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Senate Standing Committees on Community Affairs
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**Re: Social Security (Administration) (Enhanced Income Management Regime—
Volunteers) Determination 2023**
**Social Security (Administration) (Enhanced Income Management Regime—
State Referrals) Determination 2023**
**Social Security (Administration) (Enhanced Income Management Regime -
Commonwealth Referrals and Exemptions) Determination 2023**

I welcome the opportunity to 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). 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 either of these cards as a *compulsory measure* 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.

Some people interviewed were ambivalent about the BasicsCard program, even though they were accustomed to it through long years of government policy experimentation. However, where there was ambivalence, this cannot be construed as consent or support for further mandatory income management.

The perspectives of employees and affiliates of local service providers varied, with some in favour of mandatory approaches to income management, particularly those

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).

with positions dependent on paternalistic policy being funded by government, and some adamant that such approaches were not serving any effective purpose. A variety of card circumvention strategies were reported in every field work site. Thus, people with addiction issues could find work-arounds to access what they were seeking if they were persistent and creative. Even if this involved buying certain types of goods and on-selling them for a lesser sum. There was a micro-economy that had grown around the cashless welfare cards, where financial exploitation took place by people in a position to profit from the poverty and, at times, the desperation of social security recipients. The BasicsCard and Cashless Debit Card ‘dollars’ were at times traded for ‘less’ in a variety of contexts. 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.

Several Elders from field work sites expressed indignation that these measures had been forced on First Nations peoples, negatively impacting their autonomy to manage their everyday transactions, while drawing upon and further extending many of the negative colonial stereotypes about Aboriginal peoples.

Concerns expressed by those opposed to mandatory income management have included points about:

- the *practical consumer difficulties* for cardholders paying for everyday goods and services that were not meant to be prohibited in theory but were in practice (for instance, bus services, laundromat fees, child care fees, purchases at community markets, etcetera),
- *stigma* experienced by cardholders,
- *human rights violations*, and
- *the sense of injustice that people felt over their budgetary autonomy being removed based on unevidenced assumptions about their capacity to manage their finances.*

Human Rights Compliance Problems with the Legislative Instruments

In considering the current legislative instruments the Parliamentary Joint Committee on Human Rights mentioned that compulsory income management limits a range of human rights, including:

‘the rights to a private life, social security, equality and non-discrimination, the rights of the child, and potentially the right to an adequate standard of living (if being subject to mandatory income management caused difficulties in accessing and meeting basic needs).’²

This Committee has consistently pointed out these problems with compulsory income management over many years.

² Parliamentary Joint Committee on Human Rights, *Report 11 of 2023*, p 46.

The Parliamentary Joint Committee on Human Rights note that some human rights have been omitted from consideration from the ‘The statements of compatibility accompanying each of the instruments’, with a failure ‘to identify all rights potentially limited, such as the right to a private life.’³ This strategic omission of relevant human rights by the drafters of the statement of human rights compatibility is disingenuous.

In analysing the government’s rationale for the continuation of compulsory income management the Committee stated:

‘it is not evident that facilitating the continued operation of mandatory income management under Parts 3AA and 3B of the Act is, for the purposes of international human rights law, necessary and addresses a public or social concern that is pressing and substantial enough to warrant limiting human rights. While facilitating the operation of a regime that provides participants with access to superior technology and improved banking functions is, in itself, an important aim, it remains unclear why this enhanced income management regime must operate on a mandatory basis (or why legislation is required to improve this technology).’⁴

I agree with the PJCHR on these issues. The continuation of compulsory forms of income management is neither consistent with Australia’s full range of international human rights obligations nor is it *necessary* to support the budgetary arrangements of people on social security payments. People could use CentrePay as a voluntary measure if they desire a bill payment support system.

The Committee once again referred to the problem of lack of proportionality with the compulsory income management system the government is imposing, pointing to the lack of ‘flexibility to consider individual circumstances and ... the availability of less rights restrictive ways of achieving the stated objectives.’⁵

Consultation and Overrepresentation of First Nations under Income Management

I note that the Statement of Compatibility with Human Rights accompanying the State and Commonwealth Referrals legislative instruments claim that:

‘individuals who become subject to the enhanced IM regime may include a high proportion of First Nations people. Extensive consultation has occurred with First Nations people and communities in the establishment of the enhanced IM program, including on the locations in which it operates.’⁶

³ Parliamentary Joint Committee on Human Rights, *Report 11 of 2023*, p 47.

⁴ Parliamentary Joint Committee on Human Rights, *Report 11 of 2023*, p 47.

⁵ Parliamentary Joint Committee on Human Rights, *Report 11 of 2023*, p 49.

⁶ Statement of Compatibility with Human Rights, *Social Security (Administration) (Enhanced Income Management Regime— State Referrals) Determination 2023*, p 8; Statement of Compatibility with Human Rights, *Social Security (Administration) (Enhanced Income Management Regime— Commonwealth Referrals and Exemptions) Determination 2023*, p 17.

Enhanced income management is *very likely to disproportionately apply to First Nations given that they have long made up the majority of people being income managed in the Northern Territory* (see Appendix A), a jurisdiction where the government plans to keep up the mostly mandatory income management measures with far fewer people ‘volunteering’ for income management. Capturing people for compulsory income management who are defined as long term unemployed and who are defined as disengaged youth is key to the gross overrepresentation of Indigenous peoples under the Northern Territory income management regime. Part 3AA of the *Social Security (Administration) Act 1999* (Cth) will just perpetuate this pattern. This is yet another gesture of indirect racial discrimination described as benevolent intervention by government.

In terms of consultation, during field work in Alice Springs this year Aboriginal Elders and Community members from surrounding communities frequently either did not speak favourably about the introduction of the SmartCard or did not know it was being introduced at all. More often the latter. I note that the government says that consultation about the SmartCard has occurred and will continue. However, consultation after the introduction of the policy is not the same thing as ‘free, prior and informed consent’, which violates a key principle embedded under Article 19 of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). Australia’s First Nations deserve better than this.

Right to Self-Determination

The legislative instruments assert that the SmartCard promotes self-determination through a constrained choice where one cashless social security payment card is offered in exchange for another. This is nonsense. Article 3 of UNDRIP refers to self-determination as free choice – not constrained choice. During field work numerous interviewees have explained how the imposition of such cards adversely impacted their ‘economic, social or cultural development’, interfering with their aspirations for further study, training and small business development. Thus, I disagree with the government’s assertion that ‘Any limitation on the right to self-determination is minimal and is ... reasonable, necessary and appropriate’.⁷

Rather, these sorts of cards can perpetuate a poverty trap for many of the people subject to them, and that is an appalling way to treat Australia’s Indigenous Peoples. A mother undertaking training for small business development who cannot pay for child care with her cashless social security card, for example, is actively being thwarted in her economic development aspirations – not supported by government to rise out of the social security system. Autonomy and choice are highly valued by First Nations people, and ‘top-down’ compulsory income management approaches have a lengthy history of not working effectively in achieving the government’s stated

⁷ Statement of Compatibility with Human Rights, *Social Security (Administration) (Enhanced Income Management Regime— State Referrals) Determination 2023*, p 9.

goals. It is long past time that the Federal Government abandoned punitive, stigmatising, and poverty entrenching approaches to social security payments.

Recommendations

1. That the legislative instruments supporting the introduction of the SmartCard be disallowed.
2. That the government take seriously its responsibility to ensure that any restrictions on human rights are proportionate, exploring a range of less rights restrictive alternatives and ensuring that there is flexibility to cater to the individual circumstances of social security recipients.
3. That government consultation practices with First Nations conform to UNDRIP requirements.

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

Yours sincerely,

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Appendix A

Shelley Bielefeld, *Submission No 4 to the Senate Standing Committee on Community Affairs, Inquiry into the Social Security (Administration) Amendment (Income Management Reform) Bill 2023*, 31 March 2023, 1-14.