



Committee Secretary
Access to Legal Services
Senate Finance and Public Administration Committees
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Dear Committee Secretary,

Submission to the Inquiry into Indigenous access to legal services

The National Welfare Rights Network welcomes the opportunity to provide comment on Aboriginal and Torres Strait Islander (ATSI) experience of law enforcement and justice services. ATSI Australians are often the most disadvantaged and marginalised people in our community.

The National Welfare Rights Network (NWRN) is a network of community legal centres throughout Australia which specialise in Social Security law and its administration by the Department of Human Services (DHS). The NWRN has members in all States and Territories both in capital cities and regional locations. There are 14 Welfare Rights member centres. We also have two associate members providing Welfare Rights services in the Northern Territory (NT): the Northern Australian Aboriginal Justice Agency (NAAJA) and the Central Australian Aboriginal Legal Aid Service (CAALAS).

NWRN member centres are funded under the Commonwealth Community Legal Services Program funding, while the NT services are funded from Prime Minister and Cabinet and the NWRN Secretariat is funded by the Department of Social Services under the Community Investment Program.

The NWRN Secretariat co-ordinates the policy, law reform, government engagement, sector engagement and media activities of the NWRN as well as resourcing and supporting the member centres.

Yours sincerely,

Kate Beaumont
President

NATIONAL WELFARE RIGHTS NETWORK

Submission to the Finance and Public Administration Committee Inquiry into Indigenous Access to Legal Services

Table of Contents

1. About the National Welfare Rights Network.....	3
2. Prevalence of legal problems.....	3
3. Barriers facing Indigenous clients when dealing with Centrelink.....	4
4. The importance of access to Welfare Rights services.....	5
5. Indigenous appeals to address social security problems.....	7
6. Prevalence of overpayments by Indigenous social security recipients	8
7. Barriers leave young men without income support	9
8. Over-representation of Indigenous job seekers in compliance system	10
9. Activity test exemptions and domestic violence	12
10. Problems with Income Management and Centrelink in the NT	13
11. Indigenous communities, social security payments and prosecutions	14
12. Conclusion.....	16
Appendix 1. Indigenous & non-Indigenous Income Support Payments, December 2014.	16

1. About the National Welfare Rights Network

The National Welfare Rights Network (NWRN) is a network of community legal centres throughout Australia which specialise in Social Security law and its administration by the Department of Human Services (DHS).

The NWRN has members in all States and Territories both in capital cities and regional locations. There are 14 Welfare Rights member centres. We also have two associate members providing Welfare Rights services in the Northern Territory under the Welfare Rights Outreach Program (WROP), the Northern Australian Aboriginal Justice Agency (NAAJA) and the Central Australian Aboriginal Legal Assistance Service (CAALAS).

2. Prevalence of legal problems

A study of legal need in Australia found a significantly higher prevalence of one or several types of legal problem arising among Indigenous respondents in most jurisdictions.¹ The problem groups with elevated risks for Indigenous people in some jurisdictions were the crime, government, health and rights problem groups.

It was reported that:

“Legal services may need to be extended and provided with additional resources in order to widen accessibility and to meet current demand efficiently. For example, extension of operating hours, telephone, internet and video conferencing services, local services in readily accessible locations, outreach services in rural and remote areas, and services in appropriate languages may all be worth exploring as means of increasing accessibility.”²

People on government payments were more likely to experience legal problems reflecting socio-economic disadvantage i.e. from the following problem groups in at least one or a few jurisdictions: family, government, health, housing and rights. The high levels of government problems were largely due to difficulties related to receipt of government payments. The rights problems included problems related to discrimination and unfair treatment by police.³

The focus of this submission is the high levels of problems experienced by Indigenous people related to receipt of government payments (i.e. Centrelink payments), based on the frontline expertise of the NWRN. We note with deep concern, the increasing rates of incarceration of Indigenous people, which is the focus of many submission to this inquiry. It is critical that government, policy experts, and the broader community – driven by

¹ Coumarelos, C. Macourt, D. People, J. MacDonald, HM. Wei, Iriana, R. & Ramsey, S. 2012, *Legal Australia-Wide Survey: legal need in Australia*, Law and Justice Foundation of NSW, Sydney, p. 178.

² Ibid. p. 207

³ Ibid, p. 177.

Indigenous people themselves – tackle the contributing social factors of these disturbing rates of Indigenous incarceration.

3. Barriers facing Indigenous clients when dealing with Centrelink

The Department of Human Services (i.e. Centrelink) has identified a number of potential barriers that their staff needs to take into account when providing services to Indigenous people.

These include:

- language issues;
- kinship and cultural obligations within the Indigenous community which may vary from non-Indigenous community family obligations;
- cultural issues;
- disproportionally lower health status;
- caring responsibilities based on different child rearing responsibilities and traditions;
- disproportionally lower education levels;
- challenges with financial management;
- isolation;
- negative contact with the criminal justice system;
- racism, evidenced by non-Indigenous community attitudes;
- poor housing and overcrowding; and
- disproportionally higher levels of homelessness.⁴

NWRN members and associate members have observed that rather than challenge a decision, some Aboriginal people, particularly young single men, will disconnect from the system and remain off payments, further entrenching poverty. We explore this problem later in this submission on page 8. Other problems can occur when Indigenous people have significant debts raised (that can be as high as \$20,000 or more), which can result in people choosing to go off income support altogether rather than risk incurring further overpayment. This can have significant consequences for the entire community, as family members and others are called on to support the person. As the person's financial situation deteriorates, overall indebtedness increases along with pressure from creditors for repayment. Individual and family stressors will accelerate, problems can spiral out of control, causing other legal, health, criminal and family issues.

Welfare Rights notes that the impending changes to the Remote Jobs and Communities Program, with the introduction of full-time Work For The Dole requirements and a harsher and more complex compliance regime, is likely to present difficulties for some Indigenous job seekers.

NWRN members provide early intervention and legal assistance services which can restore income support security and has significant flow on effects (as discussed at 4 below). NWRN

⁴ Australian National Audit Office, *Initiatives to Support the Delivery of Services to Indigenous Australians*, Department of Human Services, Auditor-General Audit Report No. 45, 2013-14, p. 25.

members have also developed useful resources to assist young people and Indigenous job seekers to understand their right to appeal decisions, what to do when they have their payments suspended or reduced, and how to reconnect with their DHS and their employment service provider. Improved resourcing for Welfare Rights workers will better equip Indigenous job seekers to meet their requirements and keep their payments while looking for work.

4. The importance of access to Welfare Rights services

Earlier this year, NWRN released independent research which examined the impact of our services and the experiences of people who seek assistance from a Welfare Rights caseworker.⁵ The study involved a delayed qualitative survey of 30 closed cases from the 2013-14 financial year and a quantitative survey of 218 clients. The research provides a snapshot of the assistance that Welfare Rights workers provide to many thousands of Indigenous and non-Indigenous income support recipients each year.

NWRN member centres provide information, advice and casework assistance directly to their clients. Examples of assistance include:

- advice about eligibility;
- identifying under-claiming;
- restoring suspended payments;
- ensuring correct rate/type of payment;
- helping collect information to support claims and appeals;
- having debts waived in special circumstances;
- overturning decisions to reject claims or reduce or cancel payments;
- overturning other incorrect departmental decisions;
- having preclusion periods waived in special circumstances;
- assistance with exemptions from activity requirements and income management;
- making representations in certain matters referred for prosecution;
- representation at internal reviews and at external reviews (Social Security Appeals Tribunal and Administrative Appeals Tribunal); and
- claims for compensation for defective administration.

The NWRN research explored the impacts of financial instability experienced by people whose social security income was suspended, reduced, cancelled or had a debt raised. It found that some people experienced a serious decline in physical and mental health as a consequence. Some people could no longer afford medicines, some experienced an increase in existing pain levels while others reported significant weight loss. Many became socially isolated and struggled to look after children.

Feeling disbelieved or misjudged by Centrelink affected self-esteem levels and the ability to relate to other people. Some people fell further into depression and some began to

⁵ Bell, S. *How does the National Welfare Rights Network add value to clients? Independent Research with clients*, Susan Bell Research, December 2014.

contemplate suicide. Thirteen of the 30 people studied had considered suicide during their dispute with Centrelink.

The report also revealed significant flow on effects from the intervention of Welfare Rights services. The researchers found that the pre-intervention quality of life was marked by financial instability, physical deterioration, social isolation and emotional struggle. The casework interviews revealed that following NWRN intervention:

- 20% were now able to provide for their children;
- 20% had reduced family tension;
- 20% either kept their home or were no longer homeless;
- 20% had returned to work or study;
- 30% or more were no longer considering suicide;
- 10 % were eating properly;
- 10% became volunteers; and
- 6% reconnected with supports.⁶

The report found that NWRN fills a gap in legal and other service provision. Many (60%) of 'advice' clients had approached other organisations in the past regarding the problem they contacted the NWRN member centre about (Centrelink 30%, Legal Aid 18% other CLCs 9%, the Commonwealth Ombudsman 5%) and most (77%) of these had not found the help that they needed from these organisations.

Our member centre in Adelaide runs a successful outreach project into the APY Lands. This is a joint outreach project which also brought on board the relevant decision makers in the Centrelink appeals process being: the Social Security Appeals Tribunal, the Administrative Appeals Tribunal and Centrelink.

The Welfare Rights Outreach Program (WROP - first funded in response to the Northern Territory Emergency Response) demonstrates the value of special funding for welfare rights outreach services as an effective and efficient model for increasing access to welfare rights services in remote communities. However, we note the submission to this inquiry by NAAJA and CAALAS which concludes that significantly increased funding is needed.

We also note the value of feedback from the WROP workers which has informed NWRN's policy work and engagement with the DHS on issues such as income management, remote servicing, accessibility of Centrelink services and debt prevention strategies.

However, despite our best efforts with the limited funding available, there is a huge amount of unmet need. Each state and territory has only a handful of Welfare Rights workers to assist with many thousands of clients needing assistance. Outreach programs are severely constrained by limitations to funding. With additional funding for Indigenous specific and remote services, NWRN could increase access to our services to these clients.

⁶ There were multiple outcomes for some clients who participated in the research which means percentages do not add to 100.

As we note later in this submission, nearly 80 per cent of Indigenous people live in capital cities and in regional areas. Nearly all of NWRN's members across the country also undertake community legal education initiatives and outreach, in varying locations, from Dubbo to Logan, from Kalgoorlie to the APY Lands. A stronger funding base would allow for more consistent Welfare Rights assistance in areas with significant numbers of Indigenous populations. This would enable NWRN to assist greater numbers of Indigenous people who experience problems, issues that we highlight later in this submission, in key problem areas such as debts, job seeker compliance, activity exemptions, securing correct entitlements and social security prosecutions.

5. Indigenous appeals to address social security problems

In 2013-14, just 460 appeals were lodged by Indigenous income support recipients at the Social Security Appeals Tribunal (SSAT), from a total of 9,812 appeals lodged.⁷ In Senate Estimates hearings over the past few years the head of the SSAT has noted that it faced challenges in achieving increased use by Indigenous social security recipients.

Jane Macdonnell, the SSAT Principal Member is quoted in the most recent Annual Report that:

*"(d)uring 2013-14, the SSAT particularly focussed on presentations to providers of services to Indigenous persons in light of the low number of applications for review by the SSAT from persons identifying as Indigenous. However, there has been no increase in the number of such applications for review."*⁸

Questions have been raised concerning the number of appeals by Indigenous income support recipients in relation to Centrelink decisions. The ANAO has undertaken analysis which indicated that as a percentage of people in regular receipt of Centrelink payments, Indigenous payment recipients were more likely to appeal decisions.⁹

However we note that:

- the finding was more evident in urban areas than in remote areas;¹⁰
- the ANAO report did not indicate whether the review numbers represented formal reviews to Authorised Review Officers, or all reviews and reconsiderations e.g. by original decision makers, team leaders, managers, subject matter experts and so on;
- the ANAO does not provide a breakdown by external appeals (at the SSAT and the AAT), which we believe would show lower rates of Indigenous appeals; and
- critically, there was no breakdown of how many decisions are varied or overturned.

NAAJA and CAALAS' experience is that there are a number of barriers to Aboriginal people accessing the appeals system which include:

⁷ Senate Community Affairs Legislation Committee, *Supplementary Budget Estimates – 23-24 October 2014, Answer To Question on Notice, Department of Human Services, Question No: HS 36.*

⁸ Social Security Appeals Tribunal, *Annual Report 2013-14*, p. 14.

⁹ ANAO, *Op Cit*, p. 56.

¹⁰ ANAO, *Ibid*, p. 56.

- lack of knowledge of the review and appeal system;
- fear of Departmental pushback if a review is sought;
- language and literacy barriers;
- the Department not taking complaints regarding an adverse decision as requests for review; and
- the absence of regular face to face Centrelink services in most remote communities.

As a consequence, Aboriginal people are more likely to bear the consequences of adverse decisions, for example they may:

- make repayments towards debts which have grounds to be waived;
- make repayments towards debts that they do not understand the reason for the debt having occurred;
- remain off payment following suspension or cancellation of a payment;
- not challenge decisions to impose participation failures when there is a reasonable excuse;
- remain on a less appropriate payment (ie under claiming), for example a person on Newstart Allowance whose legitimate claim for the Disability Support Pension is not granted.

Increasing funding for welfare rights services would increase access to assistance with such problems, including lodging appeals and reviews to ensure people are receiving their correct entitlements.

6. Prevalence of overpayments by Indigenous social security recipients

Indigenous social security recipients experience a high rate of Centrelink overpayments. There are a number of historic factors which have resulted in this situation. These include language, literacy, disability, low educational attainment, socio-economic disadvantage, complexity of social security requirements, administrative complexity and bureaucracy and the historical absence of a consistent Centrelink presence in many remote communities. Some communities in remote locations have only had regular contact and visits by Remote Servicing Teams over the past few years as a part of the Northern Territory Emergency Response and the introduction of Income Management.

Significant language, literacy and numeracy barriers undermine the value of written communication via letters. For example, many do not have clear understanding of the terms used, such as “gross”, “net” “change of circumstances”, “income”, etc. Most remote communities have unreliable mail services. For example, there is no personal mail delivery in any remote community in the Northern Territory. In some locations, access to telephone and the internet is patchy.

There is confusion about the requirements to notify of partner's income, and people often fall foul of the complex social security reporting rules. Many people rely on the services of Centrelink agents to access the Departments' services and agents are often not adequately trained. Many also lack financial literacy and money management skills.

These and other factors have resulted in high rates of overpayment among Indigenous people.

Analysis undertaken by the Audit Office confirms that over the period 2010–11 to 2012–13, Indigenous customers were more likely to have a debt raised by DHS than non-Indigenous recipients.¹¹

In the 2013-14 financial year, the Department of Human Services raised 128,750 debts among Indigenous income support recipients. Newstart Allowance recipients were responsible for the largest proportion of debts, (27.3 per cent), and Family Tax Benefit overpayments (including reconciliation debts) accounted for 32 per cent of the debts. Youth Allowance (Jobseeker) accounted for 9.5 per cent of these overpayments, followed by Abstudy at 6.5 per cent and Parenting Payment Single at 6 per cent.

A proportion of this debt is both preventable and appealable.

NWRN is currently engaging with the Department of Human Services on Indigenous debt matters. Extra resources to allow NWRN members to work on initiatives to minimise overpayments would be welcome. This year's Federal Budget announced \$1.7 billion in savings from a range of "welfare integrity" measures. NWRN hopes that the Government will include some debt prevention initiatives among the suite of measures that are to be introduced over the next few years which address the levels of debt among Indigenous people.

7. Barriers leave young men without income support

NWRN urges the Committee to consider the difficulties faced by young, mainly male, Indigenous unemployed people, who become disconnected from the income support system, while at the same time, are often not connected to local community supports. There has been a failure to address cultural barriers which risks leaving young Indigenous Australians in NT and other remote and regional communities without essential income support payments.

Small economies in local remote towns are unable to provide jobs for everyone who wants one. In many communities outside of Darwin half the population is under 25, and young people lack transport or the funds to search for employment.

¹¹ Ibid, p. 58.

Centrelink payments are often the only source of income in remote towns, but hundreds of young Aboriginal men are not pursuing the payments due to what has been termed 'culture gaps'.

For some young people, Centrelink is too difficult to deal with, and young people are often embarrassed by poor language and literacy skills and don't feel comfortable talking to Centrelink staff. Filling in forms – essential to get on payment – can be difficult for many people.

Without a job or income support, they are living in poverty, or relying on family members for help.

Young people often have difficulties with Centrelink payment requirements, particularly when they undertake continuous training for jobs that just do not exist in remote communities. In some communities, the closest Centrelink office is about 200km away, and getting through to speak to a Centrelink 'smart centre' can take hours, and be costly.

Until recently, there was no hard data on the number of young Indigenous men living without an income in the Northern Territory. But, according to Dr Nicholas Biddle from the Australian National University about 11 per cent of the male Indigenous population aged 15 to 24 in remote NT, are not working, not studying and not receiving an income. Only 1 per cent of the non-Indigenous population is in the same position.¹²

Dr Biddle estimates that about 600 young Aboriginal NT men are not accessing Centrelink payments they are entitled to, and says this probably underestimates the true figure.

Olga Havnen, a former co-ordinator general for remote service delivery in the NT, has been urging governments to focus on the problem, claiming that the social consequences of having no money can cause community breakdown, and often result in family violence, and potentially incarceration down the track.

The NWRN, along with NAAJA and CAALAS, has consistently sought to highlight these problems with the Department of Human Services, and urged them to develop strategies to make sure that people remain on the right Centrelink payments and engaged with and linked to community supports.

8. Over-representation of Indigenous job seekers in compliance system

Another key social security issue of importance is how Indigenous job seekers experience the compliance and penalty system.

Most people who receive activity-tested income support payments (such as Newstart Allowance or Parenting Payment) are required to undertake activities, such as job search, and to attend appointments. Financial penalties are applied in situations where job seekers are seen to have failed to meet their obligations.

¹² ABC Lateline, *Many not using Centrelink*, Kate Wild, 12 June 2013,

Indigenous job seekers are subject to financial penalties to a much greater extent than non-Indigenous job seekers. Despite totalling 10 per cent of job seekers in 2012 to 2013, Indigenous job seekers accounted for 28 per cent of all financial penalties imposed, 30 per cent of smaller financial penalties imposed, and 34 per cent of serious failures for 'serious non-compliance' imposed.¹³

The table below shows the number of eight week and the number of short financial penalties served by all job seekers in the financial year 2013-14. Eight week penalty numbers that were fully or partially waived were omitted.¹⁴

	Short financial penalties (No Show No Pay and Reconnection)		8 week non-payment penalties	
	Number	%	Number	%
Indigenous job seekers	56,290	27%	3,299	17%
Non-Indigenous job seekers	150,969	73%	15,893	83%
All job seekers	207,259	100%	19,192	100%

Table 1. Indigenous and Non-Indigenous Job Seeker Compliance Penalties, 2013-14.¹⁵

Indigenous jobseekers in receipt of unemployment benefits who fail to participate in scheduled training, interviews or appointments have had their 'participation failure' applied at an increasingly higher rate than non-Indigenous customers, according to analysis undertaken by the ANAO.¹⁶

In the six years from 2007 and 2013 there was a toughening of the job seeker compliance policy, which, along with the removal of 'remote area exemptions', resulted in increased rates of compliance against Indigenous job seekers. While the rates of participation failures increased for all jobseekers, the rates relating to Indigenous unemployed increased at a higher rate: from 33 per cent to 62 per cent, whereas for non-Indigenous job seekers, the rates increased from 39 per cent to 55 per cent.¹⁷

New rules for remote job seekers, which will strictly enforce full-time Work For The Dole requirements, will need to be carefully monitored. NWRN has previously worked with Centrelink on the implementation of an 'Indigenous Breaches Strategy', as part of a coordinated effort to limit the harm caused to individuals, their families and communities, when income is cut or reduced.

¹³ Department of Employment, *Job Seeker Compliance Data*, 2012-13.

¹⁴ Senate Standing Committee on Education and Employment, *Supplementary Budget Estimates 2014-15*, EM1659_15 and EM1658_15.

¹⁵ Senate Standing Committee on Education and Employment, *Department of Education*, EM1659_15.

¹⁶ ANAO, *Ibid*, p. 57.

¹⁷ ANAO, *Op Cit*, p. 57.

Additional funding to support NWRN's work in this area would result in positive outcomes for Government and individual job seekers.

9. Activity test exemptions and domestic violence

Job seekers may seek exemptions from activity testing or participation requirements for caring responsibilities, temporary incapacity, or personal circumstances. Exemptions are available for domestic violence, but they are rarely granted.

There are a range of short term exemptions for 13 or 16 weeks, and some longer term exemptions, that are available for a maximum of 52 weeks. The majority of exemptions are for temporary illnesses or personal circumstances, such as homelessness, a broken bone, a bereavement, or a disruption at home, such as a fire or a burglary. Longer exemptions are provided under legislation for foster carers or for home schooling. Longer exemptions are also available for people requiring longer recovery periods, e.g. cancer, severe stroke, brain injury, etc.

As at August 2014, a total of 78,324 participation exemptions were being applied. Of these, 6,398, or 8 per cent were granted to Indigenous income support recipients.¹⁸

The Department of Human Services can also grant activity test or participation exemptions for people experiencing family violence. However, the available information indicates that very few women are granted activity test exemptions under this criteria. Data for August 2014 indicates that 156 exemptions were granted across Australia for domestic violence to Principal Carer Parents, and of these, just 23, were granted for Indigenous women.¹⁹

By way of contrast, in Alice Springs between 1 March 2014 and 28 February 2015, there were 850 incidents of domestic violence related assault recorded by the Northern Territory Police.²⁰

The social and economic costs of violence against women are substantial. The National Council to Reduce Violence against Women and their Children estimated that violence against women and their children, including both domestic and non-domestic violence, cost the Australian economy \$13.6 billion a year.²¹

A recent analysis of the available data by the Parliamentary Library reveals that Indigenous women face much higher risk factors than other women:

¹⁸ Senate Standing Committee on Education and Employment, Questions on Notice, *Supplementary Budget Estimates 2014015*, EM0546_13

¹⁹ Standing Committee on Education and Employment, Op Cit, EM1654_15.

²⁰ Northern Territory Police, *Northern Territory Crime Statistics, Alice Springs*, accessed on 8 May 2015 at: <http://www.pfes.nt.gov.au/Police/Community-safety/Northern-Territory-crime-statistics/Alice-Springs.aspx>.

²¹ Janet Phillips, Social Policy Section, Penny Vandenbroek, Statistics and Mapping Section, *Domestic, family and sexual violence in Australia: an overview of the issues*, Parliamentary Library, Research Papers, October 2014.

- Indigenous people are two to five times more likely to experience violence than non-Indigenous people;
- Indigenous women are five times more likely to be homicide victims than non-Indigenous people; and
- Indigenous women are 35 times more likely to be hospitalised than non-Indigenous people.²²

NWRN acknowledges that some people affected by domestic violence may not wish to seek activity test exemptions, and may be able to continue to undertake activities like job search or training, or part-time employment. However, we are concerned that the low level of take up of the available domestic violence activity test exemptions is indicative of a broader access issue, i.e. people are not aware of the exemption or not able to navigate the system to seek an exemption, including access to Welfare Rights services.

10. Problems with Income Management and Centrelink in the NT

Problems relating to Centrelink payments was seen as a significant legal issue in the Northern Territory, according to a 2012 study, *The Indigenous Legal Needs Project: NT Report*.²³ Nearly three quarters of all participants (73.2 per cent) identified being in receipt of an allowance, with the proportion of Indigenous women receiving benefits 18.7 percentage points higher than that of Indigenous men (82.1% of women compared with 63.4% of men). Nearly seventy per cent were subject to Income Management, with the proportion of Indigenous women 16.2 percentage points higher than that of Indigenous men (76.2% of women subject to Income Management compared with 60% of men).²⁴

The study noted:

“Overall, 29.1% of all participants receiving Centrelink payments identified having experienced a dispute or problem in this area, with the proportion of Indigenous women being 6.2 percentage points higher than Indigenous men (31.7% of women compared with 25.5% of men). Only 11.1% of participants sought legal advice or assistance for identified Centrelink issues. Indigenous women were much less likely to seek assistance than Indigenous men for problems in this area (5.6% of women compared with 22.2% of men).”

There is a significant need for legal assistance in this area, and this is particularly the case for Aboriginal women, who are more likely to be receiving Centrelink payments, more likely to be on Income Management, more likely to be experiencing problems with Centrelink, and less likely to seek legal assistance than Aboriginal men. The most common issues identified related to underpayment/reduced payments and to the Basics Card.

²² Ibid, p. 10.

²³ Allison, F. Cunneen, C. Schwartz. M. and Behrendt, L. *The Indigenous Legal Needs Project: NT Report*, November 2012, p. 12.

²⁴ Ibid.

Some problems were related to associated credit and debt, as the following stakeholders acknowledged:

"[With Basics Card quarantining] ... when the intervention arrived, and suddenly 50% of everyone's welfare payments were quarantined, overnight people suddenly said 'well how am I going to pay for that car loan, how can I pay for this, you know, consumer loan I've got for the fridge I purchased... The intervention threw up a lot of issues like this (Statutory Authority staff). If a white person in town gets a \$25,000 debt [from] Centrelink, 9 times out of 10 they'll know that that might be right, or that it might not be right, and they'll go and seek some advice on it. Whereas our clients, [we] have someone who has been paying off \$80/week for..."²⁵

Access to legal advice from welfare rights services for income managed clients is vital to address individual problems with administration of payments and to ensure access to proper entitlements and exemptions.

11. Indigenous communities, social security payments and prosecutions

The Department of Human Services (DHS) has contact with a significant proportion of the Indigenous population. For example, DHS reported that as at 30 June 2013, the total Centrelink population was 7,359,634, of which 248,955 people identified themselves as Indigenous, equating to 3.4 per cent of the overall Centrelink client base. This represented 45.4 per cent of the total Indigenous population.²⁶

Appendix 1 provides the most recent breakdown of the numbers of Indigenous and non-Indigenous payment recipients, as at December 2014. It shows that at this point there were 226,396 Indigenous people receiving the main social security payments, accounting for 4 per cent of the DHS client base. The data reflects the demographic profile of Indigenous Australians, with low numbers of Age Pension recipients (at just 0.7 per cent) and much higher proportions of Indigenous people receiving Parenting Payment Single and Newstart Allowance (12.6 per cent and 9.2 per cent respectively).

DHS expects that Indigenous customers will account for a greater proportion of its client-base over time and that, "compared to the general population, a higher proportion of these customers will belong to DHS "high risk or vulnerable customers".²⁷

The majority of the Indigenous population live in capital cities and regional areas. In 2011, about a third of Indigenous people lived in the capital cities.²⁸ As noted by the Productivity Commission, a much higher proportion of the Aboriginal and Torres Strait Islander

²⁵ Ibid.

²⁶ Department of Human Services, *Indigenous Servicing Strategy 2012-15*, p. 3, cited in ANAO, p. 30.

²⁷ Ibid, p. 31.

²⁸ Australian Bureau of Statistics, *Census of population and housing - counts of Aboriginal and Torres Strait Islander Australians, 2011*. Canberra: Australian Bureau of Statistics, 2012.

population resides in remote and very remote areas (21.3 per cent, compared with 1.7 per cent of the non-Indigenous population).²⁹

By June 2015, there will be around 730,000 Aboriginal and Torres Strait Islander Australians, and they will account for around three per cent of the Australian population.³⁰

With nearly 80 per cent of the Indigenous population residing in capital cities and regional areas, the funding of Welfare Rights Services needs to strike the right balance to allow access in the bush and in the towns and cities. Additional support to address social security and related problems can reduce stress on individuals and families, and build stronger communities that are resilient and resourceful.

Welfare Rights intervention can impact directly on prosecution and incarceration. Welfare Rights services assist with administrative review of overpayments. In many cases we run, administrative review will result in:

- a debt being waived on the grounds of administrative error by Centrelink, or on the grounds of special circumstances (which involves a finding that the person didn't knowingly fail to meet their obligations); or
- a debt being found not to exist (eg where the debt was based on incorrect information).

This in turn will generally mean that the debt will not be referred for prosecution, or if prosecution was already on foot, that charges will not be laid or will be withdrawn.

Our caseworkers, who are experts in interpreting Centrelink files and seeking waiver or overturning of debt, also have success in negotiating directly with the Commonwealth Director of Public Prosecutions. Our services provide backup assistance and work co-operatively with criminal lawyers (e.g. within Aboriginal Legal Services and Legal Aid) where possible.

The Department of Human Services notes that for the period 1 July 2011 to 30 June 2014, 9.8 per cent of matters referred for prosecution were for Indigenous income support recipients. In the 2013-14 financial year, the Department of Human Services referred 1,071 social security and family assistance matters to the Commonwealth Director of Public Prosecutions.³¹

Given the complexity of social security law, the optimal time to successfully challenge a social security debt is prior to prosecution, by way of administrative review where the decision makers and the advocates are experts in social security law. Once these matters get to the criminal courts, the decision makers and advocates do not generally have the

²⁹ Productivity Commission, *Overcoming Indigenous Disadvantage*, 2014. A3.2.

³⁰ Australian Bureau of Statistics, *Estimates and Projections, Aboriginal and Torres Strait Islander Australians, 2001 to 2026*, Cat. No. 3238.0, Canberra.

³¹ Department of Human Services, *Annual Report 2013-14*, p. 148.

benefit of social security expertise and significant factors in social security law may be overlooked, to the defendant's detriment.

A substantial increase in Welfare Rights funding is needed to increase access to specialist social security assistance prior to criminal prosecution.

12. Conclusion

An independent evaluation of Welfare Rights services confirms that access to assistance with social security problems can have a profound effect on individuals and communities by improving financial, social and health outcomes. It also reduces the ensuing legal problems associated with lack of income such as loss of accommodation, family stress and breakdown, child protection, consumer and criminal law problems.

Current funding to Welfare Rights services is manifestly inadequate to address the full extent of legal need among Indigenous people. Substantially more funding is required to improve access to Welfare Rights services for Indigenous people.

Appendix 1. Indigenous & non-Indigenous Income Support Payments, December 2014.

Payment type	Indigenous	Not Identified Indigenous	Total	% Indigenous
ABSTUDY (Living Allowance)	n/a	n/a	7,663	n/a
ABSTUDY (Non-Living Allowance)	n/a	n/a	19,557	n/a
Age Pension	16,154	2,431,278	2,447,432	0.7%
Austudy	203	577,267	39,455	0.5%
Carer Allowance	18,874	21,102	596,141	3.2%
Carer Payment	12,224	237,209	249,433	4.9%
Disability Support Pension	48,086	776,384	824,470	5.8%
Newstart Allowance	67,250	660,528	727,778	9.2%
Parenting Payment Partnered	8,937	93,291	102,228	8.7%
Parenting Payment Single	33,688	227,937	261,625	12.9%
Partner Allowance	50	6,840	6,980	0.7%
Sickness Allowance	337	7,634	7,971	4.2%
Special Benefit	82	5,178	5,260	1.6%
Widow Allowance	430	23,341	23,771	1.8%
Widow B Pension	0	440	440	0.0%
Wife Pension (Partner on Age Pension)	86	6,941	2,027	4.2%
Wife Pension (Partner on DSP)	124	7,030	7,154	1.7%
Youth Allowance (Other)	18,180	95,315	113,495	16.0%
Youth Allowance (Student & Apprentice)	1,689	178,737	180,426	0.9%

TOTAL	226,394	5,356,452	5,623,306	4.0%
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Source: DSS Payment Demographic Data. Go To: <http://data.gov.au/dataset/dss-payment-demographic-data/resource/8b9d2203-1701-461e-be65-12a6a7b58726>