



Committee Secretary  
Parliamentary Joint Committee on Human Rights

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3 May 2024

***Submission to inquiry into compulsory enhanced income management and compulsory income management (collectively referred to as 'compulsory income management') for compatibility with human rights***

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:
  - a. strengthens the effectiveness and integrity of our social security system;
  - b. educates the community; and
  - c. improves people's lives by reducing poverty and inequality.
3. EJA welcomes the opportunity to make this submission to this Inquiry.
4. We note that the comprehensive Bills Digest produced to assist consideration of the Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Act 2022 (Bills Digest No. 67. 2022-23), aptly describes Enhanced Income Management 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.'<sup>1</sup>
5. EJA is concerned that recent legislative changes and Ministerial determinations in respect of the Enhanced Income Management program have served to reinforce compulsory income management as a component of the social security policy framework, rebranded, without proper scrutiny by Parliament of the range of fundamental human rights concerns raised over many years regarding compulsory quarantining of social security entitlements.

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

6. EJA is a member of the Accountable Income Management Network (AIMN). AIMN has provided a comprehensive submission to this inquiry, spanning its Terms of Reference. EJA fully endorses the recommendations made in the AIMN submission.
7. As outlined in EJA's and AIMN's submissions to the Senate Standing Committee on Community Affairs inquiry into the Social Security (Administration) Amendment (Income Management Reform) Bill 2023<sup>2</sup>, there is extensive evidence showing that involuntary income management is ineffective in achieving its goals and that it has harmful effects for many. Despite this evidence and despite previous commitments from the Government to end involuntary income management, the present legislative and policy framework operates to embed involuntary income management as a component of the social security framework. We propose that compulsory income management is not a reasonable means of achieving its purported aims, and that the flouting of human rights intrinsic to the compulsory quarantining of social security entitlements is not justifiable.
8. EJA supports the earliest possible transition from compulsory income management to a purely voluntary scheme. In the meantime, while compulsory income management is still in place, it is crucial that any further amending legislation and Ministerial determinations not continue to embed compulsory income management as a feature of the social security framework.
9. Pending transition to a purely voluntary regime, there is an urgent need to address issues affecting access to appeal rights for people seeking to exit compulsory income management.
10. Given EJA's focus on ensuring that social security legislation enhances rather than impedes access to social security entitlements and rights, EJA's submission focuses on the following Terms of Reference for the Inquiry:
  - *how in practice income management has been applied, including how individual exemptions from compulsory income management have been considered;*
  - *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.*

## Summary of recommendations

11. EJA endorses AIMN's recommendations to this Inquiry.
12. Further to AIMN's recommendations, EJA recommends that:
  - A. while compulsory income management remains in place, future proposed amendments to compulsory income management legislation, and any future Ministerial Determinations affecting compulsory income management,

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<sup>2</sup> EJA submission available at [Enhanced-Income-Management-Bill-inquiry-EJA-submission\\_final.pdf](https://www.ejaustralia.org.au/enhanced-income-management-bill-inquiry-eja-submission-final.pdf) (ejaustralia.org.au)

- be expressed to be transitional, pending the phasing out of compulsory income management
  - include a sunset clause.
- B. the Social Security Administration Act be amended so as to revoke the Ministerial discretionary power to extend the Enhanced Income Management regime to new regions / jurisdictions via instrument. The jurisdictions and areas to be subject to income management should be legislatively proscribed, under social security law, so as to ensure Parliamentary scrutiny of Government proposals to extend Enhanced Income Management to new areas, or to refine the criteria determining which individuals may be subject to compulsory income management.
- C. legislation be introduced to substantively reform exemption and exit provisions under social security law, including to enable permanent exemptions and exits.
- D. pending C., that DSS and Services Australia review exemption and exit policy and procedural guidelines, with a view to identifying and removing barriers to applying for exemption/exit; and to ensuring equitable application of exemption and exit policies and enhancing access to internal review and appeals.
- E. the Social Security Act be amended, so as to insert 'objects'. The 'objects' should make direct reference to Australia's international human rights obligations - including under the UN Convention on the Rights of the Child. This would provide a legislative framework to ensure proper scrutiny of whether significant social security measures such as compulsory income management comply with Australia's human rights obligations.

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

### Absence of sunset clauses

13. There are currently no sunset clauses in either the primary legislation, or in key Ministerial Determinations proscribing which jurisdictions and which individuals may be subject to compulsory income management. This means that the compulsory income management can potentially continue indefinitely, there being no timeframe for transitioning to a purely voluntary scheme - despite the Government's statements that this is their intention.
14. For example, the lack of a sunset clause in the State Referrals determination means that it will remain in place until repealed - or provided they are subject to Part 4 of the Legislation Act, for 10 years.
15. The absence of sunset clauses in the primary legislation and associated instruments is contrary to the phasing out of involuntary income management and instead speaks to the opposite.

#### ➤ **Recommendation A:**

- *That while compulsory income management remains in place, future proposed amendments to compulsory income management legislation, and*

*any future Ministerial determinations affecting compulsory income management:*

- *be expressed to be transitional, pending the phasing out of compulsory income management*
- *include a sunset clause.*

## **Ministerial discretion**

16. We acknowledge that providing for Ministerial discretion under social security law via instrument can be useful – such as 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 Australian Government Disaster Recovery Payment. However, we propose that providing for 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 proper Parliamentary scrutiny.
17. Particularly given the absence of sunset clauses in respect of Compulsory Income Management, it is inappropriate that the Social Security Administration Act (the SSA Act) provides the Minister for Social Services with the authority to declare new jurisdictions and areas subject to Enhanced Income Management. We propose that this aspect of the legislative framework for the program has substantially contributed to the opacity of key aspects of the scheme’s operation, including fundamental differences in its operation for communities and individuals in different states/territories – differences including internal and external review rights for people seeking exemption or exit.
18. In broad terms, the explanatory statements for the Ministerial determinations introduced to date regarding the Enhanced Income Management regime fail to provide adequate explanation of fundamental aspects of the tabled instruments. Instead, the explanatory statements largely seek to justify their content by reference to the substance of the determinations being substantially the same as previous instruments created under former iterations of income management. We believe that this opacity has resulted in inadequate consideration of ongoing human rights issues affecting people subject, or potentially subject, to compulsory income management across the jurisdictions<sup>3</sup>.
19. To illustrate this point, the Commonwealth Referrals Determination at Part 2 considers vulnerable welfare payment recipients/vulnerability indicators. It repeats, in substance, the same vulnerability indicators and considerations as the equivalent legislative instrument created under the previous iteration of income management, which was made in 2013 and last amended in 2016. These vulnerability indicators include homelessness, financial hardship and financial exploitation.
20. Since 2013/2016, our social context has significantly changed, as has our understanding of vulnerability – for example, there are increasing levels of homelessness due to the housing

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<sup>3</sup> EJA’s submission to the Senate Community Affairs References Committee inquiry into the Social Security (Administration) (Enhanced Income Management Regime – State Referrals and Commonwealth Referrals and Exemptions) Determinations 2023 examines these issues in detail. Submission available at [Enhanced-Income-Management-Bill-inquiry-EJA-submission\\_final.pdf \(ejaustralia.org.au\)](https://www.eja.org.au/submission_final.pdf)

crisis, increasing levels of financial hardship due to the cost-of-living crisis, and a better understanding of the nuances of family/domestic violence.

21. Similarly, Part 2 subdivision C of the Commonwealth Referrals Determination copied the substance of the equivalent previous legislative instruments in effect from 2013/2016 concerning vulnerable youth released from gaol or psychiatric confinement. This is despite there being subsequently a Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability, and a Royal Commission into the Child Protection and Youth Detention Systems of the Government of the Northern Territory.
22. It is reasonable to assume that proper consideration and consultation would have resulted in significant revisions to the Commonwealth referrals determination due to our changing context and our developing understanding of vulnerability since 2013/2016. In circumstances where the previous iteration of involuntary income management was ineffective in meeting its goals, the introduction of legislative instruments in exactly the same terms as the 2013/2013 determinations is difficult to comprehend.

➤ **Recommendation B:**

- the Social Security Administration Act be amended so as to revoke the Ministerial discretionary power to extend the Enhanced Income Management regime to new regions / jurisdictions via instrument. The jurisdictions and areas to be subject to income management should be legislatively proscribed, under social security law, so as to ensure Parliamentary scrutiny of Government proposals to extend Enhanced Income Management to new areas, or to refine the criteria determining which individuals may be subject to compulsory income management.

### **Impenetrability of the complex legislative framework**

23. Given the principles for administration of social security law set out in section 8 of the Social Security Administration Act<sup>4</sup>, the legislation enabling compulsory quarantining of a person's social security income support entitlements should be clear and able to be readily interpreted. However, the Enhanced Income Management legislation is so complex that it is impenetrable, even for people experienced in statutory interpretation – a key example being Division 2 of Part 3AA of the Social Security Administration Act, which prescribes categories of person who may be subject to compulsory income management in particular jurisdictions, as well as persons who may be exempt among these categories.<sup>5</sup>
24. Whilst the policy guidelines provided for Services Australia delegates in applying the legislation aim to unravel this complexity, the list of links for information on the Enhanced Income Management programs operating in each jurisdiction serves to highlight this complexity – reflecting the fact that whether a person is subject to compulsory income management, and how it is administered, depends on their location<sup>6 7</sup>. This means that most people subject to compulsory income management decisions will not have their

<sup>4</sup> Available at [SOCIAL SECURITY \(ADMINISTRATION\) ACT 1999 - SECT 8 Principles of administration \(austlii.edu.au\)](https://www.austlii.edu.au/au/other/dfat/special/socialsecurity/act1999/sect8.html)

<sup>5</sup> For an outline with links to jurisdictional criteria see [12.3 Persons subject to the enhanced income management regime | Social Security Guide \(dss.gov.au\)](#)

<sup>6</sup> See [12.3 Persons subject to the enhanced income management regime | Social Security Guide \(dss.gov.au\)](#)

<sup>7</sup> For exemptions, see [12.2.4 Exempt welfare payment recipient | Social Security Guide \(dss.gov.au\)](#)

individual circumstances taken into account, instead the approach is geographic. This is a highly problematic level of abstraction in terms of the individualised nature of human rights requirements.

### **Opacity of review and appeal rights – Services Australia website**

25. Unfortunately, the complexity and opacity of the legislative framework for compulsory income management decision-making serve as a fundamental systemic barrier to appealing decisions, with jurisdictional variations further complicating the extent and operation of affected individuals' review and appeal rights.
26. The Services Australia website provides information on compulsory income management appeal rights, with the information arranged by state/territory jurisdiction. People seeking appeals information on the website must:
  - click the relevant state or territory
  - then progress through various pages relating to the category the person falls into<sup>8</sup>.
27. This finally leads to a generic page re review and appeal rights<sup>9</sup>, which is of limited assistance for other than straightforward social security decisions.

### **Procedural guidelines for Services Australia frontline staff and delegates**

28. Where a person does successfully lodge a request for formal review of a compulsory income management decision, and the decision is in fact reviewable by Services Australia, procedural guidance for frontline Services Australia officers dealing with such review requests is contained in the agency's Operational Blueprint.<sup>10</sup> These guidelines are difficult to navigate and intrinsically confusing.
29. Policy guidelines for Services Australia officers seeking to ascertain review and appeal rights in respect of compulsory income management decisions are similarly convoluted – reflecting the complexity of the legislation. Section 11.1.13 of the Australian Government Social Security Guide states that:

*A person who does not agree with a decision made under the SS(Admin)Act about their income management arrangements, \*under any income management measure, can generally seek a review of that decision. The person will have access to the full range of review and appeal rights, including review by [AROs](#) and the [AAT](#).*

**Note:** *This applies to decisions made under the Commonwealth social security law. \*Certain decisions made in relation to income management under state law cannot be reviewed in this manner.*

*For the specific avenues of review and/or appeal under each measure, see the following SS Guide sections:*

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<sup>8</sup> For example, see link at [Referral for enhanced Income Management by child support protection authority - Enhanced Income Management and SmartCard in the Northern Territory - Services Australia](#):

<sup>9</sup> See [Explanations and formal reviews - Accessing our services - Services Australia](#)

<sup>10</sup> See [Reviews of Income Management and enhanced Income Management decisions 103-01070000 \(servicesaustralia.gov.au\)](#)

<b>Measure</b>	<b>Section</b>
<i>Cape York</i>	<a href="#"><u>11.2.9</u></a>
<i>Child Protection</i>	<a href="#"><u>11.3.7</u></a>
<i>Vulnerable Welfare Payment Recipient</i>	<a href="#"><u>11.4.4</u></a>
<i>Disengaged Youth</i>	<a href="#"><u>11.5.3</u></a>
<i>Long-term Welfare Payment Recipient</i>	<a href="#"><u>11.6.3</u></a>
<i>Voluntary Income Management</i>	<a href="#"><u>11.7.7</u></a>

(\* underlining ours)

30. Linked information for each of the measures further reveals the complexity of the underpinning legislation, as determined by geographic location and/or membership of a cohort, such as 'disengaged youth'. While a person subject to compulsory income management by virtue of meeting the definition of a 'disengaged youth' has ordinary rights of appeal under social security law<sup>11</sup>, the text at 11.2.9 in relation to Cape York, says:

Full [AAT](#) review rights are applicable under the Cape York initiative. Care, however, needs to be taken in determining the correct appeal path for the individual. Different aspects of the Cape York income management initiative can be appealed in Federal and Queensland jurisdictions. The broad distinction is that:

- a decision by the Family Responsibilities Commission, including a decision to give a notice to the delegate about income management for an individual, may be able to be appealed under Queensland law, and
- a decision by the delegate about the implementation of income management, including a decision about the allocation or disbursement of income managed funds, may be reviewed under social security law.

If a decision about income management is reviewed under the social security law, income management continues to apply until the review is finalised, unless otherwise directed by the relevant tribunal or court.

- [11.2.9.10 What can be reviewed/appealed through the delegate under the Cape York initiative](#)
- [11.2.9.20 Review of decision that individual is subject to income management under the Cape York Welfare Reform](#)
- [11.2.9.30 Review of decision to make deductions from individual's relevant welfare payments under the Cape York Welfare Reform](#)
- [11.2.9.40 Review of decision in relation to meeting the priority needs of individual under the Cape York initiative](#)

31. The self-evident complexity and opacity of compulsory income management appeal rights constitute a significant barrier to both internal and external review of decisions, the result being that vulnerable participants at risk of or already experiencing acute harm as a result of being subjected to compulsory income management are denied access to statutory internal appeal rights. This barrier flouts key principles for administering social security law set out in section 8 of the Social Security Administration Act<sup>12</sup>, and it is unsurprising that

<sup>11</sup> See [11.5.3 Review & appeal process under the Disengaged Youth measure | Social Security Guide \(dss.gov.au\)](#)

<sup>12</sup> Accessible at [SOCIAL SECURITY \(ADMINISTRATION\) ACT 1999 - SECT 8 Principles of administration \(austlii.edu.au\)](#)

very few compulsory income management matters reach the Administrative Appeals Tribunal.

- **Recommendation C:**
  - That legislation be introduced to substantively reform exemption and exit provisions under social security law, including to enable permanent exemptions and exits
- **Recommendation D:**
  - That pending C., that DSS and Services Australia review exemption and exit policy and procedural guidelines, with a view to identifying and removing barriers to applying for exemption/exit; and to ensuring equitable application of exemption and exit policies and enhancing access to internal review and appeals

**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.**

### **Equality and non-discrimination**

32. The Statement of Compatibility with human rights (SOC) for the Income Management Reform Bill included recognition that First Nations people are grossly disproportionately represented in income management cohorts; yet the SOC stated that the legislation would not 'directly limit' rights to equality and non-discrimination, and 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.<sup>13</sup>
33. The SOC for the Income Management Reform Bill also stated that there had 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 did not explain or justify how these limitations on rights to equality and non-discrimination are reasonable, necessary or proportionate. We believe that this analysis should have been included.
34. The SOC noted that 'extensive consultation' had been undertaken with affected groups – but as noted above, no detail was provided in the Bill or its Explanatory Memorandum about what this entailed. Participation via genuine consultation is required by the United Nations Declaration on the Rights of Indigenous Peoples<sup>14</sup>. There was a lack of specificity around consultation processes in the Bill's SOC. Considering that the CDC and Income Management

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<sup>13</sup> See, e.g., 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.

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



programs have been repeatedly criticised for a failure to consult with communities and incorporate principles of self-determination,<sup>15</sup> this was a notable and concerning absence.

35. We are hopeful that the DSS consultation currently underway<sup>16</sup> will not only inform policy development but also be outlined in future Explanatory Memoranda on proposed amending legislation and Ministerial Instruments.

### **Self-determination, autonomy**

36. The SOC for the Income Management Reform Bill stated that Enhanced Income Management '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'.
37. With respect, this is disingenuous. Compulsory income management 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 in no way resolved 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**

38. The SOC for the Bill appropriately noted that article 9 of the International Covenant on Social Economic and Cultural Rights recognises the right to social security. It stated 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'.
39. This understates the significance of income quarantining – a limitation that interferes with the right to private life. Rights to social security, and to an adequate standard of living, should not be 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.
40. Compulsory income management programs treat the social security cohort in specified regions and categories distinctly from the rest of population. If a person who is not on social security income support or in a region that is not subject to the program, and they unable to manage their own funds, they may be subject to a public guardianship or trustee arrangement whereby their money is managed in accordance with what is determined to be their best interests. Enhanced Income Management cohorts, by contrast, have their funds

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<sup>15</sup> See, e.g., 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.

<sup>16</sup> See [Future of Income Management | engage.dss.gov.au](https://engage.dss.gov.au)

managed by Services Australia, subject to broader criteria than those that apply in respect of the public guardian or trustee in their jurisdiction.

41. In addition to having personal choices restricted, people on compulsory income management are also subject to surveillance and data-sharing, without no control over how their data is used and what may be done with it. Questions remain as to how financial institutions use and process personal data obtained from the SmartCard (and the BasicsCard).

## **Rights of the child**

42. EJA is concerned that garnisheeing social security income support of people with dependent children in their care through non-individualised, geographically designated compulsory income management, clearly flouts the UN Convention on the Rights of the Child.
43. As has been extensively canvassed in EJA's and other organisations' submissions to various inquiries over the years, the impacts of garnisheeing a parent's/carer's access to income support can be catastrophic – particularly, for example, where a woman is seeking to flee domestic violence and needs full access to her social security payments to do so. Whilst domestic violence can be grounds for granting an exemption or exit from compulsory income management, as discussed there are deep-seated systemic barriers to appealing.
44. EJA is particularly concerned that there has to date been inadequate regard to the needs of children in the care of people subject to compulsory income management where the person with responsibility for the care of the child is unable to manage their finances due to disability or other factors such as family/domestic violence involving coercive control, or substance abuse.
45. Compulsory Income Management can also have severe impacts for vulnerable young people seeking to establish independence<sup>17</sup>. For example, young people released from prison can be automatically subject compulsory income management. This completely removes the young person's right to a private life, personal autonomy and self-determination. It can also have the effect of trapping young people in abusive family situations because they are unable to access independent income support to flee the abuse and stay safe. The social security system should provide financial stability, enabling access to secure housing and social inclusion, with young people encouraged and actively supported to complete schooling, pursue further study, and gain meaningful employment.
46. We propose that a mechanism to entrench the rights of children as a key principle underpinning social security law, and ensuring proper scrutiny of the human rights implications of compulsory income management, would be through making direct reference Australia's international human rights obligations in the Social Security Act – particularly the rights of children. This would provide a legislative foundation for ensuring that human rights are properly taken into account when significant policy regimes such as social security income management are developed, and most importantly when considered by Parliament.

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<sup>17</sup> Noting that the Convention on the Rights of the Child covers young people under 18 years

## Limitations not justified

47. There is extensive evidence showing that compulsory income management is ineffective in achieving its goals and that it has harmful effects for many.<sup>18</sup> This evidence indicates that garnisheeing income support entitlements is not a reasonable means of achieving a legitimate aim, and that the human rights impacts are therefore not justifiable. As noted in one PJCHR report, 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'.<sup>19</sup> 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.<sup>20</sup>
48. Inserting human rights obligations as 'objects' in the Social Security Act would enable a more holistic examination of the human rights implications of significant and contentious social security measures such as compulsory income management.

➤ **Recommendation E**

- *That the Social Security Act be amended, so as to insert 'objects'. The 'objects' should make direct reference to Australia's international human rights obligations - including under the UN Convention on the Rights of the Child. This would provide a legislative framework to ensure proper scrutiny of whether significant social security measures such as compulsory income management comply with Australia's human rights obligations.*

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<sup>18</sup> See, e.g., 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?>](https://espace.library.uq.edu.au/data/UQ_6863639/HiddenCostsReportFinal.pdf?>).

<sup>19</sup> Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Futures measures* (March, 2016) [4.63].

<sup>20</sup> Parliamentary Joint Committee on Human Rights, *Report 6 of 2018* (June 2018), 38.