

28 February 2023

Committee Secretary
Select Committee on Workforce Australia Employment Services

By electronic submission

Dear Committee Secretary,

Economic Justice Australia (EJA) submission to the Inquiry into Workforce Australia Employment Services

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. The issues regarding Workforce Australia have been comprehensively set out in the Australian Council of Social Service's (ACOSS) submission to this Inquiry, which makes recommendations developed in consultation ACOSS members, including EJA.
4. EJA fully endorses ACOSS's recommendations – particularly its recommendations regarding:
 - The need to legislate a robust human-rights based Digital Protections Framework (via the proposed Legislative Instrument currently being developed, and ideally through Primary Legislation) including protections against automated suspension of payments and intrusive surveillance of people to monitor compliance. Remove automation of payment suspensions by ensuring a delegate of the Employment Secretary scrutinises the lawfulness and appropriateness of any payment suspensions before they are applied; and replacing immediate suspension of payments after two days with a 'second-chance' system
 - Any ongoing use of automated decision-making should include safeguards such as accessible complaints mechanisms to protect against unfair decisions.
 - The need to establish and adequately resource an independent complaints service to support users of employment services, until the proposed independent licensing/quality assurance body is established.

- The need to adequately fund independent and problem-solving advocacy services to support users of employment services.

Automated decision making and the need for digital protections

5. DEWR's and WFA's implementation of the Targeted Compliance Framework is characterised by digitisation and automated decision-making, including in:
 - the streaming of job seekers to either digital servicing or a provider
 - the development of job plans
 - the application of the Job Seeker Classification Instrument
 - the application of the Points Based Activation System
 - the suspension of income support payments
 - The application of non-payment penalties.
6. The use of automated-decision making (ADM) in the context of social security engages human rights. Most relevantly, Australia has obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) to realise the right to social security (Article 9).¹ Amongst other things, this right provides that any 'withdrawal, reduction or suspension' of social security benefits should be circumscribed and 'based on grounds that are reasonable, subject to due process, and provided for in national law'.² Fully automated decision-making that results in the suspension or cancelation of payments without the involvement of a human decision-maker, lacks sufficient safeguards and does not provide the requisite due process for individuals subject to these decisions.
7. Automated decisions to suspend payments may have serious consequences for individuals that are not taken into account in the decision-making process – a person may be prevented from being able to pay rent, buy food or seek medical attention, and may experience increased stress and anxiety that compounds existing vulnerabilities.³ There are many reasons why a person may have difficulty complying with their mutual obligations under the Targeted Compliance Framework, not all of which are in a person's control. Practical factors such as homelessness, lack of access to a mobile phone or the internet, or personal issues such as mental illness, can mean that a person is unable to engage with their employment services provider during the suspension period and explain their situation. These systems also place a significant burden on the affected individual to self-report, resolve issues around opaque, incorrect or unfair decisions, and navigate faceless digital platforms.⁴ It is clear that rigid automated decision-making (ADM) processes can result in poor decisions and servicing that has no or inadequate regard to jobseekers' particular needs or vulnerabilities.

¹ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 9.

² UN Committee on Economic, Social and Cultural Rights, *General Comment No. 19: The right to social security* (Art 9 of the Covenant), 39th session, UN Doc E/C.12/GC/19 (4 February 2008), [24]

³ 'Mutual obligation Snapshot – Payment suspensions and cancellations' ACOSS (Webpage) < <https://www.acoss.org.au/mutual-obligation-snapshot-payment-suspension/> >.

⁴ See eg, Simone Casey, 'Towards digital dole parole: A review of digital self-service initiatives in Australian employment services' *Australian Journal of Social Issues* (2022) 57, 111-124.

8. These systems also result in disproportionately high (and potentially discriminatory) rates of suspensions and non-payment penalties for people among intersecting vulnerable cohorts – including people with disability, people who are homeless, single parents, and First Nations people.⁵
9. It is essential that a human rights-based approach is taken to the development, adoption and monitoring of ADM systems, and that there is sufficient transparency and accountability in their administration. The Robodebt Royal Commission has highlighted the impacts of unfettered automated decision-making under a poorly designed and recklessly administered social security compliance program. EJA's submission to the Royal Commission⁶ includes recommendations that aim to address the need for digital protections in the context of Services Australia's administration of social security and family assistance entitlements, and also in the context of whole-of government reform.

EJA recommendations further to those made in the ACOSS submission

10. We reiterate recommendations made in EJA's submission to the Robodebt Royal Commission, namely:
 - A. Establish a Social Security Commission, or empower the Economic Inclusion Advisory Committee, to undertake an examination of all areas of social security for compliance with public law principles and human rights standards, including regarding the use of Artificial Intelligence (AI) / Automated Decision Making (ADM). This work should be undertaken in consultation with technology experts.
 - B. Implement the recommendations and guidelines of the AHRC and Commonwealth Ombudsman for achieving best practice in the use of technology (whether AI, ADM or however else described) by governments in decision making, and especially in administrative decision making.
 - C. Establish an independent agency (a newly created AI Safety Commissioner, the Ombudsman or similar) with the function of reviewing all automated decision-making systems proposed to be used by government, to ensure compliance with best practice guidelines. This review should be mandatory and legislated. The independent agency should also advise the proposed Social Security Commission or the Economic Inclusion Advisory Panel on the use of AI/ADM in social security systems.
 - D. Enact legislation requiring external testing and auditing of all automated systems in development for government, at an appropriate scale relative to the nature and implications of the proposed system. Testing and auditing should be mandatory and

⁵ See eg, 'Mutual obligation Snapshot – Payment suspensions and cancellations' ACOSS (Webpage) < <https://www.acoss.org.au/mutual-obligation-snapshot-payment-suspension/> >.

⁶ Accessible at

conducted prior to an automated system being rolled out by a body with appropriate expertise. Ongoing funding should be provided to enable testing and auditing on an ongoing basis.

- E. Ensure that there is a 'human in the loop' where ADM is in use to make a decision affecting an individual's legal interests, entitlements, benefits, obligations or rights, to provide oversight and accountability.
- F. Train, inform and empower Services Australia staff and whole of government to identify and correct individual and systemic errors.
- G. Develop processes within Services Australia and all government departments to enable staff to raise and circulate systemic concerns to senior departmental officials.
- H. Ensure all automated systems used by government in administering the law to determine individual legal interests, entitlements, benefits, obligations and rights are fully transparent and explained in a way that is comprehensible to the public. If this cannot be done, the system should not be used.
- I. Ensure that internal (ARO) and external (currently, the AAT) review mechanisms are independent, accessible and inspire confidence in administrative review in terms of the quality and timeliness of decision-making.
- J. Adequately resource independent oversight institutions, including the Ombudsman, Auditor-General and the replacement to the AAT, to perform their functions, including inquiring into the lawfulness of income compliance processes. Ensure Commonwealth departments and agencies address systemic concerns raised by oversight institutions promptly.
- K. Publish select Administrative Appeals Tribunal Tier 1 (or equivalent) decisions.
- L. Adequately resource community legal centres to assist clients with income support compliance challenges and undertake policy advocacy to raise systemic issues that arise.

Contact for this submission

Linda Forbes
Law Reform Officer
linda@ejaustralia.org.au
Economic Justice Australia
Suite 321/410 Elizabeth Street,
Surry Hills NSW 2010
Tel: +61 448 007 428

Sarah Sacher
Law Reform Officer
sarah@ejaustralia.org.au
Economic Justice Australia
Suite 321/410 Elizabeth Street,
Surry Hills NSW 2010