



Victorian Aboriginal Legal Service Co-operative Limited

*Inquiry into the Social
Security Legislation
Amendment Bill 2011*

Senate Standing Committee on Community Affairs

February 2012

About the Victorian Aboriginal Legal Service Co-operative Limited

The Victorian Aboriginal Legal Service Co-operative Limited (VALS) was established as a community controlled Co-operative Society in 1973 to address the over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system. VALS plays an important role in providing referrals, advice, duty work or case work assistance to Aboriginal and Torres Strait Islander peoples in the State of Victoria. Solicitors at VALS specialise in one of three areas of law, being criminal law, family law and civil law. VALS maintains a strong client service focus which is achieved through the role of Client Service Officer (CSO). CSOs act as a bridge between the legal system and the Aboriginal and Torres Strait Islander community.

VALS is actively involved in community education, research and advocacy around law reform and policy development. VALS strives to:

- a) Promote social justice for Aboriginal and Torres Strait Islander peoples;
- b) Promote the right of Aboriginal and Torres Strait Islander peoples to empowerment, identity and culture;
- c) Ensure that Aboriginal and Torres Strait Islander peoples enjoy their rights, are aware of their responsibilities under the law and have access to appropriate advice, assistance and representation;
- d) Reduce the disproportionate involvement of Aboriginal and Torres Strait Islander peoples in the criminal justice system; and
- e) Promote the review of legislation and other practices which discriminate against Aboriginal and Torres Strait Islander peoples.

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Introduction

The Victorian Aboriginal Legal Service Co-operative Limited (VALS) is an Aboriginal Community Controlled, State-wide organisation that is committed to working with the Aboriginal and Torres Strait Islander community of Greater Shepparton in preparation for the extension of the Placed Based Income Management pilot. We therefore welcome the opportunity to respond to the *Inquiry into the Social Security Legislation Amendment Bill 2011*, however note the extremely inadequate time with which the community has been given to respond to this Inquiry and therefore our limited capacity to provide a submission that is suitably informed and considered.

VALS has a number of significant concerns about the development, implementation and consequences of Place Based Income Management (PBIM) on VALS' clients and the broader Aboriginal and Torres Strait Islander community of Greater Shepparton. These concerns include, but are not limited to, the following:

- Lack of Government consultation and meaningful engagement with the community and absence of practical information regarding the extension of income management to Greater Shepparton as a trial site;
- Absence of evidence about how the initiative will improve outcomes for vulnerable children and families;
- Failure to respect the principles and standards contained within the conventions and declarations to which Australia is party, notably those contained within the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP);
- Significant access to justice barriers that will be apparent in the absence of procedural fairness guarantees through review and appeal mechanisms coupled with the absence of adequately resourced legal aid services to help the community navigate their legal rights;
- The strong likelihood that the stigma associated with PBIM through the use of basics cards will drive community problems away from state welfare authorities;
- Whilst there are multiple entry points for welfare recipients into PBIM, there is a notable lack of pathways to exit PBIM onto self managed welfare;
- The absence of government assistance and support for the significant resource burden that PBIM will bring to VALS and other community service organisations.

VALS is disappointed that the Government is planning to expand income management to pilot sites around the country without a thorough evidence base or publically available evaluation demonstrating the initiatives increased protection of vulnerable people or encouragement of desired behavioural change amongst welfare recipients. In the absence of this evidence, the Government introduced the *Social Security Legislation Amendment Bill 2011* ("the Bill") that empowers the Minister to recognise a state or territory as a jurisdiction in which income

management may operate,¹ and in doing so, enabling income management to be extended throughout the country without further legislative amendment.

The Bill further empowers an officer or employee of a state or territory authority to make a decision requiring that a welfare recipient be subject to the income management regime.² This provision delegates decision-making about whether an individual is subject to income management from Centrelink employees to employees of specified state or territory departments, bodies or agencies. VALS is concerned that the efficient and equitable administration of PBIM will be compromised due to the dilution of responsibility across multiple authorities.

VALS acknowledges the potential for positive outcomes through income management where it is a well implemented and administered on a case-by-case and voluntary basis. VALS believes, however, that the expansion of income management as outlined in the Bill will be damaging through increased experience of indirect discrimination, stigmatisation and may lead to an increase in low-end offending. VALS therefore does not support the extension of PBIM and instead argues that resources must be directed to more effective and sustainable approaches to addressing the issues facing vulnerable families such as: access to support in financial matters such as debt through unpaid fines and credit; parenting support; and culturally appropriate childcare, education, training and employment support and opportunities.

Community consultation

VALS is disappointed at the lack of consultation with local community members prior to the 2011 federal budget announcements, including the lack of consultation with community service organisations whose clients will be targeted through the initiative. Since the budget announcement, there has been piecemeal communication with the community to inform them on how income management will be implemented in Greater Shepparton and how community service organisations will be engaged in the process. The local community has not been involved in determining local issues and solutions. The rollout of income management to this community is therefore likely to be met with confusion, resistance and insult. The success of income management in achieving its stated aims is therefore unlikely and the chances of unintended consequences probable.

At a recent Shepparton forum on income management attended by a range of stakeholders (“the forum”),³ a number of concerns were raised about the lack of consultation between government and the community prior to and following the announcement of Shepparton as a trial site in the May 2011 budget. Of the local agencies in attendance, none had been consulted by FaHCSIA in advance and consultations since have been ad hoc. It was the view of the majority in attendance that local expertise and local knowledge is being undervalued and over-looked by the Government.⁴

The forum is further concerned that a Community Action Leader has only very recently been appointed and that there did not appear to be a clear timeline for Government to appoint a Local

¹ s 6 introducing section 123TGAB into the *Social Security (Administration) Act 1999*.

² s 6 introducing section 123TGAA into the *Social Security (Administration) Act 1999*.

³ Co-hosted by Community Legal Centre for the Goldburn Valley and Familycare, 24 January 2012, Familycare, Shepparton.

⁴ Minutes from the forum can be found annexed to VCOSS’ submission.

Advisory Group. VALS is disappointed that the government has not established and utilized these proposed local consultative and advisory mechanisms prior to initiating the current Inquiry.

VALS is also concerned to learn that positions on the Local Advisory Group will not be open to all community organisations, and therefore broad community participation will be limited. As these are the only clear means for the community to feed information back to the Government, we consider it grossly inadequate that the government has not yet put these measures in place. As noted in the Victorian Council of Social Services' (VCOSS) submission to this Inquiry, the Australian Social Inclusion Board provides useful governance principles to guide the development and implementation of place based initiatives, including targeted income management, as follows:

- A clear connection between economic and social strategies;
- A framework for providing integration of effort across governments;
- A meaningful devolution that allows significant and meaningful local involvement in determining the issues and solutions;
- Capacity development at both the local level and in government, without which greater community engagement or devolution of responsibility will be impossible; and
- Funding, measurement and accountability mechanisms that are designed to support the long term, whole of government and community aims for the initiative, rather than attempting to build an initiative around unsuitable measurement and accountability.⁵

From our meetings with community services and VALS staff in Shepparton, it is clear that these principles have not been applied in the development of the PBIM trial site. The Government is therefore not credible in stating that local issues have been identified and that PBIM will be tailored to addressing these issues.

The forum largely agreed that income management was unlikely to assist vulnerable welfare recipients to manage their money better. This is because the policy does not address the underlying causes of disadvantage. Other possible negative implications of the policy that were identified by the forum include the following:

- The policy limits competition. It limits choice for consumers and also limits clientele for business. This may impact on the local economy and will not help people get jobs.
- People committing criminal acts due to lack of cash/ to obtain cash and/or to support addictions.
- Potential for a 'basics card economy' where people are trading goods for cash.
- Will make people less likely to engage with and seek help from local authorities for fear of being income managed.

⁵ These principles were articulated in the September 2011 Communiqué of the Social Inclusion Board's National Place Based Advisory Group.

- Will place increased stress on local services – there are only 3 financial counsellors locally.
- May place undue burden on state-based agencies who could all become referrers under the new legislation.

Impact on VALS, our clients and the broader Aboriginal and Torres Strait Islander community

VALS, along with other services in Greater Shepparton, are concerned that income management will place significant additional pressures on community service organisations with additional Government support for these organisations is not yet apparent. VALS expects a significant number of our clients will be subject to income management due to their high contact with welfare agencies and their likely categorisation as ‘vulnerable’. VALS is funded to provide legal aid for Aboriginal and Torres Strait Islander people in the areas of criminal, civil and family law. To provide broader services to the Aboriginal and Torres Strait Islander community, VALS must stretch an already inequitable funding source or search for other sources of funding and support. As a state-wide Aboriginal Community Controlled Organisation and primary provider of family, civil and criminal legal aid services to Aboriginal and Torres Strait Islander peoples in Victoria, VALS expects a greater level of support from the Government for such significant and unprecedented legislative and welfare reforms.

VALS predicts that our services will be increasingly called upon by the community in preparation for, and during the life of PBIM as follows:

- VALS’ family law solicitors will typically be assisting clients who are subject to referral onto income management through the child protection stream;
- If, as we predict, income management brings about an increase in low-end offending (such as petty theft due to lack of disposable cash and/or alcohol dependency. This is behaviour which will not change without support services not brought about as part of income management), our criminal law solicitors and Client Service Officer’s (CSOs) case loads will increase; and
- Where discrimination and other complaints arise out of income management referrals, or when clients wish to challenge or appeal a decision to be referred onto income management, our single civil law solicitor will be critically effected.

VALS has not been contacted by the Government about how the services we provide in Greater Shepparton will be affected and we have experienced significant trouble in contacting the Government and its departments for detailed PBIM information. For the issues we foresee with the introduction of income management, VALS would ideally provide the Aboriginal and Torres Strait Islander community of Greater Shepparton at minimum with an information and education officer and a welfare solicitor. We are currently limited in our capacity to deliver the additional services necessary to adequately support the Aboriginal and Torres Strait Islander community of Greater Shepparton through the introduction of PBIM, and without additional resourcing, our service and the community will be placed under additional stress.

Child Protection

In 2010–11, Aboriginal and Torres Strait Islander children were almost 8 times as likely to be the subject of substantiated child abuse and neglect as non-Aboriginal and/or Torres Strait Islander children. Furthermore, the rate of Aboriginal and Torres Strait Islander children on care and protection orders was over 9 times the rate of non-Aboriginal and Torres Strait Islander children (at 30 June 2011).⁶ From 2009-10 to 2010-11, Victoria showed a 15% increase in notifications with the most common overall type of substantiated abuse type for Aboriginal and Torres Strait Islander children being neglect.⁷ During 2010-2011, the ratio of Aboriginal and/or Torres Strait Islander Children to non-Aboriginal and/or Torres Strait Islander children aged 0-17 who were the subjects of substantiations of notifications was 9-4 (50.4 and 5.4 per 1,000 respectively).⁸

The over-representation of Aboriginal and Torres Strait Islander children in child protection substantiations is caused by a complex matrix of issues. The legacy of past policies of forced removal, intergenerational effects of previous separations from family and culture, poor socioeconomic status and perceptions arising from cultural differences in child-rearing practices are all underlying causes for over-representation of Aboriginal and Torres Strait Islander children in the child welfare system.⁹ VALS has seen no evidence as to how income management in other jurisdictions nor how PBIM as proposed for Greater Shepparton will address the problems faced by families and communities such as those revealed through the above statistics.

VALS is concerned about the Bills application by the Victorian Department of Human Services – Child Protection (“Child Protection”) based on the experience of our colleagues at North Australian Aboriginal Justice Agency (NAAJA) and Central Australia Aboriginal Legal Aid Service (CAALAS). Referrals made by the Northern Territory Department of Children and Families (DCF) have been problematic for these services for a number of reasons. As a recognised Territory authority, DCF are empowered to make referrals for income management based on their assessment and decision making processes. Centrelink have no option but to accept and action a DCF written referral requiring a person to be subject to income management nor does Centrelink have oversight or input into DCF decision making processes. Our Northern and Central Australian colleagues have consequently found that instances arise where people are referred to income management contrary to both DCF policy and the objectives of child protection income management.

We refer the Senate Committee to the Aboriginal Peak Organisations Northern Territory (APO NT) submission for further detail and evidence with regard to the above concerns and further refer to their expert submission for safeguarding better decision making. In short, APO NT note their collective experience of administrative risk inherent in the absence of discretion being afforded to Centrelink to review the referral of a receipt of income management from a state authority as the result of deficient decision making. Considering the lack of information made available to state authorities in Greater Shepparton to date, coupled with an insufficient understanding amongst state authorities in jurisdictions where income management already exists of how income management

⁶ Australian Institute of Health and Welfare, *Child protection Australia 2010–11. Child welfare series no. 53* (2012) Canberra, AIHW.

⁷ Id.

⁸ Id.

⁹ 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) Sydney, HREOC.

works, VALS argues that Centrelink should maintain decision making power as to whether a referral is actioned. Centrelink staff, including social workers, are more highly trained and experienced to assess and determine a person's suitability for income management.¹⁰ The absence of any monitoring or review of a state authority's referral of a recipient to income management in Victoria is hazardous and will likely result in inconsistent and procedurally unfair decision making. VALS questions the validity of the expansion of child protection referred income management to Victoria before known problems in jurisdictions where child protection income management already exists are examined and resolved. Without this process, the Government is complacent in the expansion of a flawed, inefficient and inequitable system.

Furthermore, the absence of Centrelink discretion in actioning a referral from a state authority limits a recipient's right to appeal the decision placing them on income management. As Centrelink exercise no decision-making powers with a referral from Child Protection (or other state authority), a recipient is unable to appeal the decision through the usual channels that govern Centrelink decisions, that is, the federal Social Security Appeals Tribunal (SSAT) and the Administration Appeals Tribunal (AAT). Recipients will instead be forced to rely upon the internal appeal avenues of the referring state authority, assuming such avenues exist, or other available appeal mechanisms available in Victoria such as the Victorian Civil and Administrative Tribunal (VCAT). Due to the likely variations of review and appeal mechanisms between state authorities within Victoria, as well as those between various jurisdictions, inconsistent appeal rights and decreased procedural fairness will apply for recipients of the same federal scheme.

Change of residence

VALS questions how the Bill provides for income management when a person changes place of residence outside of the pilot region or travels to other parts of the state or country. Given that income management operates through local retailers and businesses who sign up to the program to enable people to use their income management account with those retailers, VALS is concerned that people will not be able to access their income managed welfare outside of Greater Shepparton. While agreements with major national retailers may partly address this issue, it still raises questions about civil and political rights relating to freedom of movement and rights to access social security.

Human rights considerations

Attendees at the aforementioned Shepparton community income management forum raised a number of human rights concerns arising out of PBIM, including:

- Income management denies people dignity, particularly when using the basics card.
- The policy limits freedom of movement by dictating which towns and stores a person can shop in.
- The policy does not affect people equally.

¹⁰ We note, however, that Child Protection and other Victorian agencies and authorities are generally under-resourced and therefore currently ill-equipped to manage the roll-out of this complex system.

- The policy will impact unfairly on people with a disability and already disadvantaged groups will be disproportionately affected.

VALS believes that the decision to roll out PBIM was done in the absence of human rights considerations. VALS wholeheartedly supports measures that are designed to protect and promote the rights of vulnerable people, communities and their families. Such measures must, however, be consistent with Australia's human rights obligations, and be central to the design and implementation of initiatives at the local level. The Government has already failed in this regard. The Government has endorsed UNDRIP which is an instrument that clarifies and elaborates human rights as they are found in international human rights law as they specifically apply to Indigenous peoples. The standards and principles in UNDRIP should be used to interpret and inform the application of binding international human rights law such as that contained within the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of Racial Discrimination (CERD).

The right to self-determination is protected under Article 1 of both the ICCPR and ICESCR, both of which Australia is a party to. This right is also enshrined in numerous articles of UNDRIP¹¹ which affirms the fundamental obligation to consult with Indigenous peoples on decisions affecting them. As articulated in Article 19 of UNDRIP:

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

The principle of free, prior and informed consent reflects the importance of empowering vulnerable and disadvantaged families and communities to engage in respectful dialogue with Government based on mutual respect. VALS argues that the Government's failure to consult communities throughout the Northern Territory Emergency Response has not been corrected, and the same practice has found its way to PBIM in Greater Shepparton. This lack of consultation in the Northern Territory, and the continuation of this practice in the new pilot sites, undermines the right to self-determination and continues to disempower Aboriginal and Torres Strait Islander peoples in Victoria. It is hard to comprehend how the removal of decision-making power from an already disempowered community will achieve the Government's objective of getting vulnerable peoples' lives back on track.

UNDRIP serves as a clear framework for applying a culturally aware and human rights-based approach to considering and addressing specific rights for specific situations and communities in a language that is useful to governments and communities. Without a mutual framework, language or respect, government policies and initiatives will be ineffective. Furthermore, with a mutual framework, language and respect, discrimination against Aboriginal and Torres Strait Islander peoples in Greater Shepparton due to structural or administrative problems will be more easily prevented and overcome.

VALS is also interested in how discrimination complaints and investigations that are likely to arise out of PBIM purchasing limitations will be dealt with by the Victorian Equal Opportunity and Human

¹¹ 3, 4, 18, 19, 23 and 32.

Rights Commission, the Australian Human Rights Commission and the courts. The state-based administration of federal powers and functions raises complex questions around how such complaints are best dealt with. Victoria also has unique and additional considerations to bear as public authorities must act in accordance with, and legislation must be interpreted consistently with, the *Charter of Human Rights and Responsibilities Act 2006* (Vic). VALS questions the preparedness of public authorities, the Victorian and the Federal Government for the interaction of this legislation with federally legislated powers to be administered by state agencies. Whilst the *Charter of Human Rights and Responsibilities Act 2006* (Vic) is currently under review, this consideration remains central to the local operation of PBIM in Greater Shepparton.

At a practical level, VALS believes income management will significantly restrict the ability of Aboriginal and Torres Strait Islander peoples to make collective decisions about purchasing certain goods of benefit to multiple members of the family and/or community. The administration of income management through basics cards will remove the ability of family and community to pool monies to direct it to those who are in most need, or for expensive items for the use of more than one person.

Alternatives

The Shepparton community income management forum discussed a range of alternatives to income management. They majority agreed that these options would be more effective in assisting vulnerable welfare recipients, including:

- Participation in financial counselling/ financial literacy programs.
- Increasing social security payments to a reasonable level that would afford welfare recipients a reasonable standard of living.
- Assisting disadvantaged welfare recipients to address underlying causes of disadvantage.
- Reforming the way the office of housing deals with rental arrears.
- Improving access to affordable housing.
- If income management was to come into play in Greater Shepparton, it should be a voluntary measure.
- Where income management is compulsorily enforced, it should be done as a last resort.

The forum discussed less intrusive measures that are already available to assist people with their money-management, such as Centrepay and financial counselling. It was noted that there have been some very positive results locally where an increase in Centrepay use has resulted in fewer requests for material aid. Further to this, many agreed that the Guardianship and Administration list was adequate for those who are unable to manage their money by reason of a disability.