Central Australian Women's Legal Service Inc
PO Box 3496
6 Bonanni Arcade
2 Gregory Terrace
Alice Springs NT 0871
Phone: (08) 89524055
Fax: (08) 89524033
Free Call: 1800 684 055
Email: enquiries@cawls.org.au

1 February 2012

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Senators

STRONGER FUTURES IN THE NORTHERN TERRITORY BILL 2012 and TWO RELATED BILLS

Central Australian Women's Legal Service Inc. (**CAWLS**) provides this brief submission to the Senate Standing Committee on Community Affairs (**the Committee**) in relation to its current Inquiry into the Social Security Legislation Amendment Bill 2011, Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011 and the Stronger Futures in the Northern Territory Bill 2011.

One of a number of Women's Legal Services (WLS) nationally, and one of just three in the Northern Territory (NT), CAWLS is a community legal centre specialising in women's legal issues. We provide advice, information, casework, court representation, legal education and law reform for, and on behalf of, a diverse array of women residing in Central Australia, predominantly in relation to family law and family violence matters.

We are funded by both the Commonwealth Attorney-General's Department and the NT Department of Justice. CAWLS' vision is to ensure that all women and children are able to live with dignity and respect, whilst being free from all forms of violence and abuse.

We provide comment in relation to the Social Security Legislation Amendment Bill (**the Bill**) only. Our concerns with the Bill are as follows:

1. **Child Protection Income Management**

We note that the Bill does not include changes that affect the Child Protection Income Mangement (**CPIM**) Measure, but consider that the tabling of the Bill provides an excellent opportunity for the Committee, and the Government, to reflect on the operation of CPIM in the Northern Territory, and an opportunity to effect legislative changes that would enhance the rights of individuals subject to CPIM.

Section 123UC of the *Social Security (Administration) Act 1999* (Cth) (**SS(A)A**) provides that Centrelink *must* place an individual on CPIM if a child protection officer of a State or Territory (in the NT, a Department of Children and Families (**DCF**) child protection worker) gives written notice to Centrelink that the person is to be subject to CPIM. Centrelink is afforded no discretion in the implementation of this notice. Centrelink has no ability to assess whether the decision was made by DCF staff in accordance with DCF internal policy or in line with the objectives of CPIM.

Significantly, the requirement that Centrelink must implement the notice effectively circumscribes the ability of an individual to appeal the decision to place them on CPIM through Centrelink administrative review procedures. While technically review is available, the decision that is reviewable is simply the decision to implement the notice. To review the substance of the decision, a review must be initiated internally within DCF.

This is of particular concern in the Northern Territory, which does not have an external administrative review body (such as an Administrative Appeals Tribunal) which is able to independently review decisions of Government departments or personnel.

As the Government moves to expand the operation of CPIM to five new communities from July 2012, we urge the Committee to recommend amendment of section 123UC to allow Centrelink discretion in the implementation of a notice received from a relevant child protection authority. This would ensure that decisions made under this section are effectively brought under Centrelink administrative review processes; ensure that all individuals subject to CPIM are able to exercise the same rights of appeal, regardless of the jurisdiction in which they live; and provide an important safeguard and oversight of child protection authorities' decisions in relation to CPIM.

2. Referral to compulsory income management by State and Territory regulatory authorities

Schedule 1 Part 1 of the Bill amends Part 3B of the SS(A)A to insert provisions that allow for officers or employees of recognised State/Territory authorities to refer individuals to Centrelink to be compulsorily income managed at 70% (meaning 70% of a person's income support payment is directed to a

Centrelink managed income management account; and 30% given directly to the individual).

A State or Territory department (or part of a department), body or agency can be declared a 'recognised State/Territory authority' by the Minister by legislative instrument.

We express concern at the proposed inclusion of further sections in the SS(A)A that essentially refer social security powers to non-Australian Government bodies, creating the unusual situation where Federal legislative powers are, in effect, being administered by State or Territory government departments or agencies (as already occurs with CPIM). While it is understood that the intention is to extend this power initially to the Northern Territory Alcohol and Other Drugs Tribunal, this body is not specifically named – rather, the proposed section will allow the Minister to extend this referral power to any State or Territory bodies at any stage, simply by Legislative Instrument.

As the Australian Council of Social Services points out in its submission to this Inquiry[1], the increased use of legislative instruments in social security legislation in recent years has "reduced the transparency of the legislative process and the ability of Parliament to steer the course of important policy changes in this area". We ask that the Committee give serious consideration to the potential ramifications of the continued use of legislative instrument to further expand and extend the scope of the income management regime.

The proposed sections reflect the current CPIM referral process set out above. Like CPIM the proposed provisions do not allow for Centrelink to exercise any discretion in the implementation of a notice received from a 'recognised State/Territory authority' requiring that a person be income managed. Our concerns with the lack of discretion, and particularly the way this affects appeal rights, are set out in our discussion of CPIM above.

We urge the Committee to recommend that proposed section 123UFAA be amended to provide Centrelink with the discretion as to whether to implement a notice received from a recognised State/Territory authority and, importantly, to bring decisions made under this section effectively under Centrelink administrative review processes.

As the proposed section currently stands, it is likely that individuals referred for income management from different State or Territory authorities will be subject to different review mechanisms and procedures, depending on the administrative appeals mechanisms of the State or Territory in which they reside, or that of the particular referring department, body or agency. We

---

[1] Australian Council of Social Services, Submission to the Senate Community Affairs Committee: Social Security Legislation Amendment Bill 2011, January 2012, available at http://www.aph.gov.au/Senate/committee/clac_ctte/strong_future_nt_11/submissions.htm

submit that this is unjust, unfair and not in keeping with principles of natural justice.

Finally, CAWLS considers that the allocation of 70% of a person's income support payment to an income management account is arbitrary and unjustified.

We submit that for both the proposed 'State/Territory referral' measure and CPIM, the percentage of a person's income to be income managed be ought to be determined by the referring officer or employee (or, if our recommendations above are adopted, by the Centrelink officer making the decision as to whether to implement the referral notice) in consultation with the individual, to ensure that income management will operate as effectively as possible for the individual concerned.

3. Extension of SEAM

(a) Lack of Evidence Base

The Bill proposes expanding the School Enrolment and Attendance Measure (**SEAM**) to a number of additional communities across the Northern Territory. To date, SEAM has operated on a trial basis in a handful of remote communities, including Ntaria and Wallace Rockhole in Central Australia.

CAWLS is concerned at the expansion of SEAM despite a lack of evidence that it has worked to positively impact school attendance in the trial communities. The evaluation of the 2009 model states that "SEAM did not demonstrably improve the rate of attendance of SEAM children overall, nor was any effect apparent at any stage of the attendance process in 2009"[2].

CAWLS asks the Committee to recommend that the expansion of SEAM be put on hold until substantive evidence is available to show that the serious step of suspending and/or cancelling parental income support payments works to significantly improve school attendance.

Until such evidence is made available, we urge the Government to continue to engage with communities to develop positive, incentive based approaches to improving school attendance; and to undertake a meaningful evaluation of the other factors that may influence school attendance in the Northern Territory including the curricula offered to students and the school environments.

(b) Operation of proposed Division 3A with existing SEAM sections

[2] Improving School Enrolment and Attendance Through Welfare Reform Measure (SEAM) Evaluation Report for the NT in 2009 (January 2011)

The Bill inserts a new Division 3A into Part 3B of the SS(A)A. These sections allow the Secretary, or 'the person responsible for the operation of a school' (presumably the Principal) to require the parent of a child who is failing to attend school to attend a conference to discuss the child's school attendance and/or to enter into a school attendance plan. Failure to attend a conference or to comply with the attendance plan may result in the parent receiving a compliance notice; and ultimately may result in the suspension or cancellation of their income support payment.

The current Division 3 – School Attendance sections remain. These are the sections under which the current SEAM trial has been operating, and provide for the issuing of school attendance notices by the Secretary (and do not allow for conferencing or school attendance plans, or involvement from a person within the relevant school).

It is unclear as to when the proposed Division 3A will be used as opposed to the existing Division 3.

We submit that clarification is required as to how the new sections will operate in relation to the existing sections, and in what circumstances one will be used, or preferenced, over the other. Such clarification should be included in the Bill and not left to policy.

We also note the potential for confusion where school attendance notices, notices requiring attendance at conferences, notices requiring school attendance plans, and compliance notices can emanate from multiple sources depending on the type of notice being issued.

4. Disclosure of information to the Secretary – other State/Territory referrals

Proposed section 123ZEAA grants broad powers to State/Territory officials to give information to Centrelink about a person on income management, or a person who is being considered for referral to income management, under the proposed State/Territory referral provision. Further, when such information has been disclosed to Centrelink, this section will allow Centrelink to disclose information about the person to the State/Territory authority.

Centrelink, in particular, possesses an extremely wide range of sensitive information about individuals who have had the need to be involved in the social security system. Likewise, certain State/Territory authorities (for example, housing authorities, health departments and education departments) hold similarly sensitive information.

It is imperative that individuals feel safe and comfortable to disclose to Centrelink and other government agencies personal information that may

help these agencies to provide relevant and timely assistance, without concern about how their personal information may be disclosed or used by such agencies.

We request that the Committee seek advice from the Office of the Australian Information Commissioner as to the potential privacy law implications of this broadly drafted clause.

We thank the Committee for the opportunity to provide this submission and regret that, due to time constraints, we are unable to provide a more fulsome submission.

We would appreciate the opportunity to appear before the Inquiry should sitting days be held in Alice Springs, or otherwise by telephone/videoconference.

Yours sincerely

Janet Taylor
Managing Principal Solicitor