

**SUBMISSION TO THE SENATE COMMUNITY AFFAIRS LEGISLATION
COMMITTEE ON THE
STRONGER FUTURES IN THE NORTHERN TERRITORY BILL AND TWO
RELATED BILLS
DARWIN COMMUNITY LEGAL SERVICE**

Submission in response to the proposed Social Security Legislation Amendment Bill 2011

Darwin Community Legal Service

Darwin Community Legal Service (DCLS) is a community-based organisation working with disadvantaged and marginalised people to enhance their access to and understanding of the legal system. DCLS has specialist caseworkers in the area of welfare rights, tenancy and homelessness and has ongoing experience with the delivery of income management and SEAM legislation in the Northern Territory. Through client casework, Community Legal Education and community engagement, DCLS has identified the following main areas of concern with income management legislation.

- lack of flexibility of scheme- particularly with regards to exemptions

DCLS has become aware that many people who have been subject to income management who are entitled to be exempt have found it difficult to demonstrate to Centrelink that they meet the exemption criteria. For example, school and health information can be difficult and/or time consuming to obtain, Centrelink letters can be unclear and exemption criteria can be inappropriately inflexible.

- stigmatisation of people required to use a basics card

Many clients have complained to DCLS that using the basics card is stigmatising and breaches their right to privacy by identifying them as a recipient of Centrelink benefits. This will be of particular concern if income management is introduced in disadvantaged areas in major cities.

- increased bureaucracy for people on income management

Calls to Centrelink are incredibly time consuming and very costly if a person needs to call from a mobile phone. It is not unusual for a person to be on hold for over half an hour before they get to speak to Centrelink. Income management increases the amount of time a person needs to spend on the phone to Centrelink or in a Centrelink office on a weekly basis.

- invasion of privacy

People on income management are required to routinely and regularly answer invasive and patronising questions about their spending behaviour and past activities. DCLS has been made aware of one instance where a person was required to provide credit card statements for the past 15 years.

- cost

DCLS takes objection to Minister Macklin's assertion that this legislation will have no direct costs. Income management is an expensive program.

Costs include increases in the number of call centre and office staff at Centrelink, an increase in the number of social workers required as well as infrastructure (including administration, booths, technology for businesses) relating to setting up the basics card in the new areas.

- does not achieve what it proposes to

The effectiveness of income management has still not been independently measured, however our experience has been that it does not achieve the desired outcomes. Income management does not have a positive influence on people's lives.

Where Income management does have some benefits, ie that it can make it easier for people in remote areas to pay their bills in a practical sense, and that it can protect from economic abuse and 'humberging', this could be retained by making income management voluntary. Throughout our Community Legal Education and casework, DCLS found unanimous support for making income management available to people on a voluntary basis only.

In addition to the general concerns above, DCLS has a number of specific concerns with the proposed legislation.

Concerns regarding the State Referral scheme (Part 1)

DCLS questions the need for a scheme of income management by referral by a designated state authority. The proposed amendments already allow for Child Protection to refer a person for income management. The proposed amendments also allow for a person who is 'vulnerable' to be income managed.

DCLS queries the perceived benefits of, in addition to the above amendments, also referring people to income management by state authority. Presumably this would cover people who are not referred by Child Protection or in a 'vulnerable' category. It would not have to be shown that these people are not meeting their own priority needs. It would not have to be shown that income management is in the person's or their family members' interests. There is no safeguard against this being used as a punitive measure or for revenue raising (ie recovery of housing debts or fines).

Assurances from the government that this power will only be used in a certain area or by a certain state authority are not adequate. Once the power is enacted it is there for future governments to exercise the power in accordance with the policy of the day. A Minister would have the power to nominate any state authority in any area as a 'designated state authority'.

We submit that there is no justifiable reason to extend income management in this manner and to do so would lead to inappropriate and unfair referrals.

Transparency of State Referral Scheme

If the power is to be extended to state authorities, DCLS has major concerns about the transparency of the proposed referral system.

The Explanatory Memorandum and headings in the legislation state that the legislation would allow State bodies to 'refer' a person for income management (EM page 2). However the text of the proposed legislation actually states that a state body may 'require' a person to be income managed. This means the decision to place a person on income management is not a Centrelink decision but a decision of the nominated state body. That state body is not required to inform a person of the reasons for their decision or make publically available the guidelines for placing a person on income management.

It has been our experience in the NT that when Child Protection staff place people on income management there is little understanding of how and why these decisions are made. Child Protection is not required to inform a person of the reason they are being placed on income management. Obtaining such information has proven difficult. Indeed, when the measure was introduced in the NT, DCLS was told that information regarding referral guidelines was confidential. We had to apply to obtain the guidelines through FOI and after some delay this was finally obtained. This indicates a lack of accountability for Child Protection staff using this measure and a considerable hindrance of an income managed person's right of appeal.

With the proposed expansion of the scheme to other state bodies, DCLS is also concerned with the uniformity between states or between workers as to when people are recommended.

Appeal Issues

A person placed on income management through a Centrelink requirement is able to appeal through the free, simple and relatively quick avenues of the Social Security Appeals Tribunal and Administrative Appeals Tribunal. They can do this without legal representation and cannot be exposed to costs orders against them if they lose.

A person placed on income management by a state body who wished to appeal the decision would have to appeal through relevant state channels. This could include appealing through courts, which can be slow, complicated, involve fees for lodgement and the applicant can be at risk of adverse costs orders. Many people on welfare payments would be simply unable to afford these costs and would be unable to navigate the court system without legal representation.

How to address issues of transparency and appeal

DCLS strongly opposes extending income management referrals to unidentified state authorities. However, if the powers are to be extended in this way, DCLS proposes the following amendments in order to address transparency issues;

1. That s. 123TA(ga) be amended to the following (changed underlined);

an officer or employee of a recognised State/Territory authority recommends the person to be subject to the income management regime and the Secretary decides this is in the person's best interests; or

2. That s123TA(g) be amended to the following (changes underlined);

The Queensland Commission recommends the person be subject to the income management regime and the Secretary decides this is in the person's best interests; or

3. That s123UFAA(1)(b) be amended to the following (changes underlined);

before the test time, an officer or employee of a recognised State/Territory authority gave the Secretary a written notice recommending that the person be subject to the income management regime under this section; and

The proposed changes above would ensure income management decisions are accountable and transparent and that a person subject to income management would have access to the normal social security appeals process.

Deductible Portion of income managed funds to be allowed to be increased to 100%

Section 123XPAA of the proposed legislation would allow the Minister to change the percentage of income management to 100% via legislative instrument. DCLS strongly objects to the extension of executive power in this manner and strongly objects to the extension of income management to 100%.

A person on Centrelink benefits with no other income who was placed on income management at 100% would be affected in the following manner;

- No access to cash whatsoever
- Not able to give or lend money to any person for any reason

(example; a parent would not be able to give pocket money to their child)

(example; a parent of a student studying interstate or overseas would not be able to send money to that student)

(example; a child of an elderly resident of another country would not be able to send money to that person to assist with medical expenses)

- Have extreme difficulty travelling outside their area of residence
- Not be able to travel overseas at all
- Difficulty purchasing goods from any stores other than select (usually large department) stores
- Never be able to buy anything from a local market
- If the person attended an event or festival the person would not be able to purchase food or drink or anything else at that event
- Never be able to buy anything second hand except at a designated second hand store
- Never be able to buy anything requiring a credit card purchase (eg internet sites)
- Never be able to buy a single alcoholic drink on any occasion
- Never be able to park their car in any parking space that requires coin payment
- Not be able to use coins in a public phone
- Not be able to buy a bus/train ticket where cash was required
- Be required to call Centrelink each time they wished to buy anything not available on a Basics card (usually waiting more than 30 minutes to talk to somebody and paying for the call if calling from a mobile phone) OR being required to visit a Centrelink office before each purchase

These restrictions could be placed on a person regardless of how well they are able to manage their own finances and regardless of whether the person would benefit from income management. DCLS objects to the extension of income management in this manner, however if it is to be extended, DCLS appeals to the senators to restrict the portion available for income management to 50% *in any category*.

Privacy Issues

DCLS has concerns about the information sharing provisions contained in s 123ZEAA. DCLS submits that s123ZEAA(2) is too broad in that it allows Centrelink to reveal any information to the state authority, regardless as to whether it is relevant to the issue of income management. DCLS submits that 'for the purposes of the performance of the functions and duties, or the exercise of the powers, of the officer or employee' be amended to 'if the disclosed information is relevant to the income management decision'.

Income management to apply when a person moves out of area (s123UCB)

As outlined above, a person placed on income management who moved out of area would have difficulty using their basics card anywhere except large department stores. Many people required to use a basics card would be stigmatised and we submit this would be more so if they were to use one outside a designated income management area.

SEAM measures (Schedule 2)

DCLS objects to the extension of SEAM income management. There is no evidence that this improves school attendance and our experience is that schools are not equipped to be reporting to Centrelink in this manner. This translates into the income managed person being repeatedly sent between Centrelink and the school in order to collect information and address issues.

In the experience of DCLS, child attendance at school is recorded and reported inconsistently. School attendance record keeping procedures are not sophisticated enough to be the basis for the suspension of a person's welfare payments. School attendance records can be inaccurate and record keeping in regards to 'approved' or 'unapproved' absences is often lacking in sufficient detail. There is usually no accessible avenue through which a person can appeal or correct an incorrect record.

DCLS also has doubts about the practicality of introducing SEAM requirements in state government or privately managed schools. The new legislation introduces the requirement for a parent to be notified of non-attendance, which is a positive measure. Previously our experience was that parents were routinely not informed when their children were missing school. However, it is questionable whether schools can be required to send out notices in this manner by the Commonwealth. Our understanding is that any action in this area would need to be initiated by state governments.

DCLS questions whether the SEAM measures are going to have any real impact on school attendance rates. The premise of the measure is that school truancy stems from lack of parental responsibility and the parental intervention can fix the problem. In our experience the reasons for truancy are much more complex and varied and the response needs to address the underlying causes.

In Summary

- Income management is expensive, complicated, and does not achieve the desired outcomes.

- Any positive attributes from income management could be retained by making the regime voluntary.
- The extension of income management to people required by state authorities is unnecessary and undesirable.
- The extension of the income management decision to state authorities raises concerns regarding transparency and appeal rights
- The allowance for the income management portion to be extended to 100% would place extreme and unacceptable restrictions and difficulties on daily living activities of income managed people.
- The extension of income management to continue when a person leaves the designated area is undesirable.
- The extension of SEAM places responsibility on schools that they are not equipped to meet. School records can often be incorrect and are difficult to update. SEAM is not an appropriate response to truancy.