

The issues and implications regarding the welfare provisions within the 2010 Northern Territory Intervention amendments.

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Abstract: *The Northern Territory National Emergency Response (NTNER) (or Intervention), and its subsequent amendments, represent a critical development in Australia's Indigenous policy. Instigated through the government's precipitous need to address Aboriginal child abuse in the Northern Territory (NT), invoked a platform for sweeping reforms that extended far beyond what was necessary or proportionate to confront its initial objective (Siewert, 2010: 79). This paper is principally concerned with the change in welfare provisions following the attempt by the Commonwealth to amend the NTNER through the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010 (Cth) (the Welfare Reform Act 2010). An evaluation of this amendment will be advanced through, firstly, examining the contextual elements of the Intervention; secondly, providing a discussion of the philosophical constructions that underpin such interventionist policies; thirdly, analysing the legal framework, and the accompanying debates, for administering social welfare from a domestic and international law perspective; fourthly, critically evaluating the evidence-based support and criticism regarding welfare quarantining; and finally, offer a litany of recommendations and suggested amendments to the imposed welfare reforms in order for the NTNER, and the Australian government, to unequivocally fulfil their duties of facilitating the human rights of Indigenous Australians.*

INTRODUCTION

The Northern Territory National Emergency Response (NTNER) (or Intervention), and its subsequent 2010 amendments, represent a critical development in Australia's Indigenous policy. The government's precipitous need to address Aboriginal child abuse in the Northern Territory (NT) invoked a platform for sweeping reforms that extended far beyond what was necessary or proportionate to confront its initial objective (Siewert, 2010: 79). While the government's actions are perhaps rooted in benevolence and good intentions, the immense scale of the NTNER has essentially drained a decade of political capital from Australian Indigenous affairs. As such, following the swift ascent of the NTNER into the national spotlight, elevated through the inflammatory political discourse of the Howard and Rudd Governments (Macoun, 2011: 520), Indigenous issues have just as quickly resumed their place in the nation's periphery. What is left is yet another failed neoliberal model, where the odds are as easy to calculate as they are discouraging.

The NTNER reflects a heightened degree of governmental management and authority within Indigenous policy, heralding what some argue as an era of 'new paternalism' (Altman, 2007: 1). Such contentions are particularly evident through the NTNER legislative measures of imposing mandatory income management restrictions in prescribed communities in the NT, which disproportionately impact Indigenous Australians (Billings & Cassimatis, 2011: 58). The application of mandatory income management beyond the child protection setting has raised concerns of racial discrimination and arguably renders domestic legislation incompatible with Australia's commitments to international human rights law.¹ The most recent 2010 reforms, in

¹ Inconsistencies with Australia's domestic law and International human rights law can be found in relation to the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD), Article 1(4), of which the

response to (questionable) evidence and consultation, were intended to redesign or repeal aspects of the NTNER legislation and consequently amend features of welfare provisions through the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010* (Cth) (the Welfare Reform Act 2010), for legal reasons of non-discrimination compliance. The implementation of the amended welfare scheme that continues to primarily capture Aboriginal social security recipients (Billings, 2011: 7) has yielded a myriad of opposing perspectives. In support of the maintenance of mandatory income management is the contention that a doctrine of mutual obligations regarding welfare provisions should be employed to target 'vulnerable regions' and assist those 'individuals at risk' and most susceptible to the effects of social disengagement (House of Representatives, 2009a). Conversely, blanket welfare quarantining is also perceived as an initiative that restores the ideology of assimilation (Dodson, 2007: 28) and fails to contextualise the structural determinants of disadvantage (Altman, 2010: 4).

This paper is principally concerned with the change in welfare provisions following the Commonwealth amending the NTNER through the Welfare Reform Act 2010. An evaluation of this amendment will be advanced through, firstly, examining the contextual elements of the Intervention; secondly, providing a discussion of the philosophical constructions that underpin such interventionist policies; and thirdly, analysing the compliance of the mandatory income management measures affecting prescribed Indigenous Australians with the right to non-discrimination, as applied by the Racial Discrimination Act 1975 (RDA).

CONTEXT

On the 15th of June 2007, the Northern Territory Board of Inquiry presented a report regarding the various forms of abuse experienced by Aboriginal children in the NT. The report entitled *Ampe Akelyernemane Meke Mekarle: 'Little Children are Sacred'* (LCAS report) (Wild & Anderson, 2007) immediately obtained the attention of the Howard government regarding the real and perceived problems of Aboriginal child abuse in the communities of the NT. In direct response to the LCAS report, the Howard government declared a 'National Emergency' in an effort to confront this complex and problematic issue (Arney et al, 2011: 42).

During the Parliamentary session on the 7th of August 2007, former Federal Minister for Indigenous Affairs Mal Brough introduced three Bills and two Appropriation Bills before the House of Representatives². With minimal debate³, the Bills passed both the Lower and Upper Houses of Parliament to become law ten days later on the 17th of August 2007. Accompanying these Bills, and subsequent pieces of Legislation, was the suspension of Part II of the *Racial Discrimination Act 1975* (RDA). This action essentially insulated the Commonwealth from legal challenges on the basis that the legislation could be deemed discriminatory, both on the grounds that the RDA was suspended and the assertion that its actions constituted 'special measures' (Billings, 2011: 10). At the time of the legislative process, co-author of LCAS, Pat

Australian government ratified in 30 September 1975 via the *Racial Discrimination Act 1975* (Cth) s 8(1); and the *Declaration on the Rights of Indigenous Peoples*, of which Australia has endorsed.

² These Bills included:

- Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007
- Northern Territory National Emergency Response Bill 2007
- Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007
- Appropriation (Northern Territory National Emergency Response) Bill (No.1) 2007-2008
- Appropriation (Northern Territory National Emergency Response) Bill (No. 2) 2007-2008

³ The limited debate of the Bills can be seen through the Official Hansard of August 7 2007:
<<http://www.aph.gov.au/hansard/reps/dailys/dr070807.pdf>>

Anderson, was explicitly critical of the lack of consultation and the uncooperative approach undertaken by the government in legislating the NTNER: 'There's not a single action that the Commonwealth has taken so far that corresponds with a single recommendation. There is no relationship between these emergency powers and what's in our report' (Anderson, 2007 – referenced from Hansard). On another occasion, Anderson would plead for the Intervention to be reconsidered by Prime Minister Howard: 'I would appeal to the Prime Minister to stop. Please stop, don't proceed. Just stop so he can talk to more Aboriginal people, to talk to Aboriginal leaders' (ABC Lateline, 2007).

At the centre of these controversial Intervention measures were the imposed reforms to welfare provisions through indiscriminate income management. The *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Welfare Reform Act 2007) ensured that 50 percent of welfare payments and 100 percent of lump sum government payments were solely directed towards items that met the criteria of priority needs⁴ (s 123TB(c) WRA 2007). These generic welfare provisions were applied to 73 prescribed communities in the NT (ss 123TB-123TE WRA 2007) with the purpose "to promote socially responsible behaviour, particularly in relation to the care and education of children" (s 123TB(a)). The formulations of these welfare reforms are grounded in the welfare trials coordinated by Noel Pearson and the Cape York Institute (CYI) (Billings, 2011: 4). In an effort to break the chains of entrenched poverty and social dysfunction reinforced by the crippling stranglehold of passive welfare dependence, Pearson's approach required a more direct method of financial welfare to Indigenous Australians (Pearson, 2000). The implementation of welfare provisions imposed by the Intervention, however, does not reflect the scheme established by the CYI as the CYI conducted a predominantly voluntary (or opt-in) method of income management; nor does it resemble the degree of consultations performed by the CYI (Billings & Cassimatis, 2011: 10).

Shortly after the implementation of the NTNER, the Howard government were defeated in the Federal election by the Australian Labor Party (ALP), led by former Prime Minister Kevin Rudd on November 24th 2007. The Rudd government, which supported the legislation in Opposition, continued the measures undertaken by the NTNER and thus proceeded to roll-out the extensive implementations of income management throughout the NT⁵. The following year, the Federal Government would announce a review conducted by the Northern Territory Emergency Response Review Board (the Review Board) headed by Australian Indigenous leader Peter Yu (the Yu Report), to evaluate the first year of the NTNER. Over the period of July/August of 2008 the Review Board consulted with 31 Indigenous communities, 56 representatives of other communities throughout the NT and received over 200 submissions (Cox, 2011: 16). Whilst the Yu Report 'observed definite gains as a result of the Intervention', such as the welcoming of police stations in communities and the 'measures designed to reduce alcohol-related violence' (Yu et al., 2008: 9-10) it was explicitly critical of the income management measures, stating that a 'blanket imposition continues to be resisted' throughout the NT (Ibid). The Yu Report recommended that instead of compulsory universal program of welfare quarantining, the government should pursue voluntary income management (Ibid). This recommendation has yet to be adopted by the government.

⁴ Priority Needs under s 123TH of the Welfare Reform Act 2007 broadly constitutes items such as food, healthcare products/services, accommodation expenses, tools of trade, transportation, education and training expenses.

⁵ Jenny Macklin, 'Northern Territory Emergency Response progress', Press Release 9 June 2010: 'The number of people being supported through income management has reached 17 000 under the Northern Territory Emergency Response (NTER). This compares with 1400 people on income management in November 2007.'
<http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/pages/nter_progress_9jun10.aspx> at 15 December 2011.

In response to the Yu Report, the Federal government and the NT government released a joint statement on May 21 2009 that expressed general support to the recommendations offered by the Review Board (Cox, 2011: 19). Both levels of government identified the general need for youth engagement plans, employment strategies and alcohol management plans. Moreover, the Federal government agreed to reinstate the RDA and compensate Indigenous owners for having acquired their property without consent (NTER Review, 2009). The recommendations relating to mandatory income management were rejected and in order to frame the provisions as generally applicable, the Federal government extended the provisions of blanket welfare quarantining to three new broad categories: disengaged youth; long-term welfare payment recipients; and people assessed as vulnerable (Welfare Reform Bill, Schedule 2, item 25 (s 123TA)).

The Federal Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), led by MP Jenny Macklin, released the 'Future Directions for the Northern Territory Emergency Response – Discussion paper' (Future Directions) on the same day as the governments' joint response to the Yu Report⁶. This paper provided the basis for renewed consultations with Indigenous communities. Legal considerations were undoubtedly the prominent factor driving the 'redesign consultations'. This was due to the fact that following the reinstatement of the RDA the NTNER (or components of it) would need to be considered as 'special measures' (with exception to compulsory income management) to be deemed non-discriminatory. Following the reinstatement of the RDA, compulsory income management would undergo a relatively more general application and was extended to prescribed communities outside of the NT. The wider application of compulsory welfare quarantining strengthens⁷ the capacity of this feature of the NTNER Act to be considered compliant with the legal tests qualifying a 'special measure'.⁸ In order to qualify as special measures, both Australian and international law require the consultation and consent of the citizens affected (AHRC, 2009: 7). Therefore, it has been suggested that the FaHCSIA consultations were predominantly employed as a means to avoid litigation (Billings & Cassimatis, 2011: 60). This is reflected in the outcomes achieved by the 'redesign consultations', as it appears to have been implemented as a formality with predetermined results, as opposed to a policy reform constructed and influenced by such community consultations (Cox, 2011; Billings & Cassimatis, 2011).

Moreover, the NTNER, and in particular welfare quarantining, has tarnished Australia's international reputation and has invoked a substantial degree of criticism. Following the visit from the United Nations (UN) Special Rapporteur, Professor James Anaya reported on the situation of human rights of Indigenous Australians and concluded that income management (among other measures) was overtly discriminatory and was stigmatising communities (Human Rights Council, 2009: 2). Additionally, CERD responded to a series of complaints and contended that the government amend the NTNER to reinstate 'full compliance with the provisions of the Convention' (CERD, 2009).

Therefore, it is these progressions and subsequent pressures that have influenced the 2010 amendments (or lack thereof) to the NTNER.⁹

⁶ Australian Government 'Future Directions for the Northern Territory Emergency Response – Discussion paper' (2009). http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/future_directions_discussion_paper/Documents/discussion_aper.pdf at 15 December 2011.

⁷ Although, does not necessarily ensure compatibility with the RDA.

⁸ The relevant legal tests to qualify an Act as a special measure will be discussed below.

⁹ The 'Social Security Legislation Amendment Bill 2011' ('Stronger Futures' Bill) is currently being reviewed by the Australian Senate and seeks to further increase the reach of mandatory income management to five new communities across Australia, including:

- Playford (SA)

PHILOSOPHY

The Intervention is a contemporary manifestation of an underlying political philosophy that has developed and consequently pervaded Indigenous Australian affairs since settlement. Through the flow of time and events, the dominant political philosophy in Australia has transitioned from the foundational thought of colonialism¹⁰ to the contemporary philosophy of liberalism¹¹ (Simmons et al, 2006: 781). The end of the Cold War¹², in particular, surmounted liberalism and its preeminence to individualised freedom as the dominant ideology in international relations (Fukuyama, 1989). As such, liberalism grew in prominence within Australian politics, eventually becoming the prevailing political thought determining domestic policy, including Indigenous affairs (Sanderson, 2007: 32).¹³ Yet, despite Australia's philosophical transition to liberalism, colonial undertones associated with framing the contentious concept and identity of 'Aboriginality'¹⁴ as deficient have remained an omnipresent force in establishing stereotypes and, thus, influencing policy (Macoun, 2011). For while attitudes of racial superiority towards Indigenous Australians were explicitly exerted through the policies¹⁵ and political thought of colonialism, the political narrative describing Aboriginality in terms of deficit and comparatively inferior to settler society have remained a common feature under liberalism, albeit in a more implicit manner (Tyler, 1993: 322-324). Therefore, through the evolution of Australian political philosophy, the goals of Indigenous policy have changed from the colonial objective of 'assimilation', to the liberal objective of 'normalisation'¹⁶ (Turner & Watson, 2007: 206); the means by which these goals are achieved, however, has remained the common link between these two philosophies dictating Indigenous Australian affairs. The Intervention, and more specifically mandatory income management, represents the liberal goal of individualism and normalisation, achieved through the colonial practices of authoritarian control and deficit discourse (McCallum, 2011: 607). This introduces the conceptual framework of authoritative liberalism¹⁷, whereby forms of despotic governing

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- Blacktown (NSW)
 - Shapparton (VIC)
 - Rockhampton (QLD)
 - Logan (QLD)

¹⁰ The term colonialism will be referred to throughout this paper as the dominant political thought of being of service to the Crown, during the period of European Australian settlement.

¹¹ Liberalism, as a philosophy, represents the political orientation of facilitating freedom and choice within individuals who are capable of acquiring a capacity for autonomous, self-directed activity (McCallum, 2010: 609).

¹² Marked by the fall of the Berlin Wall on November 10, 1989.

¹³ While this paper demonstrates that liberalism has, indeed, become the dominant political philosophy in Australia, this does not negate the influence of other prominent philosophies and ideologies influencing Australian policy, such as conservatism, realism, egalitarianism etc.

¹⁴ The term Aboriginality throughout this paper will refer to the social construction that identifies the particular characteristics (such as race, language, culture, land lineage etc.) that both Indigenous and non-Indigenous Australians associate with the identity of Aboriginals (Macoun, 2011: 519). As it is with any broad conception of identity, Aboriginality is an inherently problematic concept. For the sake of this argument, the above description will be employed.

¹⁵ For e.g. the White Australia Policy and assimilation policies.

¹⁶ Normalisation refers to abiding by the regulations and expectations imposed by the sovereign.

¹⁷ There is a degree of subjectivity and interpretation involved with defining a conceptual framework and the perceived dominant ideology influencing a particular issue. Whilst this paper demonstrates that authoritative liberalism has become

are employed to enforce obligations upon those parts of the population considered incapable of governing themselves (Dean, 2002: 38; Hindess, 2001: 95). Thus, an analysis of the influence and rationale of authoritative liberalism, in relation to the mandatory income management measures of the Intervention, will be advanced; and an argument regarding the centrality and entanglement of deficit discourse within the prevailing philosophy of authoritative liberalism will be put forth. This discussion endeavours to highlight the constant philosophical undertones that exist just beneath the surface of Indigenous policy, and particularly the Intervention. For it is the liberal paradigm, entwined with the social constructions of Aboriginality and formulated by deficit discourse, that remains the locus determining Indigenous Australian affairs.

Authoritative Liberalism

Liberalism is viewed as a distinct form of political reason concerning the practical implications of the belief that individuals are endowed with, or capable of acquiring, a capacity for autonomous, self-determined activity (McCallum, 2011: 609). While general forms of government intervention have been fervently denounced through political rhetoric¹⁸, practical forms of liberalism have recognised the social milieu as involving both government regulation and self-regulating activity of free interactions between individuals (Foucault, 1978: 90). These descriptions subsequently question the ability of liberalism to offer an inclusive environment to those of whom the capacity for self-determined autonomy is perceived by the State as insufficiently developed. This broad underlying concern of liberalism can therefore be applied to the Intervention, and specifically income management. This query challenges whether the liberal doctrine, which has formulated the Intervention policy (Stringer, 2007: [8]; Sanderson, 2007: 34), adequately supports and is in the best interests of those individuals whom the income management provisions impact upon. Hindess (2001) asserts that throughout developed Western societies, the capacities for self-determination and autonomy may be developed, but it is achieved predominantly through the compulsory imposition of extended periods of discipline and authoritarianism:

In spite of liberalism's undoubted commitment to liberty, only a minority were actually governed as free individuals. Another minority – whose size is, for obvious reasons, difficult to estimate – consisted of those who were more or less successfully cleared out of the way (Hindess, 2001: 101).

Moreover, practical forms of liberalism, contrary to their rhetorical discourse, regularly employ actions of State control, as demonstrated through the Intervention (Stringer, 2007: [9]). Provisions such as income management, under the auspices of the Intervention, convey the authoritative methods implemented to achieve the liberal goal of individual autonomy and thus 'normalisation', demonstrating the inherent contradictions of liberalism:

the guiding principle regarding Indigenous Australian policy (e.g. see Altman & Hinkson, 2007), it does not deny the influence of other philosophical and ideological subscriptions.

¹⁸ For e.g. see both of former President Reagan's Inaugural Addresses; former Prime Minister Thatcher's 'Iron Curtain' speech; former Prime Minister Howard's 2009 Menzies Lecture.

Neoliberalism lauds individualism, personal freedom and the free market, but in practice it relies heavily on state regulation and control to ensure conditions which are conducive to business... from the manipulation of interest rates by reserve banks, to influencing family behaviour through welfare benefit practices (McMartin, 2007: 1-2).

Therefore, the Intervention employed State authoritative practices, such as mandatory welfare quarantining, with the mission to 'stabilise', 'normalise' and 'exit' prescribed communities, extending and reaffirming the reach of liberalism (Tedmanson & Wadiwel, 2010: 7; Altman & Hinkson, 2007).

The nature of authoritative liberalism was particularly evident through the 'operationalised' military command of the Intervention to achieve the goal of liberal stability (McCallum, 2011: 23). This authoritative physical presence coupled with the legally bound social impediments like mandatory income management and other attempts to coerce Indigenous Australians into becoming adherents to liberal ideals, implemented strategies of forced assimilation akin to the methods imposed by colonialism (Dodson, 2007: 85; Stringer, 2007: [7]). The mandatory welfare quarantining provisions are a form of authoritative liberalism, seeking to normalise individuals within prescribed Indigenous communities to become stable and autonomous citizens of the free market (Walter, 2010: 128). In this regard, the Intervention advances the efforts of liberalism to assimilate Indigenous Australians within what former MP Brough calls 'the real economy' (Brough, 2007c: 5). The liberal project of the Intervention then endeavours to replace the 'unproductive' and dysfunctional Indigenous culture(s) with a market-oriented and liberally based structure through authoritative means (Walter, 2010: 133). Hence, the Intervention perpetuates an established form of assimilation into contemporary liberal society, uncovering salient parallels to colonial interventions:

The task of assimilation was to endow Aborigines with the capacities that would make it no longer necessary to discriminate against them. (Goot & Rowse, 2007: 30)

This quote implies that forms of racial and cultural discrimination are implicit within the authoritative practices of the Australian government to establish liberalism throughout Indigenous Australia. As will be discussed in the coming section, methods of deficit discourse construct and reaffirm the perceived necessity for Indigenous Australia to abide by the liberal doctrine (Pholi et al, 2009: 9). Constructing Aboriginality as deficient and subsequently antithetical to mainstream Australia reiterates the superiority of liberalism and legitimises its authoritarian practices.

Deficit Discourse

Deficit discourse represents an ideological worldview that explains and justifies outcome inequalities – Indigenous health or education standards, for instance – by pointing to supposed deficiencies within disenfranchised individuals and communities (Brandon, 2003; Valencia, 1997; Weiner, 2003; Yosso, 2005). Constructions of deficit discourse discount sociopolitical contexts and apply prejudices regardless of systemic conditions (for example, racism and economic inequality) that have contributed to the varying degrees of access (Dudley-Marling,

2007; Gorski, 2008a; Hamovitch, 1996). As such, the purpose of deficit discourse is to justify existing social conditions by identifying the inequality as *located within*, rather than *pressing upon*, the disenfranchised communities (Gorski, 2010: 3). This subsequently defers the efforts away from repairing the *conditions* which have disenfranchised the individuals, to a focus of repairing the *individuals* disenfranchised from society (Weiner, 2003; Yosso, 2005).

Conceptual Framework

The conceptual framework of deficit discourse, as an entwined characteristic of the broader social project of liberalism, offers an insightful interpretation into the social constructions of Aboriginality that have justified the Intervention. The erosive mindset of deficit pervading Aboriginal communities and its association with identity, is a remnant of imperial history (Shields, Bishop, & Mazawi, 2005), influencing perceptions of authenticity from both Indigenous and non-Indigenous Australians alike (Gorringe et al, 2011: 2). The ideology of deficit is formulated through the belief that inequalities do not arise from unjust social conditions, but rather are inherent behavioural deficiencies assumed within disenfranchised individuals and communities (Brandon, 2003; Gorski, 2008a, Gorski, 2008b; Valencia, 1997; Yosso, 2005). This conceptual understanding of Aboriginality is persistently promulgated through the rhetoric of policy-makers and is unambiguously evident in the deficit discourse associated with the Intervention:

What we have got to do is confront the fact that these communities have broken down. The basic elements of a civilised society don't exist. What civilised society would allow children from a tender age to become objects of sexual abuse? (Howard, 2007)

Pathologising Indigenous Australians and disenfranchised communities as innately associated with deficit essentially trains the mass consciousness to blame Indigenous Australians for their own social detachment (Gorski, 2010: 5). The extent of saturation inflicted by successive Australian governments is apparent within the litany of policies responding to 'the Aboriginal *problem*', through such policies as: the 'Northern Territory *Emergency Response*', 'income *management*' and 'Closing the Gap' (Gorringe et al, 2011: 4). While the purpose of such policies is to address issues of inequality, the language employed implicitly assumes characteristics of deficit within Aboriginal people. Such an inference regarding the discursive nature of Indigenous policy and its media representations is frequently pronounced by scholars (e.g. Altman & Hinkson, 2007; Cunningham and Baeza, 2005; Murray et al, 2003), but rarely are such claims comprehensively supported with research evidence from media studies (McCallum, 2011: 22). In a paper recently published, however, McCallum contends that Indigenous Australian health policy has been influenced by the backdrop of news media reporting, framing Indigenous health as an intractable policy problem and reflecting an elite agenda (McCallum, 2011: 22-23). This contention resonates with the alarmist response to the LCAS report from the media, legitimating the implementation of the Intervention and dramatically shifting Indigenous policy (Behrendt, 2007: 15). The hysterical media coverage then reinforces cultural assumptions and collective dispositions to encourage compliance with an oppressive social order (Sleeter, 2004: 133). This consequently deflects public

consciousness from the systemic conditions underlying and perpetuating Indigenous inequalities, and focuses, instead, on recycling its own misconceptions, which justify Indigenous inequalities (Jennings, 2004: 130).

Inequality

Framing inequality as the locus for which Indigenous Australian policy is constructed (as is the case for the 'Intervention' and 'Closing the Gap') is problematic. Murray contends that social policy formulated with the objective of alleviating statistical inequality can come to define a people by their limitations, 'creating social identities based on paternalistic notions of powerlessness and victimisation' (Murray, 2004: 64). Reducing Indigenous Australians to a collation of statistical indicators to convey what is *wrong* with Aboriginal people translates to the recognition by the dominant majority of what is *known* about Aboriginal people – both in terms of existence and authenticity¹⁹ (Nakata, 2006: 265-268). This reductionism and essentialism of Indigenous identity then imparts a binary option offered to Indigenous people, either to succumb to the deficit identity of Indigenous status, or cease to authentically exist as an Indigenous person (Paradies, 2006: 355). Moreover, as such deficits have been firmly implanted within the national consciousness regarding Indigenous Australians, progress is then measured by the extent of positive change, further insulating existing institutions and ideological structures (such as liberalism) from criticism (Pholi et al, 2009: 10). The level of 'success' is then measured by the extent to which Indigenous Australians conform to the non-Indigenous ideal. For instance, Indigenous Australians in prescribed areas are exempt from income management if they undertake recognised education courses or obtain adequate levels of employment. What is not recognised, however, is that due to the binary conceptions of Aboriginality (for e.g. the common belief that you are either black or you are not) deficit discourse has caused Indigenous Australians to associate 'Western' education and employment as being inconsistent with the identity of being Indigenous (Paradies, 2006; Gorringer et al, 2011: 6).

Social Impacts

The primary social impact of deficit discourse is the fundamental imbalance of power it creates within society (Gorski, 2010; Pholi et al, 2009: 10; Paradies, 2006: 367). Through reducing Indigenous Australians to statistical units demonstrating continual deficiency and constructing Aboriginality as socially inferior by pathologising discourse (Macoun, 2011: 526), imposes an identity and questions the authenticity of what characteristics constitute an Indigenous

¹⁹ Authenticity is associated with the characteristics that typically embody an Indigenous Australian. While such perceptions may have originated from non-Indigenous Australia, they are now prevalent with Indigenous Australian communities. Such characteristics include:

- Skin colour
- Inequity in learning
- Traditional language capacity
- Connection to traditional culture
- Location
- Degree of 'possession' versus 'dispossession'
- Extent of historical lineage to a land (AIATSIS, 2011: 7-8)

Australian (Gorringe et al, 2011: 6). This effectively surrenders the opportunity (or power) for Indigenous Australians to adequately determine an identity that is outside the binary options of identity, which are considered normal (Shields et al, 2005). This relinquished ability to construct a socially accepted identity, without compromising perceptions of cultural authenticity, further empowers existing structures and dominant ideologues that have formulated these conceptions of deficiency. Deficit discourse, therefore, deflects society's scornful glaze from the mechanisms of injustice perpetuating the popular discourse on to Indigenous Australians, who possess a disproportionately low level of power within the liberal hierarchy (Gorski, 2010: 7; Pholi et al, 2009: 10). As such is the case with the Intervention, deficit discourse focuses on individual bias and behaviours, rarely addressing 'the unexamined ideologies and myths that shape commonly accepted ideas and values in a society.' (Nieto & Bode, 2008: 7)

A further social impact of deficit discourse, implicitly connected to perceptions of authenticity, is the implications of lateral violence (Gorringe et al, 2011: 8). Lateral violence refers to the damaging behaviours inflicted by an oppressed minority group on to individuals within that minority group, as opposed to the criticism or vilification of the oppressive system itself (Dudgeon et al, 2000: 69). While behaviours of lateral violence are instigated from systematic conditions of oppression, they are laterally directed towards peers and, in particular, 'use accusations of inauthenticity as a mechanism of social exclusion.' (Gorringe et al, 2011: 8) Lateral violence, therefore, represents an underlying and harmful social impact of deficit discourse, as individuals adopt perceptions of deficiency and lack agency from the pathologising discourse existing within government policies, such as the Intervention, and inflict them upon peers.

Ending the Silence

Finally, it must be reiterated that this is not an argument that dogmatically abdicates the philosophy of liberalism in its entirety. The virtues of liberalism are varied and well noted, facilitating freedoms and benefits to populations that are considered to be among the best enjoyed throughout society's history (Simmons et al, 2006: 781). But the cultural inclusiveness of the liberal hegemony, and the flexibility of which this trail of political thought may be offered, is a questionable aspect of liberalism, as evident through the paternalistic measures of the Intervention. Moreover, the manner in which the sociopolitical elite has framed Aboriginality as beset with deficiency, in order to achieve the goal of Indigenous normalisation within the liberal hegemony, are methods grounded in colonialism to reinforce the dominant ideology (Macoun, 2011: 523). Social representations are therefore paramount to how populations perceive others and perceive themselves (Bamblett, 2011: 17). When methods of deficit discourse are persistently employed, stereotypes of Indigenous disadvantage are reaffirmed, binary conceptions of Aboriginality are further buttressed, and thus policies are legitimised (McCallum, 2011: 29). Whilst it appears simple in theory to state that a counter narrative that transcends the descriptions of Aboriginal deficit is essential, it is extremely difficult in practice to alter the perceptions of Aboriginal identity in non-Indigenous and Indigenous Australians alike. It requires a confronting process of examining the seemingly

constant philosophies of existing institutions, ideologies and societal identities (Gorski, 2010: 20-23). Restrictive representations can, however, be challenged and overcome by empowering Indigenous voices, leading to consideration of 'strengths and diversity' (Nelson, 2009: 103). Failure to change social practices bolsters the aforementioned implications of deficit discourse and, as Gooda (2009) notes, in doing so 'we are constantly playing to and highlighting what are perceived to be [Indigenous] weaknesses – we are always playing catchup. I would prefer to play to our strengths as Aboriginal people.' This is undoubtedly a sensitive topic for both Indigenous and non-Indigenous Australians (Gorringer et al, 2011: 10); yet, without highlighting the impact of deficit language within the dominant discourse of liberalism, a shift in the national voice from Indigenous deficit to Indigenous strength will not be possible. In the words of the former U.S. Supreme Court Justice Louis Brandeis, 'Sunlight is the best disinfectant'.

LEGAL SECTION – RIGHT TO NON-DISCRIMINATION

This argument concerns the right to non-discrimination for Indigenous Australians affected by mandatory income management under the 2010 amendments to the Welfare Reform Act, as applied to the Racial Discrimination Act 1975 (Cth) (RDA) in Australia. In order for the implementation of the measure to be deemed non-discriminatory under the RDA, discretionary actions and decisions taken in the implementation of the mandatory income management measures must avoid 'direct'²⁰ and 'indirect'²¹ racial discrimination (sections 9(1) and 9(1A) of the RDA) (AHRC, 2010: 6 [14]). As the redesign measures identified three new broad categories of people subject to mandatory income management, consisting of: disengaged youth; long-term welfare payment recipients; and people assessed as vulnerable²², these categories consequently allowed the provisions to be considered as generally applied beyond prescribed areas, avoiding claims of direct discrimination. There remains only the potential for mandatory income management to be ruled as indirectly discriminatory (as defined below). If mandatory income management is ruled as indirectly discriminatory, then it must comply with all of the criteria that constitute a 'special measure'²³ in order to meet the requirements of the

²⁰ **Direct Discrimination** is treating someone less favourably because of his or her race, colour, descent, national origin or ethnic origin than someone of a different 'race' would be treated in a similar situation. (HRLRC, 2010: 16)

²¹ **Indirect Discrimination** occurs when a term, condition or requirement is imposed generally that is unreasonable and has a disparate impact on people of a particular race. (AHRC, 2010: 7)

²² More specifically, within these three broad categories, the Welfare Reform Act identifies seven categories of welfare recipients in total who can be subjected to income management:

(a) a child protection officer of a State or Territory requires the person to be subject to the income management regime; or

(b) the Secretary has determined that the person is a vulnerable welfare payment recipient; or

(c) the person meets the criteria relating to disengaged youth; or

(d) the person meets the criteria relating to long-term welfare payment recipients; or

(e) the person, or the person's partner, has a child who does not meet school enrolment requirements; or

(f) the person, or the person's partner, has a child who has unsatisfactory school attendance; or

(g) the Queensland Commission requires the person to be subject to the income management. (Welfare Reform Bill, Schedule 2, item 25 (s 123TA)).

²³ 'Special Measures' are essentially differential treatment between racial groups which are identified as necessary in order to address an existing inequality or disadvantage, under section 8 of the RDA (AHRC, 2011: 2).

RDA. Therefore, this legal analysis will argue that mandatory income management can potentially be identified as being indirectly discriminatory (Billings & Cassimatis, 2011: 74) and that the provisions do not adequately satisfy all of the requirements that constitute a 'special measure' (AHRC, 2009: 22-23). Moreover, this paper acknowledges the inherent complexity of a judicial interpretation in identifying the NTNER mandatory income management measures as indirectly discriminatory, and due to limitations of this paper, will subsequently focus on the ability of the provisions to comply with the special measure criteria. The research findings put forth in this section, however, can also be applied in support for the claim that blanket welfare quarantining under the NTNER 2010 legislation is indirectly discriminatory.²⁴ As such, this argument will be advanced with specific reference to section 9(1A) of the RDA concerning indirect discrimination²⁵, where:

- (a) a person requires another person to comply with a term, condition or requirement which is not reasonable having regard to the circumstances of the case; and
 - (b) the other person does not or cannot comply with the term, condition or requirement; and
 - (c) the requirement to comply has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, by persons of the same race, colour, descent or national or ethnic origin as the other person, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life;
- the act of requiring such compliance is to be treated, for the purposes of this Part, as an

²⁴ More specifically, the forthcoming research findings on mandatory income management question the reasonable nature of the measures; the ability of prescribed Indigenous Australians to comply with the measures; and the detrimental impact upon the equal enjoyment of rights in public life by prescribed Indigenous Australians (AHRC, 2010: 7).

²⁵ Whilst the right to non-discrimination (specifically indirect discrimination) is the central focus of this paper, section 10 of the RDA regarding the right to equality before the law is an integral and interdependent component of this human right. This section provides that:

10. Rights to equality before the law

(1) If, by reason of, or of a provision of, a law of the Commonwealth or of a State or Territory, persons of a particular race, colour or national or ethnic origin do not enjoy a right that is enjoyed by persons of another race, colour or national or ethnic origin, or enjoy a right to a more limited extent than persons of another race, colour or national or ethnic origin, then, notwithstanding anything in that law, persons of the first-mentioned race, colour or national or ethnic origin shall, by force of this section, enjoy that right to the same extent as persons of that other race, colour or national or ethnic origin.

(2) A reference in subsection (1) to a right includes a reference to a right of a kind referred to in Article 5 of the Convention.

The right to equality under section 10 should be understood to exist where there is 'a moral entitlement to be treated in accordance with standards dictated by the fundamental notions of human dignity and essential equality which underlie the international recognition of human rights' (*Mabo No. 1* (1988) 166 CLR 186, 229 (Deane JJ)). A law will engage the right to equality if it impacts upon a persons ability to 'live in full dignity', 'engage freely in any public activity' or 'enjoy the public benefits of... society' (*Gerhardy v Brown* (1985) 159 CRL 70, 126 (Brennan JJ)). Furthermore, the right to social security additionally represents an engaged right in reference to the NTNER mandatory income management provisions.

act involving a distinction based on, or an act done by reason of, the other person's race, colour, descent or national or ethnic origin.

Furthermore, in order for the mandatory income management measures to be considered consistent with the RDA, one of two options must be satisfied (AHRC, 2010: 14):

1. The structure and implementation of mandatory income management measures avoids racial discrimination; or
2. The mandatory income management measures are developed as a 'special measure' under the RDA.

The questionable extent that either of these options has been adequately satisfied will be conveyed in the forthcoming sections, with a greater concentration on the second option.

Option 1: Avoiding racial discrimination in the implementation of mandatory income management

Indirect Discrimination: section 9(1A)

The Federal Government asserts that the new categories of mandatory income management form an 'objective basis for targeting the benefits of [mandatory] income management that is independent of race, and as a result, is intended to be non-discriminatory' (Australian Government, 2009: 5). Yet, despite the assertions of the Government, blanket welfare quarantining in prescribed areas may constitute indirect discrimination (HRLRC, 2010: 42; AHRC, 2009: 7; Billings & Cassimatis, 2011: 74; Siewert, 2010: 83-4). In assessing whether mandatory income management may indirectly discriminate against Indigenous Australians in the NT, it is necessary to ask:

- Are there any terms, conditions or requirements being imposed that are unreasonable (both in terms of what they require or how they are applied)?
- Are there people of a particular race who are unable to comply with the relevant term, conditions or requirement?
- Does the requirement to comply have a negative impact upon the equal enjoyment of rights in public life by people of that race? (AHRC, 2009: 7)

According to the Australian Human Rights Commission, if the answer to all of these questions is 'yes', then the mandatory income management provisions under the NTNER legislation is indirectly discriminatory (AHRC, 2009: 7). Whilst it is beyond the scope and authority of this paper to unequivocally determine whether mandatory income management does constitute indirect discrimination, selected research findings representative of the broad professional opinion denouncing these measures²⁶ will convey, at least, the potential for these provisions to be deemed indirectly discriminatory. These research findings will challenge the various

²⁶ For example, see the Australian Government Senate Inquires for the 2010 Amendments to the NTNER: <http://www.aph.gov.au/Senate/committee/clac_ctte/soc_sec_welfare_reform_racial_discrim_09/submissions/sublist.htm>; and the current Senate Inquiry into the Stronger Futures Bill: <http://www.aph.gov.au/Senate/committee/clac_ctte/strong_future_nt_11/submissions.htm>

characteristics that constitute a special measure in the coming section and will reinforce the contention that these measures are indirectly discriminatory. Therefore, if mandatory income management can indeed be characterised as indirectly discriminatory, in order to be consistent with the RDA these provisions must comply with the criteria of a special measure.

Option 2: Mandatory income management as a special measure

The term ‘special measure’ is not defined beyond ICERD’s definition of ‘special measures’ in the RDA and it holds its meaning in section 8(1) of the RDA, which provides that the RDA prohibition on racial discrimination does not apply to ‘special measures’, directly from, and by reference to, article 1(4) of ICERD²⁷ (AHRC, 2011: 3). The effect of section 8(1) of the RDA is that if a measure can be characterised as a special measure, it will not constitute racial discrimination under the RDA. If mandatory income management is classified as indirectly discriminatory, as this paper argues, then in order to comply with the RDA, it must satisfy all five characteristics of a special measure, as identified by Brennan J²⁸:

- (1) the special measure must confer a benefit on some or all members of a class;
- (2) membership of this class must be based on race, colour, descent, or national or ethnic origin;
- (3) the special measure must be for the sole purpose of securing adequate advancement of the beneficiaries in order that they may enjoy and exercise equally with others human rights and fundamental freedoms;
- (4) the protection given to the beneficiaries by the special measure must be necessary in order that they may enjoy and exercise equally with others human rights and fundamental freedoms; and
- (5) the special measure must not have achieved its objectives.

It is necessary and essential that all characteristics of a special measure must be ‘appropriate and adapted’ to the relevant purpose.²⁹ Moreover, the exemption for a special measure does not mean that if some aspects of a measure are a special measure, all aspects of that measure

²⁷ Article 1(4) of ICERD provides:

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken to have been achieved.

²⁸ *Gerhardy v Brown* (1985) 159 CLR 70

²⁹ *Gerhardy v Brown* (1985) 159 CLR 70, 105 (Mason J), 149 (Deane J)

are immune from challenge³⁰ (AHRC, 2010: 23 [82]).

This paper will focus on criteria (1), (3) and (4) of the special measure requirements stated above.

Explaining and challenging the special measures criteria with mandatory income management

(1) Confers a benefit

An essential consideration involved with understanding the benefit criterion is the necessity to correctly interpret how a program or action may advance the target group, ensuring equality of human rights with others (Vivian & Schokman, 2009: 81). The term advancement, as defined by Brennan J³¹, is fundamentally tied to the right to self-determination recognised in the International Covenant on Civil and Political Rights (the ICCPR) and the International Convention on Economic, Social and Cultural Rights (the ICESCR)³² (AHRC, 2011: 5). Whilst not binding to Australian domestic law, the ICERD have stated that:

States parties should ensure that special measures are designed and implemented on the basis of prior consultation with affected communities and the active participation of such communities.³³

The Declaration of Indigenous People (DRIP)³⁴ further reinforces this International human rights standard, and to achieve compliance with International human rights standards, adequate consultation is an essential requirement in complying with these standards and determining what constitutes a benefit. In regards to the right to non-discrimination, it is

³⁰ *Vanstone v Clark* (2005) 147 FCR 299, 354 [209] (Weinberg J), Black CJ agreeing

³¹ His Honour stated:

*A special measure must have the sole purpose of securing advancement, but what is 'advancement'? To some extent, that is a matter of opinion formed with reference to the circumstances in which the measure is intended to operate. 'Advancement' is not necessarily what the person who takes the measure regards as a benefit for the beneficiaries. The purpose of securing advancement for a racial group is not established by showing that the branch of government or the person who takes the measure does so for the purpose of conferring what it or he regards as a benefit for the group if the group does not seek or wish to have the benefit. The wishes of the beneficiaries for the measure are of great importance (perhaps essential) in determining whether a measure is taken for the purpose of securing their advancement. The dignity of the beneficiaries is impaired and they are not advanced by having an unwanted material benefit foisted on them. (*Gerhardy v Brown* (1985) 159 CLR 70)*

³² Article 1 of the ICCPR and the ICESCR states:

All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

³³ Committee on the Elimination of Racial Discrimination, General Recommendation No. 32: The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination (2009), paras. 16, 18.

³⁴ Article 19 states: ☐

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

crucial to decipher through consultation and supported research that the benefits of the measure could not be achieved without making a racial distinction, and thus justify the provisions as a special measure (AHRC, 2011: 5).

The consultation process in determining the necessity for mandatory income management and the supportive research reinforcing the benefits of these provisions are extremely problematic in this circumstance. The insufficient consultation process and predominantly negative evidence of mandatory income management has been reiterated by a variety of peak organisations, particularly in the 2010 round of Senate Submissions³⁵. These positions of inadequacy regarding welfare quarantining can be broadly depicted through the Senate Submission received from the Australian Council of Social Service (ACOSS). In relation to the extension and general application of the scheme beyond the NT, ACOSS has voiced concern with the measures, stating that ‘there has been no broad national consultation outside the NT’ (ACOSS, 2010: 9). Following the close examination of a myriad of sources, ACOSS contends ‘that the available evidence provides a weak evidence base for the extension’, with the evidence being ‘very mixed and often contradictory.’³⁶ (ACOSS, 2010: 9) Anglicare Australia, a national service delivery agency, supported these arguments, stating that ‘[t]here doesn’t appear to be evidence from the Intervention that [mandatory] income management, in and itself, is a solution to problems of dysfunction and welfare dependency.’ (Anglicare Australia, 2010: 6) Furthermore, the alarming lack of consultation was made particularly evident within the *Will They Be Heard?* Report by the Jumbunna Indigenous House of Learning, stating that:

[T]here are a number of more technical defects about the consultation process, such as lack of independence, the absence of Aboriginal people from those conducting the consultation, lack of interpreters and the complicated and inadequate nature of the explanations given about the Racial Discrimination Act and ‘special measures’.
(Nicholson et al, 2009: 7[28]).

The inadequate evidence based and limited levels of consultation were further pronounced by the Australian Financial Counselling and Credit Reform Association (AFCCRA). Representing a body of professional financial counsellors, AFCCRA have obtained direct experience with the various income management schemes in the NT and Western Australia (WA). The AFCCRA have maintained staunch disapproval of mandatory income management, preferring both voluntary ‘opt in’ approaches and trigger-based systems (AFCCRA, 2010: 5). The imposition of welfare quarantining thus ‘fundamentally alters’ the delivery of financial counselling and is ‘...contrary to our ethical standards and over 30 years of professional practice’ (AFCCRA, 2010: 6).

³⁵ For example, 2010 Senate Submissions from *Amnesty International* and *National Welfare Rights Network*, at: <http://www.aph.gov.au/Senate/committee/clac_ctte/soc_sec_welfare_reform_racial_discrim_09/submissions/sublist.htm>

³⁶ Sources include:

- Reports from the most recent NTER redesign consultations;
- The AIHW’s Evaluation of income management in the Northern Territory;
- A survey of community stores; and
- The Central Land Council survey 2008. (ACOSS, 2010: 9)

While the Australian Courts have recognised that the wishes of the intended beneficiaries are of importance in the determination of special measures through adequate consultation,³⁷ the Courts have not made the processes of consultation and consent mandatory requirements for a valid special measure³⁸. This lack of consultation may be justified where there are legitimate reasons for not consulting, or a strong body of informed support reinforcing the benefit of such provisions (AHRC, 2011: 6). The evidence provided above, however, challenges the government's proclaimed benefits of mandatory income management and highlights the importance of effective consultations in conferring a benefit.

(3) Sole purpose

The term 'sole purpose', as explained by Justice Deane in *Gerhardy v Brown*³⁹, states that special measures should be 'proportional' to the degree of disadvantage, 'appropriate' and 'adapted' to achieving its stated purpose (AHRC, 2011: 7 [25]). This point has relevance to both the 'sole purpose' and 'necessity' requirements of special measures.

The original NTNER legislation was ostensibly formulated to confront issues of Indigenous child abuse and disadvantage (Arney et al, 2011: 42). Yet, through the 2010 Amendments, the broad policy approach of the Intervention has shifted to become a sweeping policy reform, as seen through mandatory income management, attempting to combat general Indigenous disadvantage (Cox, 2011: 19). The *Future Directions Discussion Paper* of the NTNER stated that mandatory income management (and the broader Intervention) is 'part of the Government's wider strategy to Close the Gap between Indigenous and non-Indigenous Australians.' (FaHCSIA, 2009: 5) This apparent expansion of the Intervention is consistent with the extension of blanket welfare quarantining in both the NTNER 2010 Amendments and the Stronger Futures Bill 2012.

Yet, the principle of proportionality requires a precise balancing of the impact of a measure with the stated intent of the measure, and is necessary for its parts to be 'appropriate and adapted' to this purpose (AHRC, 2011: 7 [26]). Evidence has suggested, however, that the impacts of the mandatory income management measures have been *inappropriate* and *disproportionate* to the purpose of curtailing Indigenous disadvantage. For instance, the Australian Indigenous Doctors' Association (AIDA), having produced a Health Impact Assessment of the Intervention, examined the myriad of consequences associated with income

³⁷ *Gerhardy v Brown* (1985) 159 CLR 70. Quote as n 13.

³⁸ For e.g. see: *Morton v Queensland Police Service* (2010) QCA 160

³⁹ Justice Deane defines 'sole purpose' as:

What is necessary for characterization of legislative provisions as having been "taken" for a "sole purpose" is that they can be seen, in the factual context, to be really and not colourably or fancifully referable to and explicable by the sole purpose which is said to provide their character. They will not be properly so characterized unless their provisions are capable of being reasonably considered to be appropriate and adapted to achieving that purpose. Beyond that, the Court is not concerned to determine whether the provisions are the appropriate ones to achieve, or whether they will in fact achieve, the particular purpose. (*Gerhardy v Brown* (1985) 159 CLR 70)

management, and the NTNER in general. Whilst the report did convey cases of positive results, with some women claiming that ‘income management had significantly improved their lives’ (AIDA, 2010: 22), such positive results were unfortunately in the minority of the findings. Since the introduction of income management, ‘[s]everal women spoke of the hunger their families experienced close to pay day’ and there was now ‘more pressure over money’ (AIDA, 2010: 23). Furthermore, welfare quarantining prevented Aboriginal families from managing their money, thus ‘reinforcing beliefs that Aboriginal people were not able to manage their lives.’ (AIDA, 2010: 23) These findings led to the conclusion that ‘[w]e could find no evidence that the blanket quarantining of income was an effective strategy’ (AIDA, 2010: 23). Similarly, the Aboriginal Medical Services Alliance of the Northern Territory (AMSANT) voiced strong opposition to a mandatory and generic system of income management. The AMSANT Senate Submission reaffirmed the conclusion reaches by AIDA, that “[t]here is no compelling evidence that compulsory income management is an effective tool for helping to improve the living conditions for children and families in Indigenous communities” (AMSANT, 2010: [22]). This consequently challenges the compliance of mandatory income management with the special measure criterion of being considered appropriate and proportionate to the sole purpose of the measure. This element of the special measure criteria can possibly be challenged on this basis. In *Vanstone v Clark*, Justice Weinberg rejected that once a particular provision of an act is determined as a special measure, the different elements of the provision cannot be separately challenged as discriminatory⁴⁰ (AHRC, 2011: 7 [27]).

(4) Necessity

The classification of a measure being deemed as necessary requires that the provision enables the target group to enjoy their human rights equally (in this case, the right to non-discrimination) with other members of society (AHRC, 2011: 8[29]). To be satisfied that a provision demonstrates necessity to fulfill this criterion of a special measure, it is essential that current and credible evidence supports the need for the measure and shows that it will be effective (AHRC, 2009: 23[83]). Moreover, the measure should be capable of being reasonably considered to be appropriate and adapted to achieving the purpose, as conveyed within ICERD Article 1(4)⁴¹. This requires a demonstrable link, justified through a reasonable evidence base, between the measure and its stated objective (AHRC, 2011: 8[29-30]). Demonstrating this necessity through evidence in regards to mandatory income management has been a process thwart with contradictions and uncertainty (Cox, 2011: 20).

Successive Australian governments repeatedly announce the supposed successes of income management in its inception. The attitude of the Federal government has been that ‘[mandatory] income management is an effective tool for supporting individuals and families

⁴⁰ Justice Weinberg stated that such a proposition: □ involves a strained, if not perverse, reading of s8 of the RDA, and would thwart rather than promote the intention of the legislature. If the submission were correct, any provision of an ancillary nature that inflicted disadvantage upon the group protected under a ‘special measure’ would itself be immune from the operation of the RDA simply by reason of it being attached to that special measure.

⁴¹ As detailed in footnote 9.

reliant on welfare who are living in communities under severe social pressure' (Welfare Reform Act, 2009b). The Australian government then selectively refers to reports only to reaffirm their position, such as the findings from the Australian Institute of Health and Welfare (AIHW), stating that children are eating more food and that higher amounts of money is being spent on food.⁴² What failed to be acknowledged by the government, however, were the substantial limitations involved with the research methodology of these findings⁴³, despite such limitations were identified by the report itself.⁴⁴ This AIHW report, from which the government quotes, implicitly challenges the special measure requirement that these provisions can be considered reasonably necessary to achieve its objective of servicing Indigenous disadvantage.

In further contradiction to the Australian government's position on income management was an article published by the *Medical Journal of Australia* entitled 'The Full Menzies Research Study Report'. This journal article endeavoured to 'examine the impact of a government income management program on store sales.' (Brimblecombe et al, 2010: 549) This article concluded that income management had 'no beneficial effect on tobacco and cigarette sales, soft drink or fruit and vegetable sales.' (Brimblecombe et al, 2010: 549) Therefore, if the Australian government practised a true commitment to evidence-based research with Indigenous policy, then surely the Menzies report would have influenced some effect on the amended income management scheme (Cox, 2011: 63).

Therefore, as the evidence aforementioned states, mandatory income management to be considered necessary for prescribed Indigenous Australians to enjoy equality of human rights is problematic, should this measure be deemed indirectly discriminatory and thus a special measure.

Conclusion

This section illustrates the potentially problematic nature of mandatory income management under the NTNER 2010 legislation and the possibility of these measures being deemed indirectly discriminatory through a legal challenge (as of s 9(1A) of RDA). This paper has shown that if the Courts were to rule these blanket welfare provisions as indirectly discriminatory, mandatory income management would have difficulty in fulfilling the requirements of the special measure criteria and thus complying with the RDA.

CONCLUSION

This paper has endeavoured to convey that the extension of blanket welfare provisions following the amended NTNER laws in 2010 has disproportionately (and possibly, unjustly) impacted Indigenous Australians in the NT. A contemporary policy predicated upon the

⁴² Policy Statement: *Landmark Reform to the Welfare System, Reinstatement of the Racial Discrimination Act and Strengthening of the Northern Territory Emergency Response*, 5.

⁴³ Data was obtained from a client survey of 76 people subject to income management and focus groups involving 167 stakeholders. Data was collected from only 4 locations. Participants in the survey were chosen from only 4 locations and were not randomly selected.

⁴⁴ The AIHW noted that the research methods used would sit at the bottom of an evidence hierarchy (AIHW, 2009: 2).

neoliberal philosophy of normalisation, has hampered Australia's compliance with international human rights obligations. This perceivably 'lucky country', for all its hopes and all its boasts, continues to compromise the universal human rights of its Indigenous peoples. For a nation that claims to stand at the forefront of civil rights on an international stage, must reevaluate their actions at home to ensure consistency with their endeavours abroad. As such, the expanded categories of welfare recipients under this scheme only further implicate Indigenous Australians, and are deemed irresponsible, coercing individuals into education and training with the carrot of exemption (Billings & Cassimatis, 2011: 80). Pulling the financial levels of incentives to allure Indigenous peoples to educational services and improve outcomes is not supported by domestic or overseas evidence (Billings & Cassimatis, 2011: 80); nor does it accomplish other results that it purports to achieve⁴⁵. Moreover, compulsory income management has imparted an overwhelming sense of shame and inferiority within the prescribed communities (AIDA, 2010: 23), further buttressing stereotypes and prejudices promulgated by deficit discourse. This absence of hope can rot a society from within. Therefore, the above analysis casts considerable doubts over whether mandatory income management maintains consistency with non-discrimination principles. As a result, it is likely that the Australian Courts will be called to rule upon mandatory income management in the future and will hopefully bend history in the direction of justice.

BIBLIOGRAPHY

ABC Lateline (2007): <<http://www.abc.net.au/lateline/content/2007/s1998113.htm>>

Altman, J. (2007): 'Neo-paternalism: Reflections on the Northern Territory Intervention', <<http://news.anu.edu.au/?p=271&pg=0>>

Altman, J. (2007b) 'Is This Going to Assist Vulnerable Australians?' *Impact* (Winter): 10–11.

Altman, J. (2007c). In the Name of the Market? In: Altman, J. & Hinkson, M. *Coercive Reconciliation*. North Carlton, Australia: Arena Publications. 307-321.

Altman, J. & Hinkson, M. (2007) *Coercive Reconciliation*. North Carlton, Australia: Arena Publications.

Anaya, J. (2009) *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, UN Doc A/HRC/12/34 [41].

Anderson, P. (2007) *Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007; Northern Territory National Emergency Response Bill 2007; Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007; Appropriation (Northern Territory National Emergency Response) Bill (No. 1) 2007-2008; Appropriation (Northern Territory National Emergency Response) Bill (No. 2) 2007-2008 Second Reading*. August 8th, 2007 <<http://www.openaustralia.org/senate/?gid=2007-08-08.17.1>>

Australian Government (2009) *Policy Statement: Landmark Reform to the Welfare System, Reinstatement of the Racial Discrimination Act, and Strengthening of the Northern Territory Emergency Response*:

⁴⁵ See 'Legal Debate – Right to Non-Discrimination' section above.

<http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/policy_statement_nter/Pages/part1.aspx> Accessed at 17 January, 2012.

Australian Human Rights Commission (2011) *2011 Guidelines to understanding 'Special measures' in the Racial Discrimination Act 1975 (Cth): Implementing 'special measures' under the Racial Discrimination Act 1975*: <http://www.hreoc.gov.au/racial_discrimination/publications/special_measures2011.html> Accessed 20th December 2011.

Arney, F., McGuinness, K. & Robinson, G. (2011): 'In the Best Interests of the Child? Determining the Effects of the Emergency Intervention on Child Safety and Wellbeing'. *Law in Context*, Volume 27 No. 2.

Bamblett, L. (2011) 'Straight-line stories: Representations and Indigenous Australian identities in sports discourses', *Australian Aboriginal Studies*, No. 2: 5-20.

Behrendt, L. (2007) 'The Emergency We Had To Have', In: Altman, J. & Hinkson, M. *Coercive Reconciliation*. North Carlton, Australia: Arena Publications.

Billings, P. (2011) 'Introduction'. *Law in Context*, Volume 27 No. 2.

Billings, P. & Cassimatis, A.E. (2011): 'Redesigning the Northern Territory Emergency Response – Social Welfare Reform and Non-Discrimination'. *Law in Context*, Volume 27 No. 2.

Brandon, W.W. (2003). 'Toward a white teachers' guide to playing fair: Exploring the cultural politics of multicultural teaching.' *Qualitative Studies in Education*, 16(1), 31-50.

Brough, M. (2007a) Commonwealth's Intervention into Aboriginal Communities in the Northern Territory: Address to National Press Club 15 August 2007. Available from: <http://www.formerministers.fahcsia.gov.au/malbrough/speeches/Pages/speech_nter_15aug07.aspx> Accessed 20 December 2011

Brough, M. (2007b) Acting to Make a Safer, Better Life for Aboriginal Children: Message from the Minister for Aboriginal Affairs. Northern Territory Emergency Response FaCSIA 0635R. 18 August 2007. Australian Government.

Brough, M. (2007c) Interview by Alexandra Kirk, 'Nothing New in NT Intervention Law: Brough', ABC Local Radio AM Programme, 7 August.

CERD. (2009) *Correspondence to the Australian Government following up on the Early Warning and Urgent Action Procedure on the issues raised before the Committee in relation to the Northern Territory Emergency Response*, 28 September 2009 <www2.ohchr.org/english/bodies/cerd/docs/early_warning/Australia28092009.pdf> Accessed 9 January 2012.

Committee on Economic, Social and Cultural Rights (2009) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*, UN Doc E/C.12/AUS/CO/4, available at <<http://www2.ohchr.org/english/bodies/cescr/docs/AdvanceVersions/E-C12-AUS-CO-4.doc>> Accessed 9 January 2012.

Committee on Economic, Social and Cultural Rights (2009) *General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights*, UN Doc E/C.12/GC/20.

Cox, E. (2011) 'Evidence-free Policy Making? The Case of Income Management', *Journal of Indigenous Policy*, Issue 12.

- Dean, M. (2002) 'Liberal government and authoritarianism', *Economy and Society*, 31: 37-61.
- Dodson, M. (2007) 'Bully in the Playground: A New Stolen Generation?' In: Altman, J. & Hinkson, M. *Coercive Reconciliation*. North Carlton, Australia: Arena Publications.
- Dodson, M. (1994) 'The Wentworth Lecture – The End in the Beginning: (Re)defining Aboriginality', *Australian Aboriginal Studies* (1): 2-13.
- Dudgeon, P.; Garvey, D.; and Pickett, H. (2000) 'Violence turned inwards', in *Working with Indigenous Australians: A handbook for psychologists*, Gunada Press, Perth: 69-84.
- Dudley-Marling, C. (2007). 'Return of the deficit.' *Journal of Educational Controversy*, 2(1): <<http://www.wce.wvu.edu/Resources/CEP/eJournal>> Accessed January 4, 2012.
- FaHCISA (2009) *Policy Statement: Landmark Reform to the Welfare System, Reinstatement of the Racial Discrimination Act and Strengthening of the Northern Territory Emergency Response*. At: <http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/policy_statement_nter/Documents/landmark_reform_welfare_system.pdf> (viewed 6 January 2012).
- Foucault, M. ([1978-79]2008) *The Birth of Biopolitics: Lectures at the College de France, 1978-79*, 90.
- Foucault, M. ([1975]1991) *Discipline and Punish: The Birth of the Prison*. London: Penguin.
- Fukuyama, F. (1989) 'The End of History', *The National Interest*, 16.
- Gooda, M. (2009) 'Treading the fine line: navigating away from the narrative of disadvantage', paper presented to AIATSIS National Indigenous Studies Conference: Perspectives on Urban Life: Connections and Reconnections, October. <www.aiatsis.gov.au/research/conf2009/papers/H2.html#gooda> Accessed 20 January 2012.
- Goot, M. & Rowse, T. (2007) *Divided Nation? Indigenous Affairs and the Imagined Australian Public*, Melbourne: Melbourne University Press.
- Gorringe, S.; Ross, J.; and Fforde, C. (2011) "Will the Real Aborigine Please Stand Up": Strategies for breaking the stereotypes and changing the conversation', *AIATSIS*, Research Discussion Paper 28.
- Gorski, P. (2010). 'Unlearning deficit ideology and the scornful gaze: Thoughts on authenticating the class discourse in education'. In: R. Ahlquist, P. Gorski, & T. Montaño (Eds.), *Assault on Kids: How Hyper-Accountability, Corporatization, Deficit Ideology, and Ruby Payne Are Destroying Our Schools*, New York, NY: Peter Lang.
- Gorski, P.C. (2008a). 'Peddling poverty for profit: Elements of oppression in Ruby Payne's framework'. *Equity & Excellence in Education*, 41(1), 130-148.
- Gorski, P.C. (2008b). The myth of the 'culture of poverty.' *Educational Leadership*, 65(7), 32-36.
- Hamovitch, B. (1997). *Staying after school*. Westport, CT: Praeger.
- Hindess, B. (2001) 'The liberal government and unfreedom', *Alternatives*, 26: 93-111.
- Howard, J. (2007) Interview with David Koch and Melissa Doyle. Sunrise, Seven Network, 22 June, 2007. Available from: <<http://www.pm.gov.au/media/Interview/2007/Interview24381.html>> Accessed 20 December 2011.

- Human Rights Committee (2004) *General Comment 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add13.
- Human Rights Committee (2009) *Concluding Observations of the Human Rights Committee: Australia*, UN Doc CCPR/C/AUS/CO/5, available at <<http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-P-AUS-CO-5.doc>>
- Human Rights Council, United Nations (2009): *Statement of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, James Anaya, as he Concludes his Visit to Australia*, 27 August 2009 <www.un.org.au/files/files/Press%20Release%20-%20Australia%20JA%20final.pdf>
- Jennings, P.K. (2004). 'What mothers want: Welfare reform and maternal desire.' *Journal of Sociology and Social Welfare*, 31(3), 123-130.
- Macoun, A. (2011): 'Aboriginality and the Northern Territory Intervention', *Australian Journal of Political Science*, 46:3, 519-534
- McCallum, K. (2011) 'Journalism and Indigenous health policy', *Journal of the Australian Institute of Aboriginal and Torres Strait Islander Studies*, No. 2, 2011: 21-31.
- McMartin, A. (2007) 'Neoliberalism, Social Reproduction and the Reshaping of Mum Time', Paper for the Graduate Affairs Symposium, University of Otago, 28 September 2007.
- Moreton-Robinson, A. (2009) 'Imagining the Good Indigenous Citizen: Race War and the Pathology of Patriarchal White Sovereignty', *Cultural Studies Review*, 15(2): 61-79.
- Murray, K.B. (2004) 'Do not disturb: "Vulnerable populations" in federal government policy discourse', *Canadian Journal of Urban Research*, vol. 13, no. 1: 50-69.
- Nakata, M. (2006) 'Australian Indigenous Studies: A question of discipline', *Australian Journal of Anthropology*, vol. 17, no. 3: 265-275
- Nelson, A. (2009) 'Sport, physical activity and urban Indigenous young people', *Australian Aboriginal Studies*, 2009/2: 101-111.
- Nicholson, A.; Behrendt, I; Vivian, A; Watson, N & Harris, M. (2009) *Will They Be Heard? A Response To The NTER Consultations*. Jumbunna Indigenous House of Learning.
- Nieto, S., & Bode, P. (2008). *Affirming diversity: The sociopolitical context of multicultural education*, 5/e. Boston: Pearson.
- NTER Review. (2011):
http://www.facs.gov.au/sa/indigenous/pubs/nter_reports/response_to_reportNTER/Pages/recommendations_table.aspx
- Paradies, Y. (2006) 'Beyond black and white: Essentialism, hybridity and indigeniety', *Journal of Sociology*, vol. 42, no. 4: 355-367.
- Pearson, N. (2000) *Our Right to Take Responsibility*, Cairns: Noel Pearson and Associates.
- Pholi, K.; Black, D.; & Richards, C. (2009) 'Is 'Close the Gap' a useful approach to improving the health and wellbeing of Indigenous Australians?', *Australian Review of Public Affairs*, vol. 9, no. 2: 1-13.

- Sanderson, J. (2007) "Reconciliation and the Failure of Neo-liberal Globalisation", In: Altman, J. & Hinkson, M. *Coercive Reconciliation*. North Carlton, Australia: Arena Publications.
- Siewert, R. (2010) *Inquiry into the provisions of the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of the Racial Discrimination Act) Bill 2009 and related legislation - Dissenting report*: Senator Rachel Siewert, Australian Greens.
- Shields, C.; Bishop, R. & Mazawi, A. E. (2005) *Pathologising Practices: The impact of deficit thinking on education*, Peter Lang, New York.
- Sleeter, C.E. (2004) 'Context-conscious portraits and context-blind policy. *Anthropology & Education Quarterly*, 35(1): 132-136.
- Simmons, B.A.; Dobbin, F.; & Garrett, G. (2006) 'International Organization', *The MIT Press*, vol. 60, no. 4: 781-810.
- Stringer, R. (2007) A Nightmare of the Neocolonial Kind: Politics of Suffering in John Howard's Northern Territory Intervention. *Borderlands ejournal* 6, Available from: <<http://www.borderlands.net.au>>
- Tedmanson, D. & Wadiwel, D. (2010) 'Neoptolemus: the governmentality of new race/pleasure wars?', *Culture and Organization*, 16: 7-22.
- Turner, P. & Watson, N. (2007) 'The Trojan Horse Unrepresented', In: Altman, J. & Hinkson, M. *Coercive Reconciliation*. North Carlton, Australia: Arena Publications.
- Tyler, W. (1993) 'Postmodernity and the Aboriginal Condition: The Cultural Dilemmas of Contemporary Policy. *Australian & New Zealand Journal of Statistics*, 29: 322-342.
- Valencia, R.R. (1997). 'Introduction'. In R.R. Valencia (Ed.), *The evolution of deficit thinking* (pp. ix-xvii). London: Falmer Press.
- Vivian, A. and Schokman, B. 'The Northern Territory Intervention and the fabrication of 'special measures'', *Australian Indigenous Law Review* 13(1) 2009: 78-106.
- Weiner, L. (2006). 'Challenging deficit thinking.' *Educational Leadership*, 64(1), 42-45.
- Weiner, L. (2003). 'Why is classroom management so vexing to urban teachers?' *Theory into Practice*, 42(4), 305-312.
- Wild, R. & Anderson, P. (2007): *Ampe Akelyernemane Meke Mekarle: 'Little Children are Sacred': Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Darwin: Northern Territory Government.
- Yosso, T.J. (2005). Whose culture has capital? A critical race theory discussion of community cultural wealth. *Race, Ethnicity and Education*, 8(1), 69-91.
- Yu, P., Duncan, M.E. & Gray, B. (2008) *Report of the NTER Review Board*, 9-10.
<http://www.nterreview.gov.au/docs/report_nter_review/docs/Report_NTER_Review_October08.pdf>
> at 15 December 2011

LEGISLATION

Northern Territory National Emergency Response Act 2007 (Cth).

Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007 (Cth).

Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007 (Cth).

Appropriation (Northern Territory National Emergency Response) Act (No. 1) 2007-2008 (Cth).

Appropriation (Northern Territory National Emergency Response) Act (No. 2) 2007-2008 (Cth).

Racial Discrimination Act 1975 (Cth).

Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2009 (Cth).

Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009b, Explanatory Memorandum, 14, available at <[http://www.scaleplus.law.gov.au/comlaw/legislation/bills1.nsf/0/2C4C4242759BED6BCA25767A0004E9CE/\\$file/r4265em.doc](http://www.scaleplus.law.gov.au/comlaw/legislation/bills1.nsf/0/2C4C4242759BED6BCA25767A0004E9CE/$file/r4265em.doc)>

Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Act 2009 (Cth).

SUBMISSIONS FROM PARLIAMENTARY INQUIRIES

Aboriginal Medical Services Alliance of the Northern Territory (AMSANT) (2010) Answers to questions on notice to the Aboriginal Medical Services Provided to the Senate Community Affairs Legislation Committee.

<http://www.aph.gov.au/senate/committee/clac_ctte/soc_sec_welfare_reform_racial_discrim_09/submissions/QoN7AMSANT.pdf>

Amnesty International Australia, Submission 19 to Senate Standing Committee on Community Affairs, *Inquiry into Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 and the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 along with the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009 [introduced by Senator Siewert]*, February 2010.

Anglicare Australia, Submission 33 to Senate Standing Committee on Community Affairs, *Inquiry into Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 and the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 along with the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009 [introduced by Senator Siewert]*, February 2010.

Australian Council of Social Service, Submission 17 to Senate Standing Committee on Community Affairs, *Inquiry into Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 and the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 along with the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009 [introduced by Senator Siewert]*, February 2010.

Australian Financial Counselling and Credit Reform Association (AFCCRA), Submission 79 to Senate Standing Committee on Community Affairs, *Inquiry into Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 and the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 along with the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009 [introduced by Senator Siewert]*, February 2010.

Australian Human Rights Commission, Submission 76 to Senate Standing Committee on Community Affairs, *Inquiry into Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 and the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 along with the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009 [introduced by Senator Siewert]*, 10 February 2010.

Australian Indigenous Doctors' Association and Centre for Health Equity Training, Research and Evaluation, University of NSW Health Impact Assessment of the Northern Territory Emergency Response (2010). <<http://www.aida.org.au/viewpublications.aspx?id=3>> Accessed 5th January, 2012.

Human Rights Law Resource Centre, Submission No 18 to Senate Standing Committee on Community Affairs, *Inquiry into Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 and the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 along with the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009 [introduced by Senator Siewert]*, 1 February 2010.

Law Council of Australia, Supplementary Submission No 83 to Senate Standing Committee on Community Affairs, *Inquiry into Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 and the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 along with the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009 [introduced by Senator Siewert]*, 4 March 2010.

CASES

Gerhardy v Brown (1985) 159 CRL 70

Mabo No. 1 (1988) 166 CLR 186

Vanstone v Clark (2005) 147 FCR 299

INTERNATIONAL INSTRUMENTS

Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007 by resolution 61/295.

International Covenant on Civil and Political Rights, opened for signature, opened for signature 16 December 1966, UNTS (entered into force 23 March 1976).

International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 November 1976).

International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature 21 December 1965, UNTS (entered into force 4 January 1969).