

5 May 2024

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

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

Re: Invited Submission to the Inquiry into compulsory income management

I thank the Committee for the opportunity to make a Submission to this important Inquiry on compulsory income management. I make this submission as an academic with a disciplinary background in law whose research focuses on issues of social policy, inequality, social justice, human rights and Indigenous peoples.

I have undertaken research about social security and income management that has been supported by two Australian Research Council grants.¹ Work on these grants has included interviews with people from numerous field work sites who have been subject to the BasicsCard and the Cashless Debit Card (CDC), some of whom were also in income management categories where they were about to be offered a choice between the SmartCard and the BasicsCard. The vast majority of these people had lived experience with compulsory income management programs, with a small number of people who had volunteered for income management.

During the course of this research the *overwhelming majority of interviewees* who had experienced being placed on *compulsory income management* was overwhelmingly *negative* and they *expressed a preference for cash transfers as a payment mechanism*. Those who had volunteered for some form of income management were more inclined to give more positive feedback about these sorts of programs. However, even some of these people reported problems in terms of card functionality and restrictions on purchasing outlets.

I note that your Inquiry is examining the compatibility of compulsory income management with human rights, and in particular:

1. whether compulsory income management has been effective in achieving its stated aims;
2. whether compulsory income management has caused, or contributed to, beneficial and/or detrimental outcomes;

¹ Australian Research Council Discovery Early Career Researcher Award (DECRA): *Regulation and Governance for Indigenous Welfare: Poverty Surveillance and its Alternatives* (DE180100599), and Australian Research Council Discovery Project (DP): *Conditional Welfare: A Comparative Case Study of Income Management Policies* (DP180101252).

3. the nature of any consultation undertaken with affected communities and groups in relation to the operation of compulsory income management;
4. how in practice income management has been applied, including how individual exemptions from compulsory income management have been considered;
5. the practical operation of the BasicsCard and SmartCard, particularly in remote communities; and
6. 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.

In addressing these issues below, I will be focusing on data from my ARC DECRA project. There is another Submission to this Inquiry jointly made by my ARC Discovery Project team using data from that project. My DECRA project was specifically focused on the impact of several welfare conditionality programs on First Nations people in receipt of a social security payment.

1. Whether compulsory income management has been effective in achieving its stated aims

The short answer to this question is ‘no’. Compulsory income management was first introduced as a mandatory measure as part of the Northern Territory Emergency Response (‘the Intervention’, 2007-2012), with the stated goal of ensuring that social security payments were allocated towards paying for ‘priority needs’² – basic goods and services for people on the lowest incomes – and prohibiting expenditure on alcohol, tobacco, pornography and gambling products.³ The government assumption underpinning compulsory income management was that First Nations people living in the Northern Territory who receive social security payments either misuse or are at risk of misusing their social security benefits.⁴ For a critique of the parliamentary debates during this period see **Appendix A and Appendix B**.

Federal Government objectives for income management are outlined in s 123TB of the *Social Security (Administration) Act 1992* (Cth), and these are to:⁵

- ensure the prioritisation of payment for ‘priority needs’ (s 123TB(a));
- create ‘support in budgeting to meet priority needs’ (s 123TB(b));

² *Social Security (Administration) Act 1992* (Cth) section 123TH.

³ *Social Security (Administration) Act 1992* (Cth) section 123TI.

⁴ Shelley Bielefeld (2014) ‘Income Management and Indigenous Peoples – Nudged into a *Stronger Future?*’ *Griffith Law Review* 23(2): 285–317.

⁵ This material is a quote from my article Shelley Bielefeld (2016) ‘Income Management and Indigenous Women – A New Chapter of Patriarchal Colonial Governance?’ *University of New South Wales Law Journal* 39(2): 843–878, p 847.

- ensure limited funds are available for purchase of alcohol, tobacco, gambling and pornography (s 123TB(c));
- reduce the prospect that ‘recipients of welfare payments will be subject to harassment and abuse in relation to their welfare payments’ (s 123TB(d));
- ‘encourage socially responsible behaviour, including in relation to the care and education of children’ (s 123TB(e)); and
- ‘improve the level of protection afforded to welfare recipients and their families’ (s 123TB(f)).

During my field work about the impact of the BasicsCard, people raised problems in relation to how these objectives played out in everyday life. There was a disconnect between the legislatively embedded aims and the actual outcomes achieved in many instances.

Paying for ‘priority needs’ was often referred to by coerced cardholders as a cost-of-living problem rather than an irresponsible spender problem or an alcohol, drug or gambling addiction problem. Some people reported a range of circumvention strategies to get around BasicsCard restrictions on the purchase of alcohol and other legislatively prohibited goods.

Some people reported instances of how the BasicsCard was a means by which financial abuse of Elders occurred, and explained how the BasicsCard often made caring for family members more difficult.

Some people mentioned a range of basic everyday goods and services that could not be paid for with the BasicsCard – pointing out that the card was more restricted in practice than simply prohibiting the purchase of alcohol, tobacco, pornography or gambling products – other items were excluded which technically should not have been when considering the parliament’s stated goals for the program.

2. Whether compulsory income management has caused, or contributed to, beneficial and/or detrimental outcomes

While some cardholders interviewed as part of my DECRA project reported that they were used to the BasicsCard and/or that they liked the card – this view was not common – and these people could easily be accommodated by a voluntary only program.

Some of the detrimental outcomes of the compulsory income management program that arose in my ARC DECRA field work are outlined below.

Consumer purchasing problems generated by the BasicsCard

Some examples of consumer goods and services that people reported they could not pay for with their BasicsCards include fuel in particular locations, bus fares, laundromats, some clothing stores, and some health services. As one First Nations woman explained, the BasicsCard 'limits the range of choices.' (Z 39) She further explained: 'The bus service, you can't use your BasicsCard on the buses, you've got to have cash for that.' (Z 39) This was described as a problem for people on low incomes given that taxis are so much more expensive. That same interviewee also pointed out the connection between clean clothes, clean bedding and health problems, stating:

'laundromats in [X], you can't use a BasicsCard. If you can't wash your clothes and your blankets and all of that, then you've got - with overcrowding, you've got all the kids sleeping together and they're going to end up with things like scabies, head lice are just going to run rampant, you're going to have ear infections and eye infections, all of that that's going to happen.' (Z 39)

Compulsory income management has resulted in negative social, emotional and material impacts for many of the coerced cardholders

As one First Nations woman explained: 'they give us this BasicsCard and say our mob was the mob with the problem ... it's taken ... the soul out of us.' (Z 1) When asked how she felt about being put on the BasicsCard she said: 'I was disgusted' (Z2202309 1). When asked how it was trying to raise her children with the BasicsCard she stated: 'it was really mind-controlling ... cinemas and everything like that, raising ... your children, you couldn't go to these places. You had to save your money and that was hard just saving your money to go places.' (Z 1)

One First Nations man explained about the BasicsCard:

'there is a lot of stigma around it, a lot of people I know are uncomfortable using it. They prefer cash or their Visa debit card. ... They feel like they're put in a corner, ostracised in a sense. It's strange but yeah, it makes someone straight away like, well, that's someone on welfare' (Z 3).

Another male First Nations Elder explained that with the BasicsCard 'there's just a bad feel about it.' (Z 40) A further First Nations woman stated: 'the card kind of makes you feel – gives you this kind of feeling, like I can't explain it, but it's the way people look at you. It's got this kind of little bit of a stigma to it' (Z 16)

A further female First Nations interviewee maintained that the BasicsCard was a poverty pathway:

'I think we're getting poorer every day with this BasicsCard thing. It's like you can see kids here, they're all starving. That's why they break into houses and what not just to feed themselves.' (Z 33)

At times the BasicsCard led to culturally inappropriate treatment of Elders

Disrespectful treatment of Elders was seen as a negative consequence of the BasicsCard. One First Nations woman pointed out:

‘they’ve gone and given people power, power to other people that’s not in power kind of thing. They are over the Elders and that’s what was my biggest worry about when the BasicsCard did come, it was about our Elders. ... like people were speaking over our Elders to have it spent on something that’s not necessary. ... we’ve got all these little children that we grew up are basically running the show and disagreeing to the Elders’ (Z 1)

One First Nations man interviewed who was an Elder relayed an embarrassing and difficult consumer encounter once he had been put on the BasicsCard:

‘It was a really shameful sort of thing to have it, especially when I’m lined up here at [X]. I done my shopping and ... a young little white girl, said, oh, hold on a minute, I might have to check this. You may not be able to get this on your BasicCard. ... I was standing there and I told her, well stick your shopping, I’ll go somewhere else. ... It gave the young white people the opportunity to power play, which they did, a lot. Even getting ... credit for my phone, they said, are you allowed to do this? I said, look at the card. If you read the card it says I can’t get alcohol, I can’t get tobacco, and I can’t get pornography. That’s all. Those three things are the only things I can’t get. Does it say – you look yourself – does it say anything about this? About a recharge for my phone? ... it was really power play. Brought in a lot of supremacy stuff that just really re-traumatised a lot of people.’ (Z 40)

Thwarting the budgetary autonomy of people in ways that adversely impacts their career training/study plans

The imposition of a compulsory income management program can also have adverse and gendered impacts on women seeking to develop a pathway out of relying on social security payments – thwarting their efforts to engage in vocational training that requires child care. For instance, one young mother described the complications added to her attempts to engage in training for her vocation when she could not pay for child care fees with her BasicsCard:

‘when I was studying my [X] certificates I decided to put the kids in a childcare for maybe three times a week. I was only on Centrelink and my partner was just receiving his funds, but that normally just pays only for the mortgage and a light bit of shopping. So, anyway, coming to this point now, I still owe [\$X] to them and this was last year they were in there. Yeah, childcare’s very

expensive ... the childcare would not accept BasicsCard either, so that was a big thing too. My childcare didn't accept it.' (Z 15)

An exploitative micro-economy around cashless social security payment cards

Another problem that was raised in interviews was the creation of a micro-economy around cashless social security payment cards. For instance, one First Nations man explained:

'The BasicsCard ... it's traded a lot. It can be traded for money, it can be traded for other services. If there's \$1000 in the kitty, someone will purchase that off them and it could be a taxi driver or an unscrupulous shopkeeper. He might pay \$200 for the \$1000 in the kitty, utilise it, spend it. The client that owns the BasicsCard gets \$200 for the \$1000 to buy stuff with the cash, so that's how easy it can be traded.' (Z 3)

This is a natural consequence of the government providing people on cashless social security cards with a currency that is deemed inferior by many parties. This is also made clear by the following interview extract:

'Interviewee: Well the issue is now that people that have money regularly, like workers and stuff like that, people that are financed a little, they don't see the BasicCard as cash, as money. They see it as – they don't see it as your money. They just see it as government money, and it's not cash. They don't see it as money. So, you go there – what happens with the BasicCard and then people say, you get me a \$100 worth of shopping and I'll give you \$50, like cash.

Facilitator: So people, to get cash, agreeing to accept a lot less than the value of the goods are in order to just get cash?

Interviewee: Yes.

Facilitator: What are the sort of things that people just need the cash for?

Interviewee: Well, most time it's like they need to pay a debt back. They owe money and they can't take it out the Basics – you know, the other money's gone but they still got a couple of hundred in their BasicCard. So they said, oh, you know, I'll buy you something worth \$50 – like I owe you \$50, I'll get you a \$50 phone credit or something, and they say, no, \$100. It doubles.

Facilitator: So it's like a different economy that's being developed ...

Interviewee: Yeah, it's worse than hawkers' (Z 40)

The introduction of the SmartCard will do nothing to resolve this problem. Indeed, it would likely just continue under a new cashless card regime.

Harder to manage finances with the BasicsCard

As one interviewee explained, learning to manage finances with a 'separate BasicsCard to get your money and do your finance through the whole thing, that was pretty hard because ... we did not understand it, why it was going on.' (Z 1)

A further interviewee similarly explained that juggling money between two bank accounts was harder:

'it's just all the payments of Centrelink that they put onto the card and then they give you some little bit of cash, or your Basic into your bank account, so you have to split your bills that you can pay with your card and then split – and what bills you can only pay with your cash. There are certain times you can't pay some amount and you – you know?' (Z 16)

This is a problem that would only be replicated with a mandatory SmartCard.

In some instances, the BasicsCard is used as a means for gambling

Far from stamping out gambling expenditure, the BasicsCard has been used to gamble, as one First Nations woman explained:

'So when there's a lot of hunger happening and whatever, people have card games, and a person might run out of their little bit of change or whatever they've got. They don't want to miss out on this card game so they throw their BasicsCard in. They might lose that game, so the next game, they'll chuck their pin number in for that BasicsCard. So then whoever wins has someone's BasicsCard, someone's money, plus their pin number.' (Z 39)

The BasicsCard is seen by some First Nations people as a racist card

First Nations people have long been grossly overrepresented among the BasicsCard cohort, and in the Northern Territory this is undoubtedly connected to the additional compulsory categories operating in that jurisdiction for the long term unemployed and those legislatively defined as disengaged youth.⁶ The racism embedded in the compulsory income management program has been criticised since the earliest days of the Intervention,⁷ and it continues to be criticised on this basis despite there now being a few other jurisdictions where the card operates. One First Nations woman stated:

⁶ Shelley Bielefeld (2012) 'Compulsory Income Management and Indigenous Australians – Delivering Social Justice or Furthering Colonial Domination?' *University of New South Wales Law Journal* 35(2): 522–562.

⁷ Shelley Bielefeld (2012) 'Compulsory Income Management and Indigenous Australians – Delivering Social Justice or Furthering Colonial Domination?' *University of New South Wales Law Journal* 35(2): 522–562.

'It's a racist card. It's very racist. I think it goes against human rights because ... when I was on Centrelink ... they think Aboriginal people can't handle their money.' (Z 34)

She further explained the sense of futility people experienced when trying to deal with the system:

'It's conditioning, isn't it, because people are conditioned. They can't fight for their rights so you become immune - you become conditioned to it. It's like putting hair conditioner through your hair, it comes easier. That's what happens with Aboriginal people. The BasicsCard, people get conditioned to it. Nobody once they're given it, nobody can fight that. That's how I see it.' (Z 34)

3. The nature of any consultation undertaken with affected communities and groups in relation to the operation of compulsory income management

Lack of community buy in for compulsory income management programs has been an ongoing source of anger, grief, frustration, and resentment amongst many people subject to the program. There was no consultation when the then Coalition Government first introduced the compulsory income management program in the Northern Territory as part of the Intervention, and the subsequent incoming Labor Government offered a belated consultation where coerced cardholders were only given an option to continue the program with or without exemptions rather than cease the program altogether.⁸ At the time I conducted my final DECRA interviews in September 2023, consultation with people who were about to be offered a choice between the BasicsCard and the SmartCard was inadequate in some places and absent in others. This was seen as a problem by First Nations Elders and Community members, as the following interview extract shows:

Interviewee: But now you can choose between a BasicsCard and the other smart welfare card.

Facilitator 1: The smart card that's coming ...

Interviewee: It's like, that's not a real choice. I choose not to have either. How does that sound? You don't have a real choice.

Facilitator 1: Is that an issue, do you think, with people with the smart card coming in here?

⁸ Shelley Bielefeld (2012) 'Compulsory Income Management and Indigenous Australians – Delivering Social Justice or Furthering Colonial Domination?' *University of New South Wales Law Journal* 35(2): 522–562.

- Interviewee: I don't think many people ... know what a smart card is.
- Facilitator 1: Yeah. So was there any government official that came to your community to say, here, we're introducing this new technology, the smart card?
- Interviewee: No.
- Facilitator 1: Did no one come?
- Interviewee: No. Not that I know of. (Z 39)

Faith in the capacity of the SmartCard to address key challenges faced by people on low incomes was non-existent amongst the First Nations people interviewed as part of my DECRA research. For instance, one Elder interviewed stated 'the smartcard will just ... make it harder for people to get by' (Z 40).

The lack of culturally appropriate and respectful consultation throughout the history of compulsory income management is deeply problematic, and it has generated understandable frustration given the importance of the standard of 'free, prior and informed consent' embedded under Article 19 of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). The standard of 'free, prior and informed consent' is superior to the Australian Government's frequent 'command and control' regulatory style of governing Indigenous Peoples. Likewise, the right to self-determination for First Nations people embedded under Article 3 of UNDRIP is incredibly important. Any program with coercion at its core flies in the face of the right to self-determination, which is about free choice not constrained choice between two unpalatable compulsory alternatives – the BasicsCard and the SmartCard. As one interviewee explained: 'it should be left for people to make up their minds about if they want to be on a BasicsCard or whatever card is given to the people.' (Z 33)

4. How in practice income management has been applied, including how individual exemptions from compulsory income management have been considered

Several interviewees relayed that getting an exemption from the BasicsCard was just too difficult – despite the existence of an exemption process, exemptions were seen as not accessible in practice. For instance, one First Nations male Elder explained: 'it just really – there's nothing you could do about it. There wasn't anything. You can't go to Centrelink and say, look, I want to get off this.' (Z 40). Another interviewee likewise expressed a grim view of the exemption process:

- 'Facilitator 1: There's all these processes that the government puts in place. ... like with the BasicsCard, people can apply for an exemption, but how many people use that?

Interviewee: They don't. They don't. Even me, I didn't.

Facilitator 1: You didn't try and get off it?

Interviewee: I did not. I did not, because I was - that should have been my choice to go on it if I had have needed it. That's what - that choice was taken away from me.' (Z 39)

So, the impact of having choice removed in the first instance was sufficiently disempowering that further attempts at exercising agency were seen as futile in terms of trying to have budgetary autonomy restored.

5. the practical operation of the BasicsCard and SmartCard, particularly in remote communities

People living in remote communities reported a range of challenges, including the high price of food, which the BasicsCard did nothing to address, and neither will the SmartCard. It is deeply troubling that these cards are being treated by the Federal Government as if they were a poverty solution – because they are not.

The ideology underpinning cashless social security payment cards assumes that everyone has access to the expensive technology and internet connectivity required to regularly do their banking online, however, interviews with First Nations people in receipt of social security show that this is not the case.⁹ As one interviewee explained:

'Out on community, if kids are crawling out of houses and having to go find firewood to light a bloody water heater to have a shower, where are they going to get a laptop from, or an iPhone.' (Z 39)

In reality people often have to share phones, and this can, in turn, lead to other complications in terms of financial arrangements.¹⁰ Governments should not be building policy based on an erroneous assumption that everyone can afford a laptop, mobile phone or data plan sufficient for constant online banking access – especially those who are paid below poverty line social security payments.

⁹ Shelley Bielefeld (2024) 'Digitalisation and the Welfare State – How First Nations People Experienced Digitalised Social Security under the Cashless Debit Card' *Journal of Sociology* <https://doi.org/10.1177/14407833241232636> (online first version published 29/2/24).

¹⁰ Shelley Bielefeld (2024) 'Digitalisation and the Welfare State – How First Nations People Experienced Digitalised Social Security under the Cashless Debit Card' *Journal of Sociology* <https://doi.org/10.1177/14407833241232636> (online first version published 29/2/24).

6. 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.

The Parliamentary Joint Committee on Human Rights has for many years across numerous reports pointed to human rights compatibility problems with compulsory income management programs. The human rights interfered with include:

- the right to ‘social security’ (Article 9, International Covenant on Economic, Social and Cultural Rights (ICESCR),
- the right to ‘an adequate standard of living’ (Article 11, ICESCR),
- the right to non-discrimination and equality (Article 5, International Convention on the Elimination of All Forms of Racial Discrimination),
- the right of freedom from ‘arbitrary or unlawful interference’ with privacy and family (Article 17 International Covenant on Civil and Political Rights)

The Australian Government permits limitations to be placed on human rights under some circumstances, but any limitation must:

1. ‘be necessary to achieve a legitimate objective’,
2. ‘adopt a means that is rationally connected to that objective’, and
3. ‘those means must be no more restrictive than required to achieve the purpose of the limitation.’¹¹

These limitations set out above are similar to those set out in scholarly sources, for instance, proportionality as a limitation criterion is often considered to involve four key questions:

- ‘1. Does the legislation (or other government action) establishing the right’s limitation pursue a legitimate objective of sufficient importance to warrant limiting a right?
2. Are the means in service of the objective rationally connected (suitable) to the objective?
3. Are the means in service of the objective necessary, that is, minimally impairing of the limited right, taking into account alternative means of achieving the same objective?
4. Do the beneficial effects of the limitation on the right outweigh the deleterious effects of the limitation; in short, is there a fair balance between the public interest and the private right?’¹²

¹¹ Australian Government, ‘Permissible Limitations: Public Sector Guidance Sheet’ <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/permissible-limitations>

¹² Grant Huscroft, Bradley Miller and Gregoire Webber (eds), *Proportionality and the Rule of Law: Rights, Justification, Reasoning* (Cambridge University Press, 2016) 2.

While the stated aims of the Australian Government with respect to compulsory income management have been linked with a legitimate objective, there is no rational connection between the legislative aims and means being used to try to achieve them – because there is an absence of evidence that compulsory income management programs are effective in achieving the government’s goals. Compulsory income management programs have also routinely failed to meet the criteria of proportionality in terms of ‘the least rights restrictive’¹³ approach being undertaken to achieve the government’s legitimate objectives.

The Parliamentary Joint Committee on Human Rights stated that where evidence indicates that trial programs have ‘not been definitively positive’ the threshold for proportionality is unlikely to be met.¹⁴ Compulsory income management programs have not been ‘definitively positive’ in terms of the generalised outcomes generated for coerced program participants – so they ought to be abandoned. The risk of not doing so is generating even more collateral damage to social security recipients and their families.

To conclude, I emphasise the words of one First Nations interviewee who spoke of her yearning to be treated with the same human rights that other people in Australia have:

‘We’re still on BasicsCard. We got to still go and report mandatory. We’ve got to ... do our - you know, a couple of hours a day so we can get paid ... our little measly money that we get on Centrelink. ... I don’t understand why we are still on these compulsory measures when the intervention ceased - they sunset it last year in July. Why are we still in these compulsory measures? It should be scrapped and we’re given back our rights. We all want to live as - all as human beings, and we all shop in the same shop as everybody else.’ (Z 25)

Recommendations

- 1. That all compulsory income management programs be terminated.**
- 2. That any future social security amendment Bills be human rights compliant.**
- 3. That any future social security consultations be human rights compliant as opposed to mere information sessions where the government just informs communities what is about to be done to them.**

¹³ Parliamentary Joint Committee on Human Rights (2017) *Human rights scrutiny report*, Report 9 of 2017, p 37.

¹⁴ Parliamentary Joint Committee on Human Rights (2017) *Human rights scrutiny report*, Report 9 of 2017, p 37.

- 4. That the social security legislation be amended to include an objective to promote human rights compliance in relation to the international human rights treaties that the Australian Government has ratified and UNDRIP.**

If I can be of any further assistance, I would be happy to oblige.

Yours sincerely,

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Appendices

Appendix A

Shelley Bielefeld (2014) 'Income Management and Indigenous Peoples – Nudged into a *Stronger Future*?' *Griffith Law Review* 23(2): 285–317.

Appendix B

Shelley Bielefeld (2018) 'Cashless Welfare Transfers for "Vulnerable" Welfare Recipients – Law, Ethics and Vulnerability' *Feminist Legal Studies* 26(1): 1–23.
<https://doi.org/10.1007/s10691-018-9363-6>