



SUBMISSION TO THE PARLIAMMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

*Review of the Stronger Futures in the
Northern Territory Act 2012 and related
legislation*

7 NOVEMBER 2014

About NAAJA

The North Australian Aboriginal Justice Agency

The North Australian Aboriginal Justice Agency was formed in 2006. It brought together three existing Aboriginal Legal Services across the Top End to ensure the provision of quality legal services for Aboriginal Australians. NAAJA has grown to employ over 100 staff across the Northern Territory, with offices in Darwin, Katherine and Nhulunbuy and is the largest law firm in the Northern Territory.

NAAJA provides high quality, culturally inclusive criminal, civil (including family law, child protection, tenancy and social security law) advice and assistance, community legal education and throughcare prison support services. NAAJA attends community courts and holds regular advice clinics in remote communities across the Top End, from Groote Eylandt to Wadeye.

In 2008, the Commonwealth Attorney General's Department provided funding to NAAJA to establish the Welfare Rights Outreach Project to provide legal advice, legal assistance, capacity building, community legal education and advocacy services to Aboriginal people on social security law, focusing on matters arising out of the Northern Territory National Emergency Response legislation.

At present there are four solicitors who travel to remote communities across the Top End of the Northern Territory to provide legal advice and assistance to vulnerable clients around social security law, remote tenancy and consumer law. We lead reform on systemic issues in remote housing and social security in the Northern Territory, by providing high level input into how to resolve issues operationally and law and policy reform

In terms of social security law casework, we assist by:

- advising clients about their rights and responsibilities under social security law;
- assisting clients to appeal decisions of the Department of Human Services, particularly in relation to debts, income management and payment decisions;
- assisting clients to identify matters that can be appealed;
- restoring suspended payments;
- ensuring correct rate of payment;
- helping collect information to support claims;
- having debts waived in special circumstances;
- overturning decisions to reject claims or reduce or cancel payments; and
- overturning other incorrect Departmental decisions.

SCOPE OF SUBMISSION

Introduction

This submission is informed by the casework and experiences of NAAJA's welfare rights lawyers working in the area of social security law in the Top End of the Northern Territory. This submission is limited to Income Management (IM) and the School Enrolment and Attendance Measure (SEAM).

IM and SEAM are incompatible with rights to privacy, social security, an adequate standard of living and freedom of movement. IM and SEAM are also racially discriminatory measures, as they have the *effect* of impairing the "recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms" and they overwhelmingly and disproportionately impact on Aboriginal people in the NT.¹ For example, in 2012 there were approximately 48,000 people on Centrelink benefits in the Northern Territory.² In May 2014, there were, 20 003 were being income managed.³

The National Welfare Rights Network has analysed income management data for the Northern Territory and found:

*Six years into the intervention, and four years after the Racial Discrimination Act was restored, nine out of every ten people subject to the welfare quarantine are Indigenous income support recipients, yet they account for just 30 per cent of the Northern Territory population.*⁴

In relation to SEAM, the former Minister for FACHSIA admitted that the additional SEAM sites chosen in 2012 had significant Aboriginal populations.⁵ Women account for 61% of those on IM in the Northern Territory, bringing into question whether IM also indirectly discriminates on the basis of sex.

The Parliamentary Joint Committee on Human Rights' previous review of the Stronger Futures measures ('the Committee's 2013 report') stated that where fundamental human rights are restricted or limited, the government must demonstrate that the limitation pursues a legitimate objective, that there is a rational connection between the measure and the achievement of the objective and that the measure is proportionate to the objective and the least restrictive option.⁶ Any limitation must:

... be supported by evidence and a monitoring process which will assess the correctness of the assumption that the measure will contribute to achieving the goal. The justification for such limitations should be accompanied by a reasoned (and evidence-supported) explanation of why a less restrictive alternative would not be available.

¹ Article 1 of the International Convention on the Elimination of Racial Discrimination ('ICERD'); *Racial Discrimination Act 1975* (Cth), section 9. The concept of *de facto* racial discrimination is well recognised as extending the prohibition on racial discrimination to laws that overwhelmingly or disproportionately affects members of a particular ethnic or racial group in *effect*, regardless of whether the law specifies that group as the target.

² Rob Bray, Matthew Gray, Kelly Hand, Bruce Bradbury, Christine Eastman and Ilan Katz (Social Policy Research Centre, Australian National University, University of NSW, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (July 2012), at p 42.

³ 2014-2015 Budget Estimates, Community Affairs, Document 1, 05/06/2014, 11.15am, Secretary Mr Finn Pratt, at p 1.

⁴ National Welfare Rights Network Submission to the *Parliamentary Joint Committee on Human Rights Review of the Stronger Futures in the Northern Territory Act 2012 and related legislation* p 5.

⁵ Letter from the Hon Minister Macklin MP, Minister for Families, Community Services and Indigenous Affairs to the Chair of the Parliamentary Joint Committee on Human Rights, dated 27 Jun e2012, attachment *Assessment of Policy Objectives with Human Rights*, Social Security Legislation Amendment Bill 2011, p 7

⁶ Parliamentary Joint Committee on Human Rights, Examination of legislation in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011: Stronger Futures in the Northern Territory Act 2012 and related legislation*, Eleventh Report of 2013 (June 2013), p. 70

The committee notes that the government bears the onus of demonstrating that a restriction is justifiable... in many cases it will be necessary for government to provide empirical or other evidence to justify a conclusion that a limitation of a right is permissible.”⁷

As we detail below, IM and SEAM may have ostensibly legitimate and altruistic aims, however they are not, on the whole, achieving those aims and cannot therefore be considered justifiable limitations of the above rights or ‘special measures’.⁸

⁷ Ibid.

⁸ Section 8, RDA; Article 1(4) ICERD; UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 32 (2009); *Gerhardy v Brown* (1985) 159 CLR 70, 133, per Brennan J; *Maloney v R* [2013] HCA 28.

Background to Issues in NT

NAAJA provides legal assistance to some of the most vulnerable members of the Australian community. Aboriginal people in the Northern Territory:

- have high rates of disabilities⁹ and low access to disability support services;¹⁰
- are more likely to live in remote or very remote areas,¹¹ which is connected to other factors of disadvantage – poorer access to services, overcrowded housing, fewer employment opportunities and very high costs of living;¹²
- experience homelessness¹³ and overcrowding¹⁴ at a higher rate than the rest of Australia; one in four Aboriginal people in the NT are homeless;¹⁵
- have fewer employment opportunities¹⁶ and have significant barriers to employment, such as lack of literacy and budgeting skills, discrimination in the labour market, and deficits in skills/training matched to job demand in many remote communities;¹⁷
- are unable to access affordable housing, even when work is available;¹⁸
- are income managed at a much higher rate than non- Indigenous people;¹⁹
- have low median incomes;²⁰
- have lower life expectancy;²¹
- are more likely to not be in the labour force;²²
- have a low rates of educational attainment;²³
- are more likely to have a financial penalty applied for participation failures;²⁴
- live in communities where there are significant structural barriers to development;²⁵ and
- have a high degree of language diversity, which affects access to services.²⁶

⁹ Australian Institute for Health and Welfare. (2013a). *Australia's welfare 2013. Australia's welfare no. 11. Cat. no. AUS 174*. Canberra: Australian Institute of Health and Welfare. Available: <http://www.aihw.gov.au/publication-detail/?id=60129543825>, pp. 196, 206-207

¹⁰ Productivity Commission (2011) *Disability care and support: draft report [vol 1 & 2]*. Canberra: Productivity Commission (section 9).

¹¹ <http://www.abs.gov.au/ausstats/abs@.nsf/Previousproducts/1301.0Feature%20Article22004?opendocument&tabname=Summary&prodno=1301.0&issue=2004&num=&view=>

¹² <http://www.abs.gov.au/ausstats/abs@.nsf/Previousproducts/1301.0Feature%20Article22004?opendocument&tabname=Summary&prodno=1301.0&issue=2004&num=&view=>

¹³ AIHW *Homelessness among Indigenous Australians Report 2014*, table 2.1

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ See APO NT *Submission to the Senate Standing Committee On Community Affairs Social Services and Other Legislation Amendment (2014 Budget Measures No.1) Bill 2014 Social Services and Other Legislation Amendment (2014 Budget Measures No.2) Bill 2014*, 2014, p 22.

¹⁷ Senate Standing Committee on Education, Employment and Workplace Relations, *Questions on Notice*, Additional Budget Estimates, 2011-12, DEEWR Question No. EW1045_12.

¹⁸ Anglicare Australia *Rental Affordability Snapshot* April 2014, p 37.

¹⁹ 2014-2015 Budget Estimates, Community Affairs, Document 1, 05/06/2014, 11.15am, Secretary Mr Finn Pratt, at p 1.

²⁰ Office of the Northern Territory Coordinator-General, *Office of the Northern Territory Coordinator-General for Remote Services Report Jun 2011 to August 2012*, p 21

²¹ 2010-2012 data from COAG Reform Council *NT jurisdictional snapshot*, see Appendix 7.3

²² Australian Institute of Health and Welfare, *Life expectancy* [<http://www.aihw.gov.au/rural-health-life-expectancy/>] accessed on 6 August 2014

²³ Havnen, Olga, *Office of the Northern Territory Coordinator-General for Remote Services Report, June 2011 to August 2012 (2012)*, p 176

²⁴ COAG Reform Council 2012-13. *Indigenous Reform 2012-2013: Five years of performance*, (2013) pp. 65-68

²⁵ Senate Standing Committee on Education and Employment, *Questions on Notice, Additional Estimates 2012-13, Department of Employment Question No. EM0186_14*.

²⁶ Central Land Council, *Land Reform in the Northern Territory: evidence not ideology*, October 2013, p 3.

²⁷ <http://www.ais.nt.gov.au>

Stronger Futures: Inadequate Consultation

NAAJA has raised its serious concerns with the Stronger Futures consultation process with the government.

A joint letter with CAALAS, NT Legal Aid Commission and the Darwin Community Legal Service to the then Minister for Human Services, the Honorable Jenny Macklin, dated 5 August 2011 (**attached**) raised inadequacies of the consultation process, including:

- short notice being given to residents in communities prior to the consultations;
- consultation material was provide at community meetings and not before, limiting peoples' ability to properly consider and discuss the topics they were being consulted on;
- the full text of the discussion paper was not available at the consultations- a simple pictorial based discussion paper was handed out at the beginning of the consultations, with no time being given for community members to review it prior to the consultations beginning;
- The 1-3 hour length of the consultations did not allow for the proper and ventilation of serious and systemic issues of poverty and disadvantage and the structural causes of this;
- inconsistent use of interpreters during consultations, or no interpreter used at all, and inadequate definition of bureaucratic and legalistic terms;
- concerns with the quality of the discussion paper provided to community members and a lack of focus on significant issues such as child abuse and the prevention of child abuse, and compulsory income management;
- income management was not a topic of discussion at the consultations as it was said to be 'non-discriminatory' and not a part of Stronger Futures; and
- a lack of communication to participants as to whether the consultations would be relied on to support Government claims that existing programs were 'special measures.

Similar concerns were also raised with the government regarding the *Future Directions* consultations in August 2009 (**attached**), which do not appear to have been taken on board.

It is important to recall these concerns, as it is 'generally accepted that any special measure should so far as possible be developed in consultation with the group whose members are to be the beneficiaries' of the proposed measure.²⁷ Meaningful consultation is also an element of the right to self-determination²⁸ and forms part of requirement detailed in the *Declaration on the Rights of Indigenous Peoples* to 'consult and cooperate in good faith with the indigenous peoples concerned ...in order to obtain their free prior and informed consent before adopting and implementing legislative or administrative measures that may affect them'.²⁹

²⁷ UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 32 (2009), paras 16-18..

²⁸ Article 1, ICCPR

²⁹ Article 19, DRIP

INCOME MANAGEMENT

The impact of Income Management on human rights

Right to privacy

The Committee's 2013 Report found that IM impinged on the right to privacy. IM continues to impair this fundamental right.

An independent evaluation of Income Management commissioned by the previous Federal Government ('the 2012 Evaluation Report') found that participants commonly associated embarrassment and stigma with using the BasicsCard.³⁰ The BasicsCard can be seen to compromise a user's right to privacy and leads to unwarranted judgment of a person's circumstances. It announces to the public that 'this person is deficient'; 'this person cannot manage their basics', or 'this person is a bad mother'.³¹

NAAJA has lodged complaints on behalf of people discriminated against in shops because they are BasicsCard customers. We have witnessed customers being publicly humiliated by supermarket staff and noticed a marked difference in the treatment given to Aboriginal customers paying with a BasicsCard and the treatment of non-BasicsCard customers. The 2012 Evaluation Report observed that BasicsCard users reported:

- being repeatedly asked by staff if they have sufficient balance, and/or what their balance is.
- going to the supermarket can be a 'shame job', especially when they do not know the balance on the BasicsCard or have miscalculated the total of the shopping bill, and the transaction is denied.
- being questioned by shop assistants about the item they wish to purchase, such as whether the purchase of toys for children is 'appropriate'
- receiving inappropriate comments about choice of items. For example "*the check out chick would tell the customer, no, oh well you are on that card, you can't have that steak. You go and get the other steak, that cheaper one, you're wasting your money*".³²

Freedom of movement

The Committee did not previously consider whether IM restricted freedom of movement.³³ NAAJA submits that it does for the following reasons:

- A person on Income Management travelling out of the Northern Territory for any reason will be limited in the range of merchants from whom they can purchase goods using income managed funds.
- Interstate BasicsCard merchants are typically limited to major retailers and generally do not include second hand stores, smaller retailers, independent grocers, hotels or accommodation.
- At present, a person leaving the Northern Territory will have to contact Centrelink to arrange store cards or for one-off credit card payments to be made, (for example to accommodation providers), if they wish to rely on their non-BasicsCard Income

³⁰ Bray et al, p. 93.

³¹ Ibid, p. 94.

³² Ibid, p 94

³³ Article 12, *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171, art 12 (entered into force 23 March 1976).

Management funds while travelling. This can create difficulties for example when travelling with family members for urgent medical treatment.

- If a person is not able to contact Centrelink to arrange direct payments, they have to subsist on the 50% of their social security payment that is directed into their bank account, or rely on the charity of friends or family.
- The impact of this is to restrict freedom of movement across state and territory borders, which can significantly affect people's ability to meet cultural, familial and medical needs. In many cases it will lead to an increased reliance on wider family members for financial support.

The impairment of freedom of movement could be largely remedied if there was provision for a temporary suspension of IM when people travel out of the Northern Territory.

Right to Social Security³⁴

The International Covenant on Economic, Social and Cultural Rights (CESCR) requires that the provision of social security benefits must be consistent with rights to human dignity and non-discrimination. Social security should promote social inclusion rather than encourage stigma and social exclusion.³⁵

The Committee's 2013 Report found that IM involved "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 concluded that the restrictions imposed on the use of social security payments through the BasicsCard system represented a restriction of on the right to social security.

Barriers to accessing exemptions, appeals and information

NAAJA considers that IM continues to impair the right to social security. This is compounded by the significant difficulties faced by Aboriginal people, especially those in remote communities, in applying for an exemption to IM or appealing IM decisions.

For example, someone without dependent children has to be working 15 hours a week for six months, or engaged in fulltime study to obtain a 12 month exemption from IM. This is nearly impossible in remote communities because of limited access to employment and educational opportunities³⁶ and entrenched barriers to participation in the few jobs or fulltime study opportunities that arise (eg. low literacy and numeracy skills, poor health, inadequate housing and cultural and language differences).

The model of IM in the NT not a case management model that provides tailored support services.³⁷ This, together with the lack of employment and study opportunities, has contributed to the very low rate of people transitioned off income management and into work or study. Of the 20 003 people on income management in the Northern Territory as at 5 June 2014, there were 64 exemptions in place for regular paid work, 482 for full time students, 1721 for parenting requirements. The majority of exemptions granted have been to non-Indigenous people.³⁸

A further barrier is that a person seeking an exemption must complete the application process over the telephone.

³⁴ Article 9, ICESCR

³⁵ CESCR, General Comment No.19 The right to social security

³⁶ the *Pivot North* report highlights the substantial barriers to development that exist in the Northern Territory; Pivot North, *Inquiry into the Development of Northern Australia: Final Report* Sept 2014

<http://www.aph.gov.au/~media/02%20Parliamentary%20Business/24%20Committees/244%20Joint%20Committees/JSCNA/Final%20Report/Final.pdf> (accessed 25 September 2014)

³⁷ Dr L Buckmaster, 'Does Income Management Work' Parliamentary Library Briefing Book, 44th Parliament, Canberra

³⁸ 2014-2015 Budget Estimates, Community Affairs, Document 1, 05/06/2014, 11.15am, Secretary Mr Finn Pratt, at p 1.

NAAJA has raised its concerns with the exemption process (see **attached** letter to the Department of Human Services 1 October 2013) and that the process itself was contributing to the low rate of exemptions amongst Aboriginal people in the Northern Territory, particularly:

- The lack of accessibility of the exemption process, particularly for remote clients
- The lack of information about exemptions in remote communities
- The lack of clear information about Centrelink's decisions provided to remote Aboriginal customers in exemption rejection letters

We consider that the above factors mean that Aboriginal people, particularly those with language and literacy barriers are discouraged from applying for exemptions.

NAAJA's concerns have been echoed by the Auditor General, who stated:

*'There would be benefit in DHS investigating whether there are any unintended barriers which either discourage particular customer groups from applying for an exemption, or affect(sic) the likelihood of their application being successful, and taking any necessary remedial action.'*³⁹

NAAJA considers that limiting access to IM exemptions to the telephone application process creates a barrier that discourages Aboriginal people, and particularly Aboriginal people with limited English speaking skills from applying for exemptions and from being successful even if they do manage to apply. Whilst some people will prefer applying via telephone, there should be a face-to-face option.

The National Welfare Rights Network has examined IM appeal data obtained through Senate Estimates and found that Aboriginal people accounted for only one-third of those lodging appeals, despite making up 90.5% of those on IM in the NT.

The 2012 Evaluation Report noted that people whose income is managed in the NT are "often geographically remote or isolated and among the least empowered to pursue review rights or complaints mechanisms."⁴⁰

NAAJA has also raised concerns with the content of IM exemption letters with the Department of Human Services because a substantial portion of people on IM are not functionally literate in English and/or in written English.

DHS commissioned Colmar Brunton to undertake research on the intelligibility of its letters on income management in 2011. The report states:

*Letters are understood by some non Indigenous customers, however they are **ineffective as a tool to communicate with most Indigenous and DCALB targets**, especially in regional and remote communities. **For the majority of these customers the most that can be expected is that they will contact Centrelink to ask what the letter is about...**'*(emphasis added).⁴¹

The provision of letters that are incomprehensible to the majority of remote Aboriginal customers limits accessibility to, and ability to participate in, decisions that directly affect them in relation to social security.

³⁹ Australian National Audit Office, The Auditor General Performance Audit, *Administration of New Income Management in the Northern Territory*, Audit Report No. 19 2012-13 Performance Audit, p. 68.

⁴⁰ Bray, Op Cit, p. 245.

⁴¹ Colmar Brunton research: 22/08/2011 *Centrelink Income Management Testing_6 Report_v5* 7-7-11, p 6.

BasicsCard

NAAJA has long held concerns that the BasicsCard places limits on how a person can choose to spend their money (see **attached** Central Australian Aboriginal Legal Aid Service and NAAJA, *Welfare Rights Outreach Project Issues Paper*, June 2009).

These concerns are mirrored in the 2012 Evaluation Report, which detailed the following limitations on peoples' rights to choose how to spend their money:

- not all merchants accept the basics card – e.g. farmers markets, and other outlets that may sell fresh, cheap food; second hand clothing stores; local stores that offer discounts or a better deal than major retailer.
- people are restricted from certain activities important for community participation, for example the Katherine Show or the Darwin show the BasicsCard cannot be used to get into the gate or purchase food or rides.
- purchasing larger items can be difficult – it is difficult to save up money to purchase a larger item when income is divided across two accounts.
- the process for paying for goods or services from a non Basics Card merchant is convoluted and embarrassing – a person has to obtain their balance from Centrelink, contact the goods or services provider to obtain a quote, take the quote to Centrelink, Centrelink then approves the quote and makes a payment to the merchant via credit card or cheque.
- IM restricts someone's ability to eat out at certain restaurants; one Aboriginal woman who participated in the evaluation stated:

*'..if I want to take my kids out to dinner I have to get approval and then they send vouchers or a cheque to the place and that's embarrassing.'*⁴²

- people are limited from spending their money on other things such as travel.
- when the EFTPOS/BasicsCard system goes down in a particular outlet, those on Income Management are restricted from accessing other options.⁴³

Income managed customers continue to lack sufficient means to check the balance of their BasicsCard. Whilst the range of mechanisms for obtaining BasicsCard balances has expanded, there remain limitations to their universality and accessibility of these mechanisms:

- Permanent Centrelink offices are not widely distributed across the Northern Territory.
- Centrelink Remote Service Delivery teams generally visit communities on a six weekly basis.
- The majority of remote communities access Centrelink services via a Centrelink agent, which has limited functionality and is primarily designed to assist with completing claim forms and lodging application for payment forms.
- Internet access is not widespread due to limited internet connections and computers; language and literacy barriers; and other issues.

⁴² Bray et al *op cit* p. 93

⁴³ *Ibid*

- Balance readers are not widely distributed, can be often offline. Being located within stores, they are not available outside store opening hours, which can be erratic in some communities.
- Centrelink offices and the Indigenous Call Centre are closed on weekends and outside business hours.
- Home phones are relatively uncommon; mobile phone reception is only available in some communities (large portions of Central Australia, the Katherine region and communities in more remote locations do not have mobile phone coverage). There is a heavy reliance on public phones, which are usually present in low numbers in remote communities and may be absent at outstations.
- The 1800 number incurs a charge from non-Telstra mobile phones and thus imposes a cost on income-managed customers for accessing their balance.

NAAJA has been advised that Centrelink has entered into an agreement with Woolworths, Coles and a number of other retailers to allow the balance of the BasicsCard to be printed on the bottom of a customer's receipt, that is after the person has made their purchases. It is an opt in system and it is unclear what steps DHS has taken to publicise this or to monitor the uptake of it.

It will assist some customers visiting these stores in the major centres of Alice Springs, Darwin and Katherine, however the majority of remote customers would do their regular shopping at remote community store, which are not Coles and Woolworth retailers.

Unintended consequence of IM on engagement of Aboriginal men

We are aware that a significant proportion of Aboriginal men do not access Centrelink payments due to their difficulties in navigating the system. An ABC News story which aired on 12 June 2013, titled 'Many not using Centrelink'⁴⁴, highlighted this ongoing and serious issue.

We consider that IM adds to the incomprehensibility of the system and alienation of Aboriginal men in particular.

New vulnerable income management categories

The crafting of the vulnerability categories mean that young Aboriginal people will disproportionately be income managed under these changes, without an associated increase in the services available to engage young people in work and study.

The legislative instrument does not require a young person's 'vulnerability' to be assessed by a DHS social worker, meaning that the young person's 'vulnerability' will be assumed.⁴⁵ We are further concerned that no enquiry will be made as to whether income management is an appropriate response to the young person's assumed 'vulnerability'.

We are further concerned that the 'exceptions' to income management are complicated, confusing and are difficult to explain in plain language. This will have a negative impact on the number of young people who will be 'excepted.'

The drafting of the exceptions places the onus on the young person to show that income management will be detrimental to them. If DHS administers 'exceptions' in a similar way to IM 'exemptions' we are likely to see a similarly low rate of 'exception' for young Aboriginal people.

⁴⁴ <http://www.abc.net.au/news/2013-06-12/many-not-using-centrelink/4750372>

⁴⁵ NAAJA expressed concerns with the new categories of vulnerable income management during a consultation with FaHCSIA organised by the NWRN on 1 May 2013.

There were 447 young people on the ‘youth trigger’ of vulnerable income management in the Northern Territory in May 2014, and only 30 ‘exceptions’ had been granted.⁴⁶

Non-discrimination on the basis of race

As outlined above, IM is clearly incompatible with rights to privacy, social security and freedom of movement. The IM regime no longer expressly refers to race or ethnic origin of potential participants, however the history of the regime and the overwhelmingly disproportionate impact on Aboriginal people in the NT renders the measure racially discriminatory in *effect*. We note that the Committee’s 2013 Report reached the same conclusion.⁴⁷ The Committee’s 2013 Report found that it was not convinced that the government had sufficient evidence to support the characterisation of the Stronger Futures legislation as ‘special measures’.

Income Management: not a justified limitation on rights

We note that the assessment of whether a rights-limiting law is justified is similar to the assessment of whether such law is a ‘special measure’. Both assessments require consideration of whether the objective is legitimate, whether there is a rational connection between the measure and whether the measure is appropriately adapted or proportionate to achieve the objectives.

As the Committee’s 2013 Report combined analysis of special measures with the general rights-limitation test, this submission also combines the analysis. This submission is not intended to provide a detailed analysis of the difference between international law and domestic law on limitations on the right to non-discrimination or whether IM would be considered a ‘special measure’ in light of the decision in *Maloney v R*⁴⁸.

Aims of Income Management

The stated aims of IM are detailed at s 123TB of the *Social Security (Administration) Act*:

- (a) to reduce immediate hardship and deprivation by ensuring that the whole or part of certain welfare payments is directed to meeting the priority needs of:
 - (i) the recipient of the welfare payment; and
 - (ii) the recipient’s children (if any); and
 - (iii) the recipient’s partner (if any); and
 - (iv) any other dependants of the recipient;
- (b) to ensure that recipients of certain welfare payments are given support in budgeting to meet priority needs;
- (c) to reduce the amount of certain welfare payments available to be spent on alcoholic beverages, gambling, tobacco products and pornographic material;
- (d) to reduce the likelihood that recipients of welfare payments will be subject to harassment and abuse in relation to their welfare payments;
- (e) to encourage socially responsible behaviour, including in relation to the care and education of children;
- (f) to improve the level of protection afforded to welfare recipients and their families.

⁴⁶ 2014-2015 Budget Estimates, Community Affairs, Document 1, 05/06/2014, 11.15am, Secretary Mr Finn Pratt, at p 1

⁴⁷ Parliamentary Joint Committee on Human Rights report on Stronger Future, p. 155

⁴⁸ *Maloney v R* [2013] HCA 28

The aims of IM correspond with Article 11 of the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR') which promotes the right to an adequate standard of living, including adequate food, clothing and housing. These stated aims, or objectives are accepted as legitimate.

Lack of empirical evidence to justify limitation of rights

Whilst the above aims may be considered legitimate, IM is not rationally connected to the achievement of those aims, nor is it proportionate or the least restrictive means to achieving those aims. The idea that quarantining the income support payments of individuals can address the root causes of Aboriginal intergenerational disadvantage, in the context of significant structural barriers to economic development, is simplistic and naïve. Addressing entrenched social disadvantage requires sustained investment into community driven initiatives and support services that promote self-determination and autonomy rather than control and punishment.

As the Committee previously identified:

“The government bears the onus of clearly demonstrating that the measure is justified. In this case the committee would expect a clear demonstration, based on reliable empirical evidence, that the measures are having a significant impact.”⁴⁹

Compulsory IM has been implemented at significant cost but has not benefited the vast majority of people subjected to it in the Northern Territory. The Australian National Audit office found that IM cost between \$6,600 to \$7,900 per person per annum to administer in remote areas and between \$2,400 to \$2,800 in urban areas.⁵⁰ Anecdotally, we have been told that IM cost the Government \$400 million over four years.

In terms of impact, the 2012 Evaluation Report on IM found that compulsory IM, as a blanket measure, has been applied to a large number of people who are able to manage their money and who report not having alcohol, drug or gambling problems.⁵¹ The report also found:

- “there are few, if any, strong and consistent impacts”.⁵²
- “little evidence to suggest that income management is resulting in widespread behaviour change, either with respect to building an ability to effectively manage money or in building ‘socially responsible behaviour’”.⁵³
- Rather than changing behaviours or achieving the stated aims, income management was found to ‘operate more as a control or protective mechanism than as an intervention which increases capabilities.’⁵⁴
- Compulsory IM caused “considerable feelings of disempowerment and unfairness.”⁵⁵

The UN Special Rapporteur on the right of Indigenous peoples commented of the Northern Territory Emergency Response measures that they cannot be found to be necessary to the legitimate objectives sought to be achieved if the discriminator treatment is not shown to actually be achieving the intended results. See Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, *The Situation of indigenous peoples in Australia*, A/HRC/15/37/Add.4 (2010) para 63

⁵⁰ Australian National Audit Office, *Administration of New Income Management in the Northern Territory*, Report No. 19 tabled 31 January 2013, p. 94

⁵¹ Bray et al, *op cit* p. xix

⁵² *Ibid*, p. xviii

⁵³ *Ibid*, p. xviii

⁵⁴ *Ibid*, p. xix

⁵⁵ *Ibid*, p. xix

The Australian Parliamentary Library published a Background Note in May 2012, *Is Income Management Working?*, which noted:

*'... the absence of adequate data related to the effectiveness or otherwise of income management... evaluations as have been attempted should be treated with caution due to a range of methodological problems such as the lack of comparison group or baseline data; the limited amount of quantitative data; the strong reliance on qualitative measures; questions over the independence of some evaluations; and problems with other design aspects of various reviews.'*⁵⁶

Sociologist Eva Cox AO recently reported that XXX:

*Evaluators of the policy have not been able to find evidence of positive benefits from the data they collected. They noted that some positive responses that came from some recipients were not supported by any external data on improved community safety, child nutrition or school attendances, although these were the policy's core aims. They also reported negative responses, particularly from those on the compulsory version that may outweigh the positives.*⁵⁷

The *Journal of Indigenous Policy* issue titled 'Evidence-Free Policy making? The Case of Income Management' and its recent 'Addendum', detailed the findings of its comprehensive independent review of data relating to the IM outcomes. The review found that the research often quoted by the Government failed to deliver proof of the effectiveness of IM.⁵⁸

In addition to the lack of evidence of IM achieving objective outcomes, those subject to IM have experienced stigma and diminished self-worth. The 2012 Evaluation Report stated that people subject to IM reported that: 'it makes little practical difference to their lives'; that they felt 'a strong sense of having been treated unfairly and being disempowered' and that it was 'restrictive and frustrating, making their lives more difficult and complicated'.

A 2012 survey of 180 women with direct experience of IM participated, *Women's Experience of Income Management in the Northern Territory*, found that:

- 79% wanted to exit the system;
- 85% had not changed what they bought with their Centrelink payments; and
- 74% felt discriminated against when they used the BasicsCard.⁵⁹

Not only has income management failed to achieve its stated goals, it has increased feelings of racial discrimination, embarrassment and stigmatisation.

Meeting 'priority needs'? Food

One of the objects of income management is to 'reduce immediate hardship and deprivation', notably food, rent, bills and education.

The Menzies School of Medical Research, which compared expenditure patterns of stores in the Northern Territory from 2006 – 2009 found that income management appeared to have no effect on total store sales, food and drink sales, tobacco sales and fruit and vegetable sales.⁶⁰

⁵⁶ Luke Buckmaster and Carol Ey, *Is Income Management Working?*, Parliamentary Library (2012), 24 at http://aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/IncomeManagement .

⁵⁷ Cox, E. *Income management: More free evidence-based policy-making?*, *The Conversation*, 3 October 2013.

⁵⁸ Eva Cox and Terry Priest, 'Evidence-Free Policy Making? The Case of Income Management', *Addendum to the Journal of Indigenous Policy Issue 12* (2012), 1.

⁵⁹ Equality Rights Alliance, *Women's Experience of Income Management in the Northern Territory* (2012).

Meeting 'priority needs'? Housing

One of the goals of income management is to create a stable home environment for welfare recipients. The reality is that in 2014, one in four Aboriginal people in the NT are homeless.⁶¹ Aboriginal people also experience overcrowding at a higher rate than the rest of Australia, especially in remote communities.⁶² This is due to a severe and chronic shortage of affordable housing,⁶³ particularly in remote communities.⁶⁴

The participation penalty regime acts counter to the intentions of IM. Tenants can fall into rental arrears when there is an interruption to their income caused by the imposition of participation penalties. In urban public housing, tenants generally fall into rent arrears due to issues with rent rebates – people not completing forms within the correct period or the Department of Housing refusing to exercise its discretion to backdate rebate forms.

Supporting budgeting skills?

Income management and rent deductions to Territory Housing

For a number of years, legal services have been raising concerns around the practice of establishing rent deductions through income management by DHS staff without there being evidence of the customer's liability to make rent payments.⁶⁵ In some cases, DHS recipients have paid rent for months or years without being party to a tenancy agreement or having a home to live in. In other cases, Centrelink recipients have had rent deducted from both IM funds and non-IM funds.

The following case study illustrates the problem:

Case study – Rosie

Rosie lives in a three bedroom Territory Housing premises in a small remote community in North East Arnhem Land. Rosie shares this house with 18 other residents including 12 children.

Territory Housing advised Rosie that her rent was in arrears and her rent payments of \$26.00 ceased in August 2012. NAAJA obtained a copy of her Centrelink records and her Territory Housing records.

Since June 2012, Rosie has paid \$50.00 each fortnight from her income managed funds into a Territory Housing account.

Rosie had also been asked to sign a Territory Housing Rent Deduction Form, which was given to Centrelink. This form authorised Centrelink to deduct \$26.00 each fortnight in rent from her income managed funds. Since July 2012, Rosie has paid \$26.00 from her Family Tax Benefit payment into a different Territory Housing account.

Rosie paid an excess of \$24.00 each fortnight to Territory from her Centrelink income managed funds for one year. NAAJA assisted Rosie to obtain a refund of \$416.00 in rent.

⁶⁰ J Brimblecombe, J McDonnell, A Barnes, J GarnggulkpuyDhurrkay, D Thomas and R Bailie, 'Impact of income management on store sales in the Northern Territory', *Medical Journal of Australia*, vol. 192, no. 10, 17 May (2010), 549–554 at https://www.mja.com.au/journal/2010/192/10/impact-income-management-store-sales-northern-territory?0=ip_login_no_cache%3D3df0f637393f253559abc850c17c1950.

⁶¹ AIHW *Homelessness among Indigenous Australians Report 2014*, table 2.1.

⁶² *ibid*

⁶³ Anglicare Australia *Rental Affordability Snapshot April 2014*, p 37.

⁶⁴ It was estimated in 2007 that the Northern Territory needed a further 4000 dwellings to adequately house its population in 2007; 400 houses will be needed each year for 20 years to keep pace with the demand.

http://www.inquirysaac.nt.gov.au/pdf/bipacsa_final_report.pdf *Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse 2007*, p 195.

⁶⁵ See for example, <http://www.abc.net.au/lateline/content/2012/s3570663.htm>

Payments to School Nutrition Program participants

NAAJA has made complaints to the Commonwealth Ombudsman regarding the School Nutrition Program, namely that income managed payments continue to be made once a child is no longer enrolled at or attending a school.

We note the Department's letter of 21 March 2013, which states that the Department was considering updating the *Guide to Social Security Law* to make it explicit that the payments are voluntary. This has not yet occurred.

The Department's response also states 'it is not unreasonable to expect participants to identify any payments which are not required'. IM creates a dependence on Centrelink to manage the allocation of funds. Language barriers, low rates of financial literacy and other communication barriers are omnipresent in remote communities. It is not uncommon for people not to know where their money is going and therefore to continue to have funds directed towards priority need expenses that are no longer required.

Payments to consumer lease providers through Income Managed funds.

We are aware of situations in which individuals have been signed up to an expensive and inappropriate consumer leases and had deductions set up through IM.

The above concerns reflect the lack of control that people have over their money when it is income managed. For some people especially those on voluntary IM, this is acceptable and may assist with meeting 'priority needs', even if it does create dependency. However for many others it has led to overpayments, greater dependency on third parties to arrange finances and financial over-commitment, which then reduces money that can be spent on living expenses.

There is limited access to financial support and counselling in remote communities. IM will not increase financial literacy, without specific investment into culturally competent services.

Less money spent on alcohol, gambling, tobacco and pornographic material?

As noted above, between 2006 – 2009, IM appeared to have no effect on total store sales, food and drink sales, tobacco sales and fruit and vegetable sales.⁶⁶

Income management does not address the medical and pathological causes alcohol, gambling or tobacco dependence. Intensive wraparound services are needed in these contexts. Further, there are no residential rehabilitation facilities for people with alcohol and other drug problems in any remote communities across the Northern Territory and alcohol and other drug services that do exist cannot meet demand. There are no services for young people at all. There are no support services for gambling addiction in remote communities in the Northern Territory; people can only use a phone service.

Reduction in harassment and abuse?

The IM evaluation states:

*the BasicsCard (and income management more broadly) can assist in reducing financial abuse and/or harassment ...[however] the BasicsCard does not remove financial harassment and abuse (and indeed can exacerbate it in certain circumstances), and therefore income management is only a partial solution to this problem.*⁶⁷

⁶⁶ J Brimblecombe et al *op cit* 549–554

⁶⁷ Rob Bray, et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (July 2012), p. 86.

The evaluation found that for some people harassment increases because of the reduced availability of cash. This is particularly problematic in the context of family members with drug, alcohol, tobacco or gambling dependence. The 2012 Evaluation Report noted that BasicsCards are used 'for currency in card games and gambling'.⁶⁸

Increase in 'socially responsible behaviour' including care and education of kids?

There is no guarantee that a person who has their income managed will use their money 'responsibly'. Consumption and spending patterns do not change based on income source – they are connected to availability of fresh food, access to alternatives and education levels. Factors such as substandard housing and overcrowding, poor health, domestic violence and geographic isolation adversely affect child health outcomes and school attendance and educational outcomes.⁶⁹ These can be factors that parents have limited ability to control.

Income management does not create employment or education opportunities or address barriers to employment. Aboriginal people in the NT have fewer employment opportunities⁷⁰ and have significant barriers to employment, such as lack of literacy and budgeting skills, discrimination in the labour market, and deficits in skills/training matched to job demand in many remote communities.⁷¹

There has been no evidence of an increase in school attendance, or child care and wellbeing as a result of income managing payments. NAAJA awaits the release of the final Evaluation Report on Income Management in the NT, which we understand was recently provided to government.

Policies and programs that improve attendance and retention rates are those that are developed in conjunction with Indigenous educators and in consultations with communities over many years; they specify parent and community involvement in implementation and continual monitoring; and involve interagency collaborations;⁷² and are based on reliable evidence and an understanding of the interplay between individual, environmental and social forces shaping the lives of Aboriginal young people.⁷³ This is discussed further below.

Conclusion - IM

The costs of IM far outweigh the limited benefits, particularly compulsory IM. The Committee's 2013 Report found that the government had not demonstrated that IM was a reasonable and proportionate measure and therefore non-discriminatory, nor had the government produced evidence to show that IM was a justifiable limitation on rights to social security and privacy.⁷⁴

NAAJA submits that this remains the case and additionally, that IM is not a justifiable limit on the freedom of movement, as there have been limited changes in income management law, policy and service delivery about income management since the Committee's first report.

⁶⁸ *Ibid*, p. 88.

⁶⁹ Australian Human Rights Commission, 'Rural and Remote Education Inquiry Briefing Paper', (2 December 2001), <https://www.humanrights.gov.au/publications/rural-and-remote-education-inquiry-briefing-paper-28> (accessed at 23 September 2014).

⁷⁰ See APO NT *Submission to the Senate Standing Committee On Community Affairs Social Services and Other Legislation Amendment (2014 Budget Measures No.1) Bill 2014 Social Services and Other Legislation Amendment (2014 Budget Measures No.2) Bill 2014*, 2014, p 22.

⁷¹ Senate Standing Committee on Education, Employment and Workplace Relations, *Questions on Notice*, Additional Budget Estimates, 2011-12, DEEWR Question No. EW1045_12.

⁷² Australian Institute of Health and Welfare, 'School attendance and retention of Indigenous Australian students' (September 2010) <http://www.aihw.gov.au/uploadedFiles/ClosingTheGap/Content/Publications/2010/ctg-ip01.pdf> Pg. 11 (accessed at 25 September 2014)

⁷³ S. Silburn, J. McKenzie, L. Li, S.Q. Li, 'Unpacking educational inequality in the Northern Territory', pg. 93 http://research.acer.edu.au/cgi/viewcontent.cgi?article=1234&context=research_conference (Accessed at 23 September 2014).

⁷⁴ Parliamentary Joint Committee on Human Rights report on Stronger Futures, p 61-62

NAAJA recommends that the Federal Government:

- End compulsory income management in the Northern Territory, except for voluntary, child protection and income management that is recommended by DHS social worker for vulnerable people.
- Expand the range of voluntary mechanisms available to people to control the flow of their social security payments. For example, allowing a wider range of recipients to access daily and weekly payments, detaching the BasicsCard from income management and allowing any Centrelink recipient voluntary access to a BasicsCard. These mechanisms would allow individuals the opportunity to make empowered decisions, manage their own funds and identify their own priority needs.⁷⁵
- Use the resources from divesting from income management:
 - increase the stock of public and affordable housing
 - increase education and employment opportunities; and
 - address structural disincentives to work and barriers to economic development.

⁷⁵ NATSILS *Income Management Position Statement* 2012
<http://www.natsils.org.au/portals/natsils/NATSILS%20Income%20Management%20Position%20Statement%202017-10-12.pdf>

SCHOOL ENROLMENT AND ATTENDANCE MEASURE (SEAM)

The impact of SEAM on human rights

Right to social security⁷⁶

SEAM applies in selected Northern Territory communities and allows DHS to suspend (and then cancel) parents' income support payments where they fail to comply with school enrolment and attendance requirements in relation to school-aged children.⁷⁷

A person's right to social security is impaired by this punitive approach that links social security payments with school attendance, rather than assessing means or eligibility for the payment. We note that the Committee's 2013 Report found that the government's justification that SEAM 'does not make people ineligible for welfare payments, or reduce the amount paid, but places a condition on the receipt of payment' in fact established that the right to social security was impaired by SEAM.⁷⁸

Right to health/an adequate standard of living/privacy

The Committee's 2013 Report found that SEAM limited rights to health, an adequate standard of living and privacy because it forces a person to conduct themselves in a particular way and imposes sanctions for failure. Suspension of income support payments will limit the ability of parents to spend money on food, medical needs and housing for themselves, their children and other dependents. The threat and actuality of having income support benefits stopped in circumstances where a child will not go to school, causes significant stress and compromises health.

NAAJA submits that these rights continue to be impaired by SEAM.

In relation to privacy, DHS provides a list of parents or carers that are 'in scope' to the school, thereby identifying the parent or carer as a recipient of a social security payment. SEAM stigmatises these parents and carers; it assumes that the only parents that experience problems with school attendance are Centrelink recipients.

NAAJA has assisted families who have experienced deep hardship as a result of the suspension of social security payments.

Case study - Janet

Janet, a single mother with five children, had been feeding her children damper (flour and water) for five days as she could not afford anything else. Her parenting payment had been suspended under SEAM for two weeks, as her son in Grade 6 refused to go to school.

Non-discrimination on the basis of race

⁷⁶ Art 9 ICESCR; and Art 26 CRC.

⁷⁷ Department of Human Services website, 'School Enrolment and Attendance Measure – Northern Territory', <http://www.ag.gov.au/LegalSystem/AdministrativeLaw/Documents/Australian%20Administrative%20Law%20Policy%20Guide.pdf> (accessed at 24 September 2014). Part 3C *Social Security (Administration) Act 1999*.

⁷⁸ Parliamentary Joint Committee on Human Rights report on Stronger Future, p. 67.

As outlined above, SEAM is clearly incompatible with rights to privacy, social security, health, education and an adequate standard of living. Whilst the SEAM legislation does not expressly refer to race or ethnic origin in provisions that trigger suspension of payments, it has been implemented in communities that are overwhelmingly Indigenous and therefore has a disproportionate impact on Aboriginal people. This renders the measure racially discriminatory in *effect*. We note that the Committee's 2013 Report reached the same conclusion.⁷⁹

SEAM: not reasonable or proportionate

As noted above, the assessment of whether a rights-limiting law is justified is similar to the assessment of whether such law is a 'special measure'. Both assessments require consideration of whether the objective is legitimate, whether there is a rational connection between the measure and whether the measure is appropriately adapted or proportionate to achieve the objectives. As the Committee's 2013 Report combined analysis of special measures with the general rights-limitation test, this submission also combines the analysis in the context of SEAM. This submission is not intended to provide a detailed analysis of the difference between international law and domestic law on limitations on the right to non-discrimination or whether SEAM would be considered a 'special measure' in light of the decision in *Maloney v R*⁸⁰.

Aims of SEAM

SEAM was piloted in 2009 in the context of the Northern Territory having the lowest school attendance rates in Australia and the significant gap in educational outcomes between Indigenous and non-Indigenous children. SEAM was expanded in 2012 to 12 new sites in the NT. The Government sought to encourage better school enrolment and attendance.⁸¹ This is a legitimate objective.

Lack of empirical evidence to justify limitation of rights

The government contends that SEAM advances the right of children to education.⁸² The right education is vital not only for children's core skills of literacy and numeracy, but is also a key to reducing entrenched disadvantage.⁸³ NAAJA is supportive of measures that practically assist families to increase school attendance. We do not support measures that penalise parents and have no evidentiary basis.

Whilst SEAM does not limit the right to education, NAAJA is not aware of any evidence that SEAM actually advances the right to education.

The Department of Education Employment and Workplace Relations' 2010 review of the SEAM pilot ('the 2010 SEAM Review') found that attendance levels in SEAM schools differed from year to year and school to school, but over four years of the trial showed an attendance increase of around 1% compared with non-SEAM schools.⁸⁴ Issuing attendance notices and the threat of suspension had the most impact on attendance, but these impacts were short term only.⁸⁵

⁷⁹ *Ibid* p. 66

⁸⁰ *Maloney v R* [2013] HCA 28

⁸¹ Australian National Audit Office, 'Improving School Enrolment and Attendance through Welfare Reform Measure Report', available at http://www.anao.gov.au/Publications/Audit-Reports/2013-2014/The-Improving-School-Enrolment-and-Attendance-through-Welfare-Reform-Measure/Audit-summary#_ftnref4 accessed at 28 October 2014.

⁸² Article 13, ICESCR and Article 28 CRC

⁸³ Art 10, 13 & 14 ICESCR; Art 28 & 29 CRC.

⁸⁴ DEEWR *Improving School Enrolment and Attendance through Welfare Reform Measure* 2010, 2012 p34

⁸⁵ *Ibid* p44. These findings are consistent with the ANAO Report, p 51 and Appendix 2

An evaluation conducted by the Australian National Audit Office published in June 2014,⁸⁶ ('the ANAO Report') does not justify the continuation of SEAM. It found a failure to learn from the 2010 SEAM Pilot Review.⁸⁷ The ANAO Report also found that:

- effectiveness of SEAM 'was not readily identifiable' due to monitoring issues.⁸⁸
- effectively communicating and working with parents is difficult and resource intensive;⁸⁹
- limited resources prevented effectively working with the whole target group⁹⁰, and
- barriers to regular attendance are "varied, often complex and at times deeply entrenched."⁹¹

The ANAO Report found 21% of people considered to non-compliant with notices were granted special circumstance determinations⁹², highlighting the need for personal discretion. NAAJA has emphasised to DHS the importance of flexible exemptions and special circumstances provisions if SEAM is to continue in order to avoid unjust outcomes with terrible consequences for families.

International studies on the effectiveness of linking school attendance with welfare payments have also shown that case management approaches are more likely to succeed than financial penalties.⁹³ Other coercive measures, such as the use of truancy officers, already operate in many remote communities.⁹⁴ This strategy created an initial spike in school attendance, however analysis suggests that little lasting improvement can be made without addressing underlying issues relating to entrenched disadvantage and systemic discrimination.⁹⁵

The 2008 NTER Review Board report set out factors critical to improve educational outcomes:

"There are universal success factors that improve education outcomes that don't appear to be contested: focus on early childhood development, good quality teaching, quality education infrastructure and teaching resources, quality bilingual education, and associated sporting, cultural and development programs. All these critically important ingredients that determine education achievement globally are highly deficient in remote Northern Territory Aboriginal community schools.

*The Board is reminded that a far reaching and high profile inquiry into Northern Territory Aboriginal education was conducted in 1999 and made significant recommendations to the Northern Territory Government which do not appear to have been implemented."*⁹⁶

SEAM does not recognise the complexity and contextual nature of the reasons behind poor school attendance and early school leaving. These include a combination of home, school and individual factors, including:

⁸⁶ Australian National Audit Office *The Improving School Enrolment and Attendance through Welfare Reform Measure* June 2014.

⁸⁷ *Ibid* p17

⁸⁸ *Ibid* p19. Special circumstances determinations are provided for by section 124NE(2) of the *Social Security (Admin) Act 1999* (Cth). Special circumstance should only be determined to apply where there has been a clear material impact on the ability of the parent to comply with a compliance notice, such that the failure to comply is justified. The circumstance may be unfortunate, but unless it directly impacts on the ability of the parent to meet the requirements of the compliance notice, it should not be considered a special circumstance. <http://guides.dss.gov.au/guide-social-security-law/3/1/10/36> .

⁸⁹ For example ANAO found that 476 compliance notices were issued but there were 404 failed attempts to deliver these notices. *Ibid* p 18.

⁹⁰ *Ibid*, Recommendation 1.

⁹¹ *Ibid*, p61 (emphasis added)

⁹² *Ibid* p 58.

⁹³ David Campbell and Joan Wright, 'Rethinking Welfare School-Attendance Policies' *Social Service Review*, March 2005, Vol 79, [1].

⁹⁴ Minister for Indigenous Affairs, *Media Release* (4 April 2014) <http://minister.indigenous.gov.au/media/2014-04-04/remote-school-attendance-strategy-rolled-out-additional-30-schools> (accessed at 23 September 2014).

See also, Patricia Karvelas, *The Australian* (1 February 2014) <http://www.theaustralian.com.au/national-affairs/indigenous/curfews-for-kids-to-battle-truancy/story-fn9hm1pm-1226815395242> (accessed at 23 September 2014).

⁹⁵ Sven Silburn (Co-director, Menzies Centre for Child Development and Education at Menzies School of Health Research), *The Conversation* (16 September 2014) <http://theconversation.com/how-crowded-homes-can-lead-to-empty-schools-in-the-bush-30971> (Accessed at 23 September 2014).

⁹⁶ Peter Yu, Marcia Ella Duncan and Bill Gray, "Northern Territory Emergency Response: Report of the NTER Review Board", October 2008, p 31.

- the strong correlation between overcrowding in housing and school attendance. A recent study has shown that for each extra person per bedroom, there is a 20% reduction in the rate of school attendance.⁹⁷ Researchers from the Menzies School of Health analysed eight community factors relevant to school attendance, including language, remoteness and income, and found that house overcrowding explained almost half of all variations in attendance;⁹⁸
- lack of relevance to Indigenous needs, culture, and experience;
- failure to involve parents and communities in their children’s education;
- inadequate number of teachers with appropriate cultural knowledge and skills, and lack of facilities available in remote areas;⁹⁹
- bullying; and
- lack of transportation.¹⁰⁰

It is also important to acknowledge that attendance is not the sole answer to improving educational attainment. The cultural appropriateness of the school environment is a factor in determining whether a child attends school and the educational outcomes achieved. As the NTER Review found:

*Schools, whether they are government, community or church-based, are generally not recognised by children, families and the community as an important asset for social and cultural development. There is little evidence that Aboriginal language and culture have been seriously incorporated into the formal school curriculum even though English was not the first language spoken in most communities that the Board visited.*¹⁰¹

When non-Aboriginal teachers are unable to explain concepts in a way that their Aboriginal students can understand, the students develop a “failure syndrome” where their failure to remember what was taught that day causes them to become depressed”.¹⁰² School curriculum needs to be developed to recognise and reflect the experiences of its students.

The *Little Children Are Sacred* report notes that almost every community that the Inquiry visited wanted boys and girls aged 12 and over to be in separate classes for cultural reasons.¹⁰³ A failure to accommodate this can result in non-attendance.¹⁰⁴

Conclusion – SEAM

As was noted above, the current school system in the NT is not relevant to Indigenous needs, culture, or experience. Parents and communities are not adequately engaged by the Department of Education and Training in their children’s education and the number of teachers with appropriate cultural knowledge and skills is insufficient. This combined with the complex effects of poverty, is perhaps a better explanation for low school attendance than parent recalcitrance.

⁹⁷ S. Silburn, J. McKenzie, L. Li, S.Q. Li, ‘Unpacking educational inequality in the Northern Territory’, http://research.acer.edu.au/cgi/viewcontent.cgi?article=1234&context=research_conference (Accessed at 23 September 2014).

⁹⁸ *ibid*

⁹⁹ Australian Institute of Health and Welfare, ‘School attendance and retention of Indigenous Australian students’ (September 2010), <http://www.aihw.gov.au/uploadedFiles/ClosingTheGap/Content/Publications/2010/ctg-ip01.pdf> (accessed at 25 September 2014.)

¹⁰⁰ ANAO Report p55, L Behrendt and R McCausland ‘*Welfare Payments and School Attendance: An Analysis of Experimental Policy in Indigenous Education*’ Jumbunna House of Learning, University of Technology Sydney, August 2008, p27

¹⁰¹ Peter Yu et al *op cit*, p 30.

¹⁰² Rex Wild and Pat Anderson, *Ampe Akelyernemane Meke Mekarle: “Little Children Are Sacred”*, Report of the Northern Territory Board of Inquiry not the Protection of Aboriginal Children from Sexual Abuse, April 2007, p 147.

¹⁰³ *ibid*, p 153.

¹⁰⁴ As a teacher in a very remote school reported, “Our community wanted separate classes for young men and women. The principal over-rode that. The boys aren’t coming to school” Australian Education Union *Education is the Key: An Education Future for Indigenous Communities in the Northern Territory*, 9 September 2007, p 20.

Subjecting families to suspension of their social security payments cannot be considered rationally connected to the objective of getting children to attend school, nor is it appropriately adapted or the least restrictive means. It is not therefore a justified limitation on the rights to social security, health, adequate standard of living, privacy or non-discrimination, nor should it be considered a special measure.

NAAJA instead recommends that Government be encouraged to develop positive approaches to engaging families that take into account the abovementioned barriers to participation in school and improving educational outcomes.

CONCLUSION

In previous submissions regarding welfare reform, and interventions into the lives of Aboriginal people in the NT, NAAJA has cautioned against implementing such changes without thorough consultation with Aboriginal people and without consideration of whether those changes will deliver the intended outcomes.

NAAJA does not support:

- approaches which have already been shown to be ineffective for the purposes for which they were introduced such as compulsory IM and SEAM.
- actions which are oriented in misunderstandings about Aboriginal peoples' lives or motivations;
- measures that are not evidence-based and therefore unjustifiably infringe on the rights of Aboriginal people in the NT and have the effect of discriminating against Aboriginal people; and
- punitive approaches which focus on financial penalties to individuals and families. Such approaches fail to acknowledge the complex nature of Aboriginal disadvantage and unfairly target individuals rather than the structural barriers to development.

NAAJA supports:

- actions oriented towards improving children and family wellbeing, and agree with a focus on children and young people for concentrated service delivery;
- measures aimed at empowering remote communities and strengthening community leadership;
- properly resourced wraparound and co-operative service delivery, especially in remote communities;
- approaches that consider the underlying reasons for problems such as alcoholism and low school attendance. For example, living in crowded conditions has flow on effects for children and their schooling, sustaining employment, for peoples' emotional and physical health and for family cohesion. Punishing parents financially is not the answer and will only make a bad situation worse; and
- approaches which are evidence-based, cost-effective and can be independently evaluated.