



North Australian Aboriginal Justice Agency

Freecall 1800 898 251 ABN 63 118 017 842 Email mail@naaja.org.au

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

Friday May 10th 2024

Dear Committee Secretariat,

RE: Parliamentary Human Rights Inquiry into Compulsory Income Management

The North Australian Aboriginal Justice Agency Ltd (NAAJA) welcomes the opportunity to contribute to the Parliamentary Human Rights Inquiry into Compulsory Income Management (hereafter referred to as 'the Inquiry').

NAAJA is also an associate member of Economic Justice Australia (EJA), the peak body for legal assistance services who represent clients in relation to Social Security Law. In general NAAJA endorses the summary of the issues and the recommendation in the Submission to the Inquiry made by EJA.

Our experience working with our clients at NAAJA is that the Compulsory Income Management (CIM) regime segregates and further disadvantages Aboriginal Australians and obstructs opportunities for Aboriginal Australians to lead a dignified, self-determined and healthy life. We have not seen any conclusive evidence that the CIM regime meets its intended objectives.

In particular, we would like to highlight the following concerns regarding the current operation of the CIM regime.

1. Qualifying for an exemption under the regime is an extremely high bar

The CIM regime disproportionately affects Aboriginal people. The vast majority of our clients have been placed involuntarily under the CIM regime, effectively as a result of their home location directly related to their Aboriginality. They are often replaced under CIM regardless of their occupation of paid employment roles, and where there is no indication that income management is necessary. For our clients who do not wish to have their income managed, it is then an incredibly high bar to apply for and be granted an exemption from the CIM regime. In addition, the exemption is only available for a period of 12 months – there is no pathway to permanently exit CIM. In addition, in our view the complexity of the legislation and policy guidelines, as well as the evidentiary requirements, mean that very few of our clients can apply for an exemption without substantial assistance from support services. The result is that an individual, no matter how financially responsible they are, will have great difficulty in obtaining even a 12-month exemption from the CIM regime.

For example, in our experience the current process of assisting a client to understand their legal options, gather the necessary evidence, and then apply for and be granted an exemption



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from the CIM regime takes an average 25 hours of legal assistance from a NAAJA lawyer. We consider this to be an unnecessarily high burden, especially where individuals have not demonstrated any need to be placed under income management outside of their place of residence which is directly and intrinsically linked to their Aboriginal status.

The below case study highlights the difficulty faced by an individual client to obtain an exemption from the CIM regime.

Our client, who lives in a remote Aboriginal NT community, had been on income management since November 2013 when she approached NAAJA for help. We assessed that she prima facie met the criteria for a 12-month exemption from income management on the basis that:

- *our client was not vulnerable to financial exploitation;*
- *our client's children were up to date with immunisations;*
- *our client's children were regularly attending school/childcare;*
- *our client and her family's core needs were being met, particularly in relation to food, housing and clothing; and*
- *our client was being 'socially responsible'.*

It was a significant undertaking to gather evidence proving that our client met the criteria for exemption. Verifiable proof was available for some of the criteria, particularly school attendance and child immunisations. For this, we contacted the local health clinic and school and obtained records. Other criteria are harder to prove, for example that our client is not financially vulnerable and is being socially responsible. For the less concrete criteria, we helped our client prepare a statutory declaration confirming that she is control of her own money (subject to any amounts set aside for income management) and that she has not been in trouble with police.

We also obtained a Centrelink income statement so that we could review with the client her income, her expenses and how much money was set aside for income management. This helped the client decide that she wanted to pursue an exemption, as she was aware it would be a long and perhaps burdensome process, and she wanted to make sure it was worth her while.

We advised the client in November 2023 that we can help her seek an exemption from income management. We sent off the formal request for exemption on 19 February 2024, which included all evidence collated and a cover letter. Our lawyer estimates this was 25 hours of legal work. We are awaiting a decision.

2. The CIM regime creates unintended consequences and leads to an increased risk of financial hardship

Our experience is that many of our clients will often face financial hardship as a result of the income management regime. This is an unintended consequence of our clients not being able to access the cash economy. For example, our clients living in regional or remote settings are



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unable to purchase essential items, such as second-hand white goods, via secondary dealers (such as Facebook marketplace, second hand stores or through community noticeboards) because they do not have access to cash or cash-like funds, due to the limitations placed upon them by the CIM regime.

Our clients also report to us that where they have a need to access the cash economy, for example in order to buy second hand goods, or to provide cash as assistance for a family member under cultural obligations, they resort to other options, which can include exchanging items for cash, or pay day loans and other high risk high interest financial products.

This problem is exacerbated in remote communities where the cost of living is much higher. The CIM regime has the unintended outcome of forcing our clients out of second-hand markets that operate on the cash economy, further increasing their poverty and financial vulnerability.

In addition, we note that the current rules for the Centrepay payment system allow merchants to obtain payment prior to the social security recipient receiving it, including merchants who engage in profiteering or other exploitative practices. The result is that clients on CIM are forced to live on extremely low incomes well below the poverty line, without the flexibility that cash or cash like equivalents would give them to prioritise what is important for their family each week. In our view, based on reports from our clients, if they were not subject to income management, they may have had the financial capacity to purchase essential items outright rather than on high interest loans or other payment methods which place them into continual debt. This example demonstrates the additional financial vulnerability the CIM regime creates, and the unintended negative impacts of the CIM regime.

3. The regime is discriminatory and does not align with the UN Declarations on the Rights of Indigenous Peoples.

The CIM regime applies to social security recipients on the basis of their residence, which in the remote and regional areas of the Northern Territory is directly related to their indigeneity. The CIM regime, as it applies in the Northern Territory, is not based on an assessment of any identified need. This is discriminatory. The Statements of Compatibility for Human Rights governing the current CIM regime, including the cashless debit card schemes, state that this 'will not impact on or interfere with a person's right to pursue freely their economic, social, or cultural development'. From our experience, however, this is demonstrably untrue. Rather, it restrains and controls their ability to freely pursue meaningful economic, social and cultural engagement. Furthermore, the stigma of living under CIM regimes coupled with socioeconomic hardship only serves to further undermine the participants' agency. Ultimately, the current CIM regime is entirely incompatible with the principles of the United Nations Declaration on the Rights of Indigenous Peoples – particularly regarding the right to equality and non-discrimination, and self-determination.



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4. Indigenous poverty rates in the NT.

Finally, we would like to draw the Committee's attention to some extremely concerning data on Indigenous poverty rates in the NT. The figure below produced by Dr Francis Markham from the Australian National University shows the change in Indigenous poverty rates around the country between 2016 and 2021:

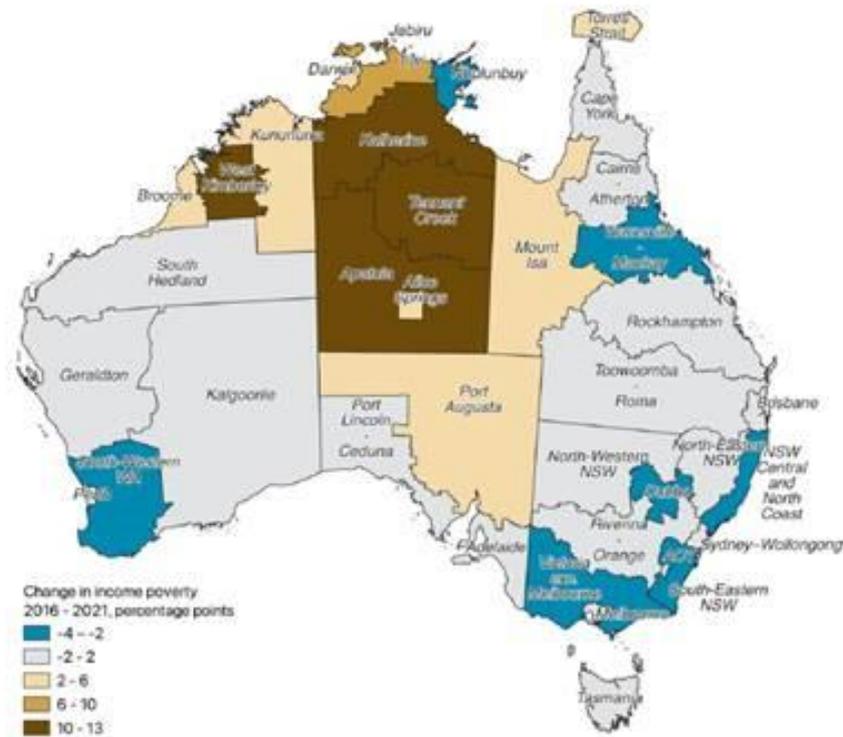


Figure 4: Change in Indigenous income poverty rates by Indigenous Region between the 2016 and 2021 Censuses.

Source: Dr Francis Markham, submission to the *Inquiry into the extent and nature of poverty in Australia*, p.7 (October 2023)

It shows that while Indigenous poverty rates are decreasing (albeit to a small degree) across most parts of the country, in remote NT and the West Kimberley, they are escalating – significantly. In these regions, poverty rates are more than 60 per cent, and in some cases, much higher.¹ This level of poverty is unparalleled elsewhere in Australia and evidence of serious policy failure – and income management is a wholly inadequate policy to address it.

The purported intent of income management is to help people receiving income support payments budget for the basics. A focus on improved budgeting is of limited utility when people have barely enough money to survive.

¹ See Dr Francis Markham, submission to the *Inquiry into the extent and nature of poverty in Australia* (October 2023), Submission no. 251, p.6-7 (<https://www.aph.gov.au/DocumentStore.ashx?id=9cff3504-f70f-42a7-b379-a5fda9f7b2dc&subId=750035>).



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The development of a voluntary income management option can therefore not obscure the urgent imperative of addressing this income disparity. At a minimum, this requires:

1. **Permanently and adequately increasing Jobseeker** and all other income support payments to keep people out of poverty.
2. **Substantially increase the Remote Area Allowance (RAA)** to appropriately account for the higher cost of living of remote regions of the Northern Territory², in line with the recent recommendation of the Economic Inclusion Advisory Committee³
3. **Ongoing indexation of all payments (including the RAA)** in line with wage movements at least twice a year.
4. Targeted efforts by the Department of Social Services to **ensure that Aboriginal people in remote communities are receiving the payments for which they are eligible.**⁴
5. **Improving the accessibility of Centrelink services** in remote regions, including increasing the number of staffed Service Centres.⁵
6. **Development of a new approach to remote employment and community development to replace the failed Community Development Program (CDP).** This new approach must facilitate job-creation in remote communities and strengthen Aboriginal community-control. The development of the new Remote Jobs and Economic Development (RJED) is a welcome first step. However, this investment must be sustained and coupled with substantial reform of employment services in true partnership with Aboriginal and Torres Strait Islander people.

Collectively, current social security and remote employment policy settings are not adequately upholding the rights of Aboriginal people in remote communities' right to social security and an adequate standard of living.

Coupled with the policy measures above to lift incomes, we also urge:

² See 'The Poor Pay More: Why the Remote Area Allowance Needs Urgent Reform', F. Markham, 12 February 2024 (<https://www.austaxpolicy.com/the-poor-pay-more-why-the-remote-area-allowance-needs-urgent-reform/>) and Central Land Council submission to the inquiry by the Senate Select Committee on Cost of Living, submission no. 184, p.8-9 (https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Cost_of_Living/costofliving/Submissions)

³ See recommendation 4 of the Economic Inclusion Advisory Committee 2024 Report (<https://www.dss.gov.au/groups-councils-and-committees-economic-inclusion-advisory-committee/economic-inclusion-advisory-committee-2024-report>)

⁴ The high numbers of Aboriginal people classified as Not in the Labour Force and widespread anecdotal evidence suggest that a significant number of Aboriginal people in Central Australia are not employed and not receiving any form of government support. This is a result of a number of contributing factors, including the high rates of penalties that were applied under the CDP program and the withdrawal of face-to-face Centrelink services across the region, which has made it even more difficult for Aboriginal people (particularly those living in remote communities) to navigate the system. Anecdotally, it is young men who have 'dropped out of the system' in the greatest numbers.

⁵ Centrelink service access across remote Central Australia has been poor for a long time. There are now only five staffed service centres across all of Central Australia. In many communities, the best people can hope for is access to a phone at the council office (with no assistance provided), and the occasional mobile visiting service. There is plenty of evidence of the digital divide experienced by Aboriginal people in remote Australia – lack of internet and phone access, lack of home computers, the fact that for most people English is a second language, and low levels of literacy and digital literacy (see for example discussion in the CLC's submissions to the Regional Telecommunications Review (2021) and submission to the Indigenous Digital Inclusion Discussion Paper (2021)). The consequent challenges accessing Centrelink services are multiple. Accessing MyGov, the pre-requisite for accessing Centrelink, first requires setting up an email address, which not all people have. Two-factor authentication compounds the challenge, as many Aboriginal people living in remote communities either don't have a mobile phone and/or are living in a community without phone service. Even calling Centrelink can mean hours spent on hold, making it challenging for people calling from pay phones or trying to use service provider phone lines.



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1. Further efforts by the Federal Government to protect people from predatory industries, including pay-day lenders, online gambling and pokies.⁶
2. Further investment by the Australian and Northern Territory Government in culturally appropriate evidence-based services to address alcohol and drug misuse and problem gambling, and strengths-based, preventative family support programs.

Genuine efforts to address the poverty crisis in remote NT will focus on policy measures that are preventative, strengths-based, and systemic – designed with Aboriginal people and their representative organisations, consistent with the commitments under the National Agreement on Closing the Gap.

Conclusions

It is our strong view that the CIM regime does not achieve its stated purpose and instead creates several unintended consequences that further entrench disadvantage and stigmatisation of Aboriginal Australians. For this reason, we consider that compulsory income management should be abolished. We have made this submission repeatedly, as have many other like-minded organisations.

If a form of Income Management is to be retained as a policy measure, it is our view that this is incompatible with human rights unless:

1. It is transitioned to a voluntary, opt-in regime; and,
2. In the transition, any aspects of the regime which have a compulsory or blanket operation include easily accessible pathways to exit the regime on a permanent basis.

Kind regards,

Jared Sharp

Principal Legal Officer

North Australian Aboriginal Justice Agency

⁶ See for example, NACCHO submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs' Inquiry into online gambling and its impacts into those experiencing gambling harm (November 2022) highlighting evidence of the 'gambling gap' between Indigenous and non-Indigenous Australians. While comprehensive data on Aboriginal and Torres Strait Islander gambling needs to be collected, data indicates that gambling participation by Aboriginal and Torres Strait Islander people is well above those of the non-Indigenous population. In addition, NT Government data shows that NT gamblers lost more than \$150 million on poker machines in the last financial year. See "Gamblers lost nearly \$150 million on NT poker machines during the last financial year, data shows", S. Dick, ABC, 19 December 2023.