

NATSILS

# Position Statement: Income Management

October 2012

## NATSILS Position Statement on Income Management

The National Aboriginal and Torres Strait Islander Legal Services (NATSILS) do not support the continuation or extension of income management (IM) in its current forms. Compulsory IM is punitive and ill-conceived in regards to achieving its stated aims. NATSILS support mechanisms that aid people in self-determining how they spend their income.

The NATSILS support the provision of voluntary financial counselling services and intensive case management models based on empowerment and skills enhancement. We do not consider that IM encourages personal responsibility or acts to up-skill those placed on it. IM is extremely costly to implement and administer and as a result diverts investment away from other program areas that could achieve genuine improvement in social outcomes for disadvantaged people.

IM exists in a variety of forms across Australia including throughout the whole of the Northern Territory, several communities throughout Western Australia, and in Cape York in Queensland. On 29 June 2011, the Commonwealth Government passed legislation to institute 'Place Based' IM in five trial sites in South Australia, Victoria, New South Wales and Queensland. The Commonwealth Government now has the power to declare any State or Territory, by legislative instrument, as an IM area.<sup>1</sup> Effectively, the Commonwealth Government is now able to extend IM across Australia without the passage of further legislation.

The NATSILS consider the decision of the Commonwealth Government to continue the current IM schemes in the Northern Territory, Western Australia and Queensland and to expand IM to five trial sites in other State and Territories, to be unsound for the following reasons:

- 1) The assumptions that underpin IM are deeply flawed and misguided and IM is not well targeted to address social disadvantage;
- 2) IM is not compatible with Australia's human rights obligations in relation to Aboriginal and Torres Strait Islander people;
- 3) The Commonwealth Government has not adhered to its commitment to only expand IM when there was a clear evidence base that it achieved its legislated objects. A clear evidence base has not been established that demonstrates IM's success in achieving its goals of protecting vulnerable individuals, ensuring that people meet their priority needs and encouraging socially responsible behaviour amongst welfare recipients;<sup>2</sup> and
- 4) IM has numerous negative unintended consequences, including the additional demand and administrative burden placed on welfare recipients, welfare services and legal assistance services.

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<sup>1</sup>*Social Security (Administration) Act 1999* (Cth), ss 123TF, 123TFA.

<sup>2</sup>*Social Security Legislation Amendment Act 2012* (Cth) s 123TB.

## Underlying Assumptions and Addressing Social Disadvantage

The majority of people<sup>3</sup> on compulsory IM in the Northern Territory are income managed on the basis on their age, the length of time a recipient has been in receipt of Centrelink payments and their payment type. The assumption is that all individuals in the Northern Territory who have been on a particular payment for a particular length of time cannot responsibly manage their finances and are socially irresponsible. The Commonwealth Government has never provided any evidence to support this deeply offensive assumption. The assumption is also flawed in terms of focussing on blaming individuals for the position in which people find themselves and due to the failure to acknowledge or address the real issues of a lack of infrastructure, support services and economic development including jobs for local people.

In locations outside of the Northern Territory, IM has been packaged as a means of addressing social disadvantage; the five new trial sites are amongst the most disadvantaged communities in Australia.<sup>4</sup> The idea that quarantining the welfare payments of individuals can address the root causes of what is most commonly inter-generational disadvantage is simplistic and naïve. Addressing entrenched social disadvantage requires sustained investment into community driven initiatives that promote self-determination and autonomy rather than control and punishment. Furthermore, the Government suggests IM will help people manage a budget and therefore create a stable household that allows people to better attend training or get a job. This assumes that hardship experienced by welfare recipients can be addressed through better financial management whereas it may in fact be due to the limited funds they receive, high costs of living and a whole raft of other social or health related issues.

Furthermore, the idea that government can empower and encourage people to be more responsible by taking away basic rights is counterproductive. The NATSILS question how people will become more financially and socially responsible if personal responsibility and control over their everyday lives is taken away and administered by government.

The Commonwealth Government should instead be working to 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 weekly payments, detaching the BasicsCard from IM 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.

IM, in itself, does not support or assist people on Centrelink payments to transition into full time study or employment. In the Northern Territory, people can be exempted from IM through involvement in full time work and study. However, service providers, including Job Services Australia, are generally not aware of these exemption requirements. The ability of Aboriginal and Torres Strait Islander peoples to successfully apply for exemptions to compulsory IM in the Northern Territory for example, is also circumscribed by the existing lack of opportunities for, and barriers to, employment and education which are not addressed by IM.

Furthermore, exemptions are not available for all categories of IM and where they do exist they are crafted to create restrictions to exiting the IM system rather than reward socially responsible behaviour. For example, exemptions are not available to participants of the Community

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<sup>3</sup>People can also be placed on compulsory IM as a result of child protection concerns by the Department of Children and Families or via an order from the NT Alcohol and Other Drugs Tribunal.

<sup>4</sup> See [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2011/pages/b06\\_10052011.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2011/pages/b06_10052011.aspx) .

Development Employment Program (CDEP), or those who are involved in both part time work and part time study, despite the participant's engagement in socially responsible behaviour.

If people do have budgeting issues, IM is not designed to teach people the necessary financial skills to enable them to exit the program. This is concerning given that the stated objectives of IM are to teach people how to be socially and financially responsible and hence, its success should logically be measured by the rate at which people successfully exit the system and continue to meet their priority needs autonomously. However, some who are subject to IM in the Northern Territory have expressed concerns, which have been repeated by financial counsellors,<sup>5</sup> that they are *losing* money management skills.<sup>6</sup> The rate at which Aboriginal and Torres Strait Islander peoples are successfully exiting the system is discussed in further detail below.

Without an identified exit strategy it appears as though IM will be a long-term Commonwealth Government strategy. Furthermore, if parents are placed on IM long-term they will not be able to demonstrate independent financial and budgeting skills to their children. The NATSILS foresees successive generations inheriting IM from those currently being introduced to the system. High quality and culturally accessible financial counselling should be a part of case management for those welfare recipients who choose it so that preparations for progressing people off IM are made from the outset.

Given the above, the NATSILS maintain that IM is borne of offensive and flawed assumptions and is ill-targeted as an effective means by which to address social disadvantage and encourage financially and socially responsible behaviour.

### **Compatibility with Australia's Human Rights Obligations**

After extending IM and related measures to the wider community in 2010, the Government's claim is that IM is now non-discriminatory and compliant with the *Racial Discrimination Act 1975* (Cth). However statistics clearly demonstrate that IM indirectly discriminates against Aboriginal and Torres Strait Islander peoples. While only being 30 per cent of the population, in May 2012 90.5 per cent of people in the Northern Territory who were on IM were Aboriginal and/or Torres Strait Islander.<sup>7</sup> In the Kimberley, Western Australia, 97 per cent of those on IM were Aboriginal and Torres Strait Islander peoples and in Cape York, IM exists almost exclusively in Aboriginal and Torres Strait Islander communities.

Exemptions to compulsory IM are rarely granted to Aboriginal and Torres Strait Islander peoples. For example, while Aboriginal and Torres Strait Islander peoples represent nine out of 10 people on IM in the Northern Territory, they account for just 22.9 per cent of granted exemptions and non-Aboriginal and Torres Strait Islander peoples, who account for just 9.5 per cent of those on the scheme, have been granted 77.1 per cent of all exemptions.<sup>8</sup>

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<sup>5</sup> Australian Council of Social Services and Australian Financial Counselling and Credit Reform Association, *Income Management Scheme to Penalise Low-Income Australians* 26 Feb 2010 at [http://acoss.org.au/media/release/income\\_management\\_scheme\\_to\\_penalise\\_low-income\\_australians](http://acoss.org.au/media/release/income_management_scheme_to_penalise_low-income_australians).

<sup>6</sup> Equality Rights Alliance, *Women's Experience of Income Management in the Northern Territory* (2010).

<sup>7</sup> Patricia Karvelas, 'Indigenous numbers fall in quarantining', *The Australian* March 13 2012 at <http://www.theaustralian.com.au/national-affairs/indigenous/indigenous-numbers-fall-in-quarantining/story-fn9hm1pm-1226297554486>.

<sup>8</sup> *Ibid.*

Indirect discrimination such as this breaches Articles 1 and 2 of the Declaration on the Rights of Indigenous Peoples and Australia's obligations under the Convention on the Elimination of All forms of Racial Discrimination and therefore the *Racial Discrimination Act 1975* (Cth).

IM cannot be characterised a special measure as the Commonwealth Government has not obtained free, prior and informed consent of affected Aboriginal and Torres Strait Islander communities. The quality of Government consultations with Aboriginal and Torres Strait Islander communities affected by IM have repeatedly been called into question since its introduction in 2007. The manner in which IM options are presented and discussed, the facilitation of consultations, the willingness of the Government to incorporate community feedback and ideas into what appear to be already decided upon policies, the use of interpreters and the limited time given to consultations have been the subject of ongoing criticisms.

The continuation and expansion of IM can therefore be seen to be a further breach of Articles 3, 19 and 23 of the Declaration on the Rights of Indigenous Peoples and is in direct opposition to international evidence that shows successful strategies for overcoming social and economic disadvantage are based on self-determination and community driven measures.<sup>9</sup>

There are also significant restrictions placed on some of the most basic freedoms of those under IM. For example, people's right to freedom of movement, as protected under Article 12 of the International Covenant on Civil and Political Rights,<sup>10</sup> has been substantially impacted upon as income managed welfare recipient's ability to travel is dictated by the location and availability of merchants and services which accept the BasicsCard. Restriction of movement in this way can significantly affect people's ability to meet their cultural, familial and medical needs and in many cases may lead to an increased reliance on wider family members for financial support.

### Evidence Based Policy

In addition to significant concerns about the validity of its underlying assumptions and its compatibility with human rights standards, there is no credible evidence that demonstrates the success of IM in achieving its stated objectives, namely that of ensuring that recipients meet their and their children's priority needs and encouraging socially responsible behaviour.

The NATSILS are aware that FaHCSIA has commissioned research into the effectiveness of IM but this report has not been released to date. The Commonwealth Government has based much of its justification for continuing existing IM regimes and trialling new IM regimes on the results of select qualitative research, while largely ignoring the results of other studies, namely those conducted by independent bodies which find little to no evidence of the effectiveness of IM. Importantly, the research cited by the Government as evidence of IM successes has been critically and repeatedly called into question.

For example, the Australian Parliamentary Library cautioned that:

... 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

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<sup>9</sup> See Harvard Project on American Indian Economic Development at <http://hpaied.org/>.

<sup>10</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171, art 12 (entered into force 23 March 1976).

data; the strong reliance on qualitative measures; questions over the independence of some evaluations; and problems with other design aspects of various reviews.<sup>11</sup>

The *Journal of Indigenous Policy* detailed the findings of its comprehensive independent review of all the available data relating to the outcomes of IM. The review found that the research often quoted by the Government failed to deliver proof of the effectiveness of IM.<sup>12</sup>

Several other research bodies have conducted their own research which suggests that IM has not had a role in achieving any of its stated goals but has rather left people feeling stigmatised and discriminated against. For example, the largest survey of people subject to IM, in which 180 women with direct experience of IM participated, found that:

- 79 per cent wanted to exit the system;
- 85 per cent had not changed what they bought with their Centrelink payments; and
- 74 per cent felt discriminated against when they used the BasicsCard.<sup>13</sup>

The Menzies School of Medical Research, which compared expenditure patterns of stores in the Northern Territory from 2006 – 2009 found that IM appeared to have no effect on total store sales, food and drink sales, tobacco sales and fruit and vegetable sales.<sup>14</sup>

A recent review by the Commonwealth Ombudsman of decision making by Centrelink in relation to IM exemptions and vulnerable welfare payment recipient determinations highlighted some serious concerns about the way IM is administered. For example, the review found that:

- Decisions were made, including decisions about who should be subject to IM and whether exemptions will be granted, that did not accord with legislative requirements and were not supported by evidence;
- Centrelink letters designed to explain its decisions were inadequate and unclear and did not inform customers of their review rights.<sup>15</sup>
- Decision-making tools and guidelines used by Centrelink decision-makers in regards to issues including, who should be subject to IM and whether an exemption is granted, did not adequately assist them to meet the relevant legislative requirements;
- There were problems with the use of interpreters, record keeping, training and dealing with review and exemption requests;<sup>16</sup>

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<sup>11</sup> 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](http://aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/IncomeManagement) .

<sup>12</sup> 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.

<sup>13</sup> Equality Rights Alliance, *Women's Experience of Income Management in the Northern Territory* (2012).

<sup>14</sup> 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](https://www.mja.com.au/journal/2010/192/10/impact-income-management-store-sales-northern-territory?0=ip_login_no_cache%3D3df0f637393f253559abc850c17c1950) .

<sup>15</sup> Commonwealth Ombudsman, *Ombudsman review leads to an overhaul if Income Management decision making* (2012) at <http://www.ombudsman.gov.au/media-releases/show/206> .

<sup>16</sup> Ibid.

Given the lack of evidence that IM is achieving its stated aims and the flawed administration practices that have been found, the justification for the significant expenditure in administering the proposed continuation and expansion of IM is unclear. The 2009 – 2010 Federal Budget estimated the administration costs at approximately \$350 million over 4 years. The Australian Council of Social Services (ACOSS) has estimated that the extension of Place Based IM to the five trial sites will cost approximately \$96.9 million over four years or around \$120 per person per week.<sup>17</sup> Disappointingly, this will mean that significant resources will be diverted away from better targeted investment such as case management services, and investment into health, education and housing.

The Government previously made a commitment to only expand IM once a comprehensive review of IM in the Northern Territory clearly demonstrated that it had achieved its stated objectives.<sup>18</sup> The NATSILS strongly emphasise the critical need for evidence-based policy, especially where policies exert an extraordinary level of control over everyday life. The NATSILS are cognisant that the Government has not honoured this commitment and is expanding IM in various models outside the Northern Territory.

### Unintended Consequences

IM has a number of negative unintended consequences, including:

- Creating confusion and inconsistent rights of appeal. The rights of review of people on IM vary according to the IM measure a person is placed under. These appeal mechanisms vary in accessibility, independence, time limitations and costs. The NATSILS are concerned that this will lead to inconsistency in decision making and the uptake of review mechanisms.

For example, a person in the Northern Territory who is placed under the IM child protection measure has to seek review from the Department of Children and Families' internal review mechanism. This decision is not reviewable by any independent administrative review mechanism.

In contrast a person who is placed on IM by the Alcohol and Other Drugs Tribunal, which can be done ex parte, has to seek review of the decision in writing and appear before the AODT or appeal to the Local Court with 30 days of being placed on IM. It has been NAAJA and CAALAS' experience that most people require legal representation to access these review mechanisms.

A person who is placed on IM under the Vulnerable Welfare Payment recipient category has access to Centrelink's internal administrative review mechanism, which is more accessible and can seek external administrative review via the Social Security Appeals Tribunal and ultimately the Administrative Appeals Tribunal.

These differential rights of appeal may result in difficulties in understanding and accessing the appropriate review mechanism and obtaining the necessary assistance to do so. Given

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<sup>17</sup> The Australian, 'Canberra cuts losses on its failed forums' at <http://www.theaustralian.com.au/national-affairs/canberra-cuts-losses-on-its-failed-forums/story-fn59niix-1226273230222>.

<sup>18</sup> J Macklin (Minister for Family Affairs, Housing, Community Services and Indigenous Affairs) and W Snowdon (Member for Lingiari), *Major welfare reforms to protect children and strengthen families*, media release, 25 November 2009, viewed 14 February 2012, at [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2009/Pages/welfare\\_reforms\\_protect\\_children\\_25nov2009.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2009/Pages/welfare_reforms_protect_children_25nov2009.aspx).

the ability of the Government to recognise any State or Territory Authority as a body which can impose IM, this issue will be of central importance as the national roll-out of IM continues;

- Restricting the places where a person can shop and or access services. For example, in many places national retailers such as Coles and Woolworths are the only accessible BasicsCard merchants which may not carry the full range of goods and services that an individual may require, for example second hand goods or specialty items such as halal meats. In larger towns or cities it may restrict people from shopping at smaller stores which may in fact be cheaper than larger retailers but do not have the BasicsCard facilities. In many instances this will lead to an increased reliance on wider family members for financial support and/or an increased burden on the individual to organise travel or purchasing arrangements through Centrelink in advance. It could also potentially represent a case of discrimination in the provision of goods and services with people of low socio-economic status arguably being included under the attribute of impairment;
- Imposing significant additional costs on social security recipients who are on IM which are not incurred by other social security recipients. For example, IM often requires increased communication with Centrelink, yet a free call number is only available for BasicsCard balance enquiries. Given the limited number of fixed telephone lines and public payphones in some communities, many people rely on mobile phones. With Centrelink phone queues now reaching “epidemic” levels with clients being forced to wait for up to for 90 minutes, people under IM could incur call costs by simply waiting on hold that exceed the total welfare payment they receive for that day;<sup>19</sup>
- Causing potential progression through the criminal justice system by creating obstacles to paying off infringements. The payment of fines or infringements is not defined as a “priority need” in the *Social Security (Administration) Act*. A person must apply to Centrelink to use their IM funds to repay fines. This will only be granted if a person has met their priority needs and they have surplus funds available. Non-payment of fines can have serious consequences, such as involvement with the criminal justice system, and can also create a snow balling effect. For example, in many States if fines remain unpaid the registrar of motor vehicles will refuse to process payments for vehicle registration and licence renewal which can lead to further motor vehicle offences being committed;
- Creating difficulties in making lump sum payments, which may have criminal and civil law consequences. For example, in the Northern Territory vehicle registration cannot be paid via instalments or by deductions from Centrelink payments; a person must pay the entire cost of registration at the time of application. The limited availability of discretionary funds means it is difficult for people to save for such events. We are concerned that if it is more difficult for people to pay vehicle registration this will have flow on effects into the criminal justice system. Given the rate at which Aboriginal and Torres Strait Islander peoples come into contact with the criminal justice system as a result of traffic violations, removing such obstacles to compliance is essential; and
- Centrelink facilitating payments made from IM funds to inappropriate third parties. For example, the NATSILS understand that Territory Housing holds a significant amount of money paid to it by people on IM, ostensibly as rent payments. Centrelink assisted people to

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<sup>19</sup> Wes Hosking, *Welfare clients in Centrelink phone hold hell*, viewed 16 July 2012, at <http://www.heraldsun.com.au/news/victoria/welfare-recipients-in-centrelink-phone-hold-hell/story-e6frf7kx-1226417238600>.

begin rent making payments to Territory Housing, without the person having a legal liability to Territory Housing.

### **Flow on Effects and Access to Justice**

The expansion of IM throughout Australia will have significant flow on effects for legal assistance and welfare services. For example, the Government has recognised the increased demand that has been placed on the two Aboriginal and Torres Strait Islander Legal Services (ATSILS) in the Northern Territory, NAAJA and CAALAS, as a result of IM and has since provided specific funding for the hiring of welfare rights lawyers within these services. Given the experience of NAAJA and CAALAS, ATSILS in the five IM trial sites are likely to experience similar flow on effects on legal service delivery. This has not been recognised by the Government however, which has refused to provide additional funding to services in the five new trial sites. If this situation is not rectified significant access to justice issues are certain to arise.

### **Conclusion**

In light of the deeply flawed underlying assumptions on which IM is based, its incompatibility with international and domestic human rights standards, the absence of evidence as to its effectiveness and the high administration costs involved, the NATSILS do not support the continuation or expansion of IM as it exists in its current forms. The NATSILS support policies which promote self-determination, are based on empowering individuals and communities to develop their own locally driven solutions and initiatives.

If IM is to continue, the Commonwealth Government and all recognised State or Territory Governments empowered to impose IM must ensure that the negative unintended consequences of IM, including those mentioned above, are addressed and that the relevant legal assistance and welfare services, including ATSILS, which will be hit with the flow on effects of IM are provided with the additional resources to deal with such.