <http://www.jumbunna.uts.edu.au/pdfs/JIHLBP11.pdf>; Jon Altman, ‘Arguing the Intervention’ (2013) 14 *Journal of Indigenous Policy* 1, 94-97; 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-76)
77. Senate Estimates, Parliament of Australia, House of Representatives, *Income Management*

    *Summary — 27 December 2013* (February 2014) 1. [↑](#footnote-ref-77)
78. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: The Final Report* (Social Policy Research Centre UNSW, September 2014) xx. [↑](#footnote-ref-78)
79. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: The Final Report* (Social Policy Research Centre UNSW, September 2014) xx. [↑](#footnote-ref-79)
80. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) 257; Commonwealth Ombudsman, *Review of Centrelink Income Management Decisions in the Northern Territory: Financial Vulnerability Exemption and Vulnerable Welfare Payment Recipient Decisions* (June 2012) 30; National Welfare Rights Network, *Submission CFV 150* in Australian Law Reform Commission (ALRC), *Family Violence and Commonwealth Laws – Improving Legal Frameworks*, Report No 117 (2011) 266. [↑](#footnote-ref-80)
81. 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. [↑](#footnote-ref-81)
82. 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-82)
83. Ilan Katz and Shona Bates, *Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands* (Social Policy Research Centre UNSW, September 2014) 1, 19, 30; J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) xxiii, 7, 87, 94-95. [↑](#footnote-ref-83)
84. Shelley Bielefeld, ‘Compulsory Income Management – Exploring Counter Narratives amidst Colonial Constructions of Vulnerability’ (2014) 36(4) *Sydney Law Review* 695-726; Shelley Bielefeld, ‘Income Management and Indigenous Peoples – Nudged into a *Stronger Future*?’ (2014) 23(2) *Griffith Law Review* 285-317; 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-84)
85. J 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-85)
86. J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (Social Policy Research Centre UNSW, July 2012) 88. [↑](#footnote-ref-86)
87. Paddy Gibson, ‘Return to the Ration Days - The NT Intervention: grass-roots experience and resistance’, Jumbunna Indigenous House of Learning, University of Technology Sydney, June 2009, 11, 12, 18 <http://www.jumbunna.uts.edu.au/pdfs/JIHLBP11.pdf>. [↑](#footnote-ref-87)
88. 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-88)
89. 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-89)
90. Australian Psychological Society, Submission to the Human Rights Policy Branch of the Attorney-General's Department, *Proposal to Amend the Racial Discrimination Act 1975*, April 2014, 7. [↑](#footnote-ref-90)
91. Australian Psychological Society, Submission to the Human Rights Policy Branch of the Attorney-General's Department, *Proposal to Amend the Racial Discrimination Act 1975*, April 2014, 7. [↑](#footnote-ref-91)
92. Australian Government, *Closing the Gap Prime Minister’s Report 2015* (Commonwealth of Australia, 2015) 1, 29-30. [↑](#footnote-ref-92)
93. 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) 65. [↑](#footnote-ref-93)
94. 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) 65. [↑](#footnote-ref-94)
95. 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) 74. [↑](#footnote-ref-95)
96. Jon Altman, ‘Arguing the Intervention’ (2013) 14 *Journal of Indigenous Policy* 1, 117. [↑](#footnote-ref-96)
97. Shelley Bielefeld, ‘Compulsory Income Management – Exploring Counter Narratives amidst Colonial Constructions of Vulnerability’ (2014) 36(4) *Sydney Law Review* 695, 701-709. [↑](#footnote-ref-97)
98. Commonwealth Ombudsman, *Review of Centrelink Income Management Decisions in the Northern*

    *Territory: Financial Vulnerability Exemption and Vulnerable Welfare Payment Recipient Decisions* (Report No 4, 2012). [↑](#footnote-ref-98)
99. Commonwealth Ombudsman, *Ombudsman 2012–2013 Annual Report* (October 2013) 43-45. [↑](#footnote-ref-99)
100. Commonwealth Ombudsman, *Ombudsman 2012–2013 Annual Report* (October 2013) 44. [↑](#footnote-ref-100)
101. Guy Standing, *A Precariat Charter – From Denizens to Citizens* (Bloomsbury, 2014) 221-224. [↑](#footnote-ref-101)
102. 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) 73. [↑](#footnote-ref-102)
103. Pierre Bourdieu, *Acts of Resistance – Against the Tyranny of the Market* (Richard Nice trans, The New Press, 1998) 3. [↑](#footnote-ref-103)
104. Loic Wacquant, *Punishing the Poor – The Neoliberal Government of Social Insecurity* (Duke University Press, 2009) 6, 20. [↑](#footnote-ref-104)
105. 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, 536-537. [↑](#footnote-ref-105)
106. Paul Farmer, *Pathologies of Power – Health, Human Rights, and the New War on the Poor* (University of California Press, 2005) 231. [↑](#footnote-ref-106)
107. Guy Standing, *Beyond the New Paternalism – Basic Security as Equality* (Verso, 2001) 137. [↑](#footnote-ref-107)
108. Erich Fromm, *The Fear of Freedom* (Routledge Classics, 2001) 247. [↑](#footnote-ref-108)
109. Helen Davidson, ‘Kevin Andrews defies report to argue for more control of welfare recipients’ cash, *The Guardian*, 18 December 2014, <http://www.theguardian.com/australia-news/2014/dec/18/kevin-andrews-defies-report-argue-more-control-welfare-recipients-cash>. [↑](#footnote-ref-109)
110. For all except ‘age and veterans’ pensions: Commonwealth of Australia, *The Forrest Review* (2014) 100-108. [↑](#footnote-ref-110)
111. Shelley Bielefeld, Submission to the Indigenous Jobs and Training Review, *Forrest Review – Creating Parity*, 20 September 2014, 2. [↑](#footnote-ref-111)
112. 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-112)
113. Sarah Martin, ‘Scullion flags income control’, *The Weekend Australian*, 14 February 2015, p 2. [↑](#footnote-ref-113)
114. Guy Standing, *A Precariat Charter – From Denizens to Citizens* (Bloomsbury, 2014) 384-385. [↑](#footnote-ref-114)