

Senate Standing Committee on Community Affairs

**Inquiry into the *Social Security Legislation
Amendment Bill 2011***

**Submission of the
Goulburn Valley Community Legal Centre Pilot**

1 February 2012

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About the Goulburn Valley Community Legal Centre Pilot

The Goulburn Valley Community Legal Centre Pilot is a project of the Loddon Campaspe Community Legal Centre and UnitingCare Cutting Edge. The GVCLCP is based in Shepparton and provides free legal assistance to disadvantaged residents of the Goulburn Valley. Currently a pilot project, the service is campaigning for a permanent Community Legal Centre in the Goulburn Valley, a region that represents one of the last significant black spots for community legal services in Victoria.

1. Background

The Goulburn Valley Community Legal Centre Pilot (**the GVCLCP**) appreciates the opportunity to provide comment on the *Social Security Legislation Amendment Bill 2011 (the Bill)*.

The GVCLCP endorses the submission of the Victorian Council of Social Services (**VCOSS**) and wishes to make the following further submissions specific to place-based income management measures to apply in Shepparton, Victoria from 1 July 2012.

This submission will draw on data gathered from a community forum on income management (**community forum**) and a survey of local agencies and individuals (**local survey**). Although very limited in scope, the community forum and local survey capture views of the community previously unheard by government.

The community forum, held on 24 January 2012, was co-facilitated by the GVCLCP and local agency FamilyCare. 22 representatives from community agencies were present to discuss local implications of the rollout in our region.

The local survey was conducted by the GVCLCP between 17 and 25 January 2012. There were 33 responses to the survey of which 15 were individuals and 18 were from local organisations. The results of this survey are attached.

Minutes of the community forum are available via the VCOSS submission.

2. Executive Summary of GVCLCP submission

- i. The GVCLCP opposes provisions in the Bill which provide for the extension of compulsory income management to the Shepparton community
- ii. Government must engage in meaningful consultation with the community and should immediately appoint a Local Advisory Group
- iii. Government should adequately fund local services to respond to unmet legal need that will emerge in relation to income management, including a permanent Community Legal Centre in the Goulburn Valley
- iv. The GVCLCP opposes provisions in the Bill that provide for the delegation of decision making powers to state-based agencies
- v. Every person subject to income management should have the same access to Centrelink social security review processes
- vi. Centrelink should maintain the ultimate discretion to refuse or accept a referral to income management
- vii. Compulsory income management unjustifiably infringes on the human rights of individuals under this Bill and should therefore should only be used as a voluntary measure

3. Overview of new income management measures to apply in the City of Greater Shepparton

As part of the Building Australia's Future Workforce package announced in the 2011-12 Federal Budget, the introduction of targeted place-based income management will be established in five disadvantaged communities across Australia, one being Shepparton, Victoria.

From 1 July 2012, income management will apply to vulnerable families and individuals in the City of Greater Shepparton, including:

- Parents referred for income management by State or Territory child protection authorities;
- People assessed by Centrelink social workers as being vulnerable to financial crisis; and
- People who volunteer for income management.

Further to this, the Bill introduces new means by which authorised state-based authorities may refer individuals onto the income management regime.

4. The extension of income management to the Shepparton community

In the absence of quantitative evidence that income quarantining assists disadvantaged communities, the GVCLCP opposes the roll-out of income management to additional sites, including Shepparton.

Both the community forum and local survey indicate widespread community opinion that income management will not work in Shepparton. A majority of participants in these consultations thought that income management would have a negative effect on local business, community cohesion and the perception of Shepparton as being a good place to live.

Participants consistently identified that income management would not be effective in assisting vulnerable welfare recipients at risk of financial crisis. Largely, this was because income management does not address the underlying causes of crisis.

Community members identified alternate measures that would be more effective, many of which could be implemented locally at less cost. For example:

- Assisting people to address the underlying causes of crisis
- Increasing access to financial counselling (we note that at present there are only 3 financial counsellors in the City of Greater Shepparton)
- Increasing access to affordable and public housing
- Local education and financial literacy programs

Participants also noted that often the reason welfare recipients experience financial crisis is linked to the fact that the level of their welfare payment is inadequate.

The GVCLCP is particularly concerned about the inadequacy of consultation between government and the community and the ability of local services to respond to the rollout of income management without support from government.

4.1. Inadequate consultation

The GVCLCP is deeply concerned that there was no consultation with the community prior to the 2011-2012 Budget announcement that Shepparton would be a trial site for place-based income management.

Following the budget announcement in May 2011, dialogue between government and the community has been muted and slow. There has been a lack of information on how the rollout will be implemented locally and this has led to uncertainty and apprehension in the community.

It was not until October 2011 that the government held its first community briefing in Shepparton followed by one other session the following month.

The GVCLCP wishes to acknowledge the efforts of local Centrelink staff who have attempted to keep the community informed on the rollout in difficult circumstances.

However, we consider the level of consultation between government and the community generally to be inadequate for the following reasons:

- All consultation has been retrospective.
- The delay between the budget announcement and the first consultation with the community is unsatisfactory.
- The community consultations were not consultative because they did not give the community the opportunity to have real input.
- Consultations were by invitation only and failed to engage the community in a meaningful way.
- The government is yet to appoint a 'Local Advisory Group' and thus there is still no clear method of communication between community and Government.
- Positions on the Local Advisory Group will be by invitation only and will therefore limit the scope of community participation.

By failing to undertake adequate consultation the government has undervalued local skill and has failed to adopt an approach that is tailored to the particular needs of the Shepparton community.

The GVCLCP opposes the introduction of income management in our community as a generic response to disadvantage. We recommend that the government take immediate steps to appoint a Local Advisory Group and to adopt an approach that engages with the community in a meaningful way.

4.2. Negative impacts on the community - lack of community legal services

The community forum and local survey highlighted numerous potentially negative impacts of income management, which are outlined in the VCOSS submission and attached documents.

The GVCLCP is particularly concerned about the ability of local services to respond to the rollout of income management measures. We note that a majority of local survey participants thought that local business, community organisations and local legal services were not well equipped to deal with the rollout of income management in Shepparton.

Although the rollout is likely to place increased pressure on local community agencies, including the GVCLCP, it is unclear what assistance, if any, the Government will give to agencies to respond to the impacts of income management.

We are principally concerned that the Goulburn Valley is one of the only regions in Victoria without a fully funded Community Legal Centre and that this leaves disadvantaged people without an important service as they attempt to navigate the income management rollout.

The GVCLCP is currently only a pilot project. The service was initially funded through philanthropic sources and received a 12 month allocation of funding from Victoria Legal Aid in the last state budget. Without additional funding the CLC will be forced to close on 30 June 2012.

As a pilot project, the GVCLCP is very limited in its capacity to provide legal assistance to the community. The unmet legal need in the Goulburn Valley is so high that demand for free legal assistance already far surpasses the capacity of the service and many vulnerable residents of Shepparton are going without legal help.

We anticipate the demand for legal assistance to increase in the lead up to, and following, the rollout of income management. We anticipate that people will require increased assistance with a range of legal matters including: social security law, credit and debt issues, housing and tenancy and child protection. We also anticipate that demand for community legal education around the income management measures will peak in the coming months.

The GVCLCP works collaboratively with other local legal services including the Goulburn Valley Regional office of Victoria Legal Aid and the Victorian Aboriginal Legal Service. We are concerned that

our colleagues at these agencies are similarly under resourced to respond to the increased local demand that income management will bring and that clients will be increasingly turning to the GVCLCP for assistance.

Due to the various vulnerabilities of our clients, it is vital that they are able to receive free and accessible legal assistance at an early stage. This is particularly important as they attempt to navigate the onerous measures and complex appeals processes contained in the Bill.

In trialing place-based initiatives in Shepparton, the Federal government has recognised our community as one suffering significant disadvantage. However, the GVCLCP is concerned that the government is failing to adequately fund local community services that have proven to be successful in assisting those who are most disadvantaged.

On this basis, we urge the government to fund a permanent community legal centre in the Goulburn Valley region.

5. Referrals to Income Management by State and Territory Agencies

The GVCLCP has a number of concerns about provisions in the Bill that give the Minister an expansive discretion to delegate decision-making authority in relation to social security.

Section 123TGAA of the Bill, allows the Minister to delegate decision-making powers to various state-based authorities. Under this section, the Minister may name any state-based department or government agency as an authorised agent.

Once a state-based authority has been identified by the Minister in legislative instrument, an officer or employee of that authority can give the Secretary notice in writing requiring that a person be subject to income management.¹

Currently in Victoria, it has been foreshadowed that these powers will be delegated to Child Protection authorities (the Department of Human Services) and the Office of Housing. However, under the Bill, this could extend to additional state-based authorities at the discretion of the Minister.

The GVCLCP is concerned that the Bill places no limitations on which additional state-based authorities the referral powers may be extended. GVCLCP is therefore not able to comment further about the appropriateness of additional state-based authorities to be delegated such power. The question of which state-based authorities are delegated referral powers is a critical aspect of the legislation.

5.1. Referral framework not finalised

The GVCLCP is concerned that just five months out from the commencement of the income management regime in Shepparton (1 July 2012), a framework for income management referrals from Victorian departments is yet to be finalised.

We understand that the Victorian State Government is yet to reach agreement with the Federal Government on how local Child Protection and Office of Housing workers will adopt powers conferred on them by the income management regime.

We note that additional legislation may be required in Victoria to enable state-based authorities to release information about clients required under the proposed income management referral process.

Given that these negotiations are ongoing, we question whether these issues will be satisfactorily finalised in time for the rollout on 1 July 2012. The lack of clarity around the referral framework makes it impracticable for us to comment further on this important aspect of the income management rollout.

¹ *Social Security Legislation Amendment Bill 2011* section 123UFAA (1)(b)

5.2. A lack of Federal oversight

The GVCLCP is particularly concerned that there is no legislative framework to govern the circumstances in which authorised Victorian agencies may refer a person to the income management regime.

Of particular concern is that there is no legislative framework, in this Bill or elsewhere, which specifies criteria or processes that Victorian authorities must apply when making an income management referral. While the Bill states that a referral must come from an "officer or employee" of a recognised authority, it is silent as to whether the officer or employee need be of particular level of experience or have any expertise in social security law.

As the Secretary is bound to accept a referral from a state-based authority², the ability of the Federal government to provide any oversight into the decision-making of state-based agencies is significantly compromised.

The GVCLCP views this delegation of power as inappropriate and recommends that the Bill be amended to ensure that the Secretary maintains the discretion to review and reject referrals from state-based agencies.

6. Appeals processes are inadequate

The GVCLCP is concerned that where a person is referred to income management by a state-based agency, the avenue for appeal or review of the decision is complex and ill defined.

It appears that appeals processes contained in part 4 of the *Social Security (Administration) Act 1999* (Cth) will not apply to decisions by state-based agencies to refer a person to income management. Because these are not deemed to be decisions made under social security law, individuals who wish to appeal the decision of a state-based agency will not have recourse to ordinary Centrelink appeals processes. Rather, these individuals will be required to navigate the internal review process of the referring state-based agency.

The GVCLCP is concerned about a number of aspects of the appeals process, namely:

- Each state-based agency and department will have differing internal appeals and review processes. This lack of streamlining and cohesion could lead to an unfair decision making process, whereby depending on the referring agent an individual will have greater access to review.
- Each agency and department will be guided by a different range of policies. With different departments having varying guidelines on who may make decisions, as well as the level of expertise required, this could lead to an unfair decision making processes between different state departments.
- The lack of consistency between states and departments may mean that individuals subject to compulsory income management in one place would not be in another.
- The internal appeals mechanisms of state-based agencies may not be adequately experienced or resourced to consider review of what are essentially decisions about social security law.
- The inconsistency in appeals processes will be prohibitively difficult for vulnerable people to navigate.

The GVCLCP recommends that the Bill be amended to provide that a decision of a state-based agencies to refer a person to income management *is* made under social security law and that part 4 of the *Social Security (Administration) Act 1999* (Cth) will apply in these situations.

² *Social Security Legislation Amendment Bill 2011s* 123UFAA

4. Human rights issues

The GVCLCP is concerned that the Bill will involve significant infringements on the human rights of social security recipients. We are concerned that this Bill will impact unfairly on Aboriginal people and the significant newly arrived community living in the City of Greater Shepparton.

Participants in the community forum and local survey placed human rights concerns high on the agenda. Broadly, the GVCLCP is concerned that income management measures will infringe on the following rights of social security recipients in Shepparton:

- the right to social security
- the right to privacy and family life
- the right to self determination
- the right to cultural life
- the right to freedom of movement

In our view, based on the lack of evidence that income management will address disadvantage in this community, these infringements are unjustified and income management should not be compulsorily imposed.

The GVCLCP notes that if the delegated decision making powers of state-based agencies under this Bill are deemed *not* to fall under Commonwealth social security law then, given the lack of Federal oversight provided for in legislation, Victorian state-based agencies should be subject to the Victorian Charter of Human Rights when making decisions about income management.

It would be inconsistent to, one on hand, deny a person access to Commonwealth appeals processes because they were referred to income management by the administrative decision of a Victorian agency which is outside Commonwealth social security law; and then also deny that person recourse to the Charter because the Victorian agency is exercising delegated powers under a Commonwealth Act.