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Committee Secretary
Senate Standing Committees on Community Affairs
By email: community.affairs.sen@aph.gov.au

Economic Justice Australia submission to the Social Security (Administration) Amendment (Income Management Reform) Bill 2023

About Economic Justice Australia

1. Economic Justice Australia (EJA) is the peak organisation for community legal centres providing specialist advice to people on their social security issues and rights. Our members across Australia have provided people with free and independent information, advice, education and representation in the area of social security for over 30 years.
2. EJA provides expert advice to government on social security reform to make it more effective and accessible. Our law and policy reform work:
 - strengthens the effectiveness and integrity of our social security system;
 - educates the community; and
 - improves people's lives by reducing poverty and inequality.
3. EJA welcomes the opportunity to make this submission to the Committee's inquiry into the Social Security (Administration) Amendment (Income Management Reform) Bill 2023 (the Bill). Given our fundamental concerns regarding the Bill, as outlined below, EJA recommends that the Bill not be passed. In the alternative, we propose amendments to ensure progress toward ending compulsory income management. We also recommend that the Bill's Statement of Compatibility with Human Rights be reconsidered and revised so as to acknowledge and address ongoing compatibility issues.

Summary of recommendations made in this submission

➤ **Recommendation A**

- That the committee recommend against passage of the Bill
- In the alternative, we propose that the Bill be amended so as to:
 - specify that the proposed amendments are transitional, pending the phasing out of compulsory income management

- *include a sunset clause for compulsory Enhanced Income Management (eIM) measures*
- *remove the Ministerial discretionary power to extend eIM regime to new regions / jurisdictions via instrument*
- *outline processes for consultations on ceasing compulsory income management, including timelines for the consultations.*
- **Recommendation B**
- *If the Committee is to support passage of the Bill, we propose that the Bill be amended to include substantive reforms to enhance exemption and exit policies, including to enable permanent exemptions and exits.*
- **Recommendation C**
- *If the Committee is to support passage of the Bill, we propose that the Bill be amended to provide for a rigorous and transparent consultation process, including regarding the ongoing use of compulsory income management, and options for supporting people transitioning out of the system.*
- **Recommendation D**
- *That the committee recommend against passage of the Bill because passage would enact measures that fail to comply with Australia's human rights obligations*
- *In the alternative, that the Statement of compatibility with human rights be re-drafted and the human rights considerations properly addressed prior to implementation.*

New income management regime – a 'hybrid' program with a rebranded card

4. As outlined in the comprehensive Bills Digest produced to assist early consideration of the Bill (Bills Digest No. 67. 2022-23),¹ the *Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Act 2022* brought the Cashless Debit Card regime to an end, and introduced part of the legislative framework for establishing the Enhanced Income Management (eIM) regime. The Bill builds on this framework – incorporating all existing Income Management measures currently in place into the eIM regime.
5. We understand that implementation of both compulsory and voluntary eIM was commenced from 6 March 2023 in places previously subject to compulsory income management under either the CDC program or the existing Income Management regime – namely Cape York, Doomadgee, and the Northern Territory. Compulsory CDC program participants in former CDC program areas have also been moved to eIM from 6 March 2023.²
6. If the Bill is passed, all people subject to compulsory income management under the existing regime would be given the option of either retaining their BasicsCard, or moving to eIM. They would still be a compulsory participant but with their BasicsCard

¹ Don Arthur and Michael Klapdoor, 'Social Security (Administration) Amendment (Income Management Reform) Bill 2023' (Bills Digest No 67, Parliament of Australia, March 2023).

² See <https://www.servicesaustralia.gov.au/enhanced-income-management-and-smartcard>

replaced by a SmartCard. The existing Income Management program would be closed to new entrants.

7. The Bills Digest aptly describes eIM as a 'hybrid welfare quarantining regime, ... in that it reflects the policy and legislative framework of the existing IM regime but uses an identical technology platform as the CDC regime to operate.'³
8. EJA is concerned that the title of the Bill is misleading, and that the focus of the Explanatory Memorandum (EM) belies the fact that there is little by way of 'reform' in the proposed legislative changes. The Bill in fact reinforces compulsory income management as a component of the social security policy framework, rebranded as Enhanced Income Management.

Absence of sunset clause for compulsory income management

9. The Bill amends complex and controversial legislation of fundamental importance to some of the most vulnerable individuals in Australia, primarily First Nations people from communities facing a range of deep-seated social and economic challenges.
10. Most importantly, the Bill embeds compulsory income management in legislation as a permanent program, with no sunset clause. It also enables the *expansion* of the program to new regions / jurisdictions through Ministerial discretion, via legislative instrument.
11. The Government has made commitments⁴ to ending compulsory income management, in recognition that compulsory income management is not effective.⁵ The Government's intentions are irrelevant if the legislation it proposes permanently entrenches compulsory income management by another name. The absence of a sunset clause enables compulsory income management to continue indefinitely, without any timeframe for transitioning to alternatives. If the Bill is to pass, it should at least be amended to include a sunset clause.
12. It is also disappointing that the EM fails to provide explanations to enable considered and informed debate about the continuation of compulsory income management. The Bill's EM side-steps the issue, failing to explain the absence of a sunset provision.
13. In our view, the EM should have clearly outlined the rationale for the continuation and potential expansion of compulsory income management as provided by the Bill, and spelt out the aspects of the CDC program and current compulsory income management that are to be replicated in the 'enhanced' program. Whilst the Bills Digest points to reasons for continuation and potential extension of compulsory income management under the new regime, the EM fails to provide an explanation or rationale.

³ Don Arthur and Michael Klapdoor, 'Social Security (Administration) Amendment (Income Management Reform) Bill 2023' (Bills Digest No 67, Parliament of Australia, March 2023) 1.

⁴ See, eg, Saskia Mabin and Matt Garick, 'Federal Labor pledges to scrap compulsory income management if it wins the election' *ABC News* (online) 20 April 2022 <<https://www.abc.net.au/news/2022-04-20/federal-labor-scrap-compulsory-income-management/101001642>>.

⁵ Don Arthur and Michael Klapdoor, 'Social Security (Administration) Amendment (Income Management Reform) Bill 2023' (Bills Digest No 67, Parliament of Australia, March 2023) 13.

Ministerial discretion to extend income management into new areas / jurisdictions

14. Particularly given the Government's stated commitment to ending compulsory income management, we find it difficult to understand why the Bill provides Ministerial discretion to declare new locations subject to both voluntary and compulsory income management via legislative instrument. While it may be acceptable, arguably, to provide that the Minister may declare new areas for extension of the voluntary income management program, we propose that it is highly inappropriate to provide the Minister with such powers in respect of compulsory income management.
15. Minister Rishworth's second reading speech states that the Bill 'does not change the current ability for state and territories to refer people to income management where there are concerns, for example, relating to child protection'.⁶ However, it seems that the Bill extends these abilities to States and Territories not already empowered to engage in such referrals, including Western Australia, Tasmania and the Australian Capital Territory, and expands the abilities of empowered States and Territories to uniformly make referrals under all the above-mentioned compulsory income management streams. The EM states that the 'disengaged youth' and 'long-term welfare payment recipients' measures are currently intended to continue in the Northern Territory only, however, proposed section 123SDA (item 32) enables these measures to apply in areas outside of the Northern Territory.
16. This means that there is nothing to prevent extension by a future government. If a policy decision is made by this or a future government to extend eIM, including compulsory income management, across all jurisdictions, no further legislation will be required. The Minister for Social Services will be empowered to do this via legislative instrument under the Bill's proposed amendments—in relation to child protection, school enrolment and attendance, other State/Territory referrals, vulnerable welfare payment recipients, disengaged youth, long-term welfare payment recipients.
17. Again, if it is the Government is in fact committed to ending compulsory income management, it is difficult to understand why various provisions of the Bill embed and extend compulsory participation.
18. We acknowledge that providing for Ministerial discretion via instrument can be useful where there is a need for flexibility and responsiveness in delivering social security payments, e.g., to enable payment qualification for a new class of visa, or declaration of an area attracting Natural Disaster Payment. However, providing Ministerial discretion to declare areas / jurisdictions subject to compulsory income management, extends too much power to the executive, enabling fundamental policy change at the whim of Government and without Parliamentary scrutiny.

➤ **Recommendation A**

- *That the committee recommend against passage of the Bill*

⁶ Amanda Rishworth, Second Reading Speech: Social Security (Administration) Amendment (Income Management Reform) Bill 2023, House of Representatives, Debates, 9 March 2023, 19.

- *In the alternative, we propose that the Bill be amended so as to:*
 - o *specify that the proposed amendments are transitional, pending the phasing out of compulsory income management*
 - o *include a sunset clause for compulsory Enhanced Income Management (eIM) measures*
 - o *remove the Ministerial discretionary power to extend eIM regime to new regions / jurisdictions via instrument*
 - o *outline processes for consultations on ceasing compulsory income management, including timelines for the consultations.*

Exemption and exit policies – absence of reform

19. We understand that the current Bill makes no functional changes to compulsory income management exemption and exit processes, with exemptions limited to a maximum of 12 months and subject to monitoring of behaviour – including with regard to parenting, school enrolment and attendance, work or study and indicators of financial vulnerability. The decision-making principles for individual exemptions are to be determined by legislative instrument.

20. Compulsory income management exit criteria and processes for seeking exit are complex and opaque. The onerous exit application process is a significant barrier for people whose first language is not English and for people with low level English literacy; and for vulnerable women and young people in urgent need of access to cash due to domestic violence and/or homelessness. There is no provision enabling indefinite exit from compulsory income management in the current legislation, and there is no reform provided in the Bill. This means that participants at risk of or already experiencing acute harm as a result of compulsory income management will not be able to be permanently exempted or exited from the program.

➤ **Recommendation B**

- *We propose that if the Committee is to support passage of the Bill, the Bill be amended to include substantive reforms to enhance exemption and exit policies, including to enable permanent exemptions and exits.*

Consultation processes opaque

21. We are unaware of the status and extent of community consultations to date regarding eIM further to what is outlined in the Bills Digest. While it is clear that there has been outreach to communities regarding the rollout of the SmartCard, it is unclear whether the changes proposed in the Bill were informed by consultations specifically on the future of compulsory income management across all affected regions / jurisdictions, with reference to potential expansion into additional regions / jurisdictions. The EM fails to provide details of the consultation process or timeline.

22. There is a need for the Government to provide clear information regarding the eIM consultation process. We propose that the Bill should detail whom is to be consulted and the nature of the consultation process, with a timeline and reporting parameters –

including on compulsory income management and options for transitioning people out of the system.

➤ **Recommendation C**

- *If the Committee is to support passage of the Bill, we propose that the Bill be amended to provide for a rigorous and transparent consultation process, including regarding the ongoing use of compulsory income management, and options for supporting people transitioning out of the system.*

Need for Indigenous Voice to Parliament highlighted

23. Imposition of compulsory income management regimes contradicts the stated objectives of supporting participants with budgeting strategies and encouraging socially responsible behaviour. The degree to which people feel that they have autonomy and control over their actions and circumstances is a key determinant of responsible financial management and socially responsible behaviour.⁷ Participants in the CDC trials reported feeling 'powerless' and having 'control ... taken away' by the lack of consultation and the restrictions of the card.⁸
24. It is clear to us that had there been an Indigenous Voice to Parliament in place, the process for consideration of any extended rollout of compulsory income management would have been very different. It would have enabled processes ensuring proper scrutiny of proposals with input from all affected communities, and with examination of the differing perspectives of communities in different regions, such as communities from the Northern Territory and Cape York. Community input on national social security policy development would not be restricted to ad hoc local consultations at one end of the spectrum, and high-level submissions to Senate Committees at the other. Considering this Government's commitment to enshrining a Voice to Parliament, we would expect greater recognition and reflection of the importance of self-determination and participation in this Bill, noting its disproportionate impact on First Nations peoples.

Statement of compatibility with human rights fails to address or acknowledge fundamental issues

25. The Bill's Statement of Compatibility with human rights (SOC) fails to properly acknowledge and address human rights issues inherent to compulsory income management, and glosses over key concerns that have been raised over the years. For example, the Parliamentary Joint Committee on Human Rights (PJCHR) and the Australian Human Rights Commission (AHRC) have regularly raised concerns regarding the right to social security, the right to private life and the right to equality and non-

⁷ Prawitz, A. and Cohart, J. (2016) 'Financial Management Competency, Financial Resources, Locus of Control and Financial Wellness'. *Journal of Financial Counselling and Planning* 27(2): 142-157

⁸ Greg Marston et al, *Hidden Costs: An independent study into income management in Australia* (February 2020) 89 <https://espace.library.uq.edu.au/data/UQ_6863639/HiddenCostsReportFinal.pdf?>. 89

discrimination.⁹ The SOC does not explicitly recognise that this Bill is a continuation of compulsory income management and that the same human rights concerns therefore apply. The use of 'superior technology' in administering eIM scheme does not address the fundamental human rights problems associated with Australia's social security income management programs.

Equality and non-discrimination

26. The SOC recognises that First Nations people are disproportionately represented in Income Management/CDC cohorts. However, the SOC states that the Bill does not 'directly limit' rights to equality and non-discrimination. Instead, the SOC states that those who become subject to enhanced income management do so on the basis of their 'individual circumstances' including their 'usual place of residence'. This belies the fact that income management involves indirect discrimination because the application of the scheme and the geography of where it has been rolled out affects First Nations people disproportionately.¹⁰ Indirect discrimination, as well as direct discrimination, are both prohibited under human rights and domestic discrimination law.¹¹ Indirect discrimination is defined as 'a rule or measure that is neutral on its face or without intent to discriminate', which exclusively or disproportionately affects people with a particular personal attribute.¹² The conclusion that Income Management schemes are indirectly discriminatory has been reached by the AHRC amongst others.¹³ This paragraph of the SOC is a misapplication of discrimination law and needs to be re-written for accuracy.
27. The SOC goes on to state that there has been an attempt to ensure any 'indirect limitations on rights to equality and non-discrimination are avoided or minimised in a way that is reasonable, necessary and proportionate.' However, the SOC does not explain or justify how these limitations on rights to equality and non-discrimination are reasonable, necessary or proportionate. This analysis needs to be included in order to justify why rights are being limited by the Bill (and not just with respect to discrimination, but all the rights engaged).
28. The SOC notes that 'extensive consultation' has been undertaken with affected groups – but as noted above, no detail is provided in the Bill or EM about what this has entailed. Participation via genuine consultation is required by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)¹⁴ (and promised by the proposed Voice to

⁹ Australian Human Rights Commission, submission to Prime Minister and Cabinet, *Remote participation for Indigenous Peoples*, 19 February 2018, 18; Parliamentary Joint Committee on Human Rights, *Report Number 9 of 2017*, 37; Australian Human Rights Commission, submission to the Senate Community Affairs Legislation Committee, *Inquiry into Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, October 2019; Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2015* (2015) 55-58.

¹⁰ See, eg, Australian Human Rights Commission, submission to the Senate Community Affairs Legislation Committee, *Inquiry into Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, October 2019, 5.

¹¹ *Racial Discrimination Act 1975* s 9(1A). See also Attorney-General's Department, 'Rights of Equality and Non-discrimination' (Web Page) <<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/rights-equality-and-non-discrimination>

¹² *Althammer v Austria* HRC 998/01, [10.2].

¹³ See, eg, Australian Human Rights Commission, submission to the Senate Community Affairs Legislation Committee, *Inquiry into Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, October 2019, 5; Victoria Tauli-Corpuz, *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*, UN Doc A/HRC/36/46/Add.2 (8 August 2017).

¹⁴ United Nations Declaration on the Rights of Indigenous, GA Resolution 61/295, UN Doc A/61/L.67 (2007) arts 19, 3, 5.

Parliament). There is a lack of specificity around processes of consultation in the SOC. Questions to be answered include – how were these consultations conducted and what communities were involved? How was input from these consultations with communities considered in relation to the decision to continue compulsory income management as eIM? Considering that the CDC and Income Management programs have been repeatedly criticised for a failure to consult with communities and incorporate principles of self-determination,¹⁵ this is a notable and concerning absence.

Self-determination, autonomy

29. The SOC states that eIM ‘doesn’t affect a person’s ability to freely pursue their economic social and cultural development’ because ‘they can continue to pursue a portion of their welfare payments when and how they choose’. With respect, this is disingenuous. Compulsory income management (including eIM) by definition restricts what a person can and cannot do with the majority of their social security payments without being given a choice in the matter. This is a significant imposition on individual autonomy, self-determination and the right to private life, and the core of the human rights concerns with compulsory income management. If the scheme were purely voluntary – and therefore did involve individual choice to participate in the scheme – these issues would not arise. The ‘choice’ to move from one compulsory income management card to another income management card does not resolve this inherent problem. Moreover, the use of ‘superior technology’ and improved ‘customer experience’ regarding the new scheme are irrelevant to these points.

Right to social security, right to an adequate standard of living and right to private life

30. The SOC rightly notes that article 9 of the International Covenant on Social Economic and Cultural Rights recognises the right of everyone to social security. It states that the right in this case is ‘limited only to the extent that individuals subject to the regime may not use a portion of their payment to purchase excluded goods or services’. However, this is a significant limitation that interferes with the right to private life. Rights to social security, and to an adequate standard of living, are not contingent on a person giving up their right to privacy and personal autonomy. Access to social security should be available to those who need it, and not come with further rights-infringing conditions attached. Social security recipients have the same right to private life and choice as anyone else.
31. Compulsory income management programs treat the social security cohort distinctly from the rest of population. If a person who is not on social security income support is unable to manage their own funds, they are subject to a public guardianship or trustee arrangement that manages their money in accordance with their best interests. So too are many people in receipt of social security income support – with their payments administered by the public guardian or trustee. The eIM cohort, by contrast, have their funds managed by Services Australia, subject to broader criteria than those that apply in respect of the public guardian or trustee in their jurisdiction.

¹⁵ See, eg, Phillip Mendes, ‘Top-down paternalism versus bottom-up community development: A case study of compulsory income management programmes in Australia’ *The International Journal of Community and Social Development* (2019) 1(1) 42 – 57.

32. In addition to having their personal choices restricted, people on compulsory income management are also subject to surveillance and data-sharing, without any control over how their data is used and what may be done with it. This is acknowledged in the SOC to an extent – the SOC notes that safeguards are in place with regard to government information sharing – but there is an open question as to how financial institutions will use and process personal data.

Limitations not justified

33. Limitations on human rights are justifiable if the limitation is a reasonable, necessary and proportionate means of achieving a legitimate aim. The SOC notes that the aim of the Bill is to 'reform income management by facilitating a seamless transition to the enhanced IM regime'. This is not the full picture, as what the Bill also aims to do is continue compulsory income management with the aid of newer technology.
34. There is extensive evidence showing that compulsory income management is ineffective in achieving its goals and that it has harmful effects for many.¹⁶ This evidence indicates that it is not a reasonable means of achieving a legitimate aim, and that limitations on human rights are therefore not justifiable. In one PJCHR report, it was noted that while income management 'may be of some benefit to those who voluntarily enter the program, it has limited effectiveness for the vast majority of people who are compelled to be part of it'.¹⁷ The PJCHR has also stated that compulsory income management is a disproportionate response to the issues it claims to address, questioning whether the policy is 'rationally connected' and 'effective to achieve' its objectives.¹⁸
35. The AHRC similarly views compulsory income management as incompatible with Australia's human rights obligations.¹⁹ For example, the Aboriginal and Torres Strait Islander Social Justice Commissioner June Oscar has stated:
- Limiting people's ability to access their welfare payments in cash does not address the reasons for drug and alcohol misuse, poverty, trauma, and lack of education...We need a multi-dimensional approach in collaboration with the people affected to tackle these issues. Income management measures like these should only ever be a last resort.*²⁰
36. If a Bill risks incompatibility with human rights, the statement of compatibility should acknowledge this and explain the considerations at hand. It should not claim that those risks do not arise, or minimise them through rhetoric. Human rights law sets out a clear legal framework for human rights assessments – and should be applied as such.

➤ **Recommendation D**

¹⁶ See, eg, Greg Marston et al, *Hidden Costs: An independent study into income management in Australia* (February 2020) <https://espace.library.uq.edu.au/data/UQ_6863639/HiddenCostsReportFinal.pdf?>.

¹⁷ Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Futures measures* (March, 2016) [4.63].

¹⁸ Parliamentary Joint Committee on Human Rights, *Report 6 of 2018* (June 2018), 38.

¹⁹ Australian Human Rights Commission, submission to the Senate Community Affairs Legislation Committee, *Inquiry into Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, October 2019.

²⁰ Aboriginal and Torres Strait Islander Social Justice Commissioner 'Cashless Debit Card Bill not Compatible with Human Rights' (Web page, October 2019) <<https://humanrights.gov.au/about/news/media-releases/cashless-debit-card-bill-not-compatible-human-rights>>.

- *That the committee recommend against passage of the Bill because passage would enact measures that fail to comply with Australia’s human rights obligations*
- *In the alternative, that the Statement of compatibility with human rights be re-drafted and the human rights considerations properly addressed prior to implementation.*

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