



Committee Secretary
Senate Community Affairs References Committee
By email: Community.Affairs.Sen@aph.gov.au

Submission to inquiry into the Social Security (Administration) (Enhanced Income Management Regime - State Referrals and Commonwealth Referrals and Exemptions) Determinations 2023

1. Economic Justice Australia (EJA) is the peak organisation for community legal centres providing specialist advice to people on their social security issues and rights. Our members across Australia have provided people with free and independent information, advice, education and representation in the area of social security for over 30 years.
2. EJA provides expert advice to government on social security reform to make it more effective and accessible. Our law and policy reform work:
 - a. strengthens the effectiveness and integrity of our social security system;
 - b. educates the community; and
 - c. improves people's lives by reducing poverty and inequality.
3. EJA welcomes the opportunity to make a submission to the Community Affairs References Committee's inquiry into the following legislative instruments:
 - a) *Social Security (Administration) (Enhanced Income Management Regime – Volunteers) Determination 2023 (Volunteers Determination)*
 - b) *Social Security (Administration) (Enhanced Income Management Regime – State Referrals) Determination 2023 (State Referrals Determination)*
 - c) *Social Security (Administration) (Enhanced Income Management Regime – Commonwealth Referrals and Exemptions) Determination 2023 (Commonwealth Referrals Determination).*
4. Although we have concerns regarding aspects of the Volunteers Determination, this submission will focus on compulsory income management, and accordingly on the State Referrals Determination and the Commonwealth Referrals Determination (collectively **the Determinations**).

Summary of concerns; recommendations

5. On 14 April 2023, EJA provided a submission to the Senate Standing Committee on Community Affairs Inquiry into the *Social Security (Administration) Amendment (Income Management Reform) Bill 2023 (the Income Management Reform Bill)*. As outlined in that submission, the Income Management Reform Bill effectively embedded compulsory income management as a component of the social security framework – with the Minister for Social Services empowered to declare which states and territories are

subject to enhanced income management (EIM), and also declare certain policies, principles and/or guidelines in respect of EIM.

6. EJA remains opposed to compulsory income management in any form, and our policy position regarding the need to transition to a purely voluntary scheme is aligned with that of the Accountable Income Management Network (AIMN), of which EJA is a member. EJA endorses AIMN's submission to this Inquiry and endorses its recommendations, namely that:
 - (i) enhanced Income Management (eIM) transition to a voluntary "opt in" regime with no provision for designated bodies to refer participants to any forms of Compulsory Income Management;
 - (ii) all existing CIM regimes transition to Voluntary Income Management regimes to ensure that the core principles of choice and self-determination are central to any reforms;
 - (iii) a repeal date of 1 July 2026 be added to the State Referrals Determination; and that
 - (iv) recommendation 10.1 of the Robodebt Royal Commission report, "Design policies and processes with an emphasis on the people they are meant to serve", should guide policy development.
7. Further to AIMN's recommendations, we propose, for the reasons outlined below:
 - a. that given the serious concerns outlined below in relation to specific parts of the determinations, the Instruments be disallowed, and that the Committee recommend that the determinations be redrafted and tabled, with:
 - i. insertion of a 1 July 2026 sunset clause into the State Referrals Determination and the Volunteers Determination
 - ii. Explanatory statements which cover, among other things, the basis on which the Minister is satisfied that NT Health has an appropriate review process in accordance with s123SCK of the Social Security Administration Act
 - b. that while compulsory income management remains in place,
 - i. all future delegated legislation under Part 3AA of the Social Security Administration Act be subject to sunset clauses
 - ii. given the complexity of the enabling legislation, particularly state/territory jurisdictional differences, that all future determinations tabled under Part 3AA of the Social Security Administration Act be accompanied by a briefing from the Parliamentary Library to enable proper consideration by Parliament.

The State Referrals Determination

8. The State Referrals Determination is made pursuant to provisions contained in Part 3AA of the *Social Security (Administration) Act* (**the Act**) and inserted by the Income Management Reform Bill. Similar determinations have been made in relation to the previous iteration of income management in Part 3B of the Act.¹

¹ *Social Security (Administration) (Declared Child Protection State – New South Wales, Queensland, South Australia and Victoria) Determination 2023; Social Security (Administration) (Declared child protection State or Territory – Northern Territory) Determination 2010; Social Security (Administration) (Declared child protection State or Territory – Northern Territory) Determination 2010; Social Security (Administration) (Deductible portion – section 123XI) Specification 2019; Social Security (Administration) (Recognised State/Territory Authority - Northern Territory Department of Health) Determination 2017;*

9. In our April submission on the Income Management Reform Bill, we voiced concern regarding the absence of a sunset clause, lack of transparency and the absence of consultation regarding the rollout of the EIM regime more generally. The absence of a sunset clause suggested against a commitment to ending compulsory income management, instead indicating the opposite.
10. Parts 2 and 3 of the State Referrals Determination further fuel our concerns – apart from continuing the ‘status quo’, the reasoning behind nominating particular states and territories is not outlined in the associated Explanatory Statement, and there appears to be no information available to Parliament as to whether the Determinations have been subject to adequate or appropriate consultation in each state and territory.
11. Although the Explanatory Statement states that “extensive consultation has been undertaken with affected communities in relation to abolishing the cashless debit card program and reforming income management...”, there is no reference to consultation in relation to the impacts, necessity or substance of each particular Determination, nor is there information regarding the nature of the ongoing consultations regarding EIM more generally.

Part 2 – declared child protection State or Territory

12. Part 2 of the State Referrals Determination declares all states and territories other than Tasmania and the ACT to be ‘child protection states or territories’. The same states and territories were previously determined to be child protection states and territories for the purpose of Part 3B of the Act (i.e. in respect of the previous, non-enhanced, iteration of income management).²
13. The State Referrals Determination empowers a child protection officer in a declared state or territory, to require a person to be subject to compulsory EIM (by way of valid notice to the Secretary), provided the other requirements in section 123SCA of the Act are met. There is no explanation in the Explanatory Statement as to why particular states and territories have been declared to be a child protection state or territory, and thereby subject to Enhanced Income Management
14. Further, unlike the determinations made for the purpose of the previous iteration of income management under Part 3B of the Act in relation to NSW, SA and VIC³, the State Referrals Determination does not have a sunset clause. There is no explanation in the Explanatory Statement as to why this is so.

² *Social Security (Administration) (Declared Child Protection State – New South Wales, Queensland, South Australia and Victoria) Determination 2023; Social Security (Administration) (Declared child protection State or Territory – Northern Territory) Determination 2010; Social Security (Administration) (Declared child protection State or Territory – Northern Territory) Determination 2010 .*

³*Social Security (Administration) (Declared Child Protection State – New South Wales, Queensland, South Australia and Victoria) Determination 2023.*

Part 3 – recognised state or territory authority

15. Part 3 of the state referrals determination declares the Department of Health of the Northern Territory (**NT Health**) to be a 'recognised authority' pursuant to section 123SCK of the Act. As a result of NT Health being a 'recognised authority', a delegated officer of NT Health can require that a person is subject to enhanced income management (by way of valid notice to the Secretary), provided the other requirements in section 123SCJ are met.
16. In order for the Minister to make a determination under s123SCK, they must be satisfied that the proposed recognised authority has functions, powers or duties in relation to care, protection, welfare or safety of adults, children or families, and that there is an appropriate review process relating to notices to the Secretary. In considering whether there is an appropriate review process, the Minister must take into account: cost, timeliness, entitlement to representation and being heard, degree of independence and whether there is provision for the use of interpreters. The Minister is not limited to these considerations.
17. The equivalent determination regarding NT Health being a 'recognised authority' for the purpose of part 3B of the Act (i.e. the previous, non-enhanced, iteration of income management), was made over six years ago, in 2017, by the then Minister for Social Services.⁴
18. The Explanatory Statement does not indicate whether consultation has occurred in relation to this particular determination and by extension, the appropriateness of continuing NT Health as a 'recognised authority' under the EIM scheme. We note that over the six years that have passed since the 2017 Determination was formalised, concepts and understanding of issues such as family and domestic violence and homelessness have changed significantly; however, there is no indication in the Explanatory Statement that there was a review of current program responses to inform the Minister's s123SCK deliberations. Also, although the determination of NT health as a 'recognised authority' is largely a continuation of the 'status quo', the basis upon which the Minister is satisfied that there is an adequate review process, particularly in light of well-known issues such as the shortage of Aboriginal and Torres Strait Islander language interpreters in the Northern Territory, is not outlined in the Explanatory Statement.

The Commonwealth Referrals Determination

Part 2: Vulnerable Welfare Payment Recipient, Division 2 – Decision making principles

19. Under s123SCM of the Act, the Secretary can make a determination that a person is a vulnerable welfare recipient (**VWR**) and therefore subject to EIM pursuant to section

⁴ *Social Security (Administration) (Recognised State/Territory Authority - Northern Territory Department of Health) Determination 2017.*

123SCL of the Act, provided other requirements in that section are met, and no exemption applies. S123SC of the Act also provides for the variation, or revocation of a determination by the Secretary that a person is a VWR.

20. Section 123CM(12) and (13) of the Act empowers the Minister to issue decision making principles for the Secretary to consider in making, varying and revoking VWR determinations. These guidelines are contained in the Commonwealth Referrals Determination. Pursuant to the decision-making guidelines contained in the Commonwealth Referrals Determination, in making a VMR determination, the Secretary must consider, in summary:

- (a) whether the person is (or in the case of variation/revocation, is likely to), experience an indicator of vulnerability, and if EIM is an appropriate response to that indicator; and
- (b) the person’s application, (or in the case of variation/revocation, the person’s likely application), of their resources to meet their relevant priority needs and whether EIM would assist (or is assisting in the case of variation/revocation).

21. While priority needs are defined in reference to the Act, vulnerability indicators are defined in the Commonwealth referrals determination - as follows:

Indicator	Definition under Commonwealth Referrals Determination
Financial exploitation	<p>A person (the first person) is experiencing financial exploitation, if another person or entity:</p> <ul style="list-style-type: none"> (a) has acquired; or (b) has attempted to acquire; or (c) is attempting to acquire; possession of, control of or the use of, or an interest in, some or all of the first person’s financial resources, through the use of undue pressure, harassment, violence, abuse, deception, duress, fraud or exploitation.
Financial hardship	<p>A person is experiencing financial hardship if:</p> <ul style="list-style-type: none"> (a) the person is unable, due to a lack of financial resources, to obtain goods or services, or to access or engage in activities, to meet the person’s relevant priority needs; and (b) that lack of financial resources is not solely attributable to the amount of income earned, derived or received by the person
Failure to undertake reasonable self-care	<p>A person is experiencing failure to undertake reasonable self-care if:</p> <ul style="list-style-type: none"> (a) the person is engaged in conduct that threatens the physical or mental wellbeing of the person; and (b) the Secretary is satisfied that the person has not taken sufficient steps to address the conduct.
Homelessness	<p>A person is experiencing homelessness or risk of homelessness if the person:</p> <ul style="list-style-type: none"> (a) does not have access to safe, secure and adequate housing; or (b) does not have a right to remain, or a reasonable expectation of being able to remain, in the housing to which the person has access; or

	(c) is using, or is at risk of needing to access, emergency accommodation or a refuge.
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Changing understanding of vulnerability

22. The legislative instrument made in relation to the equivalent provisions in the previous iteration of income management (and for the purpose of Part 3B of the Act) was the Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2013 (the 2013 Principles). The 2013 principles were last amended in 2016 and repealed via a sunset clause in 2023.
23. A central component of the determination is to identify those experiencing vulnerability and apply EIM to those identified where the other requirements are met.
24. Our understanding of vulnerability has developed significantly since 2016, and the context has also changed - for example, the rising rates of homelessness caused by the housing and cost of living crisis. Despite these changes, the vulnerability indicators in the Commonwealth Referrals Determination are in generally the same terms as the 2013 Principles but the Explanatory Statement does not indicate that consultation was conducted specifically in relation to the Commonwealth Referrals Determination or the vulnerability indicators themselves. This suggests there has been no review of the decision-making principles in the light of our changing understanding of vulnerability and changing context since 2013- 2016, nor any consultation to inform drafting of the Determination.
25. This is particularly concerning given:
 - a. the limited, and complex exemption and exit processes applicable to those experiencing a vulnerability indicator and subject to EIM5;
 - b. that s7(4) of the Commonwealth Referrals Determination allows the Secretary to act on the information or documents available to them in making a VWP determination, even where the documents or information available to the Secretary may not adequately provide a full picture of a person's circumstances. It appears there is no proactive requirement on the Secretary or their delegate to make inquiries or obtain information regarding a person's circumstances despite the potentially significant impact of a VWP declaration on a person's autonomy. Consequently, the onus may then shift to the person experiencing the vulnerability indicator, who may be in crisis, to provide sensitive and personal information to Centrelink justifying why they should not be subject to a VWP declaration.

Part 2: Subdivision C—Persons who are vulnerable youth or have been released from gaol or psychiatric confinement

25. This part of the Commonwealth referrals determination is in generally the same or similar terms to the 2013 principles. It requires the Secretary to make a determination

⁵ See further our April submission

that proscribed persons are a VWP and therefore subject to EIM, provided they meet the other requirements in section 123SCL and are not exempted. The proscribed persons include: children under 16, people receiving the independent rate of some payments who are between 16 and 22, and people under 25 who have received Crisis Payment pursuant to s1061JG of the Social Security Act 19916.

26. Again, our understanding of issues affecting young people and people recently released from custodial settings or mental health facilities has advanced considerably since the 2013 principles were developed. For example, we have had a Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability, and a Royal Commission into the Child Protection and Youth Detention Systems of the Government of the Northern Territory.
27. It is concerning that there seems to have been no consultation in relation to this particular determination in light of the significant human rights implications for young people, including young people released from custodial settings, and young people with mental health conditions requiring admission. This is particularly so given that the Secretary's discretion to revoke a determination made further to this part of the Commonwealth Referrals Determination is limited to the considerations in s8(3).

Part 3: Disengaged youth and long-term welfare payment recipients, Division 1: Exempt welfare payment recipients

28. Again, there is no indication in the Explanatory Statement that further consultation has occurred in relation to the specificities of this part of the determination, nor whether our changing context or developing understanding of financial vulnerability has been considered in the development of this part of the commonwealth referrals determination.

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⁶ Being those who have received crisis payment due to release from gaol or psychiatric confinement.