# Women doubly governed: offering a governmentality analysis to solve the apparent paradox of the current cohabitation rule

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### **Abstract:**

The cohabitation rule basically aims to ensure that an unmarried couple does not receive financial advantage from social security over a married couple. It thus denies certain payments to those who are living in certain types of relationships. This paper ponders the apparent paradox that the cohabitation rule seems to enforce women's dependence on men, while current Australian social security increasingly focuses on independent individuals. This paper offers a solution to this apparent paradox through a governmentality analysis of the cohabitation rule. A governmentality analysis allows for simultaneous political rationalities. In particular, this paper shows how welfarist and neo-liberal political rationalities govern simultaneously through the cohabitation rule. Welfarist political rationality governs dependent women, while neo-liberal political rationality governs independent individuals. This means that, in effect, women are doubly governed through the cohabitation rule. They are governed as dependent women, and also governed as independent individuals.

Mary McIntosh criticised the cohabitation rule of the 1970s and 1980s for forcing women to be financially dependent on the men they slept with because it denied payment to women who had certain relationships with men. She called social security officers "sex snoopers" and deplored the cohabitation rule for "trying to force women into prostitutional dependence on the men they slept with" (1981/2000: 119). Although the cohabitation rule has received little recent research attention, it still exists in a different form, as the marriage like relationship (MLR) criteria. The MLR, like previous manifestations of the cohabitation rule, has special significance for women and reinforcing their dependence on men. In particular, if a Parenting

Payment (Single) recipient (most of whom are women<sup>1</sup>) is found to be living in a MLR with a member of the opposite sex<sup>2</sup>, they are no longer entitled to this payment.

However, many writers have observed an increasing focus on the individual in Australian social policy through welfare to work type reforms (Carney and Ramia 1999; Carney and Ramia 2001; Goodin 2001; Yeatman 2002). Indeed, the MLR criteria applies to all Centrelink customers (both male and female). Although it has special significance for women through its continued ability to exclude single parents (mostly mothers) from Parenting Payment (Single), Parenting Payment (Single) is also changing. As of July 1 2006, welfare to work policies have been extended to Parenting Payment (Single) recipients<sup>3</sup>. It seems Parenting Payment (Single) is also increasingly focusing on developing individual customer's independence through its new welfare to work requirement.

This paper ponders this apparent paradox<sup>4</sup>. Indeed, how can the cohabitation rule – which, according to McIntosh, enforces women's financial dependence on men – coexist with an increasing focus on individual independence. How can Australian social policy enforce dependence and independence simultaneously?

This paper offers a governmentality (Foucault 1991) analytical framework to solve this paradox. I argue that the current cohabitation rule governs both women and individual Centrelink customers. To use Rose and Miller's (1992) framework: women according to a welfarist political rationality and all individual Centrelink customers according to a neo-liberal political rationality. According to a governmentality analysis, political rationalities do not replace one another – but coexist. This means that women are currently doubly governed through the MLR criteria – they are governed as women (through welfarist political rationality) and also as individuals (through neo-liberal political rationality).

This will be shown in the following steps. First, the cohabitation rule is introduced. Here it is shown that although the cohabitation rule received much theoretical and research attention in the past, its current manifestation as the MLR criteria in social security law requires new attention. Second, Foucault's understanding of governmentality (Foucault 1991) is outlined. In this section Rose and Miller's (1992) elaboration of Foucault's governmentality analytic is outlined because it provides a useful framework for analysing the current cohabitation rule. Third, the cohabitation

rule in Australian social policy is analysed according to this framework. It shows that women are currently doubly governed through the MLR criteria – they are governed as women (through welfarist political rationality) and also as individuals (through neo-liberal political rationality).

## The cohabitation rule (married like relationship criteria)

The cohabitation rule aims to ensure that "an unmarried couple who are living together as man and wife" are treated "no more favourably than a married couple in a similar financial position" (1975 Australian Commission of Inquiry into Poverty, quoted in Carney 1986: 147). Or in other words, to ensure that a person does not receive more allowance from the state by living together than if they are formally married. This is referred to as "the policy of equity" (Carney 1986: 145). In effect, it meant that an unmarried women who was considered to be living with a man "as his wife" (Jordan 1981) was denied certain social security payments.

The "policy of equity" (Carney 1986: 145) was not legislated formally until it was introduced with the new Supporting Mothers Benefit through the *Supporting Mothers Benefit Act 1973* (Cth). Until then it was, according to Carney (1986: 145), unlegislated departmental policy for the administration of the Widow's Pension. The *Widows Pension Act 1942* (Cth) was amended in 1975 to explicitly include the cohabitation rule (Jordan 1981: 37).

Until November 1977, the rule applied exclusively to women. After this is was subsumed into the Supporting Parent's Benefit and applied to both men and women (although, as indicated earlier, most recipients are women). Supporting Parent's Benefit was, along with Widow's Pension A, subsumed into Sole Parent Pension from 1 March 1989 and then Parenting Payment (Single) from 20 March 1998 (Bond et al. 2003: 3).

Since 1994 the cohabitation rule, in the form of the MLR criteria, has applied to all Centrelink customers regardless of their gender or payment (Sleep 2006: 135; DFaCS 2005: 1.1.M.120). The equity principle is still used in Australian social policy when it determines if a customer is entitled to the single or partnered rate of each allowance. The single rate for each allowance is generally higher than the partnered rate, and some allowances are still only available to singles – for example, the Parenting Payment (Single).

Currently the cohabitation rule is administered through the "member of a couple" and "married like relationship" sections of the Social Security Act. According to the *Social Security Act 1991* (Cth)s 4(2) a person is considered to be a member of a couple if they are married (not separated) or "if he or she is in a marriage-like relationship (de facto marriage) with a person of the opposite sex" (DFaCS 2005: 1.1.M.120). In deciding if a customer is in a married-like relationship, according to the guide:

Decisions must be made by having regard to all the circumstances of the relationship, including:

- The financial aspects of the relationship
- The nature of the household
- The social aspects of the relationship
- Any sexual relationship between the people, and
- The nature of the people's commitment to each other. (DFaCS 2005: 1.1.M.120, see also *Social Security Act 1991* (Cth) s 4(6))

However, the cohabitation rule has received little recent research attention<sup>5</sup>. It did in the 1970s and 1980s where it was the subject of commissions of enquiry in Australia (Sackville 1977), New Zealand and the United Kingdom and second wave feminists' criticism (McIntosh 1981/2000, 1992: Pateman and Gross 1986; Pateman 1988, 1989). However, the rule has changed since this period. The blanketing of the entire population of social security recipients by the current cohabitation rule requires new analysis. Michel Foucault's (1991) governmentality analysis provides a fruitful starting point for analysing this change. The intricate governing of population is the focus of Michel Foucault's governmentality analysis, and elaborations of this work.

## Governmentality: the how of governing

Much recent work has focused on developing Michel Foucault's conceptualisation of governmentality outlined in his "governmentality" lecture in 1978 (examples include Rose and Miller 1992; Dean 1995, 1998, 1999; Harris 1999; Henman 2003, 2004; Hindess 1997a, 1997b, 1998; Marston 2003). This section introduces Foucault's analytic of governmentality, and shows how it has been developed in a social policy

context, by Rose and Miller, which has been influential in Australian social policy research.

Foucault argued that most political analysis is yet to "cut off the kings head" (1980: 121). By this he means it focuses too heavily on the sovereign or crown – on a perceived centre of power. This neglects analysis of the methods used to count and manage the population. Foucault attempted to remedy this neglect in his concept of governmentality. In very general terms, governmentality analyses the "conduct of conduct" (Dean 1999: 2) – the *how* of governing (Dean 1999: 2, 10-11; Foucault 1982: 220-1). Or, in Foucault's words – governmentality is concerned with the "problematic of government" (Foucault 1991: 87). According to Foucault:

the managing of a population not only concerns the collective means of phenomena, the level of its aggregate effects, it also implies the management of population in its depths and details. (1991: 102)

Here, depths and details include the "ensemble formed by the institutions, procedures, analyses and reflection, the calculations and tactics that allow the exercise of this very specific albeit complex form of power" (Foucault 1991: 102).

Foucault does not mean that sovereign or state power is no longer in existence, or no longer important. Rather, that other forms of power also exist. Indeed, he explains:

We need to see things not in terms of the replacement of a society of sovereignty by a disciplinary society and the subsequent replacement of a disciplinary society by a society of government; in reality one has a triangle, sovereignty-discipline-government. (Foucault 1991: 102)

Much recent work has focused on developing Foucault's conceptualisation of governmentality in a social policy context (Dean 1995, 1998, 1999; Harris 1999; Henman 2003, 2004; Hindess 1997a, 1997b, 1998; Marston 2003). The problematic of government has been analysed in terms of *political rationalities* and *governmental technologies* by Nickolas Rose and Peter Miller (1992: 175-176). Rose and Miller focus their analysis on late 20<sup>th</sup> Century welfare states, concentrating on the United Kingdom.

According to Rose and Miller *political rationalities* are:

the changing discursive fields within which the exercise of power is conceptualised, the moral justifications for particular ways of exercising power by diverse authorities, notions of the appropriate forms, objects and limits of politics, and conceptions of the proper distribution of such tasks among secular, spiritual, military and familial sectors. (Rose and Miller 1992: 176)

Or, in other words, political rationalities are the changing understandings of acceptable management practice. For example, Rose and Miller call the political rationality of the Keynesian welfare state "welfarism" and describe it as championing mutual social responsibility (Rose and Miller 1992: 191-198). In contrast, according to Rose and Miller, neo-liberal political rationality perceives markets to be the best regulators of economic activity, including welfare (Rose and Miller 1992: 198). Neo-liberal political rationality is an attempt to address a perceived problematic 'crisis' of the Keynesian welfare state.

"Governmental technologies" are according to Rose and Miller:

the complex of mundane programmes, calculations, techniques, apparatuses, documents and procedures through which authorities seek to embody and give effect to governmental ambitions. (1992: 176, Italics added)

Or, in simpler words, governmental technologies are the tools for managing populations. Some examples are statistics (Procacci 1978: 68-69; 1991) and the government of the self through surveillance (Dean 1995; 1998; 1999). For example unemployment statistics such as the number of people who are unemployed were not always recorded – this is a relatively recent practice. Walters (2000: 12-52) refers to the discovery and invention of unemployment and argues that the categories of employed and unemployed were created, and were not a naturally occurring phenomenon.

Harris (1999), Hindess (1997a, 1997b, 1998), Henman (2003, 2004), Marston (2003) and M. Dean (1995, 1998, 1999) have been heavily influenced by Rose and Miller's approach in their analysis of the current Australian welfare. However, this analytic has not been applied to the context of the cohabitation rule. This is despite the rules current application to all individual Centrelink clients, rather than just to women (as it did previously). The next section shows how this change in target from women to the entire population of Centrelink customers is important in a governmentality analysis. Most importantly for this paper, a governmentality analysis allows for simultaneous political rationalities and their governmental technologies. Welfarism has not been replaced by neo-liberal political rationality – they coexist.

# A governmentality analysis of the cohabitation rule: solving the apparent paradox of the current cohabitation rule

This section draws on Rose and Miller's work on two political rationalities in late 20<sup>th</sup> Century western welfare states – neo-liberal and welfarist to respond to the apparent paradox: how can the cohabitation rule – which, according to McIntosh, enforces women's financial dependence on the men they sleep with – coexist with an increasing focus on individual independence. How can Australian social policy enforce dependence and independence simultaneously?

In the language of the political rationalities of welfarism, "payment would qualify an individual to receive benefits, and teach the lessons of contractual obligations, thrift and responsibility" (Rose and Miller 1992: 196). The aim here is to create "responsible individuals" (Rose and Miller 1992: 196). These "responsible individuals" only need state support in the absence of a male breadwinner. The state is only obliged to financially support a woman if a man is not obligated to, through living with her as man and wife. It is the women's responsibility to let the state know if she is living "with a man as his wife on a bona fide domestic basis although not legally married to him" ((Social Services Act (No. 3) 1975 (Cth) No. 110 – Sect. 7. Interpretation).<sup>6</sup> It is the state's responsibility ensure women honour this responsibility. Indeed, if a women received payment she is not qualified for because she is an unmarried wife, her payment ceases and prosecution may ensue.

Hence, governmental technologies of surveillance are fundamental to a welfarist political rationality. Departmental visits to women's homes to 'see if there is an extra toothbrush', hiring private investigators to see how many cars are parked outside a women's home late at night and talking to neighbours and friends about a women's relationships are documented techniques helping the state make decisions about women and their relationships.

Further, within welfarist political rationality, the department had a responsibility to be respectful to a woman's privacy and dignity. Government enquiries in Australia, New Zealand, the United Kingdom and Canada in the early 1970s (Carney 1986: 146-147; Sackville 1977: 85-89) concluded that the cohabitation rule was 'regrettably' the only 'equitable' practice. It was considered to be a necessary evil if the state was to uphold its obligation to support women with no breadwinner, and also be fair to married women. As Sackville explained in 1977, it is

Not possible to recommend a complete break from the cohabitation rule. The best approach is to mitigate the harshness of the rule and to reduce the possibility of injustice in the manner in which it is applied. (Sackville 1977: 89)

The social security appeals system became an important safeguard to ensure the departmental officers acted responsibly towards these vulnerable women. The appeals system was intended to ensure that responsible individuals were not harmed by a perceived possible excess of state power (Administrative Review Council 1995). However, as Dean showed in the United Kingdom social security appeals system, to many social security recipients this was effectively extra surveillance; "to appeal against the determinations of such officialdom is to invite further scrutiny" (H.Dean 1991: 145).

Within neo-liberal political rationality "the language of the entrepreneurial individual, endowed with freedom and autonomy, has come to predominate over almost any other in evaluations of the ethical claims of political power and programmes of government" (Rose and Miller 1992: 200). But "through this loose assemblage of agents, calculations, techniques, images and commodities, individuals can be governed" (Rose and Miller 1992: 201). The aim is to create "enterprising individuals" (Rose and Miller 1992: 196).

According to this approach, neo-liberal political rationality<sup>7</sup>, with its championing of market forces and envisaged populations of 'enterprising individuals', expresses its mentality in some changes to the Australian welfare apparatus (Harris 1999: 44).

According to Patricia Harris (1999: 43) "clients become customers" in advanced liberal governance. Centrelink clients become customers to the extent that they receive individualised service in Centrelink "customer service centres". The neoliberal language of individual customer choice permeates the governance of Centrelink's customer service centres. However, the administration of the current cohabitation rule enunciates how Centrelink "customers" (Harris 1999: 43) can be "governed through their freedom to choose" (Rose and Miller 1992: 201).

As explained earlier, the MLR criteria now applies to every individual who applies for a Centrelink payment. Indeed, if an individual wants to become a Centrelink customer, they must state their marital status. If a customer is not married, they must state whether they are a "member of a couple". A customer must declare that they are a member of a couple if they choose to live in a married-like relationship. However, as the *Guide to the social security act* states, "a customers opinion about their relationship is NOT sufficient to make a decision" (DFaCS 2005: 2.2.5.10). For an individual Centrelink customer to be considered to be living in a married-like relationship "the secretary ... in forming an opinion about the relationship between 2 people ... is to have regard to all the circumstances of the relationship" (*Social Security Act 1991* (Cth), s 4(2)). Never-the-less, if an individual customer is unhappy with Centrelink's service they are free to call the customer complaints line (DFaCS 2005).

According to this analytical framework, in a neo-liberal political rationality the cohabitation rule becomes a governmental technology in itself. The cohabitation rule allows the governing of individuals through their relationships with others. Indeed, every individual Centrelink customer is categorised according to their marital status or MLR status. Henman (2003, 2004) shows how computer technology has allowed for the surveillance of individual Centrelink clients within neo-liberal political rationality in a way that was previously impossible. Indeed, the Centrelink Annual Report 2004-05 proudly reported their successful increase in reviews of individual customer's payments made possible by computer data matching (Centrelink 2005: 40). Similarly, "public denunciation" triggers an automatic review of an individual customers payment (DFaCS 2005: 6.1.1.20). A "public denunciation" is where anyone can 'tip-off' Centrelink that a customer has not declared that they are living in a MLR. Combined with the "report a suspected fraud" website (which allows anyone to anonymously report another individual for social security fraud online (Centrelink 2006), this allows individuals to survey Centrelink customers relations with a member of the opposite sex. Consequently, within the mentality and techniques of neo-liberal governance, the MLR criteria is a governed category despite being tied to the discourse of individual freedom.

According to the analytic of governmentality, the current neo-liberal cohabitation rule which focuses on all individual customers' payments has not replaced the welfarist focus of gendered obligations and responsibilities. Rather, they coexist. Indeed, women are still disproportionately targeted (Hopkins 2005; Sleep et al. 2006). As demonstrated by Sleep, Tranter and Stannard (2006), welfarist surveillance techniques such as departmental visits to clients homes and hiring private investigators are still

used by Centrelink. In short, the cohabitation rule still governs women through welfarist political rationality governmental technologies. However, now it also governs all individual customers through neo-liberal political rationality's governmental technologies. Women are governed doubly, both as women through welfarist political rationality and as individuals through neo-liberal political rationality.

Hence, in response to the apparent paradox posed at the beginning of this paper – that Australian social policy simultaneously enforces dependence and independence – I suggest the following solution: through simultaneous welfarist and neo-liberal political rationalities women are doubly governed. They are governed as women through welfarist political rationality and as individuals through neo-liberal political rationality. Hence, they are simultaneously governed as dependent women and independent individuals.

### Conclusion

This paper pondered the apparent paradox of the current cohabitation rule: that it simultaneously enforces women's dependence by denying social security payment to those who have certain relations with the opposite sex and, through an increased focus on the individual in Australian social policy (through changes like extending welfare to work policies to single parents who receive Parenting Payment (Single), also champions individual independence. Or, in other words, how can Australian social security simultaneously enforce dependence and independence? A governmentality analysis of the cohabitation rule is offered as a possible solution to the apparent paradox. This paper suggests that simultaneous political rationalities of welfarism and neo-liberalism have lead to the MLR criteria governing women as dependent (through welfarism) and all Centrelink customers and independent individuals (through neo-liberalism). This means that women are doubly governed through the cohabitation rule (MLR criteria). They are governed as dependent women and as individual customers.

### **Footnotes**

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Please note that this figure relates to all lone parent families with children under fifteen years old, not Parenting Payment (Single) recipients. Lone mothers do not necessarily receive Parenting Payment (Single). However, it is highly unlikely that this pattern is different for Parenting Payment (Single) recipients.

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<sup>&</sup>lt;sup>1</sup> Indeed, in 2003, 87.6 per cent of lone parent families were lone mother families, while only 12.4 per cent were lone father families (Australian Institute of Health and Welfare, 2005, p. 72). Figures were similar in 1993, with 90.1 per cent being lone mother families, and only 9.9 per cent lone father families (Australian Institute of Health and Welfare, 2005, p. 72). This indicates a long term pattern of women being more likely to be lone parents.

<sup>&</sup>lt;sup>2</sup> Same sex couples are excluded from the MLR criteria, and previous manifestations of the cohabitation rule.

<sup>&</sup>lt;sup>3</sup> and Disability Support Pension recipients.

<sup>&</sup>lt;sup>4</sup> Enunciating this apparent paradox in more detail is the topic of a future paper.

<sup>&</sup>lt;sup>5</sup> With the exception of a recent articles by Tamar Hopkins (2005), and Sleep, Tranter and Stannard (2006).

<sup>&</sup>lt;sup>6</sup> Moreover, it was a women's social security recipient's responsibility to ensure her partner honoured his financial obligation to her – the man's responsibility was not legally enforcable (Sackville 1977).

<sup>&</sup>lt;sup>7</sup> Patricia Harris (1999: 41-48) uses the phrase "advanced liberal governance".

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