

**ABORIGINAL LEGAL SERVICE OF WESTERN AUSTRALIA  
(INC.)**



**SUBMISSION IN RESPONSE TO THE INTERIM REPORT OF THE  
REFERENCE GROUP ON WELFARE REFORM**

**AUGUST 2014**

## **ABOUT THE ABORIGINAL LEGAL SERVICE OF WESTERN AUSTRALIA ('ALSWA')**

ALSWA is a community based organisation which was established in 1973. ALSWA aims to empower Aboriginal peoples and advance their interests and aspirations through a comprehensive range of legal and support services throughout Western Australia. ALSWA aims to:

- Deliver a comprehensive range of culturally-matched and quality legal services to Aboriginal peoples throughout Western Australia;
- Provide leadership which contributes to participation, empowerment and recognition of Aboriginal peoples as the Indigenous people of Australia;
- Ensure that Government and Aboriginal peoples address the underlying issues that contribute to disadvantage on all social indicators, and implement the relevant recommendations arising from the Royal Commission into Aboriginal Deaths in Custody; and
- Create a positive and culturally-matched work environment by implementing efficient and effective practices and administration throughout ALSWA.

ALSWA uses the law and legal system to bring about social justice for Aboriginal peoples as a whole. ALSWA develops and uses strategies in areas of legal advice, legal representation, legal education, legal research, policy development and law reform.

ALSWA is a representative body with executive officers elected by Aboriginal peoples from their local regions to speak for them on law and justice issues. ALSWA provides legal advice and representation to Aboriginal peoples in a wide range of practice areas including criminal law, civil law, family law, and human rights law. ALSWA also provides support services to prisoners and incarcerated juveniles. Our services are available throughout Western Australia via 14 regional and remote offices and one head office in Perth.

## **INTRODUCTION**

The Interim Report of the Reference Group on Welfare Reform seeks submissions on a broad range of potential reforms to the welfare system. The Interim Report highlights that long-term reliance on social security

increases the risks of poor health, low self-esteem and social isolation. It can also have intergenerational effects. Children who grow up in households with long periods on income support are more likely to have poor education, employment and social outcomes. In contrast, employment generates clear financial, health and social benefits for individuals, families and communities.<sup>1</sup>

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<sup>1</sup> Reference Group on Welfare Reform, *A New System for Better Employment and Social Outcomes: Interim report of the Reference Group on Welfare Reform to the Minister for Social Services* (June 2014) 5.

In broad terms, the ALSWA supports measures designed to increase employment opportunities for Aboriginal people and reduce reliance on welfare. However, it is vital to ensure that any future reforms to the welfare system properly take into account the particular disadvantages and vulnerabilities of many Aboriginal people in this state. Some Aboriginal people face significant barriers to accessing employment and training opportunities because of socio-economic disadvantage, mental health issues, disability, substance abuse and other vulnerabilities including geographical remoteness.

Having made that general observation, the ALSWA is limiting this submission to the issue of income management. The ALSWA has represented Aboriginal people who have been subject to voluntary income management and compulsory income management by the Department for Child Protection and Family Support (DCPFS).

## **INCOME MANAGEMENT IN WESTERN AUSTRALIA**

### **Overview of income management**

There are two forms of income management in Western Australia: voluntary (where 50% of welfare payments are income-managed) and compulsory (where 70% of welfare payments are income-managed). For both forms of income management, 100% of advance or lump sum welfare payments are also income managed. In the latter category, child protection workers mandate income management in ‘cases of child neglect associated with financial hardship and mismanagement’ primarily as a means of ensuring that children are adequately cared for.<sup>2</sup> The main objectives of income management are to:

- ensure that the needs of the recipient and their children are met;
- improve financial skills to reduce risk of hardship in the future;
- promote socially responsible behaviour; and
- reduce amount of money being spent on items such as alcohol, tobacco, pornographic material and gambling.<sup>3</sup>

In order to improve the recipient’s future financial management capacity, referrals are made to money management programs and financial counselling. However, it appears that the take-up for these programs is low.<sup>4</sup>

In Western Australia, Aboriginal people make up approximately 3% of the population. Aboriginal children are grossly overrepresented in child protection matters – 49% of children in the care of DCPFS in 2012–2013 were Aboriginal. The level of overrepresentation in

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2 Australian Government Department of Social Services, *A Review of Child Protection Income Management in Western Australia: Experiences and perceptions of those involved in Child Protection Income Management*, Final Report (February 2014) 10 & 15.

3 Ibid 15.

4 Ibid 42-43.

compulsory child protection income management is even higher; a recent review observed that as at 22 February 2013 there were 336 persons on compulsory child protection income management in Western Australia and 63% of the recipients were Aboriginal.<sup>5</sup>

The review found after examining 92 child protection cases that compulsory child protection income management was being ‘targeted appropriately’. The most common reason for referral was ‘financial difficulties which could result in risk of homelessness, unpaid debts or children not attending school for financial reasons’.<sup>6</sup> However, it was also observed that, in some cases ‘referrals were due to factors other than financial issues’ although financial issues may have been viewed as ‘compounding factors’.<sup>7</sup> The ALSWA is of the view that compulsory income management is not appropriate in circumstances where financial issues are not a principal factor underpinning the department’s child protection concerns.

Overall, the review observed that:

The evidence collected for this review suggests that income management’s role in strengthening recipients’ financial capability and skills is less clear than its reported ability to help recipients meet priority needs.<sup>8</sup>

Therefore, while there is some evidence to support the contention that income management assisted in ensuring that the needs of children were met, it does not necessarily result in any long term gains in terms of a person’s capacity to manage finances. In addition, the review identified a number of issues with the compulsory income management scheme. The following problems, which were identified by the review, are mentioned as background for the discussion below concerning the ALSWA’s specific experiences with the scheme:

- Some child protection workers had concerns about the compulsory nature of the scheme.<sup>9</sup>
- Some child protection workers felt that the voluntary scheme, which only enables 50% of welfare payments to be income managed, was not sufficient for some clients in the metropolitan area due to the high cost of living.<sup>10</sup> Therefore, it is possible that some people may have been referred to compulsory income management because of the limitations of voluntary income management.
- Generally, child protection workers inform the client of the referral to compulsory income management. However, where it is difficult to engage with a client, a referral may be made without the client being informed. In these situations a letter from

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5 Ibid 16. Identification as Aboriginal or Torres Strait Islander is voluntary so it is noted that the number of Aboriginal and Torres Strait Islander recipients may be an underestimate (25).

6 Ibid 35.

7 Ibid 35.

8 Ibid 69.

9 Ibid 32.

10 Ibid 33.

Australian Government Department of Human Services, inviting the client to attend for an interview, is the first time the client becomes aware of the referral.<sup>11</sup>

- In some cases, participation in the income management scheme resulted in an approved credit rating for the recipient. While this was positive for some recipients it also enabled others to accumulate new debt (especially from companies who rent furniture, white goods, TV and computer equipment).<sup>12</sup>
- A number of recipients reported problems with the BasicsCard (eg, it was not available for public transport or taxis; there is an insufficient range of retail outlets available that accept the card including cheaper shops and those that allow bulk purchases; and embarrassment about having to use the card).<sup>13</sup>
- Some recipients were concerned about their lack of access to cash to ‘have fun’ with their kids and take them on outings.<sup>14</sup>

### **ALSWA experience with income management**

The ALSWA represented a client who was subject to compulsory income management by DCPFS. The client lived with her partner and their children. The children were attending school and there was no evidence to suggest that the children were involved in risky or harmful behaviours or had come to the attention of the police. The main issue facing this family was that they were living in a state housing dwelling and this dwelling was in an extremely poor condition. There was no heating or cooling and, as a result, electric heaters and fans were used by the family on a regular basis. Although the heaters and fans were relatively inexpensive to purchase, their use over time resulted in high electricity bills. It appears that the trigger for intervention by DCPFS was the outstanding electricity debt.

The family was struggling to pay off the debt at a rate that was acceptable to the electricity provider and, at the same time, manage their other financial obligations. They were eventually able to negotiate an agreement with the electricity provider to pay off the arrears at a reduced rate. The making of these regular payments, however small, avoided the power being cut off.

The father who was employed became unwell due to the mounting stress and had to cease work for a period of time. He had medical evidence to support this position. DCPFS had been monitoring the family and its increasing presence had a negative impact on the father’s already vulnerable mental health. Due to historical reasons, many Aboriginal people are sensitive and distrustful of child protection authorities and experience fear, stress and anxiety if such authorities are looking into their affairs.

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11 Ibid 37.

12 Ibid 49.

13 Ibid 52.

14 Ibid 66.

DCPFS determined that this family should be subject to income management. When income management took effect, one immediate consequence was that the agreed payments to the electricity provider stopped. From the electricity provider's point of view, the family was defaulting on the agreement. In reality, the family couldn't make payments to the electricity provider because income management removed their control of their income. The electricity was cut off for a time, although it was subsequently reinstated. In this case the intervention by DCPFS actually made the situation worse and increased the stress experienced by the parents and exacerbated the father's mental health condition. The circumstances of this case demonstrate that income management is not necessarily the appropriate response to financial issues – the real problem is that the family needed a more habitable and functional house. In ALSWA's view, intervention by DCPFS would have been more effective if it had supported the family's request to HomesWest for better housing.

In another case, ALSWA represented a female client who was required to participate in income management by DCPFS. After being placed on income management and having her income withheld, the client received a lump sum payment which she believed was child support for her youngest child. This money was used to pay bills and purchase furniture and other items for her child. In fact, Centrelink had made an error and quarantined only 30% of her welfare payment (instead of required 70%). As a consequence, the client received significantly less funds over the next few welfare payment cycles. In addition, a considerable portion of her welfare payments were quarantined for rent and this was despite the fact that the client was not required to pay rent because she was house-sitting and staying with other people. The client attended financial counselling and fortunately her counsellor assisted her to find rental accommodation and the counsellor expressed the view that the client was capable of managing her own finances.

ALSWA has also provided advice to a client from a remote area who was participating in voluntary income management. Under the scheme she was only permitted to purchase food and other goods from the local store. The client came to Perth for medical treatment and was unable to access funds to purchase food while she was staying in Perth. With assistance from the ALSWA, the client was able to obtain a voucher from Centrelink.

ALSWA family lawyers have also found that a high proportion of their clients are effectively 'forced' into voluntary income management. This often occurs before they have had an opportunity to obtain legal advice. Some of the consequences of participating in income management have included limited spending opportunities and the inability to self-manage their finances; complications with utility payments; insufficient funds for education costs; lack of choice in relation to available retail outlets; a requirement to travel long distances to a major town to purchase goods at an approved outlet and associated problems with lack of transport.

## CONCLUSION

In regard to income management, the Interim Report states that:

[c]onsideration should be given to incorporating income management as part of a package of support services available to job seekers who need to stabilise their circumstances and develop a pathway to work or study. Income management could also be used to build capabilities as part of a case-management approach to assist the large number of disadvantaged young people not fully engaged in either education or work.<sup>15</sup>

It is also noted the ‘progressive roll out of income management has become increasingly targeted to locations of socio-economic disadvantage and particularly vulnerable individuals and families. It is delivered alongside support services designed to stabilise individual and family circumstances by improving financial literacy, budgeting skills, and by addressing debt issues’.<sup>16</sup>

The ALSWA is concerned about that compulsory income management only serves to further demoralise and disenfranchise Aboriginal people. It is disturbing that Aboriginal people appear to be so highly overrepresented in the compulsory child protection income management scheme in Western Australia. Further, the examples referred to above demonstrate that administrative errors have resulted in hardship. It has been observed in relation to the compulsory income management scheme in the Northern Territory that:

Some people have experienced increased difficulty paying bills now that the government has assumed control of their finances, which has contributed considerably to elevated stress levels. Errors in the income management system have occasionally resulted in income going missing. This has been particularly traumatic for Indigenous people, given the multitude of historical injustices surrounding government mismanagement of Indigenous peoples’ funds.<sup>17</sup>

If a person is to lose control over their financial resources (even voluntarily), the system must be robust. Otherwise, unintended consequences may result where disadvantaged and vulnerable people may resort to illegal behaviour to obtain food and other necessities or be required to seek assistance from family members (who may also be in a precarious financial position).

The ALSWA also highlights that potential recipients of compulsory income management may be experiencing problems such as substance abuse and addiction; family violence; homelessness and mental health issues. It is short-sighted to believe that solutions designed to address financial mismanagement and/or curtail spending on certain ‘prohibited’ products will solve these underlying problems. For example, in the absence of counselling and support for an alcohol addition, an alcoholic (who is forced onto income management and thereby unable to purchase alcohol) may resort to illegal means of obtaining alcohol or put pressure on family members and friends to provide alcohol. There is also the potential under a

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17 Bielefeld S, ‘Compulsory Income Management and Indigenous Australians: Delivering Social Justice or Further Colonial Domination’ (2012) 35(2) *University of New South Wales Law Journal* 522, 552.

compulsory scheme for ‘authorised’ products to be exchanged with family and friends for ‘prohibited products’.

The Interim Report asks ‘in what circumstances should income management be applied’? The ALSWA highlights that Article 19 of the *United Nations Declaration of the Rights of Indigenous Peoples* provides that:

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

Bearing that in mind and the concerns discussed above, if it is proposed to extend income management, the ALSWA is of the view that any extended scheme should be voluntary. If participants are involved in income management in a truly voluntary capacity, they are more likely to engage with financial management and financial counselling services and this, in turn, is likely to improve outcomes in the future.