

23 June 2021

Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

By email only: legcon.sen@aph.gov.au

Economic Justice Australia acknowledges the Gadigal people of the Eora Nation, the Traditional Custodians of the land upon which Economic Justice Australia stands. We also acknowledge the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay respect to their Elders past, present and emerging and extend that respect to all Aboriginal and Torres Strait Islander peoples.

Dear Committee Secretary,

Economic Justice Australia submission to the inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia

1. Economic Justice Australia (**EJA**) is the peak organisation for community legal centres providing specialist advice regarding social security issues and rights. Our members across Australia have provided free and independent information, advice, education and representation in the area of social security for over 30 years.
2. EJA draws on its members' casework experience to identify systemic policy issues and provide expert advice to government on reforms needed to make the social security system more effective and accessible. Our law and policy reform work:
 - strengthens the effectiveness and integrity of our social security system;
 - educates the community; and
 - improves people's lives by reducing poverty and inequality.
3. EJA welcomes the opportunity to make this submission to the Committee. Many of the changes made to social security legislation and policy since Australia's endorsement of the United Nations Declaration on the Rights of Indigenous Peoples in 2009 have not only failed to adhere to the Declaration's principles and ensure social security laws and policies do not continue to breach the rights of indigenous peoples in Australia, but have also further eroded Aboriginal and Torres Strait Islanders' rights, including the rights to self-determination and non-discrimination.

4. The Declaration has been described by Aboriginal and Torres Strait Islander Social Justice Commissioner, June Oscar AO, as the 'most comprehensive tool we have available to advance and protect the rights of Aboriginal and Torres Strait Islander people'.¹ Yet, there is nothing to indicate that the Declaration is being, or has been, explicitly considered in the development, review or implementation of social security legislation, policies or program initiatives. The United Nations Declaration on the Rights of Indigenous Peoples is missing in action.
5. The Declaration makes it clear that rights to health, housing, education and other basic needs essential to well-being are understood as inextricable from rights to self-determination, participation in decision-making, respect for and protection of culture, and equality and non-discrimination.
6. On 26 December 2017, the United Nations Committee on the Elimination of Racial Discrimination published its *Concluding Observations on the eighteenth to twentieth periodic reports of Australia*. The Committee expressed concern that:
'... Indigenous peoples, including those living in remote areas, face discrimination in access to social security benefits, notably through the **mandatory income-management scheme** and the **community development programme**.²
7. The Committee recommended that the Australian Government;
'... reconsider the mandatory income-management scheme, which in effect disproportionately affects indigenous peoples, maintain only an opt-in income-management scheme and **remove discriminatory conditions in access to social security benefits by claimants living in remote areas**, the vast majority of whom are indigenous.³
8. These recommendations have not been implemented. Instead:
 - **compulsory income management** has been substantially extended, further entrenching harmful impacts that disproportionately affect First Nations individuals and communities;
 - the **Community Development Program (CDP)** continues to be intrinsically discriminatory, despite some amelioration of its harshest aspects, with

¹ Quoted on Australian Human Rights Commission website page on the UN Declaration on the Rights of Indigenous People: <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/projects/un-declaration-rights>.

² Concluding observations on the eighteenth to twentieth periodic reports of Australia, Committee on the Elimination of Racial Discrimination, 8 December 2017. Accessible at: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/AUS/CERD_C_AUS_CO_18-20_29700_E.pdf.

³ Ibid.

participants continuing to be subject to high rates of penalties for non-compliance with requirements;

- First Nations people on activity-tested income support payments continue to be subject to **disproportionately high rates of mutual obligations non-payment penalties**, including people with disability and their carers, and sole parents; and
- people in remote First Nations communities continue to face **systemic barriers to claiming and maintaining income support payments** – including people with disability and their carers, victims/survivors of domestic violence, people released from prison, and people who are homeless or at risk of homelessness.

RECOMMENDATIONS MADE IN THIS SUBMISSION

Compulsory income management

- EJA endorses and adopts all recommendations made by the Australian Income Management Network (AIMN) in its submission to this Inquiry⁴, including that compulsory income management, whether under the Income Management program or the Cashless Welfare program, be brought to an end. Should income management continue as a policy measure, participation should be voluntary and opt-in only.*
- In the interim, pending passage of legislation to dismantle compulsory income management programs, we propose that legislation providing for compulsory participation in the CDC program be revoked as a matter of urgency, with compulsory CDC participants exited from the program unless the person provides informed consent to remaining in the program as a voluntary participant.*

Community Development Program

- EJA proposes that the Remote Employment Program, or any alternative program to replace the CDP, should be consistent with Australia's obligations under the United Nations Declaration on the Rights of Indigenous People, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination.*
- We propose that the process for developing any program replacing the CDP must meet Close the Gap commitments, ensuring co-design with communities and consultation with key representative organisations, such as the Coalition of Peaks and the Aboriginal Peak Organisations Northern Territory (APO NT).*

⁴ The Accountable Income Management Network (AIMN) is a nation-wide group of community members; representatives of national, state and local non-government organisations and community bodies (including EJA); academics; social researchers and public policy experts. We refer the Committee the AIMN submission to this inquiry, which provides a comprehensive analysis of the extent to which Australia's failure to dismantle compulsory income management contravenes Australia's obligations as a signatory of the Declaration.

ParentsNext

- E. We recommend urgent reform of ParentsNext, amending the Social Security Act such that it becomes a genuine pre-employment program that:
- is completely voluntary,
 - prioritises cultural safety, with specific reference to the needs of First Nations individuals and communities
 - does not affect the security of a parent's income support or other payments by imposing mutual obligation requirements and applying a punitive system of sanctions
 - addresses the structural barriers preventing parents from returning to the labour market
 - removes any financial incentives to providers which may motivate them to work against the interests of participants.

Barriers to accessing social security entitlements

Disability Support Pension

- F. EJA urges the Government to implement the recommendations made in the Senate Community Affairs Reference Committee's report on its inquiry into the purpose, intent and adequacy of the Disability Support Pension, in their entirety.
- G. Recommendations made in that report aiming to address barriers to accessing DSP for First Nations people should be implemented as a matter of urgency, including increasing funding for disability advocacy, community legal services and First Nations organisations to enable provision of social security legal help to people in remote and very remote First Nations communities.

Service delivery barriers

- H. EJA recommends that Services Australia develop targeted actions for implementation of the Indigenous Servicing Strategy and for development of a Remote Servicing Strategy, toward enhancing access to social security entitlements for people in remote communities - focussing on people with disability, sole parents and carers. Actions should be informed by consultations with relevant community-led organisations, disability advocacy services working with remote communities, and community legal centres providing advice and advocacy to people in remote communities.

Access to social security legal assistance

- I. EJA proposes that specific funding be provided to community legal centres serving regional, rural, remote and very remote communities, to enable provision of specialist, culturally safe and well-being focused legal advice and assistance on social security issues.

COMPULSORY INCOME MANAGEMENT

Evolution of compulsory income management

9. Compulsory income management has its roots in the 2007 Northern Territory Emergency Response (**the Intervention**), a set of key policies which deliberately and overtly targeted Aboriginal and Torres Strait Islander communities. Notably, the introduction of legislation to enable the compulsory quarantining of social security income support payments required the suspension of the Racial Discrimination Act 1975.⁵
10. Social security quarantining has since been extended, in various formats, by successive governments, with compulsory income quarantining currently imposed via two separate schemes: Income Management and Cashless Welfare. These schemes are more commonly known by reference to the debit cards associated with their operation – the BasicsCard, issued under the Income Management scheme; and the Cashless Debit Card (**CDC**), issued under Cashless Welfare arrangements.⁶
11. Quarantining under both these schemes involves limiting the percentage of specified social security payments a person may receive as cash in their chosen personal bank account, with the balance (generally between 50% and 80%) quarantined to a separate account, accessible via the Basics Card or CDC. Restrictions are imposed on where and how the Basics Card or CDC quarantined funds can be spent by the card holder – the primary aim being to limit expenditure on alcohol and other drugs, and gambling.
12. In 2019 the former government introduced legislation to extend the trialling of the CDC program, and add new regions to the trials. After toing and froing in Parliament, and consideration of amendments, the *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Act 2020* was passed in December 2020, providing for two categories of CDC program participant across the regions – compulsory and voluntary – with jurisdictional differences regarding compulsory participation, transition from Income Management to the CDC, and exemption and exit processes.⁷
13. EJA is pleased that the incoming Labor Government has restated its pre-election commitment to end compulsory income management, however, there is as yet no indication of how this will be achieved and no timeframe. We therefore reiterate our

⁵ See, for example, the Australian Human Rights Commission statement, 'Racial Discrimination Act is a vital human rights safeguard', 8 August 2007. Accessible at: <https://humanrights.gov.au/about/news/media-releases/hreoc-media-release-racial-discrimination-act-vital-human-rights>.

⁶ Parts 3B and 3D of the *Social Security (Administration) Act 1999*, respectively.

⁷ The amending legislation, the *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Act 2020*, is available at <https://www.legislation.gov.au/Details/C2020A00136>.

primary concerns regarding compulsory income management, below, by way of highlighting the need to ensure that the dismantling of compulsory social security income quarantining is effected as a matter of urgency.

Income management undermines right to self-determination

14. *Hidden Costs: An Independent Study into Income Management in Australia*⁸, published in February 2020 by the University of Queensland, reported on the findings of a major multi-site study examining the experiences of people subject to compulsory income management in both Australia and New Zealand. The report concluded that:

*'... the social, emotional and economic costs of continuing with compulsory (income management) outweigh the benefits. It is hard to draw any other conclusion from the findings presented here and elsewhere. This does not mean that a genuine voluntary scheme could not be maintained, but it would need to sit alongside other measures to tackle poverty that have been recommended by participants in this study and other advocates and experts over many years, such as addressing the adequacy of income support payments, ensuring decent employment and training opportunities, and providing accessible social services and affordable housing. This package of reforms would be a better starting point for creating healthy, economically secure and socially inclusive communities, compared with blunt, punitive and counterproductive policies that are pushing ordinary Australians further towards the margins of their communities.'*⁹

15. These findings add to what is now an extensive body of evidence indicating the need to discontinue the CDC program. This empirical evidence is the result of independent academic research¹⁰ as well as government-commissioned reports.¹¹ While this research has noted benefits associated with the CDC program,¹² there is no empirical evidence that compulsory income management has achieved its stated objectives.¹³

⁸ Marston, G., Mendes, P., Bielefeld, S., Peterie, M., Staines, Z. and Roche, S. (2020) *Hidden Costs: An Independent Study into Income Management in Australia*. School of Social Science, The University of Queensland: Brisbane, Australia. Accessible at: <https://www.incomemanagementstudy.com/>.

⁹ Ibid. P122-123.

¹⁰ Mendes, P., Waugh, J., and Flynn, C. (2014) 'Income Management in Australia: A Critical Examination of the Evidence'. *International Journal of Social Welfare* 23(4): 362-372; Vincent, E. (2019) *Lived Experiences of the Cashless Debit Card Trial*, Ceduna, South Australia. Centre for Aboriginal Economic Policy Research (CAEPR). The Australian National University (ANU): Canberra.

¹¹ K. Mavromaras, M. Moskos, L. Isherwood and S. Mahuteau 'Cashless Debit Card Baseline Data Collection in the Bundaberg and Hervey Bay Region: Qualitative Findings', December 2019; Bray, R., Gray, M., Hand, K. and Katz, I. (2014) *Evaluating New IM in the Northern Territory*, Final Evaluation Report. Australian National University and Australian Institute of Family Studies: Canberra.

¹² Orima Research (2017) *Cashless Debit Card Trial Evaluation: Final Evaluation Report*. Orima Research and Department of Social Services: Canberra.

¹³ *Hidden Costs: An Independent Study into Income Management in Australia*. Op cit. p. 7; ANAO 2018 'The Implementation and Performance of the Cashless Debit Card Trial'; Eva Cox, 'Much of the data used to justify the

Successive reports have instead highlighted the program's overall negative impacts on individual and community wellbeing.

16. Given the weight of evidence showing the negative impacts that the compulsory CDC program can have on the vulnerable individuals and communities it targets, we reiterate the key concerns outlined in our previous submissions, which are that the CDC program:
- is causing social harm
 - has made it more difficult for some victims of domestic violence to seek safety
 - has been rolled out without adequate consultation with communities
 - has created unnecessary and outsized administrative costs
 - has been developed on the flawed assumption that poverty and social disadvantage are caused by poor financial and self-control skills rather than a basic lack of resources
 - breaches Australia's human rights obligations in relation to the self-determination of Indigenous peoples, equality, non-discrimination, social security and privacy.

Lack of basis in community consultation

17. On 26 December 2017, the United Nations Committee on the Elimination of Racial Discrimination published its *Concluding Observations on the eighteenth to twentieth periodic reports of Australia*. The Committee expressed concern that:

'... Indigenous peoples, including those living in remote areas, face discrimination in access to social security benefits, notably through the mandatory income-management scheme and the community development programme.'¹⁴

18. The Committee recommended that the Australian Government;
- '... reconsider the mandatory income-management scheme, which in effect disproportionately affects indigenous peoples, maintain only an opt-in income-management scheme and remove discriminatory conditions in access to social security benefits by claimants living in remote areas, the vast majority of whom are indigenous.'¹⁵

welfare card is flawed', The Guardian (online), 7 September 2017. Accessible at:
<https://www.evacox.com.au/content/much-data-used-justify-welfare-card-flawed>.

¹⁴ United Nations Committee on the Elimination of Racial Discrimination. *Concluding Observations on the eighteenth to twentieth periodic reports of Australia* [23]. Accessible at:
https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/AUS/CERD_C_AUS_CO_1820_29700_E.pdf.

¹⁵ *Concluding Observations on the eighteenth to twentieth periodic reports of Australia* [24]. Accessible at:
https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/AUS/CERD_C_AUS_CO_1820_29700_E.pdf.

19. This recommendation has not been implemented. Instead, the former government proceeded with extensions of the trial CDC program into new regions via legislative instrument and introduction of the amending legislation without due consideration of calls for the program to be voluntary and opt-in. There was no structured process to consult with proposed new communities regarding trial extensions and provide the opportunity for community input regarding the underlying policy rationale.
20. The extension of the CDC program into new areas has been undertaken with inadequate regard to the fact that First Nations communities across regional and remote Australia are culturally diverse, with representative community-controlled organisations partnering with a range of agencies to enhance community wellbeing. Most new CDC program participants are Aboriginal and Torres Strait Islander people residing in the Northern Territory and Cape York. Given the weight of empirical evidence indicating fundamental issues regarding the CDC program to date, including the overwhelmingly negative experiences reported by participants and communities, the proposed further rolling out of the program without extensive community consultation with organisations representing all affected Aboriginal and Torres Strait Communities is unconscionable.
21. Importantly, the amending legislation failed to include reference to one of the objects of the CDC trials – i.e., to determine whether the CDC is more effective when community bodies are involved. This lack of regard to evaluating what has purportedly been a ‘trial’, and communicate trial findings to communities, will only serve to deepen existing issues associated with inadequate consultation with affected communities.¹⁶
22. The ‘top-down’ imposition of the program contradicts its stated objectives of supporting participants with budgeting strategies and encouraging socially responsible behaviour.¹⁷ The degree to which people feel that they have autonomy and control over their actions and circumstances is a key determinant of responsible financial management and socially responsible behaviour.¹⁸ Participants in the CDC trials have reported feeling ‘powerless’ and having ‘control ... taken away’ by the lack of consultation and the restrictions of the card.¹⁹ The CDC program’s lack of basis in community consultation and self-determination takes away the autonomy of participants in a way that undermines the program’s key objectives.

¹⁶ Goulbourn Valley Community Legal Centre Pilot (GVCLCP) (2012) Shepparton Income Management Survey Report. GVCLCP: Bendigo; Mendes, P., Waugh, J., and Flynn, C. (2014) ‘Income Management in Australia: A Critical Examination of the Evidence’. *International Journal of Social Welfare* 23(4): 362–372.

¹⁷ s124PC Social Security Administration Act, as proposed.

¹⁸ Prawitza, A. and Cohartb, J. (2016) ‘Financial Management Competency, Financial Resources, Locus of Control and Financial Wellness’. *Journal of Financial Counselling and Planning* 27(2): 142–157.

¹⁹ Hidden Costs: An Independent Study into Income Management in Australia. Op cit. p 89.

Exit determinations

23. The further application of the CDC program to residents of entire geographical regions means that new cohorts of participants have lost the right to manage their income despite the fact that they may have had no issues with managing finances, and no gambling or addiction issues. The exit mechanism is intended to ensure that people may opt out of the program. However, the process to exit the CDC is long and complex, with reports of participants waiting up to a year for a decision, and inadequate evidence at times being used to deny exit.²⁰ Some participants have reported exit applications being declined for reasons not related to capacity to manage income – for example, where debit card rejections have been due to technology failure.²¹
24. One of the main issues that EJA's member community legal centres deal with regarding CDCs is where a person loses their job in a non-CDC region, has trouble finding a new job, and then moves to a CDC region in the belief that work is available there. They claim a Centrelink payment in the CDC region while they seek work, and are placed on the CDC program. When it becomes apparent that they are not in fact going to get work, they then move back to their usual place of residence – which is not a CDC region. People in this situation are then often considered to be 'transient', and thereby deemed to be unable to reasonably and responsibly manage their affairs. Clients in this situation state that when they come back to their city or town they feel they are discriminated against if they mention they have a CDC, and feel humiliated and ashamed when using it – perceiving that people think 'this must be a bad person'. Clients in this situation report that when they ask to be exited from the CDC Program, they are subjected to questioning about why they have moved to the non-CDC area and have to justify that it is their usual place of residence.
25. The legislation gives the Secretary the power to revoke a decision that a person be exited from the CDC program if the Secretary becomes aware of information that suggests the person is no longer reasonably and responsibly managing their affairs.²² Enabling the Secretary to revoke exit decisions on the basis of information that the person is no longer 'reasonably and responsibly managing their affairs' suggests that former participants will be subject to continued surveillance of their affairs and may be placed back on the card without their consent and potentially based on inadequate evidence. This scrutiny will potentially add to the humiliation and shame experienced by many people who have gone through a protracted exit process.

Absence of parliamentary scrutiny

²⁰ ABC news report: 'Cashless welfare card recipients denied exit from trial claim unfair treatment', 21 August 2020. Accessible at: <https://www.abc.net.au/news/2020-08-21/queensland-cashless-welfare-card-exit-applications-exit/12579856>.

²¹ Ibid.

²² s124PHB(9A) Social Security Administration Act as proposed.

26. The legislation extending the CDC came after former Minister Ruston announced, in May 2020, that the CDC trials would be extended until 31 December 2020. This extension was made using the Minister's powers under sunset provisions in the Coronavirus Economic Response Package.²³ There was therefore no Parliamentary scrutiny of the extension.
27. This lack of Parliamentary scrutiny was further enabled in the amending Act, which provides for future expansion of the CDC program beyond current sites via legislative instrument. Especially considering the strong and mounting evidence of the negative impacts of the compulsory CDC program on many individuals and communities, and the lack of community input and consultation regarding the trials or the current Bill measures, this continued lack of Parliamentary scrutiny is of grave concern. Any proposed extension of quarantining of security entitlements to CDCs must be subject to Parliamentary scrutiny, whether the extension is to cover new regions, new cohorts of people, or payment components.

Need to enhance access to legal assistance

28. There is a chronic lack of access to social security legal help in regional, rural, remote and very remote communities. The social security legal needs of Aboriginal and Torres Strait Islander people are not reflected in available funding programs. Funding models for legal help are not related to need and they do not take into account geographic considerations. This leaves people without access to accessible, culturally appropriate information resources, and to specialist legal advice and advocacy on social security issues.
29. The Kimberley represents a compelling example. The Kimberley is twice the size of Victoria and the region is thousands of kilometres from the closest community legal centres providing specialist social security legal advice and assistance, these being in Darwin and Perth. Whilst the Kimberley Community Legal Service (**KCLS**) is a generalist Community Legal Service, neither KCLS nor any of the other non-profit legal services in the Kimberley receive dedicated funding to provide social security legal help.
30. Lack of access to specialist social security legal advice is particularly problematic in the Kimberley given the high proportion of disadvantaged people eligible for social security benefits, and the dramatic effects of social security problems - including disproportionately high rates of mutual obligation penalties for both mainstream social security payments and the Community Development Program. There is anecdotal evidence in the Kimberley (and other regional/remote areas) of people with high needs

²³ Coronavirus Economic Response Package Omnibus Act 2020, Schedule 16.

withdrawing from the social security system and increasing financial pressure on families and communities due to people receiving Centrelink penalties or suspensions.

31. As initiatives such as extension of the CDC program were rolled out, it appears that no consideration was given to legal support and representation needs in relation to the cashless debit card/compulsory income management, or regarding social security issues generally. A CDC or Basics Card is of no relevance to a person whose social security payment has been suspended or cancelled, or who has had a Disability Support Pension claim denied, and who needs legal assistance to resolve the issue but cannot obtain it.
32. Many people with valid grounds to seek that they be exited from the CDC program have been denied the right to do so because of lack of access to advice and support; and conversely, vulnerable individuals who may benefit from income management are lost to the program because they have disengaged from the social security system.

Commitments to end compulsory income management

33. We believe that, had there been an Indigenous Voice to Parliament in place at the time, the process for evaluation of the initial CDC trials and for consideration of any extended rollout of trials to new regions, would have been very different.
34. We now have a change of Government, and note that both Labor and the Greens have made strong commitments to enabling an Indigenous Voice to Parliament, and to ending compulsory social security income management.
35. We appreciate and support the new Government's commitment to consulting with communities regarding the dismantling of compulsory engagement in income management. However, we propose that the first steps towards the abolishment of compulsory social security income management need to be taken as a matter of urgency, with priority given to introducing the required legislative amendments to the *Social Security (Administration) Act 1999*, thereby implementing commitments made under the Declaration. EJA looks forward to providing input into how these changes may be effected.
36. Separate legislative amendments will be required to enable exit from the Income Management program for certain compulsory participants. Specific provisions will need to be made given jurisdictional differences – including for Cape York region Income Management (BasicsCard) participants – taking into account community input and the role of the Family Responsibilities Commission.

➤ Recommendations:

- A. *EJA endorses and adopts all recommendations made by the AIMN its submission to this Inquiry,²⁴ including that compulsory income management, whether under the Income Management program or the Cashless Welfare program, be brought to an end. Should income management continue as a policy measure, participation should be voluntary and opt-in only.*
- B. *In the interim, pending passage of legislation to dismantle compulsory income management programs, we propose that legislation providing for compulsory participation in the CDC program be revoked as a matter of urgency, with compulsory CDC participants exited from the program unless the person provides informed consent to remaining in the program as a voluntary participant.*

COMMUNITY DEVELOPMENT PROGRAM

Evolution of the CDP

37. The CDP was introduced in July 2015,²⁵ its stated aim being to support 'job seekers in remote Australia to build skills, address barriers and contribute to their communities through a range of flexible activities'.²⁶
38. Since its introduction, the CDP has been widely criticised for discriminating against Aboriginal and Torres Strait Islander people.²⁷ Whilst recent legislative amendments mean that the CDP no longer *explicitly* states that it targets Aboriginal and Torres Strait Islander people, the geographic areas covered by the CDP predominantly comprise remote Aboriginal and Torres Strait Islander people.

²⁴ The Accountable Income Management Network (AIMN) is a nation-wide group of community members; representatives of national, state and local non-government organisations and community bodies (including EJA); academics; social researchers and public policy experts. We refer the Committee the AIMN submission to this inquiry, which provides a comprehensive analysis of the extent to which Australia's failure to dismantle compulsory income management contravenes Australia's obligations as a signatory of the Declaration.

²⁵ National Indigenous Australians Agency, *The Community Development Program (CDP)*, accessed 2 February 2022. Accessible at: <https://www.niaa.gov.au/indigenous-affairs/employment/cdp>.

²⁶ Department of Education, Skills and Employment, *Community Development Program (CDP)*, accessed 2 February 2022. Accessible at: [https://www.dese.gov.au/community-development-program-cdp#:~:text=The%20Community%20Development%20Program%20\(%20CDP,a%20range%20of%20flexible%20activities](https://www.dese.gov.au/community-development-program-cdp#:~:text=The%20Community%20Development%20Program%20(%20CDP,a%20range%20of%20flexible%20activities).

²⁷ National Social Service Rights Network, *Community Development Program - The Impact of Penalties on Participants*, October 2021, p. 4.

39. The CDP is delivered in 60 regions,²⁸ including more than 1,000 communities across Australia. As at 30 September 2021, there were 34,964 active CDP participants.²⁹ People in receipt of an activity tested income support payment who live in a CDP region are required to participate in the CDP as a condition of receiving payment – namely:

- Jobseeker Payment recipients
- Youth Allowance recipients (if not an apprentice or full-time student)
- Certain Parenting Payment recipients
- Special Benefit recipients (for certain visa holders).³⁰

40. The CDP consists of two main elements: employment services and Work for the Dole.³¹ CDP participants are generally subject to ‘mutual obligation’ requirements (unless temporarily exempt – on the grounds of ill-health, for example). Mutual obligation requirements cover:

- agreeing to a job plan;
- attending appointments and interviews in order to seek paid work;
- meeting job search requirements;
- accepting suitable paid work when offered; and
- not voluntarily leaving suitable employment.³²

41. When the CDP was introduced all participants aged between 18 and 49 were required to participate in Work for the Dole activities each day of the working week, for up to 25 hours a week throughout the year³³, unless they met exemption criteria. This led to widespread criticism that the mutual obligation requirements for program participants were more onerous than for participants in the mainstream employment services program, jobactive.³⁴

²⁸ National Indigenous Australians Agency, *The Community Development Program (CDP) Regions*. Accessible at: <https://www.niaa.gov.au/resource-centre/indigenous-affairs/community-development-programme-regions>.

²⁹ National Indigenous Australians Agency (NIAA), *Community Development Program (CDP) September 2021 Quarterly Compliance Data*, p. 3. Accessible at: <https://www.niaa.gov.au/sites/default/files/publications/cdp-quarterly-september-2021.pdf>.

³⁰ Ibid.

³¹ Ibid.

³² The Senate Finance and Public Administration Legislation Committee, *Social Security Legislation Amendment (Remote Engagement Program) Bill 2021 [Provisions]* p. 3, citing NIAA, *New Remote Engagement Program: Discussion paper*, August 2021, p.10.

³³ Department of Parliamentary Services, *Bills Digest* (Digest No 23 of 2021-2022, 18 October 2021) p.4.

³⁴ There are currently three employment services programs: jobactive (incorporating ParentsNext); Disability Employment

Services; and the CDP. From 1 July 2022 jobactive will be replaced by Workforce Australia, under the New Employment Services

Model. See: <https://www.dese.gov.au/employment/announcements/workforce-australia-employment-services>

and <https://www.acoss.org.au/mutual-obligations-and-the-new-employment-services-model>.

42. The previous government made various changes to the program over the life of the CDP, including a number of attempts at reform.³⁵ Controversy over the disproportionate number of penalties imposed on CDP participants led to a Senate Finance and Public Administration References Committee inquiry into the program, with a report published in December 2017.³⁶ The Committee made 22 recommendations in relation to the CDP.³⁷ This included a recommendation that the Government immediately replace the CDP compliance and penalty regime with obligations that are no more onerous than those of the other income support recipients.³⁸ The Committee also recommended that CDP participants have the same legal rights and other responsibilities as other income support participants, taking into account special circumstances such as remote location and cultural obligations.³⁹
43. The previous federal government funded an independent evaluation of the CDP and a report was released in February 2019.⁴⁰ The evaluation found that:
- ‘relatively high rates of penalties among participants with barriers to participation may, in part, be due to difficulties navigating the CDP and compliance systems. Community members and stakeholders interviewed suggested this difficulty was contributing to increased stress, anxiety and mental health issues’.⁴¹
44. Following these findings, the Government announced a number of administrative changes to the CDP to enable medical and other barriers to participation to be more easily recognised and reduce penalties imposed on participants.⁴²
45. The Federal Court’s decision in *Dawson v Commonwealth of Australia* (No 2) [2021] FCA 1636⁴³ (**Dawson**) dealt with a class action commenced by Western Australia’s Shire of Ngaanyatjaraku and the Ngaanyatjarra Council in 2019 on behalf of 680 CDP participants. The Applicants alleged that the Commonwealth discriminated against them and class action members, in contravention of the *Racial Discrimination Act*

³⁵ Department of Parliamentary Services, *Bills Digest* (Digest No 23 of 2021–2022, 18 October 2021), p.5.

³⁶ Senate Finance and Public Administration Committee, *Report on Appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP)*, December 2017.

³⁷ *Ibid.*

³⁸ *Ibid.*, p. xi.

³⁹ *Ibid.*

⁴⁰ Department of the Prime Minister and Cabinet, *An evaluation of the first two years of the Community Development Programme*, 5 February 2019.

⁴¹ *Ibid.*, p. 3.

⁴² Department of Parliamentary Services, *Bills Digest* (Digest No 23 of 2021–2022, 18 October 2021), p. 7, citing Wyatt, *Community Development Program reforms delivering for Indigenous Australians*, 2 October 2019. Accessible at: <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F6945863%22>.

⁴³ *Dawson v Commonwealth of Australia* (No 2) [2021] FCA 1636.

1975(Cth), by requiring them to participate in the CDP in order to receive income support payments under the *Social Security Act 1991* (Cth).⁴⁴ Applicants also alleged that obligations to participate in the CDP were more onerous than those imposed on other recipients of Newstart Allowance (the precursor to JobSeeker Payment), having regard in particular to: the remoteness of their communities; their low levels of education and literacy; and other aspects of their socio-economic status which made obtaining and participating in paid employment more difficult.⁴⁵ A settlement was reached between parties during a confidential mediation. The orders made by the Federal Court were to approve the settlement.⁴⁶

May 2021 changes

46. From 12 May 2021, participation in CDP activities was made voluntary.⁴⁷ Under the new arrangements, job seekers can volunteer to take part in activities but are still required to meet mutual obligations in relation to job seeking, and accepting and retaining work.⁴⁸ If a CDP participant does not meet these requirements, their payment may be suspended and they may incur a financial penalty by way of loss of payment for a period.⁴⁹

Disproportionately high penalty rates ongoing

47. Many commentators have pointed to the disproportionately high number of penalties for non-compliance imposed on CDP participants when compared to penalty data for jobactive participants.⁵⁰ Disproportionately high penalty rates for CDP compared to jobactive participants have continued since the May 2021 changes – in respect of failure to comply with mutual obligations in relation to job seeking, and accepting and retaining work.

48. Where a CDP participant is unable to attend an appointment or activity they must give prior notice of their reason for not being able to attend, where it is reasonable to expect them to do so.⁵¹ If they fail to do so for an appointment, a penalty may be applied

⁴⁴ Ibid, at [10].

⁴⁵ Ibid.

⁴⁶ Ibid, at [5].

⁴⁷ National Indigenous Australians Agency, *The Community Development Program (CDP)*, accessed 15 March 2022.

Accessible at:

<https://www.niaa.gov.au/indigenous-affairs/employment/cdp>.

⁴⁸ Ibid.

⁴⁹ Services Australia, *Mutual obligation requirements in the Community Development Program*,

<https://www.servicesaustralia.gov.au/mutual-obligation-requirements-community-development-program?context=51411>.

⁵⁰ Department of Parliamentary Services, *Bills Digest* (Digest No 23 of 2021-2022, 18 October 2021) p.5

⁵¹ Ibid, p. 9.

regardless of the reason for non-attendance.⁵² Data for the period 1 October to 31 December 2021 reported that 20,297 of the 38,565 participants in CDP received income support payment suspensions for missing appointments with their provider or a third party (i.e. more than 50% of total participants).⁵³

49. Penalties for jobactive differ to those applying for the CDP: jobactive participants who do not meet their mutual obligation requirements may have their payment suspended and/or face demerits, with each demerit lasting six months.⁵⁴ According to the Targeted Compliance Framework Public Data Report for the period 1 January 2021 to 30 June 2021, of the 873,704 participants in Targeted Compliance Framework (which includes jobactive participants)⁵⁵ 43% were in the Warning Zone and less than 1% were in the Penalty Zone.⁵⁶ For jobactive participants in the Warning Zone, each failure to meet a requirement results in a payment suspension and accrual of demerit points if there is no valid reason.⁵⁷ No financial penalties apply to the participant in this phase, except for work refusal or unemployment failures.⁵⁸ Participants experience escalating financial penalties with each mutual obligation failure.⁵⁹

The CDP has been criticised for failing to address the underlying issue of lack of employment opportunities in remote communities. Instead, penalties for non-compliance with CDP mutual obligations continue to cause considerable financial distress in remote and very remote communities, significantly undermining government and community-led efforts to address generational trauma, endemic poverty, chronic ill-health, domestic violence and homelessness.

⁵² Ibid.

⁵³ National Indigenous Australians Agency, *Community Development Program (CDP) December 2021 Quarterly Compliance Data*, p. 5.

⁵⁴ Services Australia, *Demerits and penalties for not meeting mutual obligation requirements*, <https://www.servicesaustralia.gov.au/demerits-and-penalties-for-not-meeting-mutual-obligation-requirements?context=51411>.

⁵⁵ Targeted Compliance Framework job seekers/participants are job seekers commenced in jobactive and Disability Employment Services, and participants commence in ParentsNext, who were in one of the TCF Zones at the end of the reference period.

⁵⁶ Department of Education, Skills and Employment, *Targeted Compliance Framework Public Data Report – 1 January 2021 to 30 June 2021*, p. 4. Note: This data covers job seekers/participants commenced in jobactive, including Digital, Disability Employment Services and ParentsNext, who were in one of the Targeted Compliance Framework Zones at the end of the reference period.

⁵⁷ Ibid, p. 11.

⁵⁸ Ibid.

⁵⁹ Ibid.

Barriers to appealing

50. Both jobactive and CDP participants can seek an internal review of a decision to impose a financial penalty or payment cancellation.⁶⁰ If a person disagrees with the internal review decision made by Centrelink, they can appeal the decision to the Administrative Appeals Tribunal (AAT).⁶¹
51. There is no publicly available data about the rates of internal appeal against CDP penalties, or the outcomes of internal reviews; however, very few cases reach the AAT. Lawyers from the North Australian Aboriginal Justice Agency (**NAAJA**), an EJA member centre, have commented that people in remote Aboriginal communities often do not understand that they have appeal rights regarding penalties, or even that they can challenge Centrelink decisions generally.⁶²

The Remote Engagement Program (REP) pilot

52. On 11 May 2021, the former Minister for Indigenous Australians, the Hon Ken Wyatt AM MP announced a new remote jobs program, the Remote Engagement Program (**REP**), to replace the CDP from 1 July 2023. As part of the 2022-2023 budget it was announced that replacement of the CDP with the REP was to be pushed back to 1 July 2024.
53. There is as yet no enabling legislation to replace the CDP with the REP, however, the *Social Security Legislation Amendment (Remote Engagement Program) Act 2021* (**REP Act**) provides the framework for piloting the REP in select communities before replacing the CDP in 2023. The pilots will be co-designed in partnership with participating remote communities. According to the original and supplementary Explanatory Memoranda for the legislation, detailed aspects of the program will be set out in legislative instruments and policy guidance, 'allowing flexibility to adjust as lessons are learnt and communities' ideas change over the course of the pilots'.
54. A key feature of the REP pilots will be payment of a supplement to participants. The supplement will be paid at a fixed fortnightly rate and paid on top of the person's primary income support entitlement, after application of the relevant income test. The rate of the supplement will be between \$100 and \$190 per fortnight, and payable for a maximum continuous period of 104 weeks. The aim is for an eligible job seeker's income support plus the new payment to be approximately equivalent to 'the minimum wage for the hours participating in work like activities.'

⁶⁰ Services Australia, *Reviews and appeals of a Centrelink decision*. See:

<https://www.servicesaustralia.gov.au/reviews-and-appeals-centrelink-decision?context=22196>.

⁶¹ Ibid.

⁶² Ibid, p. 23.

55. Eligibility for the supplement will require voluntarily participating in a 'role' in government services or a community organisation for between 15 and 18 hours per week.
56. Other aspects of the trial will include the co-design and implementation of different approaches to training, skills development and non-vocational support. The REP Act provides that the qualifying REP income support payments for the pilots will be:
- Disability Support Pension;
 - Parenting Payment;
 - Youth Allowance;
 - JobSeeker Payment; and
 - any other income support payment determined by the Minister.⁶³

Does the REP proposal address CDP human rights concerns?

57. The Australian Human Rights Commission (**AHRC**) has raised concerns that the CDP may be inconsistent with Australia's obligations under the International Covenant on Economic, Social and Cultural Rights (**ICESCR**), the International Convention on the Elimination of All Forms of Racial Discrimination (**ICERD**) - and the United Nations Declaration on the Rights of Indigenous Peoples.⁶⁴ The AHRC has also raised concerns that the disproportionate impact on Aboriginal and Torres Strait Islander peoples may constitute indirect discrimination under section 9 of the *Racial Discrimination Act 1975* (Cth) (**RDA**), and a breach of the right to equality before the law under section 10 of the RDA.⁶⁵
58. Numerous Aboriginal and Torres Strait Islander organisations have criticised the approach to developing the new REP as being inconsistent with Closing the Gap commitments.⁶⁶ Under the Closing the Gap Agreement, the Commonwealth has committed to:
- ... partnership and shared decision making with Aboriginal and Torres Strait Islander people; building the Aboriginal and Torres Strait Islander community-

⁶³ *Social Security Legislation Amendment (Remote Engagement Program) Act 2021* (Cth) Schedule 1 inserts s 661B(1) into the *Social Act 1991* (Cth).

⁶⁴ Australian Human Rights Commission, submission to *Social Security Legislation Amendment (Remote Engagement Program) Bill 2021 [Provisions]*, 20 September 2021, p. 3.

⁶⁵ *Ibid.*

⁶⁶ See submissions from the Aboriginal Peak Organisations Northern Territory, Coalition of Peaks and North Australian Aboriginal Justice Agency, Human Rights Law Centre, the Australian Council of Social Service and Aboriginal Housing Northern Territory in response to the *Social Security Legislation Amendment (Remote Engagement Program) Bill 2021*. See also the submission from the Australian Human Rights Commission to the National Indigenous Australians Agency Remote Engagement Program Discussion Paper.

controlled service sector; and sharing access to data to support Indigenous communities to make informed decisions.⁶⁷

59. Although the REP Act provides for co-design with communities in establishing trial parameters, it does not appear that Aboriginal and Torres Strait Islander communities and representative bodies were genuinely consulted regarding the program's overall policy framework prior to the introduction of the REP Bill.⁶⁸ We understand that key organisations, such as the Coalitions of Peaks and the Aboriginal Peak Organisations Northern Territory (**APO NT**) first heard about the Bill when it was tabled in Parliament.⁶⁹ The Coalition of Peaks queried how the development of the Bill, assignment of pilot sites or the broader reforms would meet the standards set out in the National Agreement for engagement and transparency.⁷⁰
60. The REP has also been criticised for failing to address one of the main flaws of the CDP: requiring people to undertake work without proper pay and adequate workplace protections.⁷¹ While the REP introduces an income support supplement for people working in placements, a participant of the REP is not considered to be a worker or employee for the purposes of employment, superannuation, workers compensation, and work, health and safety laws.⁷² This means that while participants would undertake work in placements that are equivalent to employment, with a supplement to boost the rate of their income support payment while participating, they would not have the rights and protections of other workers.⁷³
61. The Parliamentary Joint Committee on Human Rights noted in its report on the REP Bill that if work performed as part of the REP placement is characterised as a form of employment for the purposes of international human rights law, the REP may limit the right to just and favourable conditions of employment.⁷⁴ This includes the right to fair

⁶⁷ Australian Council of Social Service, submission to *Social Security Legislation Amendment (Remote Engagement Program) Bill 2021 [Provisions]*, 20 September 2021, p. 2.

⁶⁸ Northern Territory Council of Social Service, submission to *Social Security Legislation Amendment (Remote Engagement Program) Bill 2021 [Provisions]*, 9 September 2021, p. 2.

⁶⁹ Aboriginal Peak Organisations Northern Territory (APO NT), submission to *Social Security Legislation Amendment (Remote Engagement Program) Bill 2021 [Provisions]*, 20 September 2021, p. 5; North Australian Aboriginal Justice Agency and Human Rights Law Centre, submission to *Social Security Legislation Amendment (Remote Engagement Program) Bill 2021 [Provisions]*, p. 5.

⁷⁰ *Ibid*, p. 6.

⁷¹ Australian Council of Social Service, submission to *Social Security Legislation Amendment (Remote Engagement Program) Bill 2021 [Provisions]*, 20 September 2021, p. 2.

⁷² *Social Securities Act 1991* (Cth) s 661F.

⁷³ Australian Council of Social Service, submission to *Social Security Legislation Amendment (Remote Engagement Program) Bill 2021 [Provisions]*, 20 September 2021, p. 3.

⁷⁴ Parliamentary Joint Committee on Human Rights, *Social Security Legislation Amendment (Remote Engagement Program) Bill 2021*, Report 11 of 2021; [2021] AUPJCHR 112, p. 44.

wages and equal remuneration for work of equal value without distinction of any kind, a decent living for the worker, and safe working conditions.⁷⁵

62. The Parliamentary Joint Committee also noted that the UN Committee on Economic, Social and Cultural Rights has emphasised that *'the right to just and favourable conditions of work is a right of everyone, without distinction of any kind, meaning that it applies to all workers in all settings, including unpaid workers'*.⁷⁶ The Committee commented that if work performed as part of a placement were to constitute employment for the purposes of international human rights law, there could be a risk that the amount paid to the person (of \$100 to \$190 per fortnight for 15 to 18 hours work) may not amount to fair remuneration (equating to as low as \$6.66 per hour, which is far below the national minimum wage).⁷⁷

63. In addition, without the protections given to employees under the *Fair Work Act 2009* (Cth), *Work Health and Safety Act 2011* (Cth) and the *Safety, Rehabilitation and Compensation Act 1988* (Cth), people undertaking placements as part of the REP could be exposed to greater risk of exploitation and workplace injury as there will be no obligation on host organisations to comply with employment or health and safety standards.⁷⁸

64. Numerous organisations have recommended that participants in the REP be paid wages at award rates or the national minimum wage (as a minimum) together with other employee entitlements, such as superannuation and paid leave.⁷⁹ They are of the view that participants should also be afforded protections under the relevant workers compensation and work, health and safety legislation to ensure they have adequate workplace protections.⁸⁰

Need for urgent action to address CDP inequities

65. Given the change of government, the fate of the proposed program to replace the CDP from 2024 is unknown. This means that unless urgent action is taken to address the issues outlined above regarding the CDP, Aboriginal and Torres Strait Islander people will continue to be subject to disproportionately high non-compliance penalties for at least another two years.

⁷⁵ Ibid, citing the *International Covenant on Economic, Social and Cultural Rights*, article 7.

⁷⁶ Ibid, p. 45, citing UN Committee on Economic, Social and Cultural Rights, *General Comment No. 23: on the right to just and favourable conditions of work* (2016)[5] at paragraph 47 on p. 13.

⁷⁷ Ibid.

⁷⁸ North Australian Aboriginal Justice Agency and Human Rights Law Centre, submission to *Social Security Legislation Amendment (Remote Engagement Program) Bill 2021 [Provisions]*, 20 September 2021, p. 7.

⁷⁹ Ibid.

⁸⁰ Australian Council of Trade Unions, submission to National Indigenous Australians Agency *Remote, Engagement Program Discussion Paper*, 26 November 2021, p. 5.

➤ **Recommendations**

- C. *EJA proposes that the Remote Employment Program, or any alternative program to replace the CDP, should be consistent with Australia's obligations under the United Nations Declaration on the Rights of Indigenous People, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination.*
- D. *We propose that the process for developing any program replacing the CDP must meet Close the Gap commitments, ensuring co-design with communities and consultation with key representative organisations, such as the Coalition of Peaks and the Aboriginal Peak Organisations Northern Territory (APO NT).*

PARENTSNEXT

Punitive and discriminatory compliance system

- 66. EJA supports the provision of genuinely useful, personalised assistance to parents and carers with young children to help in identifying education and employment goals, improve work readiness, and facilitate engagement in activities and services in the local community. Unfortunately, however, the current legislative framework of the ParentsNext program is punitive and discriminatory in approach. Program design does not prioritise cultural safety or self-determination for First Nations participants, the result being disproportionately high mutual obligations penalty rates. As outlined in EJA's submission to the inquiry into the Social Security (Parenting payment participation requirements – class of persons) Instrument 2021, the program is fundamentally contrary to its stated aims – especially for vulnerable cohorts whose efforts to provide for young children in their care can be undermined by the punitive regime.⁸¹
- 67. EJA is part of the UN Universal Periodic Review NGO Coalition which recommended in its April 2020 report that Australia must replace involuntary programs with voluntary models which are non-discriminatory in design and implementation. EJA proposes that participation in the ParentsNext program should be fully voluntary; participation should not be a condition for maintaining social security income support and other payments.
- 68. Cohorts most likely to face suspension of payment, non-payment penalties and cancellations due to failure to meet ParentsNext obligations include: people with intellectual disability, mental health issues or cognitive impairment; parents of children with high care needs; parents experiencing family and domestic violence; and parents

⁸¹ Economic Justice Australia (EJA) submission to inquiry into the Social Security (Parenting payment participation requirements – class of persons) Instrument 2021. Accessible at:
https://www.ejaustralia.org.au/wp/wpcontent/uploads/Inquiry-into-the-Social-Security-Parenting-payment-participation-requirements_class-of-persons_Instrument-2021_EJA-submission.pdf.

who are homeless or at risk of homelessness. EJA contends that compulsorily requiring ParentsNext participation as a condition for receipt of income support is in contravention of multiple UN conventions, particularly for Aboriginal and Torres Strait Islander people.

69. We are unaware of consultations with community-controlled Indigenous organisations regarding the particular impacts of compulsory participation in ParentsNext for Aboriginal and Torres Strait Islander communities. We note, however, that Indigenous groups provided extensive input to the 2018-2019 Senate Community Affairs Committee's ParentsNext inquiry⁸² and to the Parliamentary Joint Committee on Human Rights inquiry into the Social Security (Parenting payment participation requirements – class of persons) Instrument 2021⁸³ (**the ParentsNext Instrument**).

Human rights implications

70. Imposition of mandatory and punitive welfare conditionality programs is not consistent with Australia's international human rights obligations, including its obligations under the United Nations Declaration on the Rights of Indigenous Peoples. EJA does not accept the argument that limitations on the right to social security and the right to an adequate standard of living are reasonable in the context of a punitive targeted compliance framework applied to compulsory participation in the ParentsNext program. By making the program voluntary and providing the support without the threat of payment suspension or cancellation, the program would be directed at overcoming barriers to employment without breaching Australia's human rights obligations.
71. ParentsNext continues to contravene Australia's obligations under the Convention on the Elimination of Racial Discrimination to prohibit and eliminate racial discrimination because it disproportionately impacts First Nations people – especially women and children.
72. By potentially denying social security to parents, the Convention on the Rights of the Child (**CROC**), to which Australia is also a State Party, becomes relevant. Article 3 paragraph 1 of the CROC states that 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary

⁸² Senate Standing Committees on Community Affairs inquiry, 'ParentsNext, including its trial and subsequent broader rollout', final report dated March 2019 accessible here:
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/ParentsNext/Report.

⁸³ Parliamentary Joint Committee on Human Rights, ParentsNext: examination of Social Security (Parenting payment participation requirements – class of persons) Instrument 2021 (Inquiry Report, 4 August 2021). Accessible at:
https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/ParentsNext/Report.

consideration.’ Every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children’s rights and interests are or will be affected by their decisions and actions – by, for example, a proposed or existing law or policy, including those which are not directly concerned with children, but indirectly affect children. In compliance with this Convention, Australia must ensure the right to an adequate standard of living for all children without discrimination of any kind.

73. Like the recently expanded Cashless Debit Card income management program, the simplification of ParentsNext eligibility requirements via the new Instrument was not driven by human rights concerns. ParentsNext continues in spite of discriminatory impacts on Aboriginal and Torres Strait Islander Peoples, especially single mothers and their children, and despite restrictions on individual decision making, and weak evidence of effectiveness.

Recommendation:

- E. *We recommend urgent reform of ParentsNext, amending the Social Security Act such that it becomes a genuine pre-employment program that:*
- *is completely voluntary,*
 - *prioritises cultural safety, with specific reference to the needs of First Nations individuals and communities*
 - *does not affect the security of a parent’s income support or other payments by imposing mutual obligation requirements and applying a punitive system of sanctions*
 - *addresses the structural barriers preventing parents from returning to the labour market*
 - *removes any financial incentives to providers which may motivate them to work against the interests of participants.*

BARRIERS TO ACCESSING SOCIAL SECURITY ENTITLEMENTS

Structural and systemic barriers

74. In addition to issues regarding high level social security policy programming issues such as compulsory income management, the CDP, and the mutual obligations compliance framework, Aboriginal and Torres Strait Islander people are disproportionately impacted by a range of longstanding and well documented structural and systemic issues that impede access to income security. These include:
- Disproportionately high rates of mutual obligations non-payment penalties for Aboriginal and Torres Strait Islander people in regional and remote communities (as discussed above)

- Disproportionately low rates of Disability Support Pension and Carer Payment claims and grants, especially in remote communities, despite disproportionately high rates of disability and chronic health issues
- High rates of disengagement with the social security system in remote communities, including among vulnerable young people with disability (including young people with cognitive impairment) and older people with multiple chronic health issues
- High rates of social security and family assistance debt among Aboriginal and Torres Strait Islander people – particularly among women, and including among women experiencing domestic violence
- Disproportionately low rates of appeal to the AAT, despite high rates of adverse decisions.

75. EJA, our community legal centre members, and First Nations community peak organisations have highlighted these issues in consultations and in response to inquiries over many years; however, while there are efforts to address some of the systemic access barriers via policy guidelines, resource development and targeted outreach, these deep-seated issues persist and there remains a distinct lack of accessible and available social security legal services.

76. The voices of the communities beset by these fundamental social security issues, along with a plethora of interconnected health, housing and access to justice issues need a platform at the national level – so that Government and Parliament may hear directly from communities regarding the manifold impacts of particular social security measures. The National Voice to Parliament would certainly empower First Nations people to raise economic justice issues at the national level; however, there is a need for urgent action to address key fundamental issues pending establishment of the National Voice.

Disability Support Pension

77. There are significant systemic barriers to accessing Disability Support Pension (**DSP**), rooted in the complexity of the DSP eligibility criteria and assessment processes, including policies that discount disability stemming from chronic comorbidities. These policy settings disproportionately impact Aboriginal and Torres Strait Islander people with disability resulting from chronic co-morbidities (including diabetes, and heart and kidney disease), particularly in remote communities.

78. EJA's submission to the Senate Community Affairs References Committee inquiry into the purpose, intent and adequacy of the Disability Support Pension (**DSP inquiry**), outlined how navigating DSP assessment processes and the appeals system can be

impossible for people in remote Aboriginal and Torres Strait Islander communities, with numerous case studies.⁸⁴

79. EJA was pleased to see the obstacles limiting access to the DSP for vulnerable cohorts of people with disability comprehensively brought to light in the Committee's report,⁸⁵ released in February 2022. The report reflects the recommendations that EJA has been making in relation to these issues for many years, including those seeking to address ongoing inequities faced by First Nations people with disability in remote and very remote communities.

80. EJA urges the Government to establish the consultation processes proposed in the Committee's report as a matter of urgency, with tight reporting deadlines.

➤ **Recommendations:**

- F. *EJA urges the Government to implement the recommendations made in the Senate Community Affairs Reference Committee's report on its inquiry into the purpose, intent and adequacy of the Disability Support Pension, in their entirety.*
- G. *Recommendations made in that report aiming to address barriers to accessing DSP for First Nations people should be implemented as a matter of urgency, including increasing funding for disability advocacy, community legal services and First Nations organisations to enable provision of social security legal help to people in remote and very remote First Nations communities.*

Service delivery barriers

81. Our member centres' casework indicates that Services Australia's move towards an increasingly automated approach to service delivery, and reliance on technology:

- fails to take into account the lack of adequate internet or mobile coverage in Australia's remote communities
- relies too heavily on an expected level of digital literacy without providing suitable training
- has not been rolled out with a sufficient level of training for staff at Access Service Points which leads to inadequate provision of information and assistance to people with Centrelink issues
- does not provide sufficient access to interpreters for Aboriginal and Torres Strait Islander languages.

82. EJA understands that Services Australia is currently developing a Remote Servicing Strategy to complement its Indigenous Servicing Strategy. EJA supports development

⁸⁴ Accessible here: https://www.ejaustralia.org.au/wp/wp-content/uploads/DSP-Senate-Inquiry-2021_Economic-Justice-Australia-submission.pdf.

⁸⁵ Accessible here: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/DisabilitySupportPensio/Report

of such a Strategy, however, we are concerned that there has been no consultation with either First Nations community-led organisations regarding the issues to be addressed, or with relevant welfare and disability national peaks.

➤ **Recommendation:**

H. *EJA recommends that Services Australia develop targeted actions for implementation of the Indigenous Servicing Strategy and for development of a Remote Servicing Strategy, toward enhancing access to social security entitlements for people in remote communities - focussing on people with disability, sole parents and carers. Actions should be informed by consultations with relevant community-led organisations, disability advocacy services working with remote communities, and community legal centres providing advice and advocacy to people in remote communities.*

ACCESS TO SOCIAL SECURITY LEGAL ASSISTANCE

83. There is an urgent need for specialist social security legal services to be adequately resourced in regional, rural, remote and very remote Australia. The unmet need is most pronounced in regional and remote Australia, including in the regions subject to compulsory income management.
84. There are currently no specific funds for social security legal help provided under the National Legal Assistance Partnership,⁸⁶ and no specific funds for legal help for Aboriginal and Torres Strait Islander people, despite the disproportionately high number of First Nations people affected by adverse social security and family assistance decisions daily – many of whom are in vulnerable cohorts and unable to self-represent in appeals.
85. This leaves people without access to accessible information, advice and advocacy on social security and family assistance issues. The Northern Territory (NT) is the prime example: none of the non-profit legal services in the NT – neither Aboriginal Legal Services, Community Legal Centres nor the Legal Aid Commission – receives specific funding to provide social security legal help. There has been no needs assessment relating to the social security legal need of Aboriginal and Torres Strait Islander peoples in Northern Territory or in any other part of Australia.
86. Lack of access to specialist social security legal advice is particularly problematic in the NT and the Kimberley given the high proportion of disadvantaged people in need of social security support and the dramatic effects of barriers to accessing appeal rights. Access to appeal rights is particularly problematic for Aboriginal people, who are

⁸⁶ See National Legal Assistance Partnership 2020-2025, here: <https://www.ag.gov.au/legal-system/legal-assistance-services/national-legal-assistance-partnership-2020-25>.

subject to disproportionately high rates of mutual obligation penalties and social security debts, but have disproportionately low appeal rates.

87. This disproportionality of adverse decisions coupled with the gross lack of available legal services, and complete lack of funding for social security legal assistance within Aboriginal and Torres Strait Islander legal services, points to the need to enshrine the right to social security legal help as a right within our social security law.

88. EJA member centres working in the Northern Territory, and with Aboriginal and Torres Strait Islander peoples throughout Australia, propose that:

- A needs-based funding model for social security legal assistance be developed
- Any planning/development of such a funding model involve engagement with Aboriginal legal services
- A culturally safe/wellbeing focused service delivery model be developed to provide social security legal help.

➤ **Recommendation:**

- I. *EJA proposes that specific funding be provided to community legal centres serving regional, rural, remote and very remote communities, to enable provision of specialist, culturally safe and well-being focused legal advice and assistance on social security issues.*

CONCLUSION

89. EJA, our community legal centre members, and First Nations community peak organisations have highlighted the issues raised above in consultations and in response to inquiries over many years, including in our submission in response to the National Indigenous Australia's Agency Indigenous Voice Discussion Paper.⁸⁷ While there are efforts to address some of the systemic access barriers via policy guidelines, community engagement and co-design of some programs, deep-seated inequities persist, particularly for people in remote and very remote communities.

90. EJA endorses and adopts AIMN's recommendation in its submission to this Inquiry, that the Government develop a robust framework to guide Indigenous Affairs policy-making that centres on comprehensive definitions of consent and consultation. This framework should be developed in genuine partnership with Aboriginal and Torres Strait Islander communities, community-controlled organisations and peak bodies, and underpinned by the UN Declaration on the Rights of Indigenous Peoples.

⁸⁷Economic Justice Australia submission in response to the Indigenous Voice Discussion Paper, 30 March 2021.
Accessible here: https://www.ejaustralia.org.au/wp/wp-content/uploads/Indigenous-Voice-submission_Economic-Justice-Australia_30-March-2021.pdf

91. EJA would welcome the opportunity to provide clarification, additional information or speak with the Committee during any public hearings.

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