

17 June 2022

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

**RE: Application of the United Nations Declaration on the Rights of Indigenous Peoples in  
Australia**

The Accountable Income Management Network (AIMN) welcomes the opportunity to make a contribution to the Senate Legal and Constitutional Affairs References Committee's inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Australia. This submission outlines a range of concerns regarding the incompatibility of the Cashless Debit Card (CDC) scheme and compulsory income management (CIM) more broadly with key principles outlined in the UNDRIP. CIM in Australia was initially introduced in 2007 to specifically target remote Indigenous communities as part of the Northern Territory Emergency Response, a decision which has been met with significant concern regarding human rights and racial discrimination. While the reach of CIM has since expanded to capture non-Indigenous people and has spread outside the Northern Territory, Indigenous Peoples continue to be disproportionately targeted by these punitive and paternalistic measures.

The AIMN is a nation-wide group of community members, grassroots advocates, representatives of national, state and local non-government organisations and community bodies, academics, social researchers and public policy experts. Our members have a strong commitment to social justice and human rights and are concerned about the provision of equitable and appropriate social security support to economically marginalised Australians. The AIMN is particularly concerned with issues raised by CIM, such as through the CDC trials and recent rollout of the extended CDC program. Both the original trials and their expansion across the Northern Territory and Cape York significantly and disproportionately affect Indigenous Peoples, many of whom were already subject to pre-existing CIM measures.

## 1. Terms of reference

Our submission responds to the following terms of reference outlined by the Committee:

- a. the history of Australia’s support for and application of the UNDRIP;
- e. key Australian legislation affected by adherence to the principles of the UNDRIP;
- f. Australian federal and state government’s adherence to the principles of the UNDRIP;
- g. the track record of Australian Government efforts to improve adherence to the principles of UNDRIP; and
- i. the current and historical systemic and other aspects to take into consideration regarding the rights of First Nations people in Australia.

This submission focuses on the impacts of failing to engage with the aspirations and substance of UNDRIP at the federal level with a focus on the development of Australian social security – specifically CIM – policy affecting Indigenous Peoples.

## 2. Background: Australia’s approach to the UNDRIP

- The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly on the 13<sup>th</sup> of September 2007. The Declaration is a landmark international instrument articulating the rights of Indigenous peoples, “establish[ing] a universal framework of minimum standards for the survival, dignity and well-being of indigenous peoples of the world and... elaborat[ing] on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples.”<sup>1</sup>
- Australia was one of four countries to vote against the adoption of the UNDRIP by the United Nations General Assembly in 2007, joined by fellow settler colonial states Canada, New Zealand and the United States.
- In 2009, Australia’s vote against was reversed under the Rudd Labor government, with then-Indigenous Affairs Minister Jenny Macklin stating that this decision was intended to “reset” the relationship between Indigenous and non-Indigenous people in Australia.<sup>2</sup>
- Since this time, however, we have seen a failure at the federal and state government levels to meaningfully implement the Declaration into Australia’s laws, policies and institutions, and to thereby demonstrate a commitment to centring the self-determination of Aboriginal and Torres Strait Islander peoples.

## 3. Economic control of Aboriginal and Torres Strait Islander Peoples

- Australia’s history is fraught with both legal and extra-legal actions which have curtailed the rights and freedoms of Aboriginal and Torres Strait Islander peoples. The underlying ethos of these choices extends into the operation of contemporary legislation across all

---

<sup>1</sup> <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

<sup>2</sup> <https://www.abc.net.au/news/2009-04-03/aust-adopts-un-indigenous-declaration/1640444>

government portfolios which continues to paternalistically target and disproportionately impact upon Indigenous people.

- Economic control of Indigenous Peoples has been a consistent feature of colonial policy in Australia. During the periods of protection and assimilation, various Protection Acts enabled the systematic withholding of income (wages and social security) from Indigenous people.<sup>3</sup> Indigenous people were granted eligibility to access social security in 1966, during the period of assimilation,<sup>4</sup> but this was still fraught with significant issues including questions around equitable access and the misappropriation of funds.<sup>5</sup>
- The notion of ‘self-management’ or neoliberal responsibility characterises much of the extant policy and legislative environment in Indigenous affairs. This approach sits on a continuum of paternalism with earlier phases of government intervention and features significant fiscal accountability to government.
- Indigenous Peoples’ advocacy and struggle in relation to stolen wages and reparations have led to the establishment of redress schemes operating in New South Wales, Queensland, Western Australia. However, the insufficient amounts offered through these schemes has triggered class action challenges against the Queensland and Western Australian governments, and there is also a stolen wages class action challenge against the Northern Territory government.<sup>6</sup>
- Aboriginal communities in Western Australia have also successfully taken the federal government to court over the racially discriminatory Community Development Program (CDP), otherwise known as the remote work-for-the dole scheme.<sup>7</sup> The CDP has been characterised as a form of “forced labour,” “modern slavery” and “involuntary servitude,” with the majority-Indigenous participants being forced to work for below minimum-wage social security payments while constantly being faced with the threat of payments being withheld altogether.<sup>8</sup> For a more comprehensive analysis of the CDP and racial discrimination, we refer the Committee to the submission made to this inquiry by *Economic Justice Australia*.
- A systemic failure to prioritise the economic security of Indigenous Peoples in Australia is also evident in a current Federal Court case against the federal government seeking fair and equal access to the Age Pension for Aboriginal and Torres Strait Islander people on the basis of the life-expectancy gap between Indigenous and non-Indigenous people.<sup>9</sup>

---

<sup>3</sup> <http://www5.austlii.edu.au/au/journals/UTSLRS/2013/14.pdf>

<sup>4</sup> [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp9899/99Rp27](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp9899/99Rp27).

<sup>5</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed\\_inquiries/2004-07/stolen\\_wages/report/c04](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2004-07/stolen_wages/report/c04)

<sup>6</sup> <https://theconversation.com/stolen-wages-northern-territory-class-action-will-hold-the-commonwealth-to-account-149155>

<sup>7</sup> <https://www.sbs.com.au/nitv/article/2021/12/23/racist-government-pays-out-work-dole-legal-action>

<sup>8</sup> <https://regnet.anu.edu.au/sites/default/files/publications/attachments/2017-11/Jon%20Altman%20-%20Arena%20article%20on%20welfare%20reforms%20for%20Indigenous%20Australians.pdf>

<sup>9</sup> <https://www.hrlc.org.au/news/2022/5/27/case-challenging-age-pension-discrimination-for-aboriginal-and-torres-strait-islander-people-returns-to-court>

- As outlined above, successive Australian state and federal governments have established a concerning precedent regarding the economic security of Indigenous Peoples, requiring urgent redress.

#### 4. Compulsory income management and the UNDRIP

##### 4.1. Compulsory income management

- Compulsory income management in Australia was first introduced during the Northern Territory Emergency Response (the NTER or Intervention). In an addendum to a 2010 report to the Human Rights Council, then-Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous People James Anaya made specific mention of Australia’s Northern Territory Emergency Response, which involved the suspension of the *Racial Discrimination Act 1975* (Cth) (subsequently referred to as the RDA).
- At the time of Anaya’s visit to Australia in August 2009, some four months after Australia’s formal adoption of the UNDRIP, he noted: “Aspects of the NTER as currently configured are racially discriminatory and incompatible with Australia’s international human rights obligations. These include aspects related to compulsory income management, compulsory acquisition of Aboriginal land, the assertion of extensive powers by the Commonwealth Government over Aboriginal communities, and alcohol and pornography restrictions in prescribed areas, as well as the other provisions of the NTER...”<sup>10</sup>
- Specifically, Anaya raised concerns about the lack of “consultation with affected Indigenous communities” and the imposition of “discriminatory treatment of Indigenous peoples in relation to their right to social security, which is protected by the International Covenant on Economic, Social and Cultural Rights (ICESCR) (art.9).”<sup>11</sup>
- The introduction of CIM under the Intervention and its extension via New Income Management and later Place Based Income Management has enjoyed bipartisan support, and crucially has laid the foundation for a political consensus on punitive welfare quarantining as representing a legitimate policy initiative in Australia.
- While the Rudd Labor government amended income management in the Northern Territory to make it compatible with the RDA, this has had the practical effect of further normalising the disproportionate targeting of Indigenous people by such policies. Notably, the amendment occurred through the re-framing of income management as a necessary and proportionate “welfare reform” measure to achieve the legitimate objective of supporting “disengaged individuals,” so that NTER measures “might either not be deemed discriminatory or could be deemed beneficial forms of discrimination.”<sup>12</sup>

---

<sup>10</sup> <https://www2.ohchr.org/english/issues/indigenous/rapporteur/docs/ReportVisitAustralia.pdf> p. 56

<sup>11</sup> <https://www2.ohchr.org/english/issues/indigenous/rapporteur/docs/ReportVisitAustralia.pdf> p. 48

<sup>12</sup> [https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1511200/upload\\_binary/1511200.pdf;fileType=application%2Fpdf#search=%22library/prspub/1511200%22](https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1511200/upload_binary/1511200.pdf;fileType=application%2Fpdf#search=%22library/prspub/1511200%22) p. 12

- This has resulted in the extension of income management measures to non-Indigenous welfare recipients both within and beyond the Northern Territory.<sup>13</sup> Nonetheless, Indigenous people continue to be disproportionately subject to income management across Australia.
- By virtue of the Australian Human Rights Commission’s 2009 draft guidelines stating that “it may be permissible to limit rights in pursuit of a legitimate, non-discriminatory goal,” there is significant room for discretion in assessments of whether CIM constitutes indirect discrimination against Indigenous Peoples.<sup>14</sup>

#### 4.2. The Cashless Debit Card trials

- The imposition of punitive welfare conditionality on Aboriginal communities has continued via the introduction, with bipartisan support,<sup>15</sup> of the Cashless Debit Card in the East Kimberley and Ceduna following recommendations in mining magnate Andrew Forrest’s 2014 *Creating Parity* report.<sup>16</sup>
- For an analysis of the general harms associated with CIM, including its exacerbation of socioeconomic marginalisation, mental and physical ill-health, and financial insecurity, we refer the Committee to a range of submissions that the AIMN has made to Senate inquiries into bills related to the CDC.<sup>17</sup> We also refer the Committee to the work of researchers associated with the Income Management Study, who have comprehensively analysed the impacts of CIM in Australia under both the CDC and Income Management under the Basics Card.<sup>18</sup>
- Successive explanatory memoranda presented alongside bills seeking to extend or expand the CDC have stated that the scheme is not racially discriminatory, as trial sites have been chosen on the basis of criteria that are not objective, designed for ideological policy framings such as “high levels of welfare dependence and community harm,” and espouse “comprehensive consultation with prospective communities” when this has not been the case.<sup>19</sup> When memoranda have recognised that this will disproportionately impact Indigenous Peoples, this has been justified through reference to processes of community consultation that have been roundly criticised for their inadequacy.<sup>20</sup> The aforementioned

---

<sup>13</sup>[https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/3952862/upload\\_binary/3952862.pdf;fileType=application%2Fpdf#search=%22library/prspub/3952862%22](https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/3952862/upload_binary/3952862.pdf;fileType=application%2Fpdf#search=%22library/prspub/3952862%22)

<sup>14</sup>[https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1511200/upload\\_binary/1511200.pdf;fileType=application%2Fpdf#search=%22library/prspub/1511200%22](https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1511200/upload_binary/1511200.pdf;fileType=application%2Fpdf#search=%22library/prspub/1511200%22) p. 23

<sup>15</sup> Labor has since changed its position on the Cashless Debit Card.

<sup>16</sup> <https://www.niaa.gov.au/resource-centre/indigenous-affairs/forrest-review>

<sup>17</sup> <https://accountableincomemanagementnetwork.wordpress.com/resources/>

<sup>18</sup> <https://www.incomemanagementstudy.com/publications>

<sup>19</sup> See, for example, [https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5520\\_ems\\_91404ffb-3b40-4be1-a67e-2c5f2e6a1eeb/upload\\_pdf/503546.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5520_ems_91404ffb-3b40-4be1-a67e-2c5f2e6a1eeb/upload_pdf/503546.pdf;fileType=application%2Fpdf),

[https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6130\\_ems\\_9baf413-5f49-4db7-94f4-2247c4d09854/upload\\_pdf/674588.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6130_ems_9baf413-5f49-4db7-94f4-2247c4d09854/upload_pdf/674588.pdf;fileType=application%2Fpdf),

[https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6399\\_ems\\_790e8446-8335-4dd3-8a16-b706e4066210/upload\\_pdf/723504rem.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6399_ems_790e8446-8335-4dd3-8a16-b706e4066210/upload_pdf/723504rem.pdf;fileType=application%2Fpdf)

[https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6399\\_ems\\_790e8446-8335-4dd3-8a16-b706e4066210/upload\\_pdf/723504rem.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6399_ems_790e8446-8335-4dd3-8a16-b706e4066210/upload_pdf/723504rem.pdf;fileType=application%2Fpdf)

<sup>20</sup> <https://humanrights.gov.au/about/news/media-releases/cashless-debit-card-bill-not-compatible-human-rights>

justifications also rely on a generous interpretation of compulsory welfare quarantining measures as constituting reasonable and proportionate limitations to individuals' rights.<sup>21</sup>

- A broad range of Aboriginal community-controlled organisations and peak bodies have raised substantial concerns about CIM under the CDC. A selection of these concerns is presented below:
  - “The bill is a new Intervention. It will perpetuate the torment of our powerlessness. It denies our basic freedom to control our lives. It locks the many of us who live below the poverty line out of the cash economy and undermines our small businesses that rely on cash payments... To the government this is just a law change, but to us it is about our everyday lives becoming even more of a struggle. We are sick of governments doing things to us, rather than with us... This bill disregards our views and lived experience and fundamentally undermines the collaborative spirit of the next phase of Closing the Gap. It symbolises why so many policies have failed our people and why things aren't getting better in our communities.”<sup>22</sup> – John Paterson, Spokesperson, Aboriginal Peak Organisations Northern Territory, commenting on the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020
  - “The CDC trials have been largely unsuccessful and discriminatory, and despite a lack of evidence of effectiveness, the Government is persisting with making permanent and expanding CDC with this Bill. Yet there is ample evidence of the harmful nature of CDC and its discriminatory impact on Aboriginal and Torres Strait Islander people. The CDC breaches a number of human rights and is not consistent with the UN Declaration on the Rights of Indigenous people.”<sup>23</sup> – National Aboriginal and Torres Strait Islander Legal Service, Submission to the Inquiry into the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020
  - “Compulsory income quarantining strips away a person's ability to make decisions about their own life. It takes away choices that many of us take for granted about how we spend our money and organise our personal life. These are significant restrictions on a person's freedoms and human rights, and they are not justified. There is no clear and compelling evidence that compulsory income quarantining achieves its objectives.”<sup>24</sup> – North Australian Aboriginal Justice Agency, Submission to the Inquiry into the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019
  - “AHCWA is keen to work with governments to develop solutions to address the harms related to alcohol, gambling and other drugs in communities, but we do not

---

<sup>21</sup> <http://www.powertopersuade.org.au/blog/human-rights-and-the-cashless-debit-card-examining-the-limitation-requirement-of-proportionality/22/3/2018>

<sup>22</sup> <https://www.clc.org.au/apo-nt-call-on-mps-to-oppose-the-cashless-debit-card-expansion-bill/>

<sup>23</sup> <https://www.natsils.org.au/wp-content/uploads/2020/12/NATSILS-Submission-Cashless-Debit-Card-Bill-021120-final.pdf>

<sup>24</sup> <http://www.naaaja.org.au/wp-content/uploads/2019/11/NAAJA-Submission-to-Social-Security-Administration-Amendment-Income-Management-to-Cashless-Debit-Card-Transition-Bill-2019-Cth.pdf>

believe the cashless debit card is the answer... There has been no conclusive quantitative data to support its introduction and there is an overwhelming lack of community support and involvement in its design. What needs to be considered is a welfare system that is equitable, sustainable, innovative and responsive to the unique and complex needs of Australians.”<sup>25</sup> – Michelle Nelson-Cox, Chairperson, Aboriginal Health Council of Western Australia, 2017

- Bielefeld (2015, p. 110) identifies that the implementation of CIM may be understood as part of a contemporary extension of “the relations of power that have always played out in Australia’s colonial context to ensure the structural domination of Indigenous peoples...” CIM functions to deprive individuals of autonomy through the restriction of their financial agency, raising significant implications for the rights of Indigenous Peoples to be considered full citizens of the Australian state.<sup>26</sup>
- Klein and Razi (2018) also argue that the behavioural interventions inherent in CIM programs, here focusing on the CDC in the East Kimberley, play a role in the colonial control of Indigenous Peoples.<sup>27</sup> Indigenous Peoples’ agency and autonomy are curtailed via the imposition of a neoliberal framework of individual responsibility, which is paired with state failure to either recognise the value of alternative community contributions or to adequately support and resource regional and remote Aboriginal communities.

## 5. Social security policy and the UNDRIP

- Article 1 of the UNDRIP clearly states that Indigenous peoples have the right to full enjoyment “of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.”<sup>28</sup>
- Importantly, in his 2010 report, Special Rapporteur Anaya noted that the enjoyment of these rights and freedoms clearly articulate with article 3, the right to self-determination, which he states “is a foundational right, without which indigenous peoples’ other human rights, both collective and individual, cannot be fully enjoyed.”<sup>29</sup>
- The UNDRIP contains several articles relevant to social security policy and socioeconomic development which are contingent on Indigenous Peoples enjoyment of the right to self-determination, and which are not experienced under compulsory income management. These include:
  - Article 18, the right of Indigenous Peoples to participate in decision-making in matters which would affect their rights.

---

<sup>25</sup> <https://www.ahcwa.org.au/single-post/2017/10/12/ahcwa-calls-for-a-voluntary-opt-in-cashless-welfare-program>

<sup>26</sup> <http://classic.austlii.edu.au/au/journals/AUIndigLawRw/2015/7.html>

<sup>27</sup> [https://caepr.cass.anu.edu.au/sites/default/files/docs/Working\\_Paper\\_121\\_2017.pdf](https://caepr.cass.anu.edu.au/sites/default/files/docs/Working_Paper_121_2017.pdf)

<sup>28</sup> [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf) pp. 7-8

<sup>29</sup> <https://www2.ohchr.org/english/issues/indigenous/rapporteur/docs/ReportVisitAustralia.pdf>, para. 54



- Article 19, regarding the requirement for good faith consultation and cooperation with Indigenous Peoples and the principles of free, prior and informed consent.
- Article 21, regarding the right to improvement of economic and social conditions, which includes in the area of social security, and which articulates with the right to social security under the International Convention on Economic, Social and Cultural Rights. It must be noted that Article 21 (2) identifies that states may take special measures where appropriate to ensure the continued improvement of Indigenous Peoples’ economic and social conditions. This must not be interpreted in practice to override other articles of the UNDRIP through state appeals to “best interests.”
- Article 23, regarding the right of Indigenous Peoples to determine and develop priorities and strategies to exercise their right to development, which is relevant to the development of social security policy which undermines community initiatives to support participation, financial management, and economic development including via cultural activities.

## 6. Recommendations

1. The UNDRIP must be enacted in Commonwealth law as a matter of urgency.
2. We endorse the Australian Human Rights Commission’s 2021 recommendation that the Australian government “develop a national program to implement UNDRIP and schedule it to the definition of human rights in the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).”<sup>30</sup> This will require the Parliamentary Joint Committee on Human Rights to assess the compatibility of legislation with the UNDRIP along with the set of core human rights treaties to which Australia is a party.<sup>31</sup>
3. We endorse Dr Shelley Bielefeld’s recommendation, made in her submission to the present inquiry, “that all Federal, State and Territory laws, policies, programs be assessed for compliance with UNDRIP with non-compliance remedied as swiftly as possible to prevent further suffering for Australia’s First Peoples and to promote respect for their needs and aspirations which is long overdue.”
4. Compulsory income management in Australia, whether under Income Management or the Cashless Debit Card, must immediately be brought to an end. Should income management continue as a policy measure, participation must be voluntary and opt-in only.
5. The federal government must provide comprehensive and sustained funding to Aboriginal community-controlled organisations to provide dedicated social security legal assistance.<sup>32</sup> This will enable Indigenous Peoples to interpret and challenge any potential or actual restriction of their right to social security.

---

<sup>30</sup> [https://humanrights.gov.au/sites/default/files/2020-10/implementing\\_undrip - australias third upr 2021.pdf](https://humanrights.gov.au/sites/default/files/2020-10/implementing_undrip_-_australias_third_upr_2021.pdf)

<sup>31</sup> <https://humanrights.gov.au/our-work/rights-and-freedoms/parliamentary-joint-committee-human-rights>

<sup>32</sup> We refer the committee again to *Economic Justice Australia’s* submission to the present inquiry for further detail on this matter.



6. In genuine partnership with Aboriginal and Torres Strait Islander communities, community-controlled organisations and peak bodies, and underpinned by the UNDRIP, the federal government must develop a robust framework to guide Indigenous Affairs policy making that centres comprehensive definitions of consent and consultation.<sup>33</sup> Consent in particular must be understood not just as the ability to agree but to *disagree* with government proposals, and to have this disagreement result in tangible changes to policy development.

---

<sup>33</sup> Informed by current documents including the [Indigenous Evaluation Strategy](#).