

Joint Committee on Human Rights inquiry into compulsory income management

Public Hearing – 5 July 2024

ANSWER TO QUESTIONS ON NOTICE

Accountable Income Management Network (AIMN)

Topic: Joint Committee on Human Rights inquiry into compulsory income management

Questions asked by: Senator Thorpe

Date set by the Committee for the return of answer: 19 July 2024

Question 1:

You said your organisation met with members of DSS staff in March this year about concerns around the use of compulsory income management, and how their consultation with the community was harmful and divisive, because they met with folks who were not on income management, to talk about those who are on income management. What was the response of the DSS to these complaints?

Answer:

In response to this inquiry's question:

- the nature of any consultation undertaken with affected communities and groups in relation to the operation of compulsory income management;

The AIMN's written response, submitted to the Committee on 5 May 2024 detailed:

Members of the AIMN met with DSS staff to share their concerns regarding all forms of CIM in March 2024.

Prior to this, the network had not been consulted with. The AIMN has consistently argued that true and rigorous consultation in communities should focus on those directly impacted by CIM – those who have been subjected to their incomes being managed through these schemes.

By and large (previous) community-based consultations have not effectively engaged with those for whom the policy has directly impacted and instead has created greater community friction by seeking and obtaining the views of others in the community about those on income support payments.

This has been harmful and divisive. It is those with lived experience whose voices should be directing the policy responses that impact on their lives – not others in their community who get to influence and direct what should be imposed on their fellow citizens.

The AIMN was aware that DSS had commenced a consultation on the [“Future of Income Management”](#) in November 2023, as it was advertised on their [engage.dss.gov.au](#) website. This website highlighted that “The department, in partnership with First Nations organisation, ETM

Perspectives (ETMP), is undertaking consultation to hear people’s views on the future of Income Management.”

It was clear from this website’s “Public Consultation” page that ETMP had already travelled to remote communities and intended to travel to many more. The [completed consultation events](#) detailed on their website, and outlined in their written submission to this inquiry, states that DSS and ETMP consulted with over 3600 community members in over 65 locations in place-based Income Management sites across Australia.

The AIMN was contacted by DSS staff, via email, in February 2024 to set up a time to have an initial discussion to discuss our views, concerns and insights regarding the future of the Income Management program (IM).

A number of AMIN members met with staff from DSS on 13 March 2024. During this meeting we reinforced our view that it was critical to consult directly with those with lived experience of being subjected to compulsory income management as a priority.

We also raised concerns that past consultations which favoured community voices and appointed ‘leaders’ who were in support of compulsory forms of income management – but who had no lived experience of being subjected to such measures – had the potential to be divisive. They effectively pitted one group who were not required to have their income managed deciding how others in their community should live their lives and spend their money. Such consultations essentially divided communities and empowered groups with strong voices and views to talk about how others income should be controlled. Such discourse created a harmful dynamic.

The AIMN is yet to see the outcome of these consultations and look forward to them being released to the public in the near future.

Question 2:

Can you explain the point in your submission around how the government collaborates with licensed financial service providers like Indue Ltd or Traditional Credit Union, with Services Australia acting both as a third-party service provider and contract principal, despite the fact that this dual arrangement could breach ASIC’s Conflict-of-Interest rules?

Answer:

Summary of concerns:

enhanced Income Management

- **Account and Smartcard Conditions of Use.**

Provision	Concerns
Summary of Important Information (pages 2 and 3)	<ul style="list-style-type: none"> - It is clear from the start that enhanced Income Management (eIM) involves a shared relationship, between the Commonwealth Government, represented by Services Australia and Indue Ltd. - Previous iterations of card-based technology facilitating access to income-managed funds, have implied the Commonwealth is more a

	<p>policy-setting partner; for eIM the relationship is more a collaboration between financial services partners.</p> <ul style="list-style-type: none"> - Comments to follow underline why the evolving relationship raises regulatory implications.
<p>1.3 and 1.4</p> <p>About the Conditions of Use</p> <p>(page 4)</p>	<ul style="list-style-type: none"> - In contrast to the Summary of Important Information and repeated reservations of roles undertaken by Services Australia, alone or in combination with Indue Ltd, - 1.3 notes that the Account and SmartCard are issued by Indue under its Australian Financial Services Licence (number 320204). - 1.4 indicates that Services Australia provides customer support through the eIM SmartCard hotline. - Clause 1.3 and 1.4 combine to create a confusing, circular set of responsibilities: - Indue Ltd is the licensed provider, carrying all relevant regulatory responsibilities. - Services Australia’s roles appear to make it a third party providing financial services on Indue’s behalf. - Services Australia, as the Commonwealth Government’s representative, is also presumably the principal of the contract for provision of eIM, by Indue Ltd. - There are a range of regulatory questions that arise, to ensure Indue Ltd meets its licencing obligations and general compliance requirements. - Perhaps most significant is whether the relationship between Indue Ltd and Services Australia represents a conflict of interest, noting the definition in RG 181-15: <p><i>“For the purposes of this policy, conflicts of interest are circumstances where some or all of the interests of people (clients) to whom a licensee (or its representative) provides financial services are inconsistent with, or diverge from, some or all of the interests of the licensee or its representatives. This includes actual, apparent and potential conflicts of interest.”</i></p>
<p>3</p> <p>Activating your Account</p> <p>(page 4)</p>	<ul style="list-style-type: none"> - Clause 3, merges compulsory eIM participants and volunteers, when the process and relevant terms and conditions will feel fundamentally different for those who volunteer, compared to those who are compulsorily referred. - Similar to previous iterations of card access to income-managed funds, 3.1 notes that participants will receive a letter confirming an Account has been opened, into which income-managed benefits will be paid.

		<ul style="list-style-type: none"> - 3.2 appears to reestablish a process of posting cards to participants without their request, or consent, which on its face breaches section 12 DL of the ASIC Act. - It is unclear whether Indue Ltd has sought relief from regulatory action.
8.1 Fees (page 5)		<ul style="list-style-type: none"> - Indue Ltd does not at present charge any account fees for using the Account or SmartCard but makes no warranty about stores or other financial institutions levying fees for use of their payment facilities. - It is likely that eIM participants can be identified by their use of the SmartCard and as a result this product could become the target of specific fees or charges, which would represent an unfair penalty, given the vulnerability of the user group.
9 Interest (page 5)		<ul style="list-style-type: none"> - No interest is paid on the account (9.1) but this decision is determined by the Australian Government and may change at its discretion (9.2). - Interest rates on transaction accounts are usually very low but rarely set at zero. - On its face, this term is unfair. - As the decision is not made by Indue Ltd, it also appears to breach a licensee's general responsibilities in RG 104.
13.2 and 13.3 Overdrawn accounts (page 6)		<ul style="list-style-type: none"> - Clause 13.2 notes there may be occasions when a transfer request is approved, where there are insufficient funds in the Account, leaving a negative balance (for example, this might occur if there is a delay in processing an earlier transaction, or the system is off-line). - The requirement to repay a negative balance in clause 13.3 is uncontroversial, except for the final sentence. - It is sufficient to say that repayment should be pursued consistent with the Services Australia Code of Operation, rather than reserving the right to take 'some or all' of the next deposit. - The later clause 78 makes much clearer commitment to the Code of Operation.
14.1 Closing Account (page 6)	your	<ul style="list-style-type: none"> - Indue Ltd commits to closing an account within 91 days of being notified by Services Australia that the customer is no longer an eIM participant, which seems an unreasonably long delay, that might cause hardship. - The commitment on closure is subject to clause 81.1, which notes Indue Ltd will transfer remaining funds to a new account, where details have been provided, but there is no additional detail on timelines, or other arrangements to take into account, or avoid causing hardship.
14.11		<ul style="list-style-type: none"> - This clause appears in the section related to 'Closing your Account' however the implications are broader.

<p>(page 7)</p>	<ul style="list-style-type: none"> - Other than a payment nominee, or permitted nominee, a participant is not allowed to let anyone else operate their account. - This excludes, parents from providing a secondary card to children, increasing the inconvenience of a payment mechanism designed to limit access to cash.
<p>18.4 Direct Debit (page 8)</p>	<ul style="list-style-type: none"> - Under clause 18.4, Services Australia has an unfettered right to impose additional restrictions, including turning off direct debit functionality. - This right appears to include imposing additional restrictions for individual participants, not just all SmartCard users. - On its face 18.4 is unfair and / or could be considered a penalty.
<p>18.8 Stopping a Direct Debit (page 8)</p>	<ul style="list-style-type: none"> - Clause 18.8 distinguishes direct debits by a merchant using a SmartCard number, from those where the participant has provided their BSB and Account number. - Those where the SmartCard number has been provided will not be cancelled by Indue Ltd, with the participant required to contact the merchant and rely on them agreeing to and actioning the request. - In the Banking Code payments from a savings account are referred to as ‘direct debits’, those from a credit or debit card ‘recurrent payments’ – however clause 18 of the SmartCard Terms and Conditions makes no such distinction and direct payments are drawn from the same source funds in the participant’s account. - This appears to fall short of the protection afforded in clause 135 of The Banking Code, where signatories commit to cancelling direct debits promptly, on request.
<p>20.1 Processing instructions of (page 9)</p>	<ul style="list-style-type: none"> - Indue Ltd retains a right in undefined ‘circumstances’ to not act, or delay acting on, any payment instruction provided by the participant. - The reservation is too broad and overtly unfair.
<p>23.1 Suspension of Digital Wallet (page 9)</p>	<ul style="list-style-type: none"> - Digital Wallet inter-operability does appear to be a genuine enhancement available with the SmartCard compared to previous iterations. - 23.1 reserves a right for Indue Ltd ‘acting reasonably’ (with no definition of ‘reasonably’) to cancel or suspend the use of the SmartCard through a Digital Wallet. - The list of possible reasons, includes being instructed by the Commonwealth, with earlier comments about conflict of interest in Indue Ltd’s licensing responsibilities equally applicable.
<p>26.3</p>	<ul style="list-style-type: none"> - Similar to earlier unilateral reservations, 26.3 allows Indue Ltd, on instruction from Services Australia, to limit or restrict a participant’s

<p>BPAY restrictions (page 10)</p>	<p>ability to make payment to a BPAY Biller not on the Blocked Merchant's List.</p> <ul style="list-style-type: none"> - Again, on its face the term is unfair and underscores the conflict between Indue Ltd's relationship with Services Australia and responsibilities to participant customers.
<p>38.2 About your SmartCard (page 12)</p>	<ul style="list-style-type: none"> - The SmartCard remains the property of Indue Ltd. - Whilst not an uncommon provision, it serves to emphasise that responsibility for compliance with financial service regulations relevant to the SmartCard and linked account, rests with Indue Ltd. - When Services Australia identifies compulsory participants and Indue establishes an eIM Account and issues a SmartCard, it does not afford any effective choice to relevant customers; they must activate and use the SmartCard or be locked out of access to the quarantined proportion of their income. - The Commonwealth Government, via Services Australia, does not have to comply with the ASIC Act but Indue Ltd does. - Requiring customers to have an Account and use a SmartCard they did not ask for represents coercion on the part of Indue Ltd for the purpose of section 12 DJ of the ASIC Act.
<p>40 SmartCard Restrictions (page 13)</p>	<ul style="list-style-type: none"> - The imposition of restrictions, beyond those applicable to equivalent transaction account products with card access and removing the potential for the majority of participants to choose eIM, is unfair and inconsistent with the principles underpinning financial services and general consumer protection laws in Australia. - This general concern applies to all versions of compulsory income management, including eIM and the SmartCard. - In addition to this general objection, - Clause 40.1 (2) reinstates restrictions on tobacco products, which were abandoned under previous iterations of income management, presumably because they resulted in such a potentially extensive list of excluded merchants. - Clause 40.2 places the onus on participant cardholders to stay abreast of changes to the Blocked Merchant List. - Clause 40.3 pretends there is some sophistication inherent in managing the prevention of blocked purchases by permitted mixed merchants, when the most likely method is manual, at point-of-sale, with the inevitable embarrassment and stigma for participants. - 40.4 and 40.9, similar to earlier clauses, allow Indue and Services Australia, to change and increase blocking rules at their discretion and at an individual level which represents an unfair penalty.

	<ul style="list-style-type: none"> - The definition of ‘Restricted Goods’ on page 26, includes: <i>“any other goods and services determined by the Commonwealth of Australia from time to time in accordance with the Social Security Legislation.”</i>
46 and 47 Replacement SmartCard and Temporary Replacement (page 15)	<ul style="list-style-type: none"> - If a SmartCard is reported lost or stolen, it usually takes 7 – 10 days for a replacement to be provided. - In ‘emergency situations’ a temporary card may be provided, however availability is not guaranteed. - Because the funds represent the bulk of a low, fixed, benefit income, it is safe to assume that every situation requiring a replacement card will be urgent.
67.2 Other General Website Terms (page 21)	<ul style="list-style-type: none"> - Indue Ltd does not warrant that any on-line tools, apps, or website it provides in partnership with Services Australia is free of viruses or other components that might damage a participants’ equipment or compromise their data. - The requirement for participants to take reasonable precautions, like using anti-virus software, is not unusual – but the implied limitation of liability appears unfair.
68.1 (2) and (4) Privacy - The type of personal information we collect about you (page 21)	<ul style="list-style-type: none"> - Unsurprisingly, given the focus of eIM on specified social security benefit recipients, 68.1(2) notes Indue Ltd may collect details about Centrelink entitlements from Services Australia, presumably at the time Services Australia directs Indue Ltd to open an Account in the participant’s name and issue a SmartCard. - 68.1(4) goes much further, noting Indue Ltd will collect information about all transactions, including those conducted via the SmartCard and (oddly specific) information about all taxi service journeys using the SmartCard. - These provisions are different to any normal transaction account and related card product, directly targeting benefit recipients and facilitating the compliance aspects of eIM.
70.1 (6) - Why we collect and use your personal information (page 21)	<ul style="list-style-type: none"> - Clause 70.1(6) notes Indue Ltd provides information about the operation of the account to Services Australia. - It is unclear whether or how often this power will be used, or has been used in relation to previous cards used to access compulsorily income-managed funds – but its existence is amongst the most egregious aspects of the account and card technology. - Sharing information about how an eIM customer uses their account or card with the Commonwealth Government, without any effective choice to participate, or providing free consent, is a breach of privacy. - It is also a breach of Indue Ltd’s licensing responsibilities and in particular those relating to conflicts of interest.

<p>71 What information we provide to the Commonwealth of Australia (page 22)</p>	<ul style="list-style-type: none"> - Clause 71 goes further than Clause 70 providing Indue Ltd the right to share all information about the account (or information about a Payment Nominee) with the Commonwealth. - The Commonwealth can then do pretty much as it pleases, including sharing information with any Commonwealth Department. - With such a sweeping reduction in privacy rights, it is at best ironic to note participants or Payment Nominees, have rights to complain about a breach of the Australian Privacy Principles, under Clause 76.
<p>73 what happens if you do not provide your information to us (page 22)</p>	<ul style="list-style-type: none"> - If a participant or Payment Nominee does not provide personal information, Indue Ltd may not be able to provide an account, which emphasises again that there is no real choice available to compulsory participants, unless they choose to forego their quarantined income.
<p>74 Where we store your personal information (page 22)</p>	<ul style="list-style-type: none"> - Personal information is stored in Australia but may also be sent to a service provider overseas to ‘facilitate transaction information’, or to assist with identifying suspicious, or fraudulent transactions. - That could involve the transfer of personal information to the UK, the USA, Israel, the Netherlands or Spain.
<p>77 The ePayments Code (page 22)</p>	<ul style="list-style-type: none"> - Indue Ltd is not a signatory to the ePayments Code but warrants to comply with the Code as if it were and refers to ASIC’s supervisory role. - The ASIC website notes: - ‘The Code only protects consumers who deal with a subscriber.’ And - ‘ASIC may undertake targeted compliance monitoring of specific obligations under the Code.’ - The ePayment Code imposes disclosure requirements on signatories in relation to changes of terms and conditions, that include at least 20 days advance written notice. - Indue Ltd has reserved rights to make changes unilaterally, or on direction from Services Australia, throughout the SmartCard Terms and Conditions. - Not all these requirements appear to comply with the ePayments Code disclosure requirements, for example the disclosure table under clause 83 on page 24, does not provide advance notice of changes to the Blocked Merchants List or Changes to the Internet Transfer Funds Restriction List.
<p>79 Queries and Complaints (page 23)</p>	<ul style="list-style-type: none"> - On the positive side, Indue Ltd has a complaint handling process and is a member of the Australian Financial Complaints Authority scheme. - Less positive:

	<ul style="list-style-type: none"> - The first step in the complaint handling process is the SmartCard eIM hotline, which is provided for Indue Ltd by Services Australia and - Under clause 79.9 complaints about participation in the eIM program, including the proportion of funds quarantined, must be raised with Services Australia and cannot be investigated by Indue Ltd. - The basic building blocks of consumer law and financial services regulation in Australia, are the ability to exercise choice and that products and services should be fit for purpose. - Indue Ltd says it cannot respond to issues of choice, or appropriateness, in relation to the SmartCard or eIM, deferring those questions to its contracting principal Services Australia, where Services Australia is also providing financial services under Indue's license.
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Question 3:

What is your view of the Family Responsibilities Commission model, which fundamentally still facilitates non-voluntary income management, despite all calls from experts and the community? (For example, the Commissioner holds the power to quarantine someone's income without their consent, and deny requests to be taken off even the voluntary program if the commissioner believes it is not in the "best interests" to do so)

Answer

Although the AIMN is a nation-wide group of community members, grassroots advocates, representatives of national, state and local non-government organisations and community bodies, academics, social researchers and public policy experts, there is not a representative on the network that has direct experience of the Family Responsibilities Commission model.

As stated in the North Australian Aboriginal Justice Agency's (NAAJA) response to their Questions on Notice to this inquiry, the "Family Responsibilities Commission (FRC) model is complex and established under both the Family Responsibilities Commission Act 2008 (QLD) and the Social Security (Administration) Act 1999 (Cwth)".

The AIMN does not have the expertise to comment on how the FRC model operates and refers Senator Thorpe to the submissions made by the FRC and the evidence of Commissioner Williams on 5 July 2024.

Question 4:

How can we challenge the premise that compulsory income management is needed to correct 'problem behaviour,' and instead develop policy and legislation that recognize and support the

resourcefulness and economic aspirations of our People and communities, which are often overlooked and unexamined?

Answer:

We know that compulsory income management does not work.

The AIMN's written submission to this inquiry highlighted that "A substantial body of peer-reviewed research exists on both the CDC and Basics Card which, along with government commissioned evaluations, demonstrates numerous in-built issues with CIM and an overall absence of valid changes to participant and community wellbeing attributable to these schemes.

As outlined in the Department of Social Services' (DSS) October 2022 "Reforming the Cashless Debit Card and Income Management" Regulation Impact Statement (RIS)³, numerous evaluations over the years since CIM was announced in 2007 have not demonstrated that CIM successfully achieves the programs objectives of reducing the issues in communities caused by alcohol, drugs and gambling.

A recent study (Roche et al. 2024) investigating the "Perspectives on the ongoing impact of compulsory income management in the Northern Territory" states that CIM is "largely ineffective in reducing social harms" and highlighted the "incapacity of CIM to prevent or reduce levels of family violence and substance abuse"¹.

Another way to challenge the premise that compulsory income management is needed to address "problem behaviour" is to assist the general public and media outlets to better understand the scheme and who it is impacted by it.

The majority of people receiving social security payments do not display "problem behaviour" however every single eligible social security payment recipient, in a CIM region, is forced onto the scheme. It remains a blanket policy that effectively punishes thousands of people, in the hope of addressing the behaviour of some. It would be similar to forcing everyone in the same workplace to lose control of how they spent their income, because 10 colleagues misused alcohol or were violent, while the other 500 did not.

Every individual should have the right to manage and control the use of their income without externally imposed controls. All forms of CIM do not deliver this fundamental human right.

¹ Roche, S., Taylor-Zach, N., Taylor, R. & Mendes, P. (2024) Perspectives on the ongoing impact of compulsory income management in the Northern Territory. Australian Journal of Social Issues, 00, 1–18. Available from: <https://doi.org/10.1002/ajs4.323>