



8 May 2024

Committee Secretary
Parliamentary Joint Committee on Human Rights
PO Box 6100
Parliament House
Canberra, ACT 2600

By email: human.rights@aph.gov.au

Dear Secretary

Inquiry into Compulsory Income Management

The Australian Human Rights Commission (the Commission) welcomes the opportunity to make this submission to the Parliamentary Joint Committee on Human Rights' (the Committee) inquiry into compulsory income management (the Inquiry).

Background

Income management was introduced during the Northern Territory Emergency Response, otherwise known as the Northern Territory Intervention, in 2007, in response to the *Little Children are Sacred* report. The assumption was that gambling, drugs and alcohol use in Aboriginal communities contributed to child sexual abuse and that managing 50% of a person's welfare payments would see a reduction of social harms.

Since this period, income management has been expanded. In 2008, the BasicsCard was introduced and in 2016, the Cashless Debit Card (CDC). Of critical importance for rural, regional and remote communities, the CDC did not allow for online grocery shopping or the purchase of other essentials.

In 2022, and in accordance with its election commitment, the Government repealed the CDC through the *Social Security (Administration) Amendment (Repeal of Cashless Debit Cards and Other Measures) Act 2022*. The Government also established a new income management regime and compulsorily transitioned former CDC participants to the new regime. The new programme continues to restrict how participants are able to spend their money and restricts the withdrawal of cash.

In 2023, the *Social Security (Administration) Amendment (Income Management Reform) Act 2023* expanded access to this regime by introducing eligibility criteria for both compulsory and voluntary participation, extended the regime to include

'disengaged youth' and long-term welfare payment recipients, and extended the jurisdiction of the regime to other regions.

Australian Human Rights Commission's concerns

The Commission's position on compulsory income management schemes is that they infringe on:

- individuals' right to social security,
- the right to a private life and
- the right to equality and non-discrimination.¹

Additionally, they impact disproportionately and unfairly on women, and particularly Aboriginal and Torres Strait Islander women.

Individuals' right to social security and a private life

The right to social security is of central importance in guaranteeing human dignity for all persons. Income support is a fundamental part of social security, and should be accessed without discrimination and with the recognition that different people have differing needs. Social security is protected under Article 9 of the International Covenant on Economic Social and Cultural Rights (ICESCR). The right to privacy is protected under Article 17 of the International Covenant on Civil and Political Rights (ICCPR). Compulsory income management schemes fail to respect an individual's right to social security payments, and their right to determine how to spend their money to meet their individual needs without an intrusion of the State into this decision making.

Studies conducted on the CDC indicated that while there were some positive findings on participants' perceptions of safety and alcohol and gambling reduction, several other concerns about the regime were raised:

- almost a third of participants stated that it had actually made their and their children's lives worse;²
- limited evidence of crime reduction;
- occurrence of 'grog running', humbugging and gambling with debit cards;³ and
- instances of swapping goods and services for cash well below their value.⁴

While we acknowledge this research was conducted in 2017 regarding the CDC, it is likely that this iteration of income management would result in similar findings. Where the findings demonstrate negative impacts while also severely curtailing individuals'

¹ See also: Australian Human Rights Commission, *Submission to the Senate inquiry into Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, 2 October 2019.

² Orima Research, 'Cashless debit card trial evaluation: final evaluation report', (Department of Social Services, 2017) 82, 88-89, 118

³ Orima Research, 'Cashless debit card trial evaluation: final evaluation report', (Department of Social Services, 2017) 86.

⁴ Orima Research, 'Cashless debit card trial evaluation: final evaluation report', (Department of Social Services, 2017), 88-89.

human rights to social security and privacy, this suggests that the scheme does not warrant the curtailment of human rights.

These views were reflected in a number of submissions made to the Senate Standing Committee on Community Affairs in response to the Social Security (Administration) Amendment (Income Management Reform) Bill 2023. These submissions highlighted, among other things:

- that compulsory income management is a failed policy and has not delivered its intended outcomes in the past;
- it unfairly targets and negatively impacts Aboriginal and Torres Strait Islander people;
- confusion around the Government's recognition that there is no evidence for mandatory income management and deems it inappropriate for people receiving an age or veteran affairs pension, but supports it to continue for people receiving other types of income support;
- that there is no sunset clause to this legislation;
- there are no permanent exits or exemptions; and
- 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.⁵

The right to equality and non-discrimination

The enhanced income management scheme does not address existing and ongoing concerns with compulsory income management schemes: that they are ineffective and breach the right to equality and are discriminatory.

As at 3 November 2023, there were 28,811 income management participants, with 23,058 with the original BasicsCard regime, and 5,753 with the enhanced income management regime.⁶ The vast majority of participants are in the Northern Territory – 20,968 with the BasicsCard regime and 5,208 with the enhanced income management regime.⁷

⁵ Northern Territory Council of Social Services, *submission to Inquiry to Social Security (Administration) Amendment (Income Management Reform) Bill 2023*, 17 April 2023; Australian Council of Social Service, *submission to Inquiry to Social Security (Administration) Amendment (Income Management Reform) Bill 2023*, April 2023; Economic Justice Australia, *submission to Inquiry to Social Security (Administration) Amendment (Income Management Reform) Bill 2023*, 14 April 2023; Aboriginal Peak Organisations Northern Territory, *submission to Inquiry to Social Security (Administration) Amendment (Income Management Reform) Bill 2023*, May 2023.

⁶ The Senate Community Affairs References Committee, *Review of legislative instruments made under Part 3AA or Part of 3B of the Social Security (Administration) Act 1999 – Review 1*, February 2024

[https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/RB000291/toc_pdf/ReviewoflegislativeinstrumentsmadeunderPart3AAorPart3BoftheSocialSecurity\(Administration\)Act1999%e2%80%93Review1.pdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/RB000291/toc_pdf/ReviewoflegislativeinstrumentsmadeunderPart3AAorPart3BoftheSocialSecurity(Administration)Act1999%e2%80%93Review1.pdf).

⁷ The Senate Community Affairs References Committee, *Review of legislative instruments made under Part 3AA or Part of 3B of the Social Security (Administration) Act 1999 – Review 1*, February 2024

The Commission has previously raised concerns about the indirect discrimination caused by compulsory income management schemes, which disproportionately impact Aboriginal and Torres Strait Islander peoples. Indirect discrimination occurs when a law or policy applies to everyone, but has the effect of disadvantaging some people because of a personal characteristic they share.

While the measures may not directly target Aboriginal and Torres Strait Islander peoples, their practical effect disproportionately impacts this group on account of the programme area populations having a higher—and often significantly higher—proportion of Aboriginal and Torres Strait Islander people than is the national average.

Disproportionate impact on women: breach of CEDAW, ICESCR and ICCPR

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires all ratifying States to eliminate discrimination against women and girls in all areas and promotes women's and girls' equal rights. Compulsory income management schemes disproportionately impact women, particularly First Nations women, in contravention of the object and purpose of CEDAW.

At the Senate Standing Committee on Community Affairs' public hearing into the review of legislative instruments made under Part 3AA or Part 3B of the *Social Security (administration) Act 1999* (the Hearing), Economic Justice Australia raised serious concerns that compulsory income management undermines women attempting to escape domestic and family violence by limiting access to money and where women can choose to spend it. They highlighted that rates of domestic and family violence among Aboriginal communities in the Northern Territory are very high and that social security policy issues can affect women victims-survivors' capacity to escape from domestic violence and stay safe.⁸

The schemes also impact carers, primarily women, from being able to feed their children effectively and manage family finances. For example, the following was noted at the Hearing:

What happens is that, if my income is being managed in this way that we're talking about—the government managing my income on behalf of me for my affairs—but my mother is looking after my five children, my mum needs money. But I'm in a remote community and my mother is in some other location with my five children. This is the reality. How does that BasicsCard feed my five children, and how does my mother,

[https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/RB000291/toc_pdf/ReviewoflegislativeinstrumentsmadeunderPart3AAorPart3BoftheSocialSecurity\(Administration\)Act1999%e2%80%93Review1.pdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/RB000291/toc_pdf/ReviewoflegislativeinstrumentsmadeunderPart3AAorPart3BoftheSocialSecurity(Administration)Act1999%e2%80%93Review1.pdf)

⁸ Community Affairs References Committee, *Review of legislative instruments made under Part 3AA or Part of 3B of the Social Security (Administration) Act 1999 – Review 1 – Public Hearing: 22 January 2024*, Proof Committee Hansard, p4.

the grandmother of the children, access that money for everyday living and care? This is happening everywhere.⁹

The way these schemes work in practice contravenes the object and purpose of CEDAW, women's right to social security under Article 9 of the ICESCR, as well as Articles 11 and 14(2)(c) of CEDAW, and women's right to privacy under Article 17 of the ICCPR.

Recommendations

The causes of social disadvantage are complex. Policies intended to help people require a multidimensional approach in collaboration with the people affected. The government must ensure that human rights are not violated in the process of attempting to achieve a social purpose. Limiting people's ability to access their social security payments in cash does not prevent the harms associated with drug and alcohol misuse, poverty and trauma.

The Commission has previously stated and continues to recommend to the Government its preferred features of an income management measure which are:

- an approach that utilises income management as a 'last resort' strategy, particularly for targeted risk areas such as child protection (that is supported by case management and support services);
- measures that are applied for a defined period and in a manner proportionate to the context;
- designed, implemented and operated in consultation with representatives chosen by Aboriginal and Torres Islander communities and from Aboriginal-controlled organisations; and
- voluntary.

The Commission is happy to provide further assistance to the Committee in its consideration of this matter.

Yours sincerely

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⁹ Community Affairs References Committee, *Review of legislative instruments made under Part 3AA or Part of 3B of the Social Security (Administration) Act 1999 – Review 1 – Public Hearing: 22 January 2024*, Proof Committee Hansard, p21.