

Parliamentary Joint Committee on Human Rights: Inquiry into Compulsory Income Management

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Introduction

I am a Professor in the Faculty of Law at the University of Technology Sydney and a Visiting Professor in the School of Law at the University of the Witwatersrand. I have written extensively on the topic of the right to social security and the right to non-discrimination and equality in international law and in comparative human rights law. This work includes my recent chapter on the 'Right to Social Security' in the Oxford Handbook on Social and Economic Rights: <https://academic.oup.com/edited-volume/44323/chapter/372773904> and my book *Developing the Right to Social Security - A Gender Perspective* (Routledge, 2016). In the book I specifically address the issue of Compulsory Income Management from a human rights perspective (chapter 5).

This submission draws on this work in addressing the review of the policy of 'compulsory income management' for its compatibility with human rights by Parliament's Joint Committee on Human Rights. I will restrict my brief remarks to the final point in the terms of reference: the extent to which compulsorily restricting the spending of welfare payments is consistent with international human rights law, particularly the rights to social security, an adequate standard of living, equality and non-discrimination, a private life, and the rights of the child.

Compulsory Income Management and the Right to Social Security and Non-Discrimination

Since its introduction following the 'Northern Territory Emergency Response' compulsory income management has been the subject of criticism from international human rights bodies. In his 2010 report the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people, James Anaya, found the policy to be racially discriminatory.¹ A concern with the human rights compatibility of the Stronger Futures legislation that followed the NTER measures was voiced by this Committee in 2013.² It was also widely criticised by the Australian Human Rights Commission, academics and community bodies.

The concerns with race discrimination of the initial measures have also extended to gender discrimination due to the numbers of women subject to income management and the role of

¹ Anaya, J., Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Situation of Indigenous People in Australia, 4 March 2010, A/HRC/15/37/ Add.4, appendix B, para 37.

² Parliamentary Joint Committee on Human Rights 'Examination of legislation in accordance with the Human Rights (Parliamentary Scrutiny) Act 2011: Stronger Futures in the Northern Territory Act 2012 and related legislation' (June 2013), at para 1.223.

women who often have responsibility for shopping for families, and the way that income management has limited their shopping options sometimes increasing the burdens of them, which are additional to their disproportionate caring obligations.³ The Australian Law Reform Commission found that compulsory income management can be dangerous and inappropriate in the context of family violence and recommended it not be used in such cases.⁴ The Commission noted that people experiencing family violence are often denied agency and control over themselves and their households and suggested that government measures that further remove control are likely to be harmful in deepening the sense of disempowerment of such people. Indirect race and gender discrimination is also combined in intersectional discrimination experienced by First Nations and other racialized groups of women in Australia subject to compulsory income management.

Income management imposes hardships on women recipients of social security who are carrying the care burdens of society, in poverty, and who should be entitled to welfare support, without limitations, despite their lack of paid work. This support should be fully accessible without harsh, discriminatory and inappropriate conditions attached to it, within a social security system that is designed to improve the position of women rather than one which stigmatises and burdens them. Instead, the measures hinder women's access to the right to social security and, rather than promoting gender equality, reinforce women's disproportionate household responsibilities while imposing unfair new requirements.

Compulsory income management introduces greater conditionality and control within the Australian social security system. The shift from social security as a right to a requirement that a person must prove that they are deserving is a troubling trend. Another example, criticised by this Committee, and now withdrawn by the current government, was a program called ParentsNext, which imposed demanding and punitive conditions on access to social security, primarily affecting women already burdened with caring responsibilities. Greater conditionality is accompanied by increased monitoring and punitive controls that undermine the right to social security.

The UN Committee on Economic, Social and Cultural Rights, in General Comment 19 on the Right to Social Security in ICESCR has stated 'Qualifying conditions for benefits must be reasonable, proportionate and transparent'. Compulsory income management in Australia is neither reasonable nor proportionate in limiting recipients' right to social security by controlling their use of the funds to which they are entitled. While this is somewhat different to other forms of conditionality that demand certain actions be met or behaviours followed in order to access or retain social security payments, compulsory income management can be seen as similarly suspect in assuming that recipients are not capable of rational decision-making and responsible self-management and in removing their agency. In this sense it reinforces stereotypes about social security recipients as less capable or deserving than other members of society who are entitled to control their own income as they please. Imposing conditions that control expenditure of social assistance payments raises further human rights concerns regarding autonomy, dignity and privacy.

³ Equality Rights Alliance, 'Women's Experience of Income Management in the Northern Territory' (Equality Rights Alliance, 2011).

⁴ Australian Law Reform Commission, 'Family Violence and Commonwealth Laws – Improving Legal Frameworks: Final Report' (2011), at 247–83.