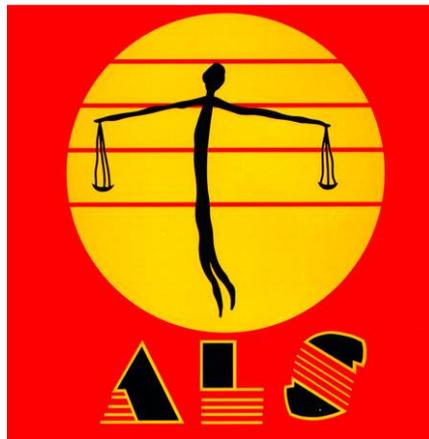


**ABORIGINAL LEGAL SERVICE OF WESTERN AUSTRALIA (INC.)**

**SUBMISSION TO THE  
DEPARTMENT OF THE ATTORNEY GENERAL**

**STATUTORY REVIEW OF THE  
PROHIBITED BEHAVIOUR ORDERS ACT 2010**

**MAY 2014**





## **Aboriginal Legal Service of WA (ALSWA) submission on the statutory review of the operation and effectiveness of the *Prohibited Behaviour Orders Act 2010 (WA)***

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### **1. Executive summary**

The *Prohibited Behaviour Orders Act 2010* (**PBO Act** or **the Act**) created a new civil mechanism for the imposition of injunctive orders on persons with at least two convictions for offences involving 'anti-social behaviour' within a three year period. The Act provides a schedule of offences that are considered to be anti-social in nature, such as: failure to obey a move-on order, disorderly conduct in public, stealing and obstructing police.

The Act is pre-emptive in that it gives courts the power to make orders with conditions that constrains otherwise lawful activities to try to prevent individuals engaging in further anti-social behaviour.

There is also a 'name and shame' provision in the Act (said to act as a deterrent), whereby the identifying particulars of individuals subject to PBOs are placed on a publicly accessible website.

To date, PBO applications have been predominately made against socio-economically disadvantaged, poorly-educated, unemployed, poly-drug addicted, mentally ill, homeless Aboriginal people.

Applications for PBOs instituted by WA Police in the Perth Magistrates Court have repeatedly sought orders constraining respondents from entering the Perth CBD, East Perth, and Northbridge. Such restrictions create great hardship because these are precisely the public places the respondents occupy.

Many respondents have little capacity to understand what the application means, let alone comply with an order if it is made.

Breach of a PBO is punishable by imprisonment and the prospect of being imprisoned for the above cohort of respondents is very high.

ALSWA is strongly of the view that the aims and objectives underpinning the introduction of the PBO Act have not been achieved, for the following reasons:

- The PBO Act has not, and cannot, curtail anti-social behaviour;
- The PBO Act has had a grossly disproportionate negative impact on Aboriginal people. The typical PBO Aboriginal respondent represented by ALSWA is male, homeless, socio-economically disadvantaged, with substance abuse issues and serious mental health problems. Applications have therefore shamelessly targeted the most marginalised, disempowered and vulnerable in the community. Breaches of PBOs create the very real risk of increasing the already disgracefully high levels of Aboriginal imprisonment in WA, in respect of conduct that does not of itself justify imprisonment;
- Many Aboriginal respondents do not have the capacity to understand the nature of the applications made against them and the restraints imposed by a PBO;

- There are already sufficient measures available to WA Police to deal with anti-social behaviour.

There is a push in national and international law to close the gap between Indigenous and non-Indigenous peoples given the massive disparity in lifespan, quality of health, education, and incarceration rates. The PBO Act only serves to increase that gap.

ALSWA's position is that the PBO Act is a pernicious piece of legislation which should be repealed immediately.

## **2. 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 WA. ALSWA aims to:

- Deliver a comprehensive range of culturally-matched and quality legal services to Aboriginal peoples throughout WA;
- 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 WA via 14 regional and remote offices and one head office in Perth.

## **3. Introduction**

In 2010, ALSWA made a submission to the Western Australian Parliament, expressing a number of concerns in relation to the *Prohibited Behaviour Orders Bill 2010 (WA)*. ALSWA cited as significant reasons why the PBO Bill should not be made law Western Australia's already high Aboriginal incarceration rates when compared to other Australian jurisdictions, the availability of existing criminal and sentencing laws to sanction anti-social behaviour, the over policing of Aboriginal people and the likelihood that marginalised and vulnerable Aboriginal people would be targeted by PBOs.

The PBO Act enables the imposition of a PBO if:

- The person the subject of the PBO application is over the age of 16 years;
- The person has been convicted of an offence involving anti-social behaviour;
- During the period of 3 years after that conviction the person was again convicted of an offence involving anti-social behaviour;
- Unless constrained, the person is likely to commit another offence involving anti-social behaviour; and
- The granting of the PBO is appropriate in all the circumstances.

The concerns expressed by ALSWA in 2010 have been realised. PBOs have targeted the most marginalised and vulnerable Aboriginal people in Western Australia.

#### **4. Statistical analysis**

ALSWA compiled data in 2013 based on the PBO applications where ALSWA had been instructed to act on behalf of respondents to such applications.

The following data arises out of ALSWA's caseload for 2013:

- 59 PBO applications were active in 2013;
- 18 PBO applications were resolved (31%);
- 41 PBO applications remained unresolved as at 31 December 2013 (69.5%);
- 10 PBOs were granted by the court or consented to (17%);
- 1 PBO was granted with negotiated constraints (1.7%);
- 5 PBO applications were withdrawn (8.4%);
- 2 persons who had PBO applications made against them died (3.4%);
- The average age of a respondent was 37 years old;
- 73% of respondents were male; 27% of respondents were female (43/59, 16/59);
- 64% of the applications constrained the respondent from the entertainment and tourism areas of Perth CBD, Northbridge or East Perth (32/50);
- 56% of respondents were homeless (28/50);
- 29.7% of respondents were in prison (14/47);
- 93.2% of respondents were receiving welfare (41/44);
- 36.1% of respondents were illiterate (13/36);

- 65.3% of respondents had mental health issues (17/26);
- 52.3% of respondents had some kind of cognitive impairment (8/15);
- 70.5% of respondents had physical health issues (12/17); and
- 96.2% of respondents had substance abuse issues (25/26).

As at 26 July 2013, 114 PBOs had been applied for.

Over half (52%) of all PBO applications were made against Aboriginal people despite Aboriginal people comprising only about 3.5% of the Western Australian population.

As at the same date, 28% (32) of these 114 PBO applications had been granted by the court, 7 of which were against Aboriginal people.

## **5. The impact on the Aboriginal people of Western Australia**

The above statistics provide a disturbing snapshot of the impact of the PBO Act on Aboriginal people.

The serious personal, health and other issues faced by most Aboriginal respondents means that most, if not all, have little or no capacity to comply with a PBO.

Many Aboriginal respondents have numerous convictions for non-compliance with police or court orders such as breaching move on orders, breaching community based dispositions and breaching bail. These patterns of non compliance will simply be replicated in the event of the imposition of a PBO. It is inevitable that repeated breaches of PBOs will eventually culminate in Aboriginal respondents being imprisoned. These issues are elaborated upon in the discussion below.

### **5.1 Disproportionate impact on Aboriginal peoples of Western Australia**

Aboriginal people are more likely to find themselves before criminal courts and more likely to have a PBO imposed upon them. Over half of the PBO applications are made against Aboriginal persons, while Aboriginal persons represent approximately 3.5% of Western Australia's population.

The historical and cultural factors underpinning the propensity for Aboriginal people to congregate in public spaces, in combination with punitive and, at times, discriminatory policing practices, means Aboriginal people are much more likely to come into adverse contact with police. This is particularly so when Aboriginal people assemble together in public spaces. Aboriginal people are therefore inherently more likely to be charged, and charged more frequently, with relatively minor street-based criminal offences than other members of the community. It is precisely these offences which the PBO Act deems to be 'anti-social', and thereby functions to expose such Aboriginal persons to applications for a PBO.

### **5.2 Homelessness**

The majority of PBO applications to date have been framed so as to constrain Aboriginal respondents from entering the Perth CBD, Northbridge and East Perth areas.

As stated above, the majority of respondents are homeless. The urban architecture of the Perth CBD and Northbridge areas are commonly the only practical shelter a homeless person can seek when they are sleeping rough. Further, homeless support services and agencies, such as soup kitchens and drop in centres, are located in these inner city areas. There are very few homeless services and agencies outside the inner city.

A PBO therefore has the potential to deny a homeless Aboriginal respondent from accessing the critical support provided by homeless agencies and services, as well as denying them a place to live and belong within their community.

As has already been noted, the likelihood of compliance with a PBO in these circumstances is remote. From a humanitarian perspective, a PBO also has the real potential to be coercive, cruel and cause undue hardship.

### **5.3 Mental health**

The majority of Aboriginal respondents to PBO applications have serious and, at times, debilitating mental health issues, with a significant cohort also having some kind of co-morbid cognitive impairment. Again, cognitive impairment bears centrally on the issue of a respondent's capacity to understand PBO applications and comply with the terms of a PBO. The imposition of a PBO on an Aboriginal respondent who is without a full capacity to understand the terms of an order is very arguably a breach of the State's duty towards the welfare of its subjects.

### **5.4 Substance abuse**

The overwhelming majority of Aboriginal respondents have significant substance abuse issues. Many of Aboriginal respondents have poly-substance abuse issues which remain untreated and substantially impact on physical and mental health, further compromising the ability to understand PBO applications and comply with the terms of a PBO.

### **5.5 Physical health**

A large proportion of Aboriginal respondents have major issues with their physical health. PBOs therefore affect people who are in greater need of medical attention than the general population. Constraints on the ability to access medical assistance will inevitably exacerbate existing medical problems predispose Aboriginal respondents to further medical problems and further contribute to high Aboriginal mortality rates.

### **5.6 Literacy**

The above statistics demonstrate that, typically, Aboriginal respondents are poorly educated and illiterate. They are also totally guileless and unsophisticated.

An example of the typical constraints sought through a PBO is as follows:

- a. *The Northbridge exclusion area, being the area bounded by the perimeter commencing from the southern corner of Stirling Street and Roe Street, continuing west along the southern border of Roe Street to Lake Street, north along the western boundary of Lake Street to Newcastle Street, east along the southern boundary of Newcastle Street to Stirling Street, and south along the eastern boundary of Stirling Street to Roe Street; and*

- b. *The Perth exclusion area, being the area bounded by the perimeter commencing from the southern corner of Barrack Street and St Georges Tce, continuing west along the southern border of St Georges Tce to William Street, north along the western boundary of William Street to Wellington Street, east along the northern boundary of Wellington Street to Barrack Street, and south along the eastern boundary of Barrack Street to St Georges Tce.*

These constraints are difficult to understand, even for a reasonably well educated non Aboriginal layperson, because they require a capacity to visualise the geography of the inner city and specific parts of streets. They present almost insurmountable problems of comprehension and understanding for unsophisticated, poorly educated Aboriginal respondents with poor literacy and impaired cognitive skills.

### **5.7 Definition of anti-social behaviour**

The object of the PBO Act is:

*to make orders that constrain offenders who have a history of anti-social behaviour and for related purposes.*

At its core anti-social behaviour is such a loose and subjective concept as to be almost undefinable and as such, should have no place in a positivist legal system. For example, prosecutions in NSW and Queensland in relation to charges of offensive or disorderly behaviour where Aboriginal people have sworn at police officers have failed, because courts have found that coarse language now forms part of everyday communications and has long lost its capacity to affront, offend or annoy. However, convictions for disorderly behaviour in WA where the offence involves no more than swearing at police are routinely relied upon as anti social behaviour justifying the making of a PBO.

### **5.8 Publication of details of restrained people**

Section 34 of the PBO Act requires the CEO of the Department of the Attorney General to publish on a website the personal details of a person constrained by a PBO. During the second reading speech for the PBO Bill, the then Attorney General, Mr Porter, indicated that this was to enable members of the public to report breaches of a PBO to police.

The publication of a person's name, photograph, residence and nature of the constraint imposed is a serious encroachment on their privacy as a citizen, especially where no criminal offence has been committed and where these details could be republished by anyone in any manner.

ALSWA is also concerned that the publication of personal details and photographs will contribute to the negative stereotyping and racial vilification of Aboriginal people. The risk of vigilantism in these circumstances cannot be underestimated.

Finally, homeless Aboriginal people who are the subject of PBOs are in almost daily contact with police, making enforcement of PBO through publication on the website otiose.

### **5.9 Procedural fairness**

The pre-emptive nature of PBOs represents a shift to sanctioning lawful activities prior to the commission of a criminal offence rather than prescribing penalties for proven criminal conduct after the fact.

PBOs are civil orders but have criminal penalties on a breach, including imprisonment. They therefore blur the line between civil and criminal law.

Under section 3(2) of the PBO Act, prescribed offences are deemed to involve anti-social behaviour unless there is proof to the contrary.

However, most Aboriginal respondents are completely incapable of providing instructions in relation to alleged offending constituting anti social behaviour by dint of their social circumstances. It is therefore almost impossible for Aboriginal respondents to discharge the reverse onus of proving to the contrary that an offence does not involve anti social behaviour. The reverse onus contained in section 3(2) of the PBO Act is inherently unfair and almost impossible to discharge.

No witnesses, including police officers, have been called at a PBO application to give viva voce evidence in relation to offending alleged to constitute anti social behaviour. It follows that no witness has been cross examined as to whether the offending relied upon is truly anti social in character.

Rather, the practice is that Statements of Material Facts, previously assembled by police for use in criminal prosecutions, are relied upon as proof of offending constituting anti social behaviour for the purposes of s3(2) of the PBO Act. Statements of Material Facts are, by definition, limited to a summary of alleged offending only. They are also notorious for being inaccurate or incomplete.

Further, as noted, Aboriginal respondents from acutely disadvantaged backgrounds are not in a position to give coherent instructions about conduct described in Statements of Material Facts, nor to give evidence in PBO proceedings. ALSWA is strongly of the view that, on almost every level, the PBO Act itself, along with the way PBO applications are conducted, is inherently procedurally unfair.

The State is in a position of enormous forensic superiority to the typical Aboriginal PBO respondent. The disparity of arms is irremediable.

Additionally, courts considering PBO applications have been urged to have regard to the entirety of an Aboriginal respondent's criminal history when considering relevant offences under section 8. As most Aboriginal respondents have criminal histories spanning many years, comprising numerous prescribed offences (in ALSWA's experience, most respondents have more than 50 prior convictions which also constitute prescribed offences), it is gravely prejudicial and borders on the impossible if an Aboriginal respondent is asked to provide instructions on each and every prior conviction which may qualify as a prescribed offence under the PBO Act. Likewise, in the unlikely event that an Aboriginal respondent gave evidence at a PBO application, their capacity to give coherent evidence in relation to their criminal history is nonexistent.

Section 9(3) also makes a person's entire criminal record relevant to the court when considering whether to make a PBO against a person. It is important to note, however, that section 7(2) of the *Sentencing Act* (1995) provides that a person's criminal record is not an aggravating factor in sentencing. In a similar vein, section 7(2) of the *Sentencing Act* provides that a previous sentence which has not achieved the purpose for which it was imposed is also not to be regarded as an aggravating factor for sentencing purposes. These important principles are ignored in the PBO Act.

### **5.10 Resources at ALSWA**

The burden placed on ALSWA in seeking to provide assistance and representation to clients who are the subject of PBO applications has been very considerable. ALSWA has assumed the workload involved in acting for respondents for PBOs without any additional resourcing or funding. The time is fast approaching where ALSWA will reach full capacity and have to turn respondents away.

This brings into sharp relief questions in relation to access to justice. The most vulnerable in our community should have appropriate access legal assistance, especially when facing proceedings as draconian as applications for PBOs. Put another way, it is an anathema in a civilised society when the most vulnerable cannot access appropriate legal services when facing proceedings which will severely inhibit their freedom of movement and association and which may also result in their imprisonment.

The PBO Act is a State law which is enforced by State authorities. It is unique to Western Australia. The resourcing exigencies confronted by ALSWA in seeking to assist disadvantaged Aboriginal clients provides a further example of the dire need for State Government funding for ALSWA for the provision of front line services in relation to the enforcement of State laws.

### **5.11 International framework**

The Act breaches the obligations of the Australian government as they relate to several international instruments.

### **5.12 Freedom of movement**

Article 12 of the International Covenant on Civil and Political Rights states:

*Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*

The restrictions placed on Aboriginal respondents limit their freedom of movement. As noted above, PBOs have predominantly constrained Aboriginal respondents from entering into inner urban areas; areas that are important hubs for transport, the support of the homeless, medical services and social interaction. For this reason, the constraints that limit an individual's right of movement are a breach of a fundamental human right.

### **5.13 Right to shelter**

Article 11 of the International Covenant of Economical, Social and Cultural Rights states:

*Every person has the right to an adequate standard of living, which includes the right to adequate housing.*

As noted above, Aboriginal respondents are often homeless and are inherently vulnerable. As a result, high-density urban spaces are the only areas that provide enough shelter for homeless persons to occupy. Constraints that limit access to key city spaces breach Aboriginal respondents right to shelter.

#### 5.14 Freedom of association, assembly, and political communication

Prohibitions on interacting with specified family or community members, where there is no threat posed to the safety of the specified individual, may impose upon a person's right to associate with their family and other Aboriginal people, which arguably infringes upon the rights of association and assembly<sup>1</sup> and the rights of Indigenous peoples.<sup>2</sup>

#### 5.15 Rights of the child

Publication of details relating to children removes important privacy and identification protections for children, which could amount to an infringement of Article 16 of the *UN Convention on the Rights of the Child*, which provides:

1. *No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.*
2. *The child has the right to the protection of the law against such interference or attacks.*

#### 5.16 Parallel legislation: The UK experience with ASBOs

The PBO Act is modelled on the UK Crime and Disorder Act 1998, which creates Anti Social Behaviour Orders (ASBOs). ASBOs are a law and order mechanism introduced by the UK Government in 1999. In 2010 the newly elected government in the UK expressed its intention to remove ASBOs, citing high breach rates and a decline in the number issued.<sup>3</sup>

The effectiveness of ASBOs has been widely criticised in the UK. Concern has been repeatedly raised that ASBOs have become badges of honour for those engaging in anti-social behaviour and have therefore not just failed to discourage, but have actually encouraged anti-social behaviour.<sup>4</sup>

In July 2010, the UK Home Office launched a review of the existing legislation relating to anti-social behaviour. The review noted the following:

- (a) Use of ASBOs had fallen by more than 50% since 2005;
- (b) Some of the tools used to curb anti social behaviour (in particular, ASBOs) were too slow and expensive;
- (c) The number of breaches of ASBOs had increased, suggesting that their use was not an effective deterrent. Of the 21,645 ASBOs issued between 1 June 2000 to

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<sup>1</sup> See for example, Article 20 of the *Universal Declaration of Human Rights*, Articles 21 and 22 of the *International Covenant on Civil and Political Rights* and Article 15 on the *Convention on the Rights of a Child*.

<sup>2</sup> See in particular, Articles 1, 2, 3, 8, 9, 11 of the *United Nations Declaration on the Rights of Indigenous Peoples*.

<sup>3</sup> "[Anti-social Behaviour, Crime and Policing Bill Fact sheet: Replacing the ASBO](#)". The British Home Office. October 2013

<sup>4</sup> <http://www.dailymail.co.uk/news/article-2148413/Goodbye-Asbo-badge-honour-prized-young-louts.html>

31 December 2011, 57.3 per cent (12,408) had been breached at least once,<sup>5</sup> and of those that were breached, breaches occurred at least 4 times on average<sup>6</sup>;

- (d) The existing tools to deal with underlying causes of anti-social behaviour are under-used.

On 22 May 2012, the UK government published a White Paper, *Putting victims first: more effective responses to anti-social behaviour* setting out its plans for dealing with anti-social behaviour. This paper was highly critical of ASBOs, ultimately stating that ASBOs “do not work as well as they should”<sup>7</sup>, and “fail to protect victims and communities in the long-term.”<sup>8</sup> Further, the report admitted that a “major flaw of the ASBO [was] that by focusing solely on prohibitions and enforcement, ASBOs fail to change the behaviour of the perpetrator, and therefore fail to stop breaches and protect victims.”<sup>9</sup>

ASBOs now suffer from a perception of being outdated and ineffective. A 2012 survey showed only 8% of Britons believe ASBOs have been successful in curbing anti-social behaviour in the UK.<sup>10</sup>

The UK legislation around the ASBO system is currently under review.

## **6. Conclusion and ALSWA recommendation**

ALSWA has witnessed firsthand the unremittingly negative impact that the enforcement of the PBO Act has had on

Aboriginal people in WA. ALSWA has, and will continue to, vigorously represent Aboriginal respondents in objecting to PBO applications.

It is completely unclear whether the introduction of PBOs has, or will have, any impact whatsoever in curbing anti-social behaviour in WA. If the UK experience is anything to go by, PBOs will fail dismally to address anti social behaviour.

What is abundantly clear is that the PBO Act is an ill conceived and pernicious piece of legislation, which targets the most vulnerable in our community - the homeless, those with mental health and cognitive impairments, poly substance abusers and the indigent. It acts to criminalise poverty. The continued enforcement of the PBO Act will further marginalise and exclude such people and ultimately culminate in their imprisonment. The introduction and enforcement of the PBO Act is indicative of a community which has little or no regard for the humanity of its most vulnerable citizens.

Members of the judiciary have also expressed serious concerns about the operation of the PBO Act. For example, in May last year Magistrate Heaney admonished WA Police for instituting an application for a PBO against a homeless, alcohol and drug addicted Aboriginal man , labelling the proceedings a “waste of time and paper” because the threat of jail or a \$6,000 fine would be pointless, as the man “wouldn’t have had six cents on him”. Magistrate Heaney also criticised the imposition of prohibited areas on the man noting that “it’s silly to

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<sup>5</sup> Page 2: <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/asbo-stats-england-wales-2011/asbo11snr?view=Binary>

<sup>6</sup> Page 3: <http://www.official-documents.gov.uk/document/cm83/8367/8367.pdf>

<sup>7</sup> *Ibid*

<sup>8</sup> *Ibid*, p16

<sup>9</sup> *Ibid*, p25

<sup>10</sup> Page 3: [http://www.angus-reid.com/wp-content/uploads/2012/02/2012.02.22\\_Asbos\\_BRI.pdf](http://www.angus-reid.com/wp-content/uploads/2012/02/2012.02.22_Asbos_BRI.pdf)

expect Mr .... to be taking this map around with him everywhere he goes and that he can go in Wellington street, he can't walk up and down Barrack Street."

On 16 August 2011, in the course of debate concerning a disallowance motion in respect of the PBO Bill, Mr Michael Mischin MLA said:

*"When this legislation was debated, the opposition and the Greens made a variety of extravagant claims about how it would be used. Those claims have been persisted with as the foundation for this motion. **The government maintains that the legislation will be used to target serious repeat offenders, and that the scheduled list of offences will aid in this approach.** The police are taking a cautious and methodical approach to their training and the implementation of the act to ensure it will be used appropriately and in line with the government's intentions. **If, at the first review of the act, the Greens can point to overuse or misuse of any of the prescribed offences, the government will consider the arguments at that time...**" (emphasis added)*

**Recommendation:**

**ALSWA strongly recommends that the PBO Act be repealed.**

## **APPENDIX: Case Studies**

### **Mr A.**

#### **1. Personal circumstances**

Mr A is a homeless, alcoholic, Aboriginal man who has a cognitive impairment as a result of sniffing solvents.

#### **2. Criminal History**

Mr A's criminal record largely comprises low-level public order type offending. He has 16 convictions for breaching a move on order, 23 convictions for breaching bail, as well as 48 convictions in relation to various Public Transport Authority regulatory offences. These convictions are casually connected to his deprived personal circumstances.

#### **3. Details of the PBO Application**

A PBO application was instituted seeking to exclude Mr A from entering Northbridge and the Perth CBD for a period of 18 months.

The relevant offence relied on for the purposes of s8(2)(a)(i) of the PBO Act was an offence of failing to obey a move-on order which involved Mr A sitting on a bench seat in Northbridge 3½ hours after being served with a move on notice directing him to leave that area.

The relevant offence relied on for the purposes of s8(2)(a)(ii) of the PBO Act was another offence of failing to obey a move-on order where Mr A was ordered to move 1km from Northbridge. Mr A was found by police 3½ hours later sniffing glue (which is not an offence) and drinking alcohol (street drinking is punishable by a fine only) in East Perth. He was approximately one kilometre from Northbridge.

ALSWA's submission at the hearing of the application for a PBO was that, although both offences were prescribed offences under the PBO Act, they did not satisfy the definition of anti-social behaviour so as to justify the imposition of a PBO.

Further, the first relevant offence was committed on the border of the exclusion area proposed under the PBO application and the second relevant offence was outside the exclusion area. Hence, the determination of the exclusion area bore little connection with Mr A's offending history.

A PBO was granted in preventing Mr A from entering the Perth CBD and Northbridge areas for 18 months.

#### **4. Effect of the PBO**

Mr A has already breached the PBO on two occasions and could easily have been sentenced to a term of imprisonment. It is highly likely that, because of his cognitive impairment, Mr A does not understand the terms of the PBO. Further, Mr A's personal circumstances point strongly to the fact that Mr A has little capacity to comply with it.

**Ms B.**

**1. Personal circumstances**

Ms B is a homeless, alcoholic, Aboriginal woman. Ms B has experienced domestic violence. Ms B has several serious health issues, including diabetes and a thyroid problem.

**2. Criminal History**

Ms B's criminal record is predominately made up of minor public order type offending. She has 22 convictions for breaching a move on order, 45 convictions for breaching bail, 28 convictions for disorderly behaviour, four convictions for trespassing and four convictions for street drinking.

**3. Details of the PBO Application**

A PBO application sought to exclude Ms B from entering Northbridge and Perth CBD for 18 months.

The relevant offences relied upon for the purposes of s8(2)(a) of the PBO Act involved charges of disorderly behaviour where Ms B had sworn at police.

**4. Effect of the PBO**

The PBO would restrict Ms B from accessing homeless services in the Northbridge area such as RUAH and programs to assist with her with her alcohol issues.

The publication of her personal details on the website could compromise her safety as a victim of domestic violence.

**Mr C.**

**1. Personal circumstances**

Mr C is a 39 nine year old homeless Aboriginal man who suffers from cognitive impairment and serious psychological problems. He endured a traumatic childhood and suffered abuse when in foster care. He has abused alcohol and drugs from an early age. Mr C was recently admitted to Graylands Hospital where there were observations of psychotic behaviour, poly-substance abuse, and possible schizophrenia.

**2. Criminal History**

Mr C has an extensive criminal history dating back to 1985. The offending history is a direct function of his difficult early life and more recently, his mental health problems.

**3. Details of the PBO Application**

A PBO application sought to exclude Ms B from entering a specific part of Northbridge.

Mr C was in custody in relation to criminal matters at the time of the hearing of the application for the PBO. Mr C appeared in court in a distressed condition and was not wearing a shirt.

ALSWA's submissions at the hearing included that:

- Mr C suffered from significant mental health issues and would have real difficulty in complying with terms of the PBO; and
- Mr C's pending criminal proceedings were likely to result in a substantial term of immediate imprisonment, making the imposition of a PBO a futile exercise.

A PBO was granted for 18 months.

**4. Effect of the PBO**

Mr C's criminal proceedings are listed for hearing in June 2014. Immediate imprisonment is inevitable and for some time. As noted above, the imposition of a PBO in these circumstances is an exercise in futility and a waste of resources.

**Ms D.**

**1. Personal circumstances**

Ms D is a homeless, alcoholic, Aboriginal woman with mental health issues.

**2. Criminal History**

Ms D's criminal record is predominately made up of low-level public order type offending, including five convictions of breaching a move on order, 26 convictions for breaching bail, 21 convictions for disorderly behaviour and several convictions for assault.

**3. Details of the PBO Application**

A PBO application was instituted seeking to exclude Ms D from entering Northbridge and the Perth CBD for a period of 18 months.

The relevant offences relied upon for the purposes of s8(2)(a) of the PBO Act involved charges of disorderly behaviour where Ms D had sworn at police.

**4. Effect of the PBO**

A PBO preventing Ms D from entering Northbridge and the Perth CBD would mean that she would not be allowed to occupy the very space where she spends her days and sleeps at night.

**Mr E.**

**1. Personal circumstances**

Mr E is 32 years old. Mr E is one of seven children. His mother is deceased.

Mr E's mother was unable to care for him as a child and he was raised by his grandparents. Both grandparents are deceased.

Mr E ran away from home at the age of 12. Between the ages of 12 and 14, Mr E lived with other relatives in suburban Perth and the Goldfields.

Mr E left school at the age of 14 after completing part of Year 8. He is functionally illiterate and innumerate.

Mr E has never worked. Mr E receives a disability support pension. He has no assets and lives a hand to mouth existence.

Mr E has been homeless since the age of 14. During that time, Mr E has lived almost continuously on the streets of Perth CBD and Northbridge. He sleeps with other homeless Aboriginal people, many of whom are relatives.

At the time of the application for a PBO, Mr E was sleeping at either the grounds of the Wesley Church on William Street, in Weld Square, in Wellington Square, or at a car park next to the Aboriginal Legal Service of WA, opposite Mclvor train station.

Mr E began sniffing solvents, including petrol, paint and glue, at the age of 10. Mr E has sniffed solvents on a daily basis for over 20 years.

Mr E started drinking alcohol at the age of 11. Mr E has consumed alcohol on a daily basis for over 20 years.

Mr E is wholly reliant on the various agencies in the Perth CBD and Northbridge areas which provide essential services to the homeless, to survive.

**2. Criminal History**

At the time of the application for a PBO, Mr E had been issued with 463 move on notices since 1 January 2006

Mr E has approximately 226 prior criminal convictions, spanning 24 years, including 25 prior convictions for breaching move on notices. The majority of Mr E's offending is in relation to public order offences, including disorderly conduct, breaches of move on notices, failing to provide personal details to police and stealing. Mr E's offending history is a function of his deprived and dysfunctional lifestyle.

**3. Details of the PBO Application**

A PBO application was instituted seeking to exclude Mr E from entering Northbridge and the Perth CBD for a period of 18 months.

The relevant offence relied on for the purposes of s8(2)(a)(i) of the PBO Act was an offence of disorderly behaviour where Mr E had sworn at police.

The relevant offence relied on for the purposes of s8(2)(a)(ii) of the PBO Act was an offence of failing to obey a move-on order where Mr E was found by police in the Northbridge area after having earlier been issued by police with a move order which required him to leave the Northbridge area.

#### **4. Effect of the PBO**

Although undiagnosed, it is almost certain that Mr E suffers from a form of serious cognitive impairment, consequent upon years of acute substance abuse. Mr E fell asleep in court and snored loudly during proceedings for an application for a PBO. He was earlier unable to provide instructions in order to complete an affidavit outlining his personal circumstances because he also fell asleep. When informed that a PBO would prevent him from entering the Northbridge precinct, his response was "but that's where I live".

The entire notion that an alcoholic, solvent sniffing, homeless Aboriginal person, who spends each and every day wandering around the Perth CBD, Northbridge and surrounding areas, with other downtrodden and hopeless Aboriginal people, looking for his next drink and solvent to sniff, would have any capacity to comply with a PBO which prevents him from occupying the very areas in which he lives and moves, is fanciful, non sensical and borders on the offensive.

A PBO, if granted, would have further enmeshed Mr E in the criminal justice system. The purpose of the PBO would not be achieved in any way whatsoever. A prosecution for breaching a PBO would only add to the public order offences which brings Mr E into almost daily contact with the courts. Each arrest would almost certainly result in a refusal of bail. Eventually, Mr E would be imprisoned. The notion that Mr E would be specifically deterred from breaching a PBO by the prospect of imprisonment and that like minded persons in his situation would be generally deterred from breaching a PBO imposed on them, by the prospect of going to jail, is simply delusional.

On release from jail, Mr E would continue to breach the PBO and the revolving door would continue to turn. The cost to the community on every single level is obvious.

The application for the PBO was withdrawn part of the way through the PBO hearing.

**Mr F.**

**1. Personal circumstances**

Mr F is a 45 year old Aboriginal man who has been homeless for about 10 years, following a relationship breakdown.

Mr F is also indigent and has not worked for over 10 years. He survives on Centrelink payments.

Mr F started drinking and using cannabis as a 16 year old. He has been drinking on a daily basis since the age of 18. On average, Mr F drinks between three or four casks of wine a day. Mr F spends each waking hour heavily intoxicated. Mr F's capacity to exercise rational judgements to regulate his behaviours and conduct is largely nonexistent.

Mr F sleeps in the alleyways in the Perth CBD with other homeless Aboriginal people. The area that Mr F sleeps in includes the area it is proposed to ban him from under a PBO.

Each and every one of the homeless people that Mr F sleeps with is in the same position. All are prolific offenders, mainly in relation to minor public order offences, and are routinely before the Perth Magistrates Court.

Like Mr F, each and every one of these homeless people has an acute substance problem.

In all likelihood, each and every one of these homeless people has some form of cognitive impairment or mental illness, stemming from years of substance abuse

Like Mr F, each and every one of them has been or is the subject on an application for a PBO seeking to ban them from Perth CBD and Northbridge.

This group of Aboriginal people sticks together and closely. Togetherness and unity provides safety and support and emotional nourishment in an acutely difficult and harsh world.

Separation from the group especially following the issuing of a move on notice and, by extension a PBO, makes for loneliness. More importantly, separation from the group and being forced to be on their own, especially at night, increases the risks of assault and the like, especially from drunken male revellers. There is also safety in numbers such that the issuing of a PBO will increase those concerns and risks exponentially.

**2. Criminal History**

Mr F has been issued with 135 move on notices since June 2006. Of those, Mr F has been issued with 77 move on orders which have required him to move away from Perth CBD. In addition, Mr F has been issued with 45 move on orders which have required Mr F to move away from Northbridge.

Mr F has about 130 prior convictions, mainly for public order offences. Most of Mr F's offences have been punished by way of financial penalties or immediate imprisonment, involving a practical recognition by sentencing courts of Mr F's inability, by dint of his

social circumstances, to comply with other dispositions, such as community based orders or suspended sentences.

### **3. Details of the PBO Application**

A PBO application was instituted seeking to exclude Mr E from entering Northbridge and the Perth CBD for a period of 18 months.

The relevant offences relied upon for the purposes of s8(2)(a) of the PBO Act involved charges of disorderly behaviour where Mr F had sworn at police.

### **4. Effect of the PBO**

It is an exquisite irony that the Affidavit sworn by a senior police officer, in support of the application for a PBO, includes a document published by the City of Perth entitled "Homeless Services in the City" which states:

West Australians who are at risk of, or experiencing homelessness, are some of the most vulnerable in the community and require support to end homelessness.....

All people have a right to be in public places.....

People will not be harassed or moved on from public places unless there is a real threat to the public: their personal safety or they are causing a disturbance.

It beggars belief that a document such as this would be annexed to an Affidavit sworn in support of an application for a PBO, which if granted, would deny Mr F the right to be in public places in the Perth CBD and Northbridge areas and would lead to him being arrested and charged and perhaps imprisoned, if he was located in those areas in breach of a PBO. .

This all begs the question – if Mr F is banned from Perth CBD and Northbridge areas for up to two years pursuant to a PBO, where is he going to go? It is highly likely that Mr F will either move to another area and, with little or no support from agencies which assist the homeless, the issues which have led to the application for a PBO in the first place will simply get worse or Mr F will end up in jail. However, on release from jail, nothing will have changed and the merry go round of substance abuse, homelessness, breaches of PBOs and likely imprisonment will resume.

Again, the objects of a PBO will remain totally illusory.

**Ms G.**

**1. Personal circumstances**

Ms G was an Indigenous woman who experienced extended periods of homelessness and had a history of serious solvent abuse. She passed away just prior to her 50<sup>th</sup> birthday. Ms G was functionally illiterate, had never worked and been admitted to psychiatric wards in relation to drug-induced conditions which later developed into psychiatric problems. She was acutely socially disadvantaged and very arguably one of the most profoundly damaged and marginalised individuals in our community.

**2. Criminal History**

Ms G had a lengthy history of minor public order offending reflective of her disadvantaged lifestyle. Most offences were disposed of by way of a small fine.

**3. Details of the PBO Application**

A PBO application was instituted seeking to exclude Ms G from entering Northbridge and the Perth CBD for a period of 18 months and to prevent her from consuming alcohol or being under the influence of alcohol in a public place.

**4. Effect of the PBO**

Ms G passed away before the application was determined. It is a laughable proposition to expect that a lifelong alcoholic, mentally unwell, homeless Aboriginal woman would have been able to flick a switch and refrain from drinking alcohol and stay away from an area which she had lived and slept in for over 20 years on pain of prosecution for breaching a PBO.