

## INCOME MANAGEMENT AND INDIGENOUS WOMEN: A NEW CHAPTER OF PATRIARCHAL COLONIAL GOVERNANCE?

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### I INTRODUCTION

Like other colonial countries, Australia has long governed its First Peoples with intrusive paternalism. Paternalistic governance has created ongoing problems for Australia's First Peoples, also referred to in national discourse as Indigenous peoples and Aboriginal and Torres Strait Islander peoples.<sup>1</sup> Such paternalism has created specific difficulties for Indigenous women who have been subject to surveillance and controlled by colonialism in every sphere of their lives. This article will explore some of these forms of surveillance and argue that new forms of paternalism ushered in by 'the global ascendance of neo-liberal policies and discourses'<sup>2</sup> have reproduced similar racialised and gendered impacts for Indigenous women as were apparent in previous policies. Situating income management in a global context, welfare reform has been and continues to be underway in many Western nations as policies are fitted to the framework

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1 See the following Research Centres and a peak non-government organisation: the Indigenous Law Centre at the University of New South Wales, Jumbunna Indigenous House of Learning at the University of Technology Sydney, the National Centre for Indigenous Studies at the Australian National University, the Centre for Aboriginal Economic Policy Research at the Australian National University, and the National Congress of Australia's First Peoples. Whilst some prefer 'Aboriginal', others prefer 'First Peoples' or 'First Nations'.

2 Avtar Brah, Ioana Szeman and Irene Gedalof, 'Introduction: Feminism and the Politics of Austerity' (2015) 109 *Feminist Review* 1, 1. In this article, neoliberalism refers to discursive narratives and policies that promote 'market-oriented "governance"' of Indigenous peoples: Jamie Peck, *Constructions of Neoliberal Reason* (Oxford University Press, 2012) xiii; Jon Altman, 'Foreword' in Natasha Fijn et al (eds), *Indigenous Participation in Australian Economies II – Historical Engagements and Current Enterprises* (ANU E Press, 2012) xvi.

of the ‘austere, neo-liberal state’.<sup>3</sup> According to the policy logic associated with austerity, “‘we’ are all equally called upon to tighten our belts, to be prudent with “our” limited resources, to be careful and “austere” in the sense of being self-disciplined, or of forgoing unnecessary luxuries’.<sup>4</sup> Australia has vigorously adopted this approach towards those welfare recipients who have been selected for income management trials. Australia’s special brand of austerity for (mostly) Indigenous welfare recipients has been a government issued ‘BasicsCard’ which quarantines a substantial percentage of welfare payments depending on the category of income management to which welfare recipients are subject. Such income managed funds can only be spent on government defined priority needs at government-approved retailers or service providers. However, as this article will reveal, income management has created considerable problems that remain unaddressed and unacknowledged by government law and policymakers responsible for welfare reform. Other countries interested in adopting a similar system of cashless welfare transfers, such as the United Kingdom,<sup>5</sup> could learn from the mistakes made by Australian law and policymakers responsible for income management.

This article will interrogate the ways in which Indigenous women are represented in official income management discourse contained in policy documents, legislation, and parliamentary debates. Compulsory income management was originally introduced as part of the Northern Territory Emergency Response (‘NTER’/‘Intervention’) via the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth). In 2007, the policymakers behind the Intervention claimed that compulsory income management could address the (presumed) vulnerability of Indigenous welfare recipients in relation to the use of financial resources. The Intervention was triggered by the *Little Children Are Sacred* report,<sup>6</sup> which had raised concerns over sexual abuse of Aboriginal children in some remote Aboriginal communities. Protecting Indigenous women and children from violence was a prominent part of policy rationale for the Intervention. During the second reading speech for the Intervention legislation, then Minister Mal Brough referred to Aboriginal communities who were to be subject to the Intervention as ‘failed’ societies ‘where basic standards of law and order and behaviour’ had ‘broken down and where women and children’ were ‘unsafe’.<sup>7</sup> The government claimed

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3 Brah, Szeman and Gedalof, above n 2, 1.

4 Ibid.

5 Claudia Wood and Jo Salter, *The Power of Prepaid* (Demos, 2013) 10–11; Guy Standing, *A Precariat Charter: From Denizens to Citizens* (Bloomsbury, 2014) 377–8; Iain Duncan Smith, ‘Duncan Smith Outlines Plans for Prepaid Benefits Cards in Place of Cash’, *The Guardian* (online), 30 September 2014 <<http://www.theguardian.com/politics/2014/sep/29/duncan-smith-prepaid-benefits-cards-cash-payments>>.

6 Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, Parliament of the Northern Territory, *Ampe Akelyernemane Meke Mekarle: ‘Little Children Are Sacred’* (2007).

7 Commonwealth, *Parliamentary Debates*, House of Representatives, 7 August 2007, 10 (Mal Brough, Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs).

that these communities needed to be ‘stabilised and normalised’.<sup>8</sup> Included in this normalisation approach was an emphasis on Aboriginal people getting ‘real jobs’ and joining ‘mainstream employment’.<sup>9</sup> Indigenous welfare recipients were portrayed as deficient for receiving ‘passive welfare’.<sup>10</sup> The government maintained that welfare for Indigenous peoples had led to ‘an intergenerational cycle of dependency’ and ‘become a trap instead of a pathway’.<sup>11</sup> The government’s stated intention for compulsory income management was to make sure that Indigenous welfare recipients were prevented ‘from using welfare in socially irresponsible ways’.<sup>12</sup> It was said that welfare reform was necessary to:

help ... stem the flow of cash going towards substance abuse and gambling and ensure that funds meant to be for children’s welfare are used for that purpose. ... [and] ... to minimise the practice known as ‘humbugging’ in the Northern Territory, where people are intimidated into handing over their money to others for inappropriate needs, often for alcohol, drugs and gambling.<sup>13</sup>

Indigenous adults receiving government income support were collectively portrayed as drug-addled irresponsible parents. Income management measures were said to be required ‘to ensure that priority needs are met and to encourage better social and parenting behaviours’.<sup>14</sup> As constructed in 2007, income management was an explicitly race based measure for all Indigenous welfare recipients living in prescribed areas in the Northern Territory. The Intervention was overtly racially discriminatory, and the government suspended the operation of the *Racial Discrimination Act 1975* (Cth),<sup>15</sup> which precluded Aboriginal people subject to Intervention measures from access to any effective domestic legal mechanism for redress.<sup>16</sup>

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8 Ibid 7.

9 Ibid.

10 Ibid 6–7, 11.

11 Ibid 6.

12 Ibid 7.

13 Ibid 6.

14 Ibid 3.

15 *Northern Territory National Emergency Response Act 2007* (Cth) s 132(2); *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth) ss 4(3), 6(3); *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth) s 4(2).

16 There was one failed constitutional law challenge brought by Aboriginal plaintiffs in the case of *Wurridjal v Commonwealth* (2009) 237 CLR 309 regarding s 51(xxxi) of the *Australian Constitution*. This involved consideration of the constitutional requirement for compulsory acquisition of property to be on just terms and related to compulsory five year leases of Aboriginal lands in the Northern Territory (one of the Intervention measures): See generally Shelley Bielefeld, ‘The “Intervention” Legislation – “Just” Terms or “Reasonable” Injustice? – *Wurridjal v The Commonwealth of Australia*’ (2010) 14 *Australian Indigenous Law Review* 2.

In 2008, then Minister Jenny Macklin announced that ‘compulsory income management’ would continue under the Intervention ‘because of its demonstrated benefits for women and children’.<sup>17</sup> Macklin stated:

Women say that income management means they can buy essentials for their children such as food and clothes. Shopping habits in licensed stores have changed – more is being spent on fresh food, sales of cigarettes have halved and the incidence of ‘humbugging’ has fallen.<sup>18</sup>

The needs of Indigenous women were therefore a central justification for the continuance of income management.

Income management was further extended under the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010* (Cth) (‘SSOLA Act’) and the *Social Security Legislation Amendment Act 2012* (Cth) in a way the government claimed was ‘non-discriminatory’.<sup>19</sup> The 2010 amendments were built upon the foundation laid in the 2007 Act. The government stated that these were welfare reforms ‘based on the principles of engagement, participation and responsibility’.<sup>20</sup> Participation in the mainstream neoliberal economy was what was intended. Macklin stated that:

Welfare should not be a destination or a way of life. The government is committed to progressively reforming the welfare system to foster individual responsibility and to provide a platform for people to move up and out of welfare dependence. The reforms included in this bill tackle the destructive, intergenerational cycle of passive welfare ...<sup>21</sup>

The government claimed the 2010 amendments set ‘objective and clear criteria’ to ‘determine if an individual is subject to income management’.<sup>22</sup> However, Indigenous peoples remain heavily over-represented in the new income management categories constructed via the 2010 and 2012 legislation.<sup>23</sup> In part, this is due to the geographical areas the government has selected for the operation of income management; it applies predominantly to Indigenous communities.<sup>24</sup>

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17 Minister for Families, Housing, Community Services and Indigenous Affairs, ‘Compulsory Income Management To Continue as Key NTER Measure’ (Media Release, 23 October 2008) 1 <[http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/M2XR6/upload\\_binary/m2xr60.pdf;fileType=application%2Fpdf#search=%22media/pressrel/M2XR6%22](http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/M2XR6/upload_binary/m2xr60.pdf;fileType=application%2Fpdf#search=%22media/pressrel/M2XR6%22)>.

18 Ibid 2.

19 Commonwealth, *Parliamentary Debates*, House of Representatives, 25 November 2009, 12 787 (Jennifer Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs).

20 Ibid 12 783.

21 Ibid.

22 Ibid.

23 J Rob Bray et al, ‘Evaluating New Income Management in the Northern Territory’ (Final Evaluation Report, Social Policy Research Centre, September 2014) xx (‘Final Evaluation Report’); Department of Social Services (Cth), ‘Income Management Summary’ (Data Summary, 1 January 2016) 3, <<http://data.gov.au/dataset/income-management-summary-data/resource/35b9b9d7-dd01-46a0-8934-81649ef502c2>>. The latter source explains that as of 1 January 2016, 78 per cent of 26 347 welfare recipients subject to income management nationwide identified as Indigenous.

24 Reference Group on Welfare Reform to the Minister for Social Services, ‘A New System for Better Employment and Social Outcomes’ (Interim Report, Department of Social Services (Cth), 2014) 117.

Income managed funds are generally spent using a government issued 'BasicsCard' with a personal identification number which can only be used for legislatively defined 'priority needs' at government approved merchants pursuant to section 123TH of the *Social Security (Administration) Act 1999* (Cth) (the '*SSA Act*'). Income management prohibits welfare recipients from using their BasicsCard to purchase alcohol, tobacco, pornographic material and gambling services, and income management is broadly associated with these stigmatising prohibitions. The government's objectives for income management are legislatively enshrined in section 123TB of the *SSA Act* and these are to:

- ensure the prioritisation of payment for 'priority needs' (section 123TB(a));
- create 'support in budgeting to meet priority needs' (section 123TB(b));
- ensure limited funds are available for purchase of alcohol, tobacco, gambling and pornography (section 123TB(c));
- reduce the prospect that 'recipients of welfare payments will be subject to harassment and abuse in relation to their welfare payments' (section 123TB(d));
- 'encourage socially responsible behaviour, including in relation to the care and education of children' (section 123TB(e)); and
- 'improve the level of protection afforded to welfare recipients and their families' (section 123TB(f)).

Income management in most Australian jurisdictions quarantines 50 to 70 per cent of a welfare recipient's payment, depending on the category of income management to which they are subject. The 2010 legislative amendments introduced several new income management categories: voluntary income management, and several compulsory income management categories that include 'disengaged youth', 'long-term' or 'vulnerable' welfare recipients, and child protection income management.<sup>25</sup> There are more income management categories operating in the Northern Territory, the original site of the NTER, than in any other Australian jurisdiction. For example, place based income management operating outside of the Northern Territory includes voluntary income management, vulnerable income management and child protection income management but does not have compulsory income management for 'long-term' welfare recipients or 'disengaged youth'. Place based income

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25 See sch 2 s 25 of the *SSOLA Act*. The categories of 'vulnerable welfare payment recipient[s]', 'disengaged youth' and 'long-term welfare payment recipients' are defined in sch 2 s 36 of the *SSOLA Act*. This has resulted in amendments to the *SSA Act*, eg, under s 123UC a person is subject to compulsory income management if there is a child protection issue.

management operates in several different Australian jurisdictions.<sup>26</sup> Income management for child protection purposes quarantines 70 per cent of a welfare recipient's regular payment whereas the other categories quarantine 50 per cent of their regular payment. In addition to this, 100 per cent of all lump sum payments are subject to income management, such as the 'Baby Bonus', 'Study Start-up Scholarship' and 'Relocation Scholarship'.<sup>27</sup>

The notion that income management serves the needs of Aboriginal women was again used as a justification for its continuation under the 2010 legislation. In the second reading speech, Macklin stated that the government's NTER Redesign consultations had revealed that 'many participants reported that income management had delivered discernible benefits, particularly to children, women, older people and families'.<sup>28</sup> This theme was continued in the policy document announcing the government's Stronger Futures framework (continuing key aspects of the NTER) where Macklin stated:

When I speak with people in remote communities and in towns like Alice Springs, particularly women, they tell me that they and their families feel safer, their children are better fed and clothed and less money is being spent on alcohol and gambling.<sup>29</sup>

The discussion paper continued:

The lives of many Aboriginal people in the Northern Territory have improved through the work done over the last four years. Women, children and the elderly are now safer; children are better fed and clothed; there is less pressure on welfare recipients for money to be spent on alcohol, drugs and gambling.<sup>30</sup>

This parliamentary and ministerial narrative is one of law and policy success. However, as this article will show via examination of numerous reports and an evaluation of income management, it is a story that contains significant omissions and misinformation. Several reports will be considered which paint a more complex picture of income management law and policy. These reports indicate that the suite of income management laws do not achieve the government's policy goals embedded within them and that law reform in this area is long overdue. Ideally, evidence should inform the policy process,

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26 Bray et al, *Final Evaluation Report*, above n 23, 7. These include Playford in SA, Greater Shepparton in Victoria, Bankstown in NSW, Logan in Queensland ('Qld'), and Rockhampton in Qld. Variations of income management also operate in Cape York in Qld, the Anangu Pitjantjatjara Yankunytjatjara Lands in SA, the Kimberly region in WA, the Ngaanyatjarra Lands and Laverton in WA, and metropolitan Perth in WA. In Cape York the percentage of income management set by the Family Responsibilities Commission can vary from '60, 75 or 90 per cent of regular fortnightly payments and all of any advances and lump sum payments': Department of Social Services (Cth), 'Income Management for Cape York Welfare Reform' (Fact Sheet, 21 January 2014) <<https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/cape-york-welfare-reform-fact-sheets/income-management-for-cape-york-welfare-reform>>.

27 J Rob Bray et al, 'Evaluating New Income Management in the Northern Territory' (First Evaluation Report, Social Policy Research Centre, July 2012) 21 ('First Evaluation Report').

28 Commonwealth, *Parliamentary Debates*, House of Representatives, 25 November 2009, 12 784 (Jennifer Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs).

29 Department of Families, Housing, Community Services and Indigenous Affairs (Cth), 'Stronger Futures in the Northern Territory' (Discussion Paper, June 2011) 1.

30 *Ibid* 5.

including the legal framework that implements policy, yet income management is an area where evaluation and reports by significant stakeholders have not had any discernible impact upon the policy process. This is concerning because a government that ignores evidence will create poor law and policy with potentially detrimental consequences for those subject to it.

In this article, intersections between race, gender and class will be explored, as most welfare recipients subject to it are Indigenous women who have been portrayed in a negative way by new paternalist and colonialist discourses of passivity, incapacity and vulnerability.<sup>31</sup> These unfavourable qualities have also historically been generally associated with women as a result of androcentric values.<sup>32</sup> These historical representations have contemporary implications because they have contributed to cultural understandings as to how to readily identify those with such qualities. The approach taken in this article is to consider how income management law and policy can affect Indigenous women, 'engage with evidence-based research and contextualise ... analysis with Aboriginal women's historical experiences of state interventions'.<sup>33</sup>

## II THE INTENSIVE REGULATION OF INDIGENOUS WOMEN: INTERSECTIONS BETWEEN COLONIALISM, NEW PATERNALISM AND PATRIARCHY

Although colonialism, new paternalism and patriarchy are distinct in their own right, they each involve asymmetrical power relations and frequent abuses of power. The purpose of this Part is not to conflate colonialism, new paternalism and patriarchy, but to examine ways that they can be combined in dominant discourse to rationalise intrusive and intensive regulation of Indigenous women.

Colonialism has represented Indigenous peoples as naturally 'backward', 'indolent' and prone to give labour 'grudgingly'.<sup>34</sup> A central part of the colonial project has therefore been to modify these traits as part of a 'civilizing mission'.<sup>35</sup> The notion that Indigenous peoples were uncivilised has long been used to rationalise disciplinary systems designed to alter Indigenous peoples' behaviour. One area of disciplinary intervention involved restricting access to money. Colonial narratives about the financial incapacity of Indigenous peoples led

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31 See Commonwealth, *Parliamentary Debates*, House of Representatives, 7 August 2007, 2, 13 (Mal Brough, Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs); Commonwealth, *Parliamentary Debates*, House of Representatives, 25 November 2009, 12 783, 12 787 (Jennifer Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs); Barry Morris, *Protests, Land Rights and Riots – Postcolonial Struggles in Australia in the 1980s* (Aboriginal Studies Press, 2013) 172.

32 Nancy Fraser, *Fortunes of Feminism: From State-Managed Capitalism to Neoliberal Crisis* (Verso, 2013) 143, 162.

33 Nicole Watson, 'The Northern Territory Emergency Response – Has It Really Improved the Lives of Aboriginal Women and Children?' (2011) 35 *Australian Feminist Law Journal* 147, 148.

34 Edward Said, *Culture and Imperialism* (Vintage Books, 1994) 131, 167.

35 *Ibid* 131.

to micromanagement of Indigenous peoples' finances throughout much of Australia's earlier colonial era.<sup>36</sup> This meant that Indigenous peoples often received a very small amount of their finances, either in wages or in welfare payments.<sup>37</sup> The State and government officials received the bulk of Indigenous peoples' incomes,<sup>38</sup> often leaving them with a tiny amount of cash available for personal expenditure. This colonial legacy has had serious implications for Indigenous peoples and 'condemned thousands of families to enduring poverty'.<sup>39</sup>

Assimilation was the core objective of colonial disciplinary measures. Such measures included numerous regulations that Indigenous inmates were legally required to obey whilst impounded within government reserves and missions.<sup>40</sup> Australian governments in all jurisdictions attempted to construct and define who Indigenous women were and set behavioural guidelines to which they were expected to adhere. This included colonial control over how Indigenous women spent their welfare payments. For example, Nicole Watson explains that in New South Wales:

Even when Aboriginal women were allowed some discretion in spending government payments, they were still subject to surveillance. ... the Protection Board issued a list of items acceptable for purchase that included food, clothing and medical treatment. A woman's spending could be scrutinised over several years before she was finally considered trustworthy.<sup>41</sup>

This is the colonial context in which contemporary income management needs to be evaluated, and these themes reoccur in the compulsory income

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- 36 Shelley Bielefeld, 'Compulsory Income Management and Indigenous Australians: Delivering Social Justice or Furthering Colonial Domination?' (2012) 35 *University of New South Wales Law Journal* 522, 528–34. For example, under s 7(1) of the schedule of the *Aboriginals Ordinance 1911* (Cth) wages due to an Aboriginal person in the Northern Territory could be paid to the government appointed 'Protector' instead; under s 43(1)(a) of the *Aboriginals Ordinance 1918* (Cth) the 'Protector' was entitled to manage the personal or real property of any Aboriginal person, which included income from wages; *Aborigines Protection Act 1909* (NSW) s 11(1) allowed Aboriginal children to be apprenticed and permitted the board for protection of Aborigines to 'collect and institute proceedings for the recovery of any wages payable under such indenture' and to expend such money as the board thought fit; s 2(1)(i) of the *Aborigines Protection (Amendment) Act 1936* (NSW) mentions the insertion of s 13C, which provided that '[i]n any case where it appears to the board to be in the best interests of the [A]borigine concerned the board may direct employers or any employer to pay the wages of the [A]borigine to the secretary or some other officer named by him'; *Aborigines Act 1911* (SA) s 35(1) and *Aborigines Act 1905* (WA) s 33 gave the Chief Protector power to control the property of any Aboriginal person, which included both real and personal property such as wages; *Aborigines' Protection Act 1869* (Vic) s 2(III) allowed the government to regulate how the earnings of Aboriginal people in contracted labour were to be apportioned.
- 37 Rosalind Kidd, *Trustees on Trial – Recovering the Stolen Wages* (Aboriginal Studies Press, 2006) 97, 103.
- 38 Jennifer Nielsen, 'Images of the "Aboriginal": Echoes from the Past' (1998) 11 *Australian Feminist Law Journal* 83, 93. At times inappropriately used trust funds were part of this process: see Shelley Bielefeld, *The Dehumanising Violence of Racism: The Role of Law* (D Phil Thesis, Southern Cross University, 2010) 176–7 <<http://epubs.scu.edu.au/theses/163/>>.
- 39 Kidd, above n 37, 128.
- 40 David Hollinsworth, *Race and Racism in Australia* (Social Science Press, 3<sup>rd</sup> ed, 2006) 102; Garth Nettheim, *Out Lawed: Queensland's Aborigines and Islanders and the Rule of Law* (Australia and New Zealand Book Co, 1973) 98–9.
- 41 Nicole Watson, above n 33, 158.



management framework which arguably continues patriarchal colonial governance through its disproportionate impact on Indigenous women.

Patriarchal colonial governance affected Indigenous women in profound ways during the 20<sup>th</sup> century. Throughout Australian history many Indigenous families were exposed to intense government surveillance and control, including the forcible removal of children with mixed heritage from their mothers by child welfare authorities, creating the phenomenon known as the Stolen Generations.<sup>42</sup> Hollinsworth explains that the views popular at that time involved stereotypical conceptions of motherhood dependent entirely on the ‘race’ of the mother:

Non-Aboriginal motherhood was ideologically valorised, so reports spoke of the removal of these children ‘from the blacks’ camp’ which carried powerful associations with filth, disease and degradation ... Within this ideology, Aboriginal women were inevitably unfit mothers as they could never be ‘fit’ to raise children whose ‘white blood’ made them superior.<sup>43</sup>

Such binary oppositions have played a powerful role, and the idea that Aboriginal women cannot responsibly care for their children has a long lineage under Australian colonialism. Disempowering and damaging stereotypes about Indigenous women have been both a justification for and a consequence of paternalistic intervention by the colonial state.

Colonialism continues to impact upon what is ‘known’ about Indigenous women because ‘racial group reputations can guide assumptions about target characteristics at either the collective or individual level’.<sup>44</sup> Much of what has become ‘known’ about Indigenous women has been constructed through ‘colonial discourse’,<sup>45</sup> which has frequently positioned Indigenous women as being without agency. As Aileen Moreton-Robinson explains:

White Australia has come to ‘know’ the ‘Indigenous woman’ from the gaze of many, including the diaries of explorers, the photographs of philanthropists, the testimony of white state officials, the sexual bravado of white men and the ethnographies of anthropologists. In this textual landscape Indigenous women are objects who lack agency.<sup>46</sup>

This observation regarding agency mirrors the contemporary attitudes of dominant politicians towards Indigenous women referred to previously. The NTER discourse reinforced racialised gender essentialism, whereby Indigenous women were collectively represented as requiring ‘rescue from violent black

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42 Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997) 28–9; Eileen Baldry and Chris Cunneen, ‘Imprisoned Indigenous Women and the Shadow of Colonial Patriarchy’ (2014) 47 *Australian and New Zealand Journal of Criminology* 276, 285–7.

43 Hollinsworth, above n 40, 127. ‘Aboriginal mothers were seen as negligent in their housekeeping, homemaking and parental responsibilities and had their children removed on these grounds’: Baldry and Cunneen, above n 42, 286.

44 Joe Soss, Richard C Fording, and Sanford F Schram, *Disciplining the Poor – Neoliberal Paternalism and the Persistent Power of Race* (University of Chicago Press, 2011) 78.

45 Homi K Bhabha, ‘The “Other” Question’ in Antony Easthope and Kate McGowan (eds), *A Critical and Cultural Theory Reader* (University of Toronto Press, 2<sup>nd</sup> ed, 2004) 62, 62.

46 Aileen Moreton-Robinson, *Talkin’ Up to the White Woman – Aboriginal Women and Feminism* (University of Queensland Press, 2000) 1.

males',<sup>47</sup> a theme that resonates with Australia's colonial history. A key aspect of Australian colonialism has been the perception that Australia's First Peoples are vulnerable and need protection from their base impulses. This theme is repeatedly reproduced in order to reinforce the colonial project. As Fiona Nicoll points out:

Far from a rupture of race relations as previously constituted, the Intervention is tediously continuous with white racialised habits of seeing and governing Indigenous people on the basis that – like addicts – they are incapable of knowing what is in their own best interest. Possibilities for change within this dynamic are limited as long as benevolent will is attributed to a patriarchal white sovereign state and defective willpower is ascribed to the Indigenous subjects it seeks to reform.<sup>48</sup>

The NTER represented Indigenous people in receipt of welfare payments 'as the undeserving poor who lack effort, proper money management skills, a sense of morality, the ability to remain sober, the ability to resist drugs and a work ethic'.<sup>49</sup> These characteristics are similar to the pejorative descriptions of welfare recipients in new paternalist narratives.

New paternalism is a policy framework originating in the United States that has subsequently expanded in influence across many Western nations.<sup>50</sup> This theory ascribes unfavourable qualities to welfare recipients and maintains that they are defective in disposition, either due to inherent irrationality or antisocial tendencies, and that such deficiencies require state imposed disciplinary intervention.<sup>51</sup> Prominent new paternalist Lawrence Mead explains the goal is not merely to punish 'misbehaviour', as the government defines it, but to preemptively prevent such behaviour 'by the oversight of authority figures, much as parents supervise their families'.<sup>52</sup> He contends that policy ought to be directed against 'patterns of life, especially unwed pregnancy and nonwork, that often help keep people poor'.<sup>53</sup> Similarly, Mark Kleiman asserts that 'divergences from individual rationality in the economic sense will tend to be more frequent and severe among the poor than the nonpoor'.<sup>54</sup> Poverty has been equated with moral failure in new paternalist discourse. The goal of new paternalism is therefore to inculcate what authorities see as mainstream behavioural norms by placing stringent conditions on welfare. Lawrence Mead claims that 'obligation is the

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47 Irene Watson, 'In the Northern Territory Intervention What Is Saved or Rescued and at What Cost?' (2009) 15(2) *Cultural Studies Review* 45, 56.

48 Fiona Nicoll, 'Bad Habits – Discourses of Addiction and the Racial Politics of Intervention' (2012) 21 *Griffith Law Review* 164, 172–3.

49 Aileen Moreton-Robinson, 'Imagining the Good Indigenous Citizen – Race War and the Pathology of Patriarchal White Sovereignty' (2009) 15(2) *Cultural Studies Review* 61, 70.

50 Matthew Thomas and Luke Buckmaster, 'Paternalism in Social Policy – When Is It Justifiable?' (Research Paper No 8, Parliamentary Library, Parliament of Australia, 2010) 1.

51 Lawrence M Mead, 'The Rise of Paternalism' in Lawrence M Mead (ed), *The New Paternalism: Supervisory Approaches to Poverty* (Brookings Institution Press, 1997) 1, 1–5, 22–3, 33–4.

52 *Ibid* 5.

53 *Ibid* 7.

54 Mark A R Kleiman, 'Coerced Abstinence: A Neopaternalist Drug Policy Initiative' in Lawrence M Mead (ed), *The New Paternalism: Supervisory Approaches to Poverty* (Brookings Institution Press, 1997) 182, 190.

precondition of freedom. Those who would be free must first be bound'.<sup>55</sup> He maintains 'if people have not been effectively bound by functioning families and neighbourhoods in their formative years, government must attempt to provide limits later'.<sup>56</sup> New paternalism therefore imposes more onerous 'obligations' upon welfare recipients as part of a 'mutual obligations' framework, in an attempt to reform their presumed irrationality, passivity and dependency.<sup>57</sup>

Colonial narratives about 'undisciplined', 'passive and dependent' Indigenous peoples who receive 'sit down money'<sup>58</sup> are consistent with the new paternalists' demeaning description of welfare recipients, which makes Indigenous peoples a ripe target for new paternalist policies. As Nancy Fraser and Linda Gordon explain, 'the new discourse about welfare draws on older symbolic currents'.<sup>59</sup> New paternalists maintain that their supervisory policies are for the benefit of those subject to them,<sup>60</sup> which has long been a chief rationalisation for colonial control of Indigenous peoples. New paternalism can therefore assist with ongoing colonial governance, as it provides a new policy label to attach to longstanding racially discriminatory dynamics.

The thrust of new paternalist policies critiquing the 'passivity' of welfare recipients is that such people need to be compelled to engage in 'activity'. The valorisation of activity over passivity in new paternalist discourse is worthy of critique. As Guy Standing comments, '[t]he word "active" seems virile and strong, whereas its opposite, "passive", suggests laziness, a lack of initiative'.<sup>61</sup> 'Who', he asks, 'could favour being passive if one could be active?'<sup>62</sup> The euphemism of active welfare policies as opposed to passive policies is inescapably masculine in its orientation, with resulting disadvantage to anyone presumed to possess traditionally 'feminine' qualities such as passivity. In the welfare context this can include males as well as females. However, income management in the Northern Territory applies disproportionately to Indigenous women,<sup>63</sup> who experience racialised and gendered essentialism in government proclamations about their vulnerability, passivity, dependency, and/or deficiency.

In the United States, new paternalism has involved immense stigmatisation of single mothers, particularly black women.<sup>64</sup> Such stigmatisation of single mothers

55 Mead, 'The Rise of Paternalism', above n 51, 23.

56 Ibid.

57 Ibid, 21; Lawrence M Mead, 'Welfare Employment' in Lawrence M Mead (ed), *The New Paternalism: Supervisory Approaches to Poverty* (Brookings Institution Press, 1997) 39, 60, 76. This phenomenon is also referred to as increased 'welfare conditionality': Chris Cunneen, Fiona Allison and Melanie Schwartz, 'Access to Justice for Aboriginal People in the Northern Territory' (2014) 49 *Australian Journal of Social Issues* 219, 220–1, 237.

58 Morris, above n 31, 172.

59 Nancy Fraser and Linda Gordon, 'A Genealogy of "Dependency": Tracing a Keyword of the US Welfare State' in Nancy Fraser, *Fortunes of Feminism: From State-Managed Capitalism to Neoliberal Crisis* (Verso, 2013) 83, 103.

60 Mead, 'Welfare Employment', above n 57, 65.

61 Guy Standing, *Beyond the New Paternalism: Basic Security as Equality* (Verso, 2001) 104.

62 Ibid.

63 Bray et al, 'Final Evaluation Report', above n 23, 69.

64 Soss, Fording and Schram, above n 44, 75, 293.

reflects a grave failing in the eyes of new paternalists: these women have defied what paternalists perceive to be the proper process for procreation by failing to ensure that either there is a patriarchal provider or that they can fulfil that function for themselves. They are deemed failures because they make claims upon the public purse. This is seen as evidence of both poor planning and poor parenting. Similar racialised and gendered value judgements have circulated in Australian welfare policy debates about Indigenous women who are single mothers in receipt of state income support. As Aileen Moreton-Robinson explains, state constructed indicia for moral motherhood have always been racialised in Australia:

In the 1980s, after Indigenous women were entitled to receive single-parent support, they were labelled as ‘welfare bludgers’ because it was perceived that they were breeding so they could receive welfare payments. Indigenous mothers, judged by the standards of white motherhood and deemed to be unfit, had their children removed from them, usually by white middle-class women who worked for welfare agencies.<sup>65</sup>

A recent comment betraying a similar sentiment was made by former Labor Minister Gary Johns who declared in 2015 that ‘Aboriginal women are being kept pregnant as “cash cows” for welfare money’.<sup>66</sup> Such notions unjustly portray Indigenous women as animalistic and unworthy of state income support.

New paternalism has pathologised welfare recipients, ‘particularly poor women with children’, as suffering from ‘welfare dependency’.<sup>67</sup> Fraser and Gordon explain that the concept of welfare dependency ‘remains feminized and racialized’.<sup>68</sup> Although there are ‘new psychological and therapeutic idioms displacing’ earlier, ‘explicitly racist and misogynous idioms ... the new psychological meanings have strong feminine associations, while currents once associated with the native and the slave are increasingly inflecting the discourse about welfare’.<sup>69</sup> Thus new paternalism results in welfare policies that have a disproportionate racialised and gendered impact.

The advocates of new paternalism see tougher welfare conditions as part of the ‘cure’ for welfare dependency. New paternalists claim the public want this type of welfare reform.<sup>70</sup> These policies are therefore designed to curry favour with voters who ‘see welfare as a passive condition where recipients do little to better themselves’.<sup>71</sup> Welfare recipients have therefore become a soft target, a scapegoat amidst the growing financial insecurity characteristic of neoliberalism. Jacqui True notes that ‘[n]eoliberal structural reforms have

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65 Moreton-Robinson, *Talkin’ Up to the White Woman*, above n 46, 166–7.

66 Gary Johns in Shalailah Medhora, ‘Aboriginal Women Are Kept Pregnant as Welfare “Cash Cows”, Claims Former Labor MP’, *The Guardian* (online), 12 July 2015 <<http://www.theguardian.com/australia-news/2015/jul/12/aboriginal-women-pregnant-welfare-cash-cows-claims-former-labor-mp>>.

67 Standing, *Beyond the New Paternalism*, above n 61, 176.

68 Fraser and Gordon, above n 59, 99.

69 *Ibid* 99–100.

70 Mead, ‘The Rise of Paternalism’, above n 51, 13; Mead, ‘Welfare Employment’, above n 57, 60.

71 Mead, ‘Welfare Employment’, above n 57, 60.

created debt, unemployment, reduced social services and increased poverty'.<sup>72</sup> The simultaneous rise of new paternalism with neoliberalism is therefore unsurprising.

As previously mentioned, income management was extended in 2010 and 2012. The key to the government's claim that these measures are no longer racially discriminatory is that they now embed new paternalism rather than pure colonialism. Indeed Lawrence Mead, one of the founders of new paternalism, asserts that it 'is really a postracial social policy'.<sup>73</sup> However, as Edward Said makes clear, there is often a lingering connection between colonialism and class based discrimination where colonial powers 'replace the colonial force with a new class-based and ultimately exploitative one, which replicate[s] the old colonial structures in new terms'.<sup>74</sup> Thus 'the fabric of the modern state' remains 'fashioned with racially woven threads'.<sup>75</sup> This is also interconnected with gender. As explained by David Theo Goldberg, '[t]he modern state is racially conceived and expressed through its gendered configurations, and it assumes gendered definition and specificity through its racial fashioning'.<sup>76</sup> This is illustrated by the dominant income management discourse and the disproportionate impact that income management has on Indigenous women, as will be discussed further in this article.

### III EVIDENCE: REPORTS AND EVALUATION OF INCOME MANAGEMENT

There have been numerous reports and thorough evaluation of income management undertaken since it was introduced in 2007. This article will address five pertinent reports that reveal challenges facing Indigenous women subject to income management. Note that the terms of reference and objectives of each body reporting on income management were not the same, which had implications regarding funding and the type of methodology adopted for each report. Whilst the reports contain much interesting and useful information, this article will focus on the problems raised regarding income management that have not been addressed in the dominant income management discourse constructed by government law and policymakers.

#### A Report 1: Equality Rights Alliance Report

The Equality Rights Alliance (ERA) is a peak organisation in Australia representing 62 non-government organisations dedicated to advancing issues of concern to women. The ERA receives funding from the Federal Office for

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72 Jacqui True, 'The Political Economy of Violence against Women: A Feminist International Relations Perspective' (2010) 32 *Australian Feminist Law Journal* 39, 52.

73 Mead, 'The Rise of Paternalism', above n 51, 22.

74 Said, above n 34, 223.

75 David Theo Goldberg, *The Racial State* (Blackwell, 2002) 131.

76 *Ibid* 7.

Women. The ERA report published in July 2011, *Women's Experience of Income Management in the Northern Territory*, indicated that there were significant problems for women subject to income management. Some women expressed 'concerns about not asking for Centrelink help to exit abusive relationships because they' did not 'want to be referred for Income Management'.<sup>77</sup> Of those surveyed, 79 per cent stated that they did 'not like using the BasicsCard' and wanted 'to stop using it'.<sup>78</sup> Furthermore, 74 per cent said that the BasicsCard did not make it easier for them to take care of their family.<sup>79</sup>

The women who participated in this research indicated that income management 'had little or no effect on what they bought' but that the BasicsCard had 'added to the difficulties and costs of paying for goods and services'.<sup>80</sup> Trying to manage family finances was reported to be more time consuming for welfare recipients on income management.<sup>81</sup> This is consistent with accounts by other researchers undertaking field work in the Northern Territory. For example, Jon Altman and Melinda Hinkson report that many Indigenous women have had 'to pay hundreds of dollars of their (50 per cent) discretionary income on taxi fares to take them to "licensed" stores to purchase food' and encountered problems with purchasing groceries upon their arrival due to faulty BasicsCards or insufficient funds to purchase what was required for their families.<sup>82</sup> Numerous women who participated in the ERA research spoke of 'feeling shamed and humiliated if their BasicsCard transaction was rejected at the shops due to low balance'.<sup>83</sup> It has often been difficult for welfare recipients to access information regarding the account balance for their income managed funds, especially for those living in geographically remote parts of Australia. Checking their account balance can also be more challenging for those whose first language is not English, as is the case with numerous Indigenous women in the Northern Territory.

Some women said income management had 'added stress', due to the challenge of 'managing small amounts of money with reduced flexibility'.<sup>84</sup> One woman reported anxiety related 'heart palpitations' that were 'confirmed by her doctor' after Centrelink failed to pay her rent to the Northern Territory Housing Department from her income managed funds, as had previously been arranged.<sup>85</sup> Once she was able to exit income management and resumed responsibility for

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77 Equality Rights Alliance, 'Women's Experience of Income Management in the Northern Territory' (Report, July 2011) 6 <<http://www.equalityrightsalliance.org.au/projects/womens-experience-income-management-northern-territory>>.

78 Ibid 29.

79 Ibid 38.

80 Ibid 6.

81 Ibid 25.

82 Jon Altman and Melinda Hinkson, 'Very Risky Business: The Quest To Normalise Remote-Living Aboriginal People' in Greg Marston, Jeremy Moss and John Quiggin (eds), *Risk, Welfare and Work* (Melbourne University Press, 2010) 185, 201.

83 Equality Rights Alliance, above n 77, 26.

84 Ibid 19.

85 Ibid.

managing her finances, her anxiety abated. The idea that income management can lead to stress related health problems is absent from the dominant discourse about income management, but such evidence is important in assessing the scheme.

Some women reported being concerned that their skills to manage money would deteriorate under income management and what impact this might have on the development of 'money management skills' of children growing up in families whose incomes were government managed.<sup>86</sup> It seems unlikely that children growing up in such circumstances would be provided with the opportunity to develop the necessary financial literacy to participate in Australia's capitalist society or the global economy. Another issue of concern is that consumer choice was curtailed for women on income management. Some women stated that 'they preferred to buy clothes from cheaper chain stores or op shops, but these stores don't take BasicsCard'.<sup>87</sup> Some women recounted that being subject to income management had increased the cost of household goods because there were limited stores that would accept the BasicsCard:

Women said that larger purchases ... needed to be made at different retailers, such as renting a new fridge or washing machine from Radio Rentals instead of buying one second hand. Over the course of the hire-purchase agreement, they said it costs a lot more to buy new, but said they would have been just as happy to buy second hand for less.<sup>88</sup>

Other unfavourable aspects of income management referred to in this report include women feeling discomfort about others seeing them use their BasicsCards and feeling as though income management was a sign that the government and 'others in their community do not respect them, and consider them to be not competent with money or as parents'.<sup>89</sup> Some of those interviewed were in the voluntary income management category; however they 'were not aware that their participation ... was now voluntary' and 'had ... expressed a desire to be paid in cash'.<sup>90</sup> To be paid in cash would mean not being under income management at all. This shows that these women had little understanding of the form of income management they had ostensibly volunteered for, which calls their alleged voluntariness into question.

Contrary to government rhetoric about income management making communities safer, 70 per cent of women reported not feeling safer since commencing income management, and some said that crime has increased as a result of less cash being available.<sup>91</sup> The findings of this report were available to the federal government before they decided to extend income management via their 2012 legislation, however these findings were ignored.

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86 Ibid 18.

87 Ibid 23.

88 Ibid 22.

89 Ibid 6.

90 Ibid 17.

91 Ibid 33.

## B Report 2: The Australian Law Reform Commission

The Australian Law Reform Commission ('ALRC') is the leading national law reform organisation and their inquiries are initiated by the Commonwealth Attorney-General with specific terms of reference. Concerns about income management were raised by the ALRC, who recommended that income management be avoided in the context of family violence as it can lead to more problems. Given that the government's rationale in implementing this system is to protect those who are most vulnerable, the recommendations of the ALRC are important in evaluating whether income management is appropriate. The Explanatory Memorandum for the *Social Security Legislation Amendment Act 2012* (Cth), which implements the 2012 extensions to the income management scheme, states:

The income management regime ... operates as a tool to support vulnerable individuals and families. It provides a tool to stabilise people's circumstances by limiting expenditure of income support payments on excluded items, including alcohol, tobacco, pornography, gambling goods and activities.<sup>92</sup>

However, the ALRC pointed out that '[t]he vulnerable position of people experiencing family violence, and the complex needs for their safety and protection, suggest that a different response is required'.<sup>93</sup> They noted that, for Indigenous women who experience domestic violence, 'a mandatory income management regime may discourage reporting'.<sup>94</sup> The ALRC suggested that limitations in the legislative definition of 'priority needs' may pose 'particular difficulties for victims of family violence'.<sup>95</sup> Women experiencing domestic violence require easily accessible funds for crisis accommodation and travel to get away from perpetrators of violence.<sup>96</sup> Having to engage in complicated and time consuming bureaucratic procedures to spend income managed funds in ways that do not comply with the legislative definition of 'priority needs' can have the unintended consequence of impeding the achievement of these safety preserving objectives. Recommendation 10–1 of the ALRC report *Family Violence and Commonwealth Laws – Improving Legal Frameworks* therefore advocates that:

The Australian Government should amend the *Social Security (Administration) Act 1999* (Cth) to ensure that a person or persons experiencing family violence are not subject to Compulsory Income Management. The *Guide to Social Security Law* should reflect this amendment.<sup>97</sup>

The ALRC suggests that compulsory income management 'runs counter to the theme of self-agency identified as a central theme' in their Inquiry on Family Violence.<sup>98</sup> It said '[s]takeholders argued strongly to similar effect – a problem

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92 Explanatory Memorandum, *Social Security Legislation Amendment Bill 2011* (Cth) 2.

93 Australian Law Reform Commission, *Family Violence and Commonwealth Laws – Improving Legal Frameworks*, Report No 117 (2011) 267–8 ('ALRC Report').

94 Ibid 271.

95 Ibid 279. 'Priority needs' are defined by legislation: *SSA Act* s 123TH(1), and include food, clothing, health, housing needs and certain household utilities.

96 This issue was addressed in Recommendation 10–3 of the *ALRC Report*, above n 93, 18.

97 Ibid.

98 Ibid 260.



arising from coercive and controlling conduct should not be met with a similar response'.<sup>99</sup> They quoted the submission by the Good Shepherd Youth and Family Service who maintained that:

Family violence, the exercise of power and control of one person over another, is an attack on the individual autonomy, agency, and freedom of the victim. In this context, the risks of further disempowerment and loss of independence from compulsory income management are high. Replacing individual power and control with state power and control is at best stop-gap and at worst a further abuse.<sup>100</sup>

The idea that income management is a high risk policy that can constitute abuse of vulnerable women is absent from dominant income management discourse, despite the ALRC report drawing attention to it. There is also other evidence that income management has been ineffective in addressing domestic violence where it is present. For example, the government's NTER Redesign consultations in Tennant Creek recorded that '[d]omestic violence is fuelled by peoples' inability to control their money' and that income management 'can fuel violence in families'.<sup>101</sup> These are important considerations that warrant further attention by law and policymakers. However, Recommendation 10–1 was not adopted by the Australian government.

The ALRC considered that a voluntary system of income management was preferable to the current model containing numerous compulsory income management categories. Recommendation 10–2 proposes that:

The Australian Government should amend the *Social Security (Administration) Act 1999* (Cth) to create an 'opt-in and opt-out' income management model that is voluntary and flexible to meet the needs of people experiencing family violence. The *Guide to Social Security Law* should reflect this amendment.<sup>102</sup>

Recommendation 10–2 was also not adopted by the federal government. There has been more support for voluntary income management than the compulsory categories, yet the current rules pertaining to voluntary income management mean that the scheme has limited 'voluntariness' and it is not particularly flexible. Welfare recipients who try it and find it unsatisfactory 'must wait 13 weeks before they can choose to stop being income managed'.<sup>103</sup> There is no flexibility regarding the amount to be income managed – rather, it is set at 50 per cent of a person's payment. Welfare recipients have also been offered an incentive payment of \$500 per year to 'choose' income management,<sup>104</sup> which is inconsistent with the concept of voluntariness. In addition, the threat of being placed in one of the compulsory income management categories currently looms

99 Ibid.

100 Ibid.

101 Alastair Nicholson et al, 'Will They Be Heard? A Response to the NTER Consultations – June to August 2009' (Research Unit Report, Jumbunna Indigenous House of Learning, University of Technology Sydney, November 2009) 205.

102 ALRC Report, above n 93, 18.

103 Bray et al, 'First Evaluation Report', above n 27, 26.

104 Made in two \$250 payments for each six-month period: Australian National Audit Office, 'Administration of New Income Management in the Northern Territory' (Audit Report No 19, Australian National Audit Office, 31 January 2013) 14. Note that this incentive payment has recently been abolished under the *Social Services Legislation Amendment (No 2) Act 2015* (Cth) sch 1 pt 1.

in the shadows for many of those who do not ‘volunteer’, creating extra pressure to do so. Also, as previously discussed in the context of the ERA report, there are women in the voluntary income management category who do not understand that they have an option to exit the scheme. A final point worth mentioning from the ALRC report is that they noted the tension between income management and human rights,<sup>105</sup> a theme later elaborated upon by the Parliamentary Joint Committee on Human Rights.

### C Report 3: The Parliamentary Joint Committee on Human Rights

The Parliamentary Joint Committee on Human Rights (‘PJCHR’) is a federal committee that examines bills, legislation and legislative instruments for human rights compatibility pursuant to the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth). The PJCHR then reports to the House of Representatives and the Senate about the human rights compatibility of the relevant Bill, Act, or legislative instrument. A finding of incompatibility does not invalidate any legislation. The *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) therefore provides a weak regulatory mechanism. However, it does provide an opportunity for the PJCHR to draw attention to the government’s human rights violations and stimulate public discussion about the need for social injustice to be redressed. Rights discourse can be useful ‘in struggles for social justice’<sup>106</sup> and as such it remains important to Australia’s First Peoples.<sup>107</sup> The tension between income management and human rights was explored in the 2013 report by the PJCHR when examining the Stronger Futures legislative package, which included amendment to social security law and further expansion of income management.<sup>108</sup> The PJCHR reported:

the income management regime gives rise to a number of human rights compatibility issues. These include whether the income management regime in its various manifestations is consistent with the right to be free from discrimination on the ground of race or ethnic origin, the right to be free from discrimination on the ground of sex, the right to equal protection of the law, the right to social security, the right to an adequate standard of living, and the right to privacy.<sup>109</sup>

Sex discrimination was raised due to the fact that women are vastly over-represented within the income management categories. The Committee also

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<sup>105</sup> *ALRC Report*, above n 93, 267.

<sup>106</sup> Michael McCann, ‘The Unbearable Lightness of Rights: On Sociolegal Inquiry in the Global Era’ (2014) 48 *Law & Society Review* 245, 267.

<sup>107</sup> National Congress of Australia’s First Peoples, ‘Statement to the Senate Standing Committee on Community Affairs on Conditions Affecting Aboriginal Communities in the Northern Territory including the Proposed *Stronger Futures in the Northern Territory Bill (2011)* and Accompanying Bills’ (Statement, February 2012) 2–3 <<http://nationalcongress.com.au/wp-content/uploads/2012/02/CongressStrongerFutures.pdf>>.

<sup>108</sup> Under the *Social Security Legislation Amendment Act 2012* (Cth), other legislation examined concurrently included the *Stronger Futures in the Northern Territory Act 2012* (Cth) and the *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012* (Cth).

<sup>109</sup> Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Examination of Legislation in Accordance with the Human Rights (Parliamentary Scrutiny) Act 2011: Stronger Futures in the Northern Territory Act 2012 and Related Legislation* (2013) 49.

raised concerns about racial discrimination, stating that although income management now applies to some non-Indigenous communities:

the measures still apply overwhelmingly to ... Aboriginal communities. Accordingly, this means that they will fall within the definition of racial discrimination in article 1 of the ICERD, which refers to measures as racially discriminatory if they have 'the purpose or effect' of restricting the enjoyment of human rights. As such, in order to be non-discriminatory they will need to be shown to be based on objective and reasonable grounds and [be] a proportionate measure in pursuit of a legitimate objective.<sup>110</sup>

The PJCHR concluded that the government had failed to prove that income management was non-discriminatory. They stated that 'to the extent it may be viewed as having a differential impact based on race' the government had not 'clearly demonstrated' that income management 'is a reasonable and proportionate measure and therefore not discriminatory', nor that it 'is a justifiable limitation on the rights to social security and the right to privacy and family'.<sup>111</sup> In other words, the type of welfare reform adopted by Australia involves multiple human rights violations that are not demonstrably reasonable, proportionate or justifiable. The PJCHR also noted the importance of self-determination for Indigenous communities, which has been denied with the imposition of compulsory income management against the will of numerous Indigenous communities affected by this law and policy.<sup>112</sup> It is arguable that infringing the human rights of welfare recipients makes them more rather than less vulnerable, which is the antithesis of what the government claims to be trying to achieve with income management. The continuation of compulsory income management is likely to contribute to further international criticism of Australia for flouting the international human rights obligations by which it has agreed to be bound.<sup>113</sup> However, the findings of this report have made no discernible impact on government law and policymakers responsible for income management.

#### **D Report 4: First Evaluation Report of Income Management in the Northern Territory**

There have been two government commissioned university based reports undertaken as part of an evaluation of the operation of income management in the Northern Territory since the changes introduced to the scheme in 2010: one released in 2012 and the other released late in 2014. These reports were

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110 Ibid 51–2. The ICERD is the *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969).

111 Parliamentary Joint Committee on Human Rights, above n 109, 61–2.

112 Ibid 75; Michele Harris (ed), *A Decision To Discriminate: Aboriginal Disempowerment in the Northern Territory* (Concerned Australians, 2012) 63–7.

113 Such as those contained in the *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) art 1 and the *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 9.

undertaken in accordance with terms of reference determined by the federal government. The Northern Territory has by far the highest number of welfare recipients subject to income management out of any Australian jurisdiction. The 2012 and 2014 studies involved qualitative and quantitative research with numerous stakeholders, including a sample of those subject to different types of income management. The evidence from these studies is not favourable in a variety of respects. There was no substantial evidence that income management meets the objectives it was implemented to address, revealing a disconnect between government rhetoric about the efficacy of income management and the lived reality of those who are subject to it. The government commissioned report undertaken by Bray et al in 2012 found ‘little indication that income management is itself effective in changing parenting behaviour, reducing addiction or improving capacity to manage finances’.<sup>114</sup> They concluded that:

Compulsory Income Management is applied to a substantial number of people who appear neither to require, nor to gain any benefit from, the program. This is not without cost, both to the individual and to government. In many cases those subject to income management have a sense of unfairness at being subject to income management and find it embarrassing, humiliating and in some cases demotivating.<sup>115</sup>

Although income management was ostensibly introduced to support and stabilise vulnerable people and families, Bray et al noted that there has been an increase in violence in some areas because of income management and the BasicsCard.<sup>116</sup> One participant explained ‘[t]here are more robberies and violence due to less cash and this is thanks to the BasicsCard’.<sup>117</sup> This outcome has been ignored in dominant income management discourse constructed by the government law and policymakers responsible for income management.

The 2012 report revealed some women are finding that being subject to compulsory income management has had a negative impact on their emotional wellbeing. The restrictions placed upon expenditure patterns through income management can also lead to greater social isolation for those reliant upon government income support. For example, one Indigenous woman stated that ‘[o]ne thing I find is your depression and other added stresses from it (income management). It is making it harder and [people are] stressed when not ... able to get to funerals [which is] causing depression from not having closure’.<sup>118</sup> Another Indigenous woman opined ‘[i]t’s really embarrassing people. ... They [have] got to remember not everyone is dysfunctional’.<sup>119</sup> Bray et al noted that stigma was a common side effect for welfare recipients subject to income management.<sup>120</sup> The process of having to ask to spend income managed funds on an item or activity that is not defined by the legislation as a ‘priority need’ is demeaning and

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114 Bray et al, ‘First Evaluation Report’, above n 27, 267.

115 Ibid 261.

116 Ibid 18, 89, 230.

117 Ibid 89, 230.

118 Ibid 94.

119 Ibid 95.

120 Ibid 93.

laborious for welfare recipients. One Indigenous woman explained her experience as follows: ‘They told me at Harvey Norman, Good Guys, and then JB Hi Fi ... to go to Centrelink and get them to make a cheque and then it takes 3 days for that cheque to get to the shop and that is difficult’.<sup>121</sup> For women to be required to engage in permission seeking processes from a patriarchal bureaucracy to make purchases is deeply disempowering. For Indigenous women it can also revive unpleasant associations with former colonial restrictions placed upon Indigenous women defined in disparaging ways by government authorities.<sup>122</sup> Unfortunately, this report also appears to have made no impact upon government law and policymakers responsible for income management.

### **E Report 5: Final Evaluation Report of Income Management in the Northern Territory**

Government proclamations about the efficacy of income management in parliamentary debates and policy documents are inconsistent with findings in the 2014 Northern Territory income management report. Some of the key findings of this report were that:

- The evaluation could not find any substantive evidence of the program having significant changes relative to its key policy objectives, including changing people’s behaviours.
- There was no evidence of changes in spending patterns, including food and alcohol sales ...
- There was no evidence of any overall improvement in financial wellbeing, including reductions in financial harassment or improved financial management skills. ...
- More general measures of wellbeing at the community level show no evidence of improvement, including for children.<sup>123</sup>

As was the case with the 2012 Northern Territory report, there was evidence of income management causing stigma. Bray et al report that ‘[a] substantial group of people subject to income management felt that income management is unfair, embarrassing and discriminatory’.<sup>124</sup> It is unclear how the government expects such a stigmatising process to render support to welfare recipients. In the qualitative interviews, numerous people reported that income management had affected their emotional wellbeing. For example, one Indigenous woman stated: ‘[i]t makes life a lot harder actually. I was already suffering from depression and that just made it worse’.<sup>125</sup> This reveals that income management is not universally supportive for those experiencing vulnerability, as implied in

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121 Ibid.

122 Rosalind Kidd, *The Way We Civilise: Aboriginal Affairs – The Untold Story* (University of Queensland Press, 1997) 179; Irene Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law* (Routledge, 2015) 21.

123 Bray et al, ‘Final Evaluation Report’, above n 23, xxi.

124 Ibid.

125 Ibid 199.

government rhetoric; rather, for some people income management can exacerbate their vulnerability.

Another disturbing finding of the 2014 report is that many of Australia's poorest people are facing increased costs of living under income management. Of those surveyed, 36.7 per cent reported paying more for goods and services because they were using a BasicsCard<sup>126</sup> – with income management increasing the challenges of budgeting on a small income rather than being a useful budgetary tool for those welfare recipients. This raises further questions about how long welfare recipients will be subject to a purportedly beneficial scheme that, for many, fails to deliver positive outcomes in practice.

The 2014 income management report is revealing in terms of the demographic subject to income management. As of December 2013, 18 300 people were subject to income management in the Northern Territory; 20.1 per cent were on voluntary income management and the remainder were subject to various types of compulsory income management applicable for long-term welfare recipients, disengaged youth, vulnerable welfare recipients, or where there were child protection issues. The number of welfare recipients subject to compulsory forms of income management in the Northern Territory has steadily increased and the number of welfare recipients subject to voluntary income management has steadily declined.<sup>127</sup> This raises questions about the desirability of income management from the perspective of those subject to it. Surely if it was as supportive as the government claims more people would have chosen voluntary income management – after all for many years it led to a financial bonus of \$500 per year for those who 'volunteered' for it.<sup>128</sup> However, even with government provision of a financial incentive to choose voluntary income management, fewer welfare recipients have elected to proceed down the income management pathway. The bonus payment for voluntary income management has been criticised as a 'Foucaultian "carrot"'<sup>129</sup> for those who conform. The 2014 report shows that this additional payment, rather than lack of budgetary capacity, was the reason behind the choice of some of those who agreed to voluntary income management.<sup>130</sup>

Despite income management now being an officially race-neutral policy, Indigenous welfare recipients are grossly over-represented in income management categories. The 2014 Northern Territory income management report reveals that of the 18 300 people on income management in the Northern Territory '90.2 per cent of those being income managed are Indigenous'.<sup>131</sup> These figures demonstrate an ongoing problem in terms of the construction of income

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126 Ibid 135.

127 Ibid 50.

128 Australian National Audit Office, above n 104, 14. As noted above in n 104 this incentive payment has recently been abolished by legislation.

129 Penelope Pether, 'Reading the Northern Territory "Intervention" from the Margins: Notes toward a Feminist Social Psychoanalytic Ethics of Governmentality' (2010) 33 *Australian Feminist Law Journal* 19, 31.

130 Bray et al, 'Final Evaluation Report', above n 23, 246–7.

131 Ibid xx.

management categories that disproportionately catch Indigenous welfare recipients. Thus, the government's assertion that the 2010 amendments are 'a non-discriminatory measure'<sup>132</sup> is contentious. Rather, it is arguable that the government has strategically deployed 'formal antidiscrimination rhetoric'<sup>133</sup> whilst simultaneously ensuring the continuation of income management laws and policies with racially discriminatory consequences. The work of 'the colonial category-makers'<sup>134</sup> continues under the ruse of objectivity. As Frantz Fanon once said, '[f]or the native, objectivity is always directed against him [or her]'.<sup>135</sup> Interestingly, the government's claim that since 2010 the income management scheme has been non-racially discriminatory is counter to the perceptions of many of those now subject to it. Bray et al note that '[m]any Indigenous participants in the qualitative interviews and survey responses described the policy as being racist and some non-Indigenous people disparagingly refer to having been placed on a "blackfellows program"'.<sup>136</sup> This suggests that the stigmatisation of Indigenous welfare recipients through the original NTER income management discourse has had a profound impact.

An ongoing concern with income management is gender bias, as '[o]verall, 59.2 per cent of those subject to income management in the Northern Territory are female'.<sup>137</sup> However, Indigenous women reliant upon government income support are statistically more likely to be subject to income management than non-Indigenous women or Indigenous men. As of 'December 2013 58.9 per cent of Indigenous men and 67.7 per cent of Indigenous women on income support were subject to income management'.<sup>138</sup> Keeping in mind that the vast majority of these people are subject to compulsory forms of income management, there are clearly intersections between race, gender and class which increase the prospect of being subject to paternalistic state supervision.

There are also disparate outcomes concerning exemptions granted from compulsory income management. Those defined as 'long-term' welfare recipients or 'disengaged youth' may apply for an exemption pursuant to sections 123UGC or 123UGD of the *SSA Act*. However, the exemption process is known to be very difficult for Indigenous people to navigate. In part, this is due to the substantial documentation required, which causes some people to abandon the process early on. Other problems include that Centrelink relies on 'a centralised exemptions team that people [have] to deal with by phone', creating associated problems regarding 'the cost of contact, difficulties relating to language, and cultural preferences to deal with people face-to-face'.<sup>139</sup> Another reason for low

132 Commonwealth, *Parliamentary Debates*, House of Representatives, 25 November 2009, 12 784 (Jennifer Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs).

133 Pether, above n 129, 32.

134 Irene Watson, *Aboriginal Peoples, Colonialism and International Law*, above n 122, 69.

135 Frantz Fanon, *Concerning Violence* (C Farrington trans, Penguin Books, 2008) 49 [trans of: *De la violence* (first published 1961)].

136 Bray et al, 'Final Evaluation Report', above n 23, 301.

137 Ibid 55.

138 Ibid 69.

139 Ibid 112.

exemption rates for Indigenous welfare recipients is that Eurocentric criteria tend to be used when assessing their suitability for an exemption.<sup>140</sup> The difference between Indigenous women and non-Indigenous women able to get exemptions from compulsory income management is stark. As of December 2013, 51.4 per cent of non-Indigenous women were able to get an exemption.<sup>141</sup> By contrast, 7.6 per cent of Indigenous women were able to get an exemption.<sup>142</sup> It appears that non-Indigenous women possessed more ‘cultural capital’<sup>143</sup> to know how to successfully navigate the exemption system. Bray and others note that ‘[f]or non-Indigenous women in particular, most exemptions do not involve the person ever having been on income management’.<sup>144</sup> In other words, they manage to successfully circumvent the restrictions before they are even subject to them.

By contrast, Indigenous women are comparatively disadvantaged in the exemption process. Further empirical research as to why this is so would be illuminating. Could it be that non-Indigenous women with children more easily fit the government’s criteria for moral motherhood and therefore find it easier to navigate the exemption process for income management? Indigenous women may well be experiencing a double dose of discrimination in the income management exemption context due to negative racialised and gendered stereotypes outlining their motherly ineptitude in accordance with colonial propaganda. As previously explained, in earlier colonial times, removal of children from their Indigenous mothers could only take place by painting a picture of incompetence on the part of Indigenous mothers. Indigenous women on welfare are therefore positioned differently to other groups on income management. They have historically been, and many still are, subject to a range of government interventions premised upon the belief that they are not good mothers – as ongoing disproportionate Indigenous child removal figures attest.<sup>145</sup>

Another unresolved issue highlighted by the 2014 report is the government’s misrecognition of actual budgetary capacity possessed by many welfare recipients placed in compulsory income management categories. The broad compulsory income management categories operating in the Northern Territory

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140 Shelley Bielefeld, ‘Compulsory Income Management and Indigenous Peoples – Exploring Counter Narratives amidst Colonial Constructions of “Vulnerability”’ (2014) 36 *Sydney Law Review* 695, 705–7; Commonwealth Ombudsman, ‘Review of Centrelink Income Management Decisions in the Northern Territory: Financial Vulnerability Exemption and Vulnerable Welfare Payment Recipient Decisions’ (Report No 4, Department of Human Services (Cth) and Department of Families, Housing, Community Services and Indigenous Affairs (Cth), June 2012) 30. These two sources also outline a range of administrative law problems that income managed Indigenous welfare recipients have experienced including lack of access to reasons for Centrelink decisions and frequent lack of procedural fairness.

141 Bray et al, ‘Final Evaluation Report’, above n 23, 98.

142 Ibid.

143 Pierre Bourdieu, *Language and Symbolic Power* (G Raymond and M Adamson trans, Polity Press, 1991) 61 [trans of: *Ce que parler veut dire* (first published 1982)].

144 Bray et al, ‘Final Evaluation Report’, above n 23, 103.

145 Aboriginal and Torres Strait Islander Social Justice Commissioner, ‘Social Justice and Native Title Report 2015’ (Report, Australian Human Rights Commission, October 2015) 11, 138; Baldry and Cunneen, above n 42, 286–7.



catch everyone who falls within them – regardless of their experience with financial management. For example, one Indigenous woman interviewed stated:

I know how to handle my money. I have a degree in business management and I'm a qualified hairdresser who has managed salons. I know what I need to do and I was doing fine before the incident. I had some problems after that but I don't understand why I have to have my money managed and I don't know why I can't get off it.<sup>146</sup>

This account of misrecognition of capacity is consistent with that of Aboriginal activist Barbara Shaw who stated in 2013:

Take income management, which I have been on for five and a half years. I ran for parliament in 2010 and outpolled both Labor and Liberal candidates in Central Australian communities. I have represented my people at the United Nations. But the Government says I can't manage my money. On their own estimations of \$6000 to [\$]8000 per person per year administrative cost for income management, the government has spent more than \$30,000 dollars just to control my small income. This system has made it much harder for us to share and care for each other. I used to run an unofficial safe house here at Mt Nancy town camp. I'd get money off all the parents every week. If there was drinking and fighting and the kids needed somewhere to be, they knew they were safe here at 'Big Mamma's' house and that I could buy meals for them. No one has the cash to chuck in any more.<sup>147</sup>

In addition to highlighting the problem of misrecognition, this shows that some resourceful initiatives undertaken by Indigenous women to address challenges faced in their communities have been undermined by the income management scheme.

The theme of income management curtailing women's choices and increasing the prospect of social isolation was again raised as an issue of concern in the 2014 income management report. One Indigenous woman protested: 'You can't do much on BasicsCard and income management. You can't take kids to the cinema and Darwin show don't use it and Mindil Beach market don't use it and even just to sit down and eat in the eatery you can't use the BasicsCard'.<sup>148</sup>

The 2014 report also confirms that for some welfare recipients income management has resulted in greater passivity about financial management.<sup>149</sup> This reveals that authoritarian controls can actually undermine rather than enhance financial responsibility.

As thorough as the government commissioned income management reports are, and though they contain a wealth of useful information, it is also important to consider the limitations of such research. This research required government approval of questions put to participants. This means there were issues with how some questions were framed. For example, welfare recipients who had successfully obtained an exemption and exited compulsory income management were asked (with the options laid out in this order) to 'strongly agree', 'agree',

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146 Bray et al, 'Final Evaluation Report', above n 23, 199.

147 Barbara Shaw, 'The NT Intervention – Six Years On', *New Matilda* (online), 21 June 2013 <<https://newmatilda.com/2013/06/21/nt-intervention-six-years>>.

148 Bray et al, 'Final Evaluation Report', above n 23, 206.

149 *Ibid* xxii, 252.

‘neither agree nor disagree’, ‘disagree’, or ‘strongly disagree’ with the following statements: ‘Income management was good for me’, ‘Income management was good for my children’, ‘Income management taught me how to better manage my money’, and ‘Income management made me change my behaviours’.<sup>150</sup> The manner in which these options were put to participants created a hierarchy of responses coinciding with the government’s income management rhetoric – left to right. The very first option participants were faced with was to strongly agree with a statement framed in leading language. Arguably, questions put to participants ought to have been phrased in more neutral language. To do otherwise is the equivalent of asking a leading question in a situation of asymmetrical power relations. It automatically put welfare recipients in a position where some may have been uncomfortable about overtly disagreeing with the government, especially if they remained reliant upon government income support for their daily survival. It is possible that this affected the responses given.

Government commissioned income management evaluation also needs to be contextualised. Evaluation of income management in the Northern Territory must be understood as part of racialised state surveillance with possible ramifications across other policy areas, such as forced removal of Indigenous children. Throughout Australia’s earlier colonial period, Indigenous children were routinely removed from their families and communities as part of an official state orchestrated assimilation policy, creating the Stolen Generations.<sup>151</sup> This has led to intergenerational trauma for Indigenous peoples;<sup>152</sup> and a long overdue official government apology by the Rudd Labor Government to members of the Stolen Generations.<sup>153</sup> However, forced removal of Indigenous children remains disproportionately high.<sup>154</sup> Consequently, many Indigenous parents live under the shadow of surveillance undertaken by child welfare authorities. This is highly significant. The 2014 report indicates that the research was seen by many participants as collecting information for the government. This had the capacity to affect the answers given to questions posed. The following quotation illuminates this complexity:

While the data collection was largely undertaken by an independent company, with the fieldwork mainly being conducted by Indigenous interviewers, the collection of these data was viewed by many respondents as the ‘government collecting information’. This perception can shape responses in several ways. In some cases it can result in the respondent answering questions in the way that they consider the government wants to hear. In other cases respondents may use it as a means of sending a message to government, relating to what they see as being a lack of consultation about the program, or in expressing defiance of, and frustration with, government including their views about the intervention. Cultural

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150 Ibid 181–2.

151 Human Rights and Equal Opportunity Commission, above n 42, 29–35.

152 Judy Atkinson, Trauma Trails, *Recreating Song Lines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press, 2002) 67–8.

153 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, 167–71 (Kevin Rudd, Prime Minister).

154 Aboriginal and Torres Strait Islander Social Justice Commissioner, above n 145, 11, 138.

attitudes can also play a role – especially in seeking to avoid confrontation. The impact of some of these factors was highlighted for this evaluation when undertaking community feedback on the First Evaluation Report. One of the points noted in this earlier report was an apparent contradiction between reported improvements in the wellbeing of children by survey respondents and the trends in quantitative measures of outcomes. In feedback we were told ‘what else do you think we would say – it would be a shame job if we said things had got worse for our children – and if we did, what would happen? Would the government take them away again?’ (Community feedback, Alice Springs)<sup>155</sup>

As previously mentioned, income management was first introduced in 2007 as part of the NTER. This involved uninvited military presence on and control over Indigenous lands in the Northern Territory, purportedly to help stabilise dysfunctional Indigenous communities.<sup>156</sup> This created understandable panic on the part of Indigenous parents who were portrayed as grossly negligent in the care of their children – with the allegation made that Indigenous children were victims of paedophile rings organised by Indigenous elders – an allegation later proven to be false.<sup>157</sup> However, by that stage the damage to reputation had already been done. Given this recent history, it is understandable that some Indigenous people would be concerned about possible ramifications of providing information to government. It is therefore unsurprising that there were 403 people who refused to participate in the research – even if they did not like income management. Bray et al explain that ‘[s]ome of the people who refused to undertake the survey spoke quite negatively about income management and expressed a desire not to spend time speaking about it’.<sup>158</sup> Evidently, for these people it was bad enough being subject to income management without spending more of their time caught in the wheels of a bureaucratic feedback loop. Given the selective use made thus far of government commissioned income management research, welfare recipients could be forgiven for thinking that their feedback would have little or no impact on law and policy development. For example, in her comprehensive 2011 analysis of early income management reports, Eva Cox concluded that ‘the government cherry-picks’ information ‘but fails to report negative findings in its own data’.<sup>159</sup> This unfortunate trend continues.

Despite the evidence referred to thus far detailing serious problems with income management, the federal government announced in the May 2015 Budget that income management would continue for another two years. They declared: ‘Income management helps people manage their welfare payments, encourages socially responsible behaviours and protects vulnerable Australians’.<sup>160</sup> This

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155 Bray et al, ‘Final Evaluation Report’, above n 23, 167–8.

156 Rosie Scott and Anita Heiss (eds), *The Intervention: An Anthology* (Concerned Australians, 2015) 19; *Utopia* (Directed by John Pilger, Secret Country Films, 2013) 1:10:25–1:10:51.

157 *Utopia*, above n 156, 1:09:41–1:23:13.

158 Bray et al, ‘Final Evaluation Report’, above n 23, 346.

159 Eva Cox, ‘Evidence-Free Policy Making? The Case of Income Management’ (2011) 12 *Journal of Indigenous Policy* 1, 88.

160 Treasury, ‘Budget 2015: Fairness in Tax and Benefits’ (Report, Commonwealth of Australia, 2015) 15 <<http://www.budget.gov.au/2015-16/content/glossy/tax/download/Tax-and-Benefits.pdf>>.

statement resonates with the legislative objectives for income management previously referred to in the introduction. However, this claim ignores the growing body of unfavourable feedback about income management, especially compulsory income management, and reveals an ideological commitment to income management regardless of evidence. With each new income management report produced, the government engages ‘in the process of selective re-interpretation’<sup>161</sup> of the data constructed so as to fit it within the overarching ideological framework of neoliberalism and new paternalism. For example, following the release of the 2014 Northern Territory income management report, then Federal Minister for Social Services Kevin Andrews claimed that income management would work if only there was a higher amount quarantined than 50 per cent of welfare payments.<sup>162</sup> There was no evidence to support this assertion.

In addition to overseeing ongoing income management with the BasicsCard, the subsequent Federal Minister for Social Services Scott Morrison announced in 2015 that the government would trial a variant of income management with the ‘Healthy Welfare Card’ in a number of locations; and this has now been implemented via the *Social Security Legislation Amendment (Debit Card Trial) Act 2015* (Cth) (*‘DCT Act’*) under the current Federal Minister for Social Services Christian Porter.<sup>163</sup> The 2014 Forrest Review recommendation for a ‘Healthy Welfare Card’ stipulated that there should be ‘a cashless welfare card system’ with 100 per cent income management.<sup>164</sup> This recommendation met with opposition by the Australian Council of Social Service, who stated that the Healthy Welfare Card ‘would remove individual autonomy and decision-making’ and impose ‘unnecessary bureaucratic controls on the lives of people reliant on income support’.<sup>165</sup> The amount quarantined under the Healthy Welfare Card is 80 per cent of a welfare recipient’s regular payment, and Ceduna, which has a high proportion of Indigenous welfare recipients, is one of the trial

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161 Bourdieu, above n 143, 82.

162 Helen Davidson, ‘Kevin Andrews Defies Report To Argue for More Control of Welfare Recipients’ Cash’, *The Guardian* (online), 18 December 2014 <<http://www.theguardian.com/australia-news/2014/dec/18/kevin-andrews-defies-report-argue-more-control-welfare-recipients-cash>>.

163 Scott Morrison, *Press Conference, Sydney* (7 May 2015) Department of Social Services (Cth) <<http://www.formerministers.dss.gov.au/15863/press-conference-sydney/>>; Department of Social Services (Cth), *Cashless Debit Card Trial – Overview* (27 April 2016) <<https://www.dss.gov.au/families-and-children/programmes-services/welfare-conditionality/cashless-debit-card-trial-overview>>.

164 For all except age and veterans’ pensions: Andrew Forrest, ‘The Forrest Review’ (Report, Commonwealth of Australia, 2014) 100–8.

165 Australian Council of Social Service, ‘Forrest Review Includes Some Sound Proposals, but Radical Social Security Changes Should Be Rejected’ (Media Release, 1 August 2014) <[http://www.acoss.org.au/media\\_release/forrest\\_review\\_includes\\_some\\_sound\\_proposals\\_but\\_radical\\_social\\_security\\_ch/](http://www.acoss.org.au/media_release/forrest_review_includes_some_sound_proposals_but_radical_social_security_ch/)>.

communities.<sup>166</sup> Former Prime Minister Tony Abbott strongly supported this new direction. He recently alleged that Indigenous people desire the Healthy Welfare Card ‘because they want to lift their people up by the bootstraps’ and that those who are in receipt of welfare ‘can often blow their dough on things which are quite counterproductive, which are quite harmful’.<sup>167</sup> According to Abbott, the Healthy Welfare Card will help Indigenous people to ‘face the future with confidence and pride’.<sup>168</sup> These ideas clearly resonate with the dominant political party. Within hours of the Liberal government’s new leadership under Prime Minister Malcolm Turnbull, the *DCT Act* was passed by the House of Representatives to implement trials of the Healthy Welfare Card.

#### IV OTHER CRITICISMS OF INCOME MANAGEMENT

For all the government’s assertions that income management is beneficial for Indigenous women on welfare,<sup>169</sup> it must be kept in mind that income management does nothing to redress economic and other injustices inherent in Australia’s ongoing colonialism. Indeed, it detracts focus from the conduct of the colonial state and lays the blame for poverty at the feet of those whose incomes the government seeks to manage. By individualising responsibility for poverty, income management operates powerfully as a mechanism to justify the status quo. The discursive dominance of new paternalism renders individual Indigenous welfare recipients ‘personally responsible’ for their poverty, which is politically palatable for colonial governments who wish to position themselves as not responsible for redressing racialised injustice.<sup>170</sup> Aileen Moreton-Robinson argues that the state has deployed ‘a discourse of Indigenous pathology as a weapon to circulate a strategic truth: if Indigenous people behaved properly as good citizens their poverty would disappear’.<sup>171</sup> New paternalism therefore reproduces rationalised racism, not overt, but where the measurements of

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166 ABC, ‘Trial of “Almost Cashless” Welfare Card Program To Start in Ceduna, SA, Next Year’, *AM*, 5 August 2015 (Michael Brissenden and Alan Tudge) <<http://www.abc.net.au/am/content/2015/s4287108.htm>>; Department of Social Services (Cth), *Cashless Debit Card Trial*, above n 163. The Healthy Welfare Card involves restrictions on how 80 per cent of regular welfare payments can be spent, reflected in the *DCT Act* sch 1 item 124PJ, with 100 per cent restrictions on lump sum payments. A community body can seek to vary the percentage under item 124PK, however such variation cannot be less than 50 per cent of welfare income being restricted. For a critique of the consumer rights, human rights, privacy and other problems with this Act, see generally Shelley Bielefeld, Submission No 19 to Senate Standing Committee on Community Affairs, *Social Security Legislation Amendment (Debit Card Trial) Bill 2015*, 18 September 2015, 1–15.

167 Tony Abbott in Gabrielle Chan, ‘Tony Abbott: Welfare Card Will Help Lift Indigenous People “by Their Bootstraps”’, *The Guardian* (online), 23 August 2015 <<http://www.theguardian.com/australia-news/2015/aug/23/tony-abbott-welfare-card-will-help-lift-indigenous-people-by-their-bootstraps>>.

168 *Ibid.*

169 ABC, ‘Should Governments Control How You Spend Your Welfare Payments?’, *Life Matters*, 2 June 2015 (Alan Tudge) <<http://www.abc.net.au/radionational/programs/lifematters/the-cashless-welfare-card/6512820>>.

170 Goldberg, above n 75, 233.

171 Moreton-Robinson, ‘Imagining the Good Indigenous Citizen’, above n 49, 77.

civilised conduct are constructed according to white, middle class norms. This is an attempt to discursively transform racial discrimination into an incontestable form of ‘rational discrimination’.<sup>172</sup>

Income management promotes the entrenchment of oppressive ‘status hierarchies’.<sup>173</sup> The income management scheme has increased the visibility in society of those who are reliant upon government income support as they go about their daily lives. New paternalist policies have had a similar consequence for welfare recipients in the United States. For example, John Gilliom explains that in Ohio there is:

a power struggle over the compulsory visibility of the welfare poor. The surveillance mechanisms of the state are mechanisms of domination that seek to force the poor into the open ... and, as a result, disempower them by closing off more and more of the secret places in which to hide, at least temporarily, from the power of the state.<sup>174</sup>

A similar observation could be made about the operation of income management in Australia. It has forced welfare recipients to become more visible when they engage in consumer transactions and has limited the places and spaces where they are welcome. This was poignantly expressed by Rachel McDinny, who says of the BasicsCard:

That card is now the boss, it forces me, it rounds me up when I go to buy food and other things. There are shops that have outside, the words No BasicsCard Here, how is this? I feel dreadful, this is unpleasant to say but white people are now above me and I am low down. ... this BasicsCard is bad it is tangling everyone up and we Aboriginal people we are all feeling dreadful.<sup>175</sup>

This reveals how ‘class-centered expressions of racist exclusion’<sup>176</sup> operate to perpetuate the same distribution of power and possibilities present in earlier colonial times. These factors mean that Australia is still a ‘racial state’ and a ‘racist state’ by Goldberg’s definition.<sup>177</sup> Compulsory class visibility takes place each time a welfare recipient shops with their BasicsCard. The distinctive green colour of the card marks welfare recipients out for different social treatment. The kind of discrimination and humiliation that can occur while people shop under

172 Goldberg, above n 75, 228.

173 Fraser, above n 32, 234.

174 John Gilliom, ‘Resisting Surveillance’ (2005) 23(2) *Social Text* 71, 78.

175 Rachel McDinny, quoted in Therese Ritchie, ‘All Dressed Up and Nowhere To Go’ (2012) 118 *Arena Magazine* 29, 31.

176 Goldberg, above n 75, 26, 104. Goldberg explains that:

the racial state is racial not *merely* or reductively because of the racial composition of its personnel or the racial implications of its policies – though clearly both play a part. States are racial more deeply because of the structural position they occupy in producing and reproducing, constituting and effecting racially shaped spaces and places, groups and events, life worlds and possibilities, accesses and restrictions, inclusions and exclusions, conceptions and modes of representation. They are *racial*, in short, in virtue of their modes of population definition, determination and structuration. And they are *racist* to the extent that such definition, determination and structuration operate to exclude or privilege in or on racial terms, and in so far as they circulate in and reproduce a world whose meanings and effects are racist.

At 104 (emphasis in original).

177 *Ibid* 104.

income management is apparent in the following illustration related by a Centrelink officer:

When it came out ... we had incidences in the supermarkets where the [sales assistant] would tell the customer, no, oh well you are on that card, you can't have that steak. You go and get that other steak, that cheaper one. You are wasting your money.<sup>178</sup>

This demonstrates that government rhetoric about the budgetary incompetence of welfare recipients has accomplished powerful status hierarchy work – with non-income managed people feeling free to proffer unsolicited advice at the point of sale. The long-term effect of this type of conduct on social relations is likely to be damaging. Commentators in the United Kingdom concerned about their government's plans for development of cashless welfare transfers with prepaid cards have raised similar issues.<sup>179</sup> As Zoe Williams explains:

something very significant happens when you expel people from the sphere of money. In the moment of exchange, everyone is equal; you don't have to prove that you're worthy of that purchase, your status is bestowed by the fact that you can pay for it, and you are worth as much in that moment as anybody else who can pay for it. There's a fillip of power in the process; it's why people who like shopping like shopping, and it is especially important when – for some reason that is probably financial – you spend a lot of the time feeling powerless. Give people a voucher instead, and they are not equal ... charity and condescension have crept into the transaction – or maybe pity. But nobody wants their groceries served with pity.<sup>180</sup>

Similarly, David Graeber has highlighted that the value of money lies beyond its mere purchasing power. He explains that:

if value is simply what one considers important, then money allows importance to take liquid form, enables us to compare precise quantities of importance and trade one off for the other. ... What is really at stake here in any market economy is precisely the ability to make these trades, to convert 'value' into 'values'.<sup>181</sup>

Governments who engage in cashless welfare transfers deny welfare recipients a status of parity in terms of exchange value. This discriminatory treatment is based upon negative stereotyping and does a grave disservice to the poor.

Regardless of the Australian government's asserted benevolence with income management, its most pronounced effect has been to emphatically reinforce a socio-economic hierarchy. To the extent to which Indigenous peoples are grossly over-represented under income management, the scheme has also reinforced

178 Bray et al, 'First Evaluation Report', above n 27, 94.

179 Standing, *A Precariat Charter*, above n 5, 377–8; Vonny Moyes, 'The Tories' Proposed Prepaid Benefit Cards Make Welfare an Even Dirtier Word', *The Guardian* (online), 1 October 2014 <<http://www.theguardian.com/commentisfree/2014/sep/30/tories-prepaid-benefit-cards-welfare-poverty>>; Zoe Williams, 'Tories Want To Relegate Those on Benefits to a World Outside Money', *The Guardian* (online), 28 March 2013 <<http://www.theguardian.com/commentisfree/2013/mar/28/tories-benefits-money-vouchers-underclass>>.

180 Williams, above n 179.

181 David Graeber, *Revolutions in Reverse: Essays on Politics, Violence, Art and Imagination* (Minor Compositions, 2012) 74.

Australia's racist colonial hierarchy. Rather than function as an effective safeguard for welfare recipients or communities with a high proportion of welfare recipients, income management operates as a protective mechanism for 'status hierarchies'.<sup>182</sup> In doing so, it reproduces injustice and remains a far cry from Indigenous calls for self-determination to 'freely determine their political status and freely pursue their economic, social and cultural development' in accordance with article 3 of the *United Nations Declaration on the Rights of Indigenous Peoples*.<sup>183</sup> Indigenous critical race theorists emphasise that self-determination is vital for Indigenous peoples.<sup>184</sup> Compulsory income management is the antithesis of acknowledging or fostering self-determination, and it is inappropriate for the government to persist in the racialised and gendered essentialism which portrays income management as unequivocally and universally helpful to Indigenous women. Such misrepresentation perpetuates colonial patriarchal harm towards thousands of Indigenous women now on compulsory income management across the Northern Territory and other parts of Australia. It also perpetuates colonial patriarchal harm for those Indigenous women currently on voluntary income management in the Northern Territory who have been subject to income management from the commencement of the NTER and who have no understanding that they have an option to exit the scheme.<sup>185</sup> Patriarchal colonialism is reproduced through the government's essentialising narratives about what Indigenous women on welfare want or need.

There is a diverse range of perspectives among Indigenous women about interventionist policies,<sup>186</sup> and an ethical approach to law and policy would adapt to this reality. However, gendered and racialised essentialism operates in the dominant income management discourse to position all Indigenous women on welfare as needing or desiring income management to protect them from abusive male kin and enable them to properly care for children.<sup>187</sup> Whilst some Indigenous women may perceive voluntary income management to be helpful, such as some Aboriginal women in the Anangu Pitjantjatjara Yankunytjatjara Lands in South Australia,<sup>188</sup> it should not be presumed that all Indigenous women 'experience the same thing in the same way'.<sup>189</sup> The essentialised narrative of the government regarding income management and Indigenous women leads to the erasure of dissenting voices that speak authentically about their negative experiences with income management.

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182 Fraser, above n 32, 234.

183 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61<sup>st</sup> sess, 107<sup>th</sup> mtg, Supp No 49, UN Doc A/RES/61/295 (13 September 2007).

184 Moreton-Robinson, *Talkin' Up to the White Woman*, above n 46, 151; Irene Watson, *Aboriginal Peoples, Colonialism and International Law*, above n 122, 161; Larissa Behrendt, *Achieving Social Justice: Indigenous Rights and Australia's Future* (Federation Press, 2003) 90–4.

185 Bray et al, 'Final Evaluation Report', above n 23, 238.

186 Nicole Watson, above n 33, 153.

187 Bielefeld, 'Compulsory Income Management', above n 140, 713.

188 Ilan Katz and Shona Bates, 'Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands' (Report, Social Policy Research Centre, September 2014) 1–4.

189 Margaret Davies, *Asking the Law Question* (Lawbook, 3<sup>rd</sup> ed, 2008) 247.



Self-determination for Indigenous peoples includes ‘political and economic empowerment’.<sup>190</sup> This requires a significant alteration of patriarchal colonial power imbalances, the non-stigmatised redistribution of economic resources, and the acknowledgement that existing non-paid labour undertaken by Indigenous women is to be highly valued. What is counted as work under patriarchal colonialism disadvantages the contributions made by many Indigenous women who carry out a range of important activities for their families and communities.<sup>191</sup> Patriarchal colonialism has resulted in the drawing of an arbitrary line ‘between what is deemed “work” and what is not’.<sup>192</sup> Irene Watson contends that ‘[w]hite male views prevail over all other ways of knowing and claim the centre from where all other ways of knowing are not only deemed marginal, but often not to exist at all’.<sup>193</sup> This means that although the numerous hours of work Indigenous women put into a range of socially and culturally necessary activities ought to be taken into account in socio-economic policy this seldom occurs.

Feminist scholars pertinently point out that ‘the economy is a “gendered structure”’,<sup>194</sup> and have long criticised the ‘double shift’, or ‘triple or quadruple shift’<sup>195</sup> women are expected to carry as they balance their array of domestic, extended family, community and other work roles. Their unpaid work is ‘informal economic activity’<sup>196</sup> which is misrecognised within neoliberal and new paternalist frameworks. Dominant income management discourse reflects and reinforces such ‘androcentric patterns of cultural value’.<sup>197</sup> Rather than acknowledging the socio-economic value of the unpaid caring work of Indigenous women, their life activities are misrepresented as deviancy, dependency, passivity and incapacity in new paternalist narratives. When women were faced with similar stigmatisation under new paternalist policies in the United States, Mimi Abramovitz astutely observed that ‘contrary to popular wisdom, women have always been active’.<sup>198</sup>

Aileen Moreton-Robinson points out that ‘Indigenous women as a group constitute a resource-deprived and underprivileged minority in Australia’.<sup>199</sup> Indigenous women need protection from market failure in the form of resource redistribution; however this should not come at the cost of misrecognition of actual budgetary capacities, life skills and valuable activities. As a means of promoting economic justice, the renowned postcolonial scholar Frantz Fanon called for resource redistribution in colonial contexts.<sup>200</sup> He was highly critical

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190 Moreton-Robinson, *Talkin’ Up to the White Woman*, above n 46, 163.

191 *Ibid* 156–7; Shaw, above n 147.

192 Standing, *Beyond the New Paternalism*, above n 61, 208.

193 Irene Watson, *Aboriginal Peoples, Colonialism and International Law*, above n 122, 1.

194 Brah, Szeman and Gedalof, above n 2, 2.

195 Fraser, above n 32, 35, 220.

196 True, above n 72, 43–5.

197 Fraser, above n 32, 161.

198 Mimi Abramovitz, *Under Attack and Fighting Back – Welfare and Women in the United States* (Monthly Review Press, 2000) 12.

199 Moreton-Robinson, *Talkin’ Up to the White Woman*, above n 46, 159.

200 Fanon, above n 135, 69.

of colonial powers that have enriched themselves ‘with the gold and raw materials of the colonial countries’.<sup>201</sup> Drawing attention to much neglected structural issues, he commented that it is the ‘[s]poilt children of yesterday’s colonialism and of today’s national governments’ who ‘organize the loot of whatever national resources exist’.<sup>202</sup> Non-stigmatised resource redistribution is crucial; and, arguably, specific reparation and restitution to Australia’s First Peoples is long overdue. Income management does nothing to redress the socio-economic injustice inherent in Australia’s ongoing colonialism. The government claims that income management is needed to regulate poverty, but there have been other pertinent suggestions to remedy Indigenous socio-economic disadvantage. For example, Marcia Langton suggested in 1988 that Indigenous people be paid a percentage of Australia’s gross national product by way of compensation for colonial atrocities.<sup>203</sup> She suggested that the amount ‘be agreed to by negotiations between Aboriginal people and the Australian government’ and that the ‘negotiations ... be supervised by an internationally respected body acceptable to both parties’.<sup>204</sup> This would do more than merely manage poverty, as currently attempted (without much success) by the current income management scheme. It would be a step towards positioning Indigenous peoples beyond poverty.

## V CONCLUSION

This article highlights that there are powerful lessons to be learnt from the Australian income management experience, especially as regards the racialised and gendered aspects of neoliberal austerity measures. Reflection upon the positioning of Indigenous women in dominant income management discourse highlights how racialised images of Indigenous women can have contemporary currency. There is a connection between the rhetoric of income management and long held perceptions about the character and capacities of Aboriginal mothers who have been icons for poor parenting in the national non-Indigenous imagination due to persistent colonial propaganda. Indigenous women are familiar with such colonial narratives, which have been used to forcibly remove Indigenous children from their mothers, creating intergenerational trauma for the Stolen Generations, and the families and communities from which they were removed.

Through its income management discourse, the government promotes the expansion of bureaucratic control over Indigenous women, ostensibly to ‘support’ them, whether they desire this or not. Examination of income

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201 Ibid 73.

202 Ibid 16.

203 Marcia Langton, ‘The Getting of Power’ (1988) 6 *Australian Feminist Studies* 1, 4–5 in Aileen Moreton-Robinson, *Talkin’ Up to the White Woman*, above n 46, 162.

204 Ibid.

management reports shows that ‘hypocrisy’ stalks ‘the rhetoric’.<sup>205</sup> Touted by government as a necessary form of support and protection for welfare recipients, their families and their communities, income management in the Northern Territory has instead brought greater difficulties for many of those subject to it, and failed to achieve the policy objectives unilaterally designed and imposed by the government. There are several persuasive and vivid illustrations of the negative effects of income management. Indeed, evidence shows that income management can create some of the problems law and policymakers claim it remedies so effectively. Yet despite deficiencies in evidence, income management continues to be lauded by leading politicians.

However, a welfare system that pre-emptively designates welfare recipients as poor planners and denies ‘their capacities to interpret their own needs, experiences, and life-problems’<sup>206</sup> is profoundly disempowering. Compulsory income management is applied to Indigenous women in ways that ‘conform to rather than challenge’ the ‘patterns of domination and subordination’<sup>207</sup> seen throughout Australian colonialism. There are familiar patterns of oppression at work in income management accompanied by new uses of technology and bureaucracy, and these reflect and reproduce the same hierarchal power imbalances as occurred in previous periods of Australia’s history.

The patriarchal colonial state has often sought to regulate and control Indigenous women rather than empower them. Indigenous women are familiar with the grim realities of benevolent colonial narratives that hinder self-determination. Dominant income management discourse promotes an illusory solution to poverty, and weaves a fantasy that this policy is about the government ordering disordered lives. Such representations are critical to the government shoring up the inequalities entrenched in the colonial status quo. Approximately \$1 billion was allocated to income management between 2005–06 to 2014–15,<sup>208</sup> and a further \$133.3 million was dedicated to income management for the financial years 2015/16 and 2016/17 in the 2015 Budget.<sup>209</sup> This fiscally limits other options the government could take to support Indigenous women that may well produce superior outcomes. So long as the government continues to funnel resources towards income management, fewer funds will be available to support culturally appropriate alternatives consistent with Indigenous self-determination.

Other countries interested in similar compulsory cashless welfare transfers could learn from the mistakes made by Australia’s income management law and policymakers. The Australian experience indicates that the austerity-battered poor do not benefit from such schemes. Already tasked with the tremendous challenge of existing on unbearably low incomes, cashless welfare transfers require welfare recipients to bear additional burdens that are costly to them and

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205 Standing, *Beyond the New Paternalism*, above n 61, 163.

206 Fraser, above n 32, 41.

207 Ibid 81.

208 Luke Buckmaster, Carol Ey, and Michael Klapdor, ‘Income Management: An Overview’ (Background Note, Parliamentary Library, Parliament of Australia, 2012) 34.

209 Commonwealth of Australia, ‘Budget Measures 2015–16’ (Budget Paper No 2, 12 May 2015) 42.

the state. New paternalist advocates of cashless welfare deploy specious rationales for poverty, then claim that engaging in expensive intensive surveillance is the solution. Yet as Mark Blyth wryly observes, '[a]usterity is ... supposed to reduce debt. In fact, that's the whole point of it'.<sup>210</sup> Claims that challenges associated with poverty can be magically whisked away by the adoption of cashless welfare transfers are profoundly misleading. Australia's income management experience shows that such claims ring hollow.

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210 Mark Blyth, *Austerity: The History of a Dangerous Idea* (Oxford University Press, 2013) 224.