

Submission to the Senate Community
Affairs Legislation Committee on the
Social Services Legislation Amendment
(Cashless Debit Card Trial Expansion) Bill
2018

The Accountable Income Management Network,
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Email: contactaimnetwork@gmail.com

¹ Amended in March 2019 to update incorrect reference to *Social Services Legislation Amendment (Housing Affordability) Bill 2017* as *Social Services Legislation Amendment (Housing Affordability) Act 2018*.

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Introduction

The Accountable Income Management Network welcomes the opportunity to respond to the *Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018* (the Bill).

This Bill seeks to make multiple insertions and amendments to the *Social Security (Administration) Act 1999* in order to expand the Cashless Debit Card (CDC) trial to the Hinkler electorate in Queensland and to apply certain unique conditions to trial participants in the proposed site.

We strongly recommend the rejection of both this Bill and of compulsory income management regimes in Australia on the grounds that:

- Compulsory income management in the form of the Cashless Debit Card does not achieve the results claimed, and
- The distress, shame and hardship it causes to people (disproportionately Indigenous peoples in all current trial sites), is based on a false assumption that stripping people of autonomy and dignity will solve serious health and social issues.
- The application of compulsory income management is in violation of both human and consumer rights.

About the Accountable Income Management Network

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; academics; social researchers and public policy experts. Our members have a strong commitment to social justice and human rights and are deeply concerned about the issues raised by the Cashless Debit Card trials.

Key Concerns about the Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018

This submission raises the following key concerns in relation to the current Bill, which proposes that the CDC trials should be extended and expanded to the Bundaberg and Hervey Bay region in Queensland.

- The proposition that the CDC should be **expanded to new trial sites in Bundaberg and Hervey Bay** has emerged despite the fact that both the continuation of the trial in original sites and its further expansion was only supposed to occur on the basis that the initial evaluation demonstrated success².
- The **continuation of the Community Body/Panel model** for assessing applications for variation of the percentage of a cardholder's income support payment into a welfare-restricted bank account is proposed for the Bundaberg and Hervey Bay region. This directly contradicts the Department of Social Services' statement that the Community Panels were not a suitable for carry-over to further trial sites³.
- The Bill proposes that the trial should be **extended to the Bundaberg and Hervey Bay region and that it should cease one year later than the current trial sites** (30 June 2020 rather than 30 June 2019). It also **raises the participant cap** from 10,000 to 15,000. This is despite the fact that the expansion into this region has occurred on the basis of flawed evidence and a lack of appropriate community consultation.
- Changes to trial participant definitions in the Bill limit the age range to **target participants 35 years and younger**. While the justification given by the Department of Social Services is that this age bracket encompasses those at most risk of harm related to alcohol and other drugs and gambling⁴, this will result in the further marginalisation of a particular demographic within the group of income support recipients in the Bundaberg and Hervey Bay Region.
- The **lack of requirement for the Secretary to consider the detrimental effects of the CDC on a participant's wellbeing prior to their enrolment in the trial** is of great concern, as it forces the burden of proof of hardship on to income support recipients.
- The Bill's proposition for the **Secretary to make determinations on varying the restricted payment amount by notifiable rather than legislative instrument** for the Bundaberg and Hervey Bay region only is concerning as the former is not subject to Parliamentary scrutiny.
- Including a **provision that safeguards merchants against breaching the Competition and Consumer Act 2010 when declining transactions on restricted goods** at the point

²http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/3996105/upload_binary/3996105.pdf;fileType=application%2Fpdf#search=%22media/pressrel/3996105%22.

³ Australian National Audit Office 2018, *The Implementation and Performance of the Cashless Debit Card Trial*, Australian National Audit Office, Commonwealth of Australia, page 31.

⁴ Explanatory Memorandum, Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018 (Cth), page 4.

of sale opens the possibility for further, and highly public, discrimination against cardholders.

- A **ban on cash-like products** means that cardholders will not be able to purchase gift-cards and will also be prevented from using digital currency.
- The contingent amendment referring to changes in relation to the *Social Services Legislation Amendment (Housing Affordability) Bill 2017* seeks to **allow for automatic rent deductions to occur from the *unrestricted* portion of the cardholder's payment**, further restricting their amount of discretionary income.

Concerns about the Cashless Debit Card

Creation of a Consumer Underclass

The CDC trials are a technocratic response to issues of social marginalisation and have functioned to position income support recipients in trial sites as a consumer underclass whose access to both human and consumer rights are circumscribed in the name of harm reduction.

- Sequestering 80% of a cardholder's income support payment in a welfare-restricted bank account for card-only transactions fundamentally changes the nature of consumer interactions they are able to engage in. Compared to cash-based transactions, using the CDC and being subject to restrictions on alcohol, gambling, and gift card purchases fundamentally limits cardholders' equitable access to consumption.
- Cardholders are subject to the disclosure of personal information between multiple federal government departments (the Department of Social Services and the Department of Human Services), a private company (Indue, the card issuer)⁵, and community bodies/panels presiding over trial sites⁶. This transfer of information is stated to be necessary for the implementation of the trials but raises questions of privacy and data security that have, to date, not been adequately addressed by either of the aforementioned Departments or by Indue. It also raises questions about the impartiality and effectiveness of community panels⁷.
- The extent of Indue's fiduciary duty to cardholders is unclear- major concerns remain including the fact that cardholder funds remain the cardholder's property even when sequestered in a welfare-restricted bank account, though they may not be able to access these funds.
- Additionally, the compulsory nature of enrolment means participants have to go through gruelling verification processes to opt out⁸. Opting out of the CDC is technically available on the grounds of risk to mental, physical or emotional wellbeing, and involves an appeal to the Department of Social Services, an assessment by a Centrelink social worker, and then further review by the Department⁹. This process is by no means transparent.
- Cardholders have the option to transfer up to \$200 out of their Indue account to their personal unrestricted account every 28 days. The Australian National Audit Office's

⁵ <http://guides.dss.gov.au/guide-social-security-law/8/7/8/10>.

⁶ <http://guides.dss.gov.au/guide-social-security-law/8/7/8/20>.

⁷ Australian National Audit Office 2018, *The Implementation and Performance of the Cashless Debit Card Trial*, Australian National Audit Office, Commonwealth of Australia, page 31.

⁸ <https://www.dss.gov.au/families-and-children/programs-services/welfare-quarantining/cashless-debit-card/cashless-debit-card-frequently-asked-questions#exits-exemptions>.

⁹ <http://guides.dss.gov.au/guide-social-security-law/8/7/4/15>.

(ANAO) audit of the CDC reveals that the Department of Social Services found that the majority of participants were *not* misusing this unrestricted cash¹⁰.

Problematic Use of ‘Community’ and ‘Consultation’

Whilst the government has said the trials are community led, the trials are highly contested, and the decision for the card was anything but a community decision representative of the region’s diverse population. Whilst the Minister for Social Services and others use the term ‘community’ to imply a homogenous entity, the ‘community’ of the East Kimberley, Ceduna, the Goldfields region, and the Bundaberg and Hervey Bay area are diverse peoples in terms of colonial, class and gender dynamics. Some people have more of a say than others, and the claim that the CDC trials in current trial sites is community led is misleading at best.

For current trial sites, consultation was used in a tokenistic sense in order for the government to legitimize its trial. The group who the government consulted was limited, and not representative. Dissenting voices to the trial have been dismissed and are not accounted for in the evaluation.

Further, despite the intention to target ‘vulnerable’ individuals and families for income management, eligibility is determined by catchment-area¹¹. This means that programs are rolled out by postcode rather than by participant. This is an issue, because while the purported aim of the CDC is to control the spending of individuals who engage in socially undesirable behaviour in order to curb this behaviour, the targeting is actually remarkably non-specific. As a result, many people who have never struggled with alcohol and/or other drug use or gambling are subject to the same restrictions on how they use their income support payments- something which has received push-back from many community members¹².

Problematic Racial Implications

The card disproportionately targets Indigenous peoples in all current trial sites, a point which has even been acknowledged within the current Bill proposing further expansion¹³. Expansion to the Hinkler electorate both frames Indigenous populations subject to the CDC across current trial sites as a ‘test case’ for non-Indigenous income support recipients and sets a precedent for national rollout of the scheme. However, the ANAO audit of the CDC reveals that considering the original trial sites in Ceduna and the East Kimberley is inappropriate *because* income support recipient participants in this region predominantly identified as Indigenous. This:

¹⁰ Australian National Audit Office 2018, *The Implementation and Performance of the Cashless Debit Card Trial*, Australian National Audit Office, Commonwealth of Australia, page 34.

¹¹ <http://guides.dss.gov.au/guide-social-security-law/8/7/4/10>.

¹² <https://www.theguardian.com/australia-news/2017/nov/02/bundaberg-indigenous-group-resist-unfair-cashless-welfare-card>.

¹³ Explanatory Memorandum, Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018 (Cth), page 4.

“...restricted the ability for the trial to inform government on any future implementation of the card in non-remote sites due to the different type of service arrangements and support required.”¹⁴

Reliance on Flawed Evaluation

The final evaluation report of the CDC trials in Ceduna and East Kimberley produced by ORIMA research in August of 2017 is both significantly methodologically flawed and the key piece of evidence used by the government to illustrate the ‘success’ of the CDC till date. Janet Hunt of the Australian National University has conducted an analysis of the trial evaluation carried out by ORIMA Research¹⁵ on behalf of the government in 2017. Hunt highlights selective presentation of results by ORIMA, including a lack of clarity around the factors impacting reduced alcohol use in Ceduna and the East Kimberley, the telling facts that the majority of participants identified that the CDC made no positive change in their lives and that almost half of participants stated that the CDC had actually made their lives worse.

ORIMA details significant limitations of its evaluative data in its report¹⁶ including:

- **Administrative data limitations** – much of the administrative data relied upon by Government to validate its trials is data collected for purposes other than the CDC trial evaluation. As the ORIMA report itself states: *‘The data available generally serve as imperfect proxy measures for problematic alcohol consumption, illegal drug use, gambling and anti-social and disruptive behaviours’*¹⁷. There is no longitudinal follow up of respondents in interim (wave 1) of the evaluation hence no time series comparisons nor behaviour change can be clearly identified. This is not acknowledged by Government who claim generalised assertions in the evaluation as ‘fact’. Claims that the CDC trials have conclusively proven ‘successful’ are false.
- **Recall error** – respondents are asked to comment on their behaviour at both the time of their interview and before the CDC trial commenced. It is acknowledged by ORIMA that recall error is likely to be present and needs to be considered when discussing the data¹⁸. There is no acknowledgement by Government of this significant lack of validity in the data.
- **Response bias; self-reporting and observation bias** – ORIMA acknowledge the limitations caused by response bias whereby respondents seek to agree or report in ways socially acceptable to those asking¹⁹. ORIMA acknowledge that it is NOT possible to accurately measure actual behaviours such as changes in alcohol consumption.

¹⁴ Australian National Audit Office 2018, *The Implementation and Performance of the Cashless Debit Card Trial*, Australian National Audit Office, Commonwealth of Australia, page 48.

¹⁵ http://caepi.cass.anu.edu.au/sites/default/files/docs/CAEPR_Topical_Issues_1_2017_0.pdf.

¹⁶ ORIMA Research 2017, *Cashless Debit Card Trial Evaluation: Final Evaluation Report August 2017*, Department of Social Services, page 25-28.

¹⁷ ORIMA Research 2017, *Cashless Debit Card Trial Evaluation: Final Evaluation Report August 2017*, Department of Social Services, page 25-26.

¹⁸ ORIMA Research 2017, *Cashless Debit Card Trial Evaluation: Final Evaluation Report August 2017*, Department of Social Services, page 27.

¹⁹ Ibid.

There is no acknowledgement by Government of the inherent inconclusive nature of the evaluation.

- **General Methodological Limitations** – The evaluation did not use a statistically representative random sampling of the underlying population²⁰ leaving open considerable skewing in sampling and results. This serious limitation on sampling and data validity is not acknowledged by Government which has chosen to portray ORIMA report assertions as ‘fact’.
- **Recruitment of participants** - The ORIMA evaluation relies heavily on answers to a series of questions posed to respondents who are randomly selected in public places who are selected with promises of \$30 or \$50 gift cards on completion. ‘Paying respondents affects relationships’ and can lead to contaminated results²¹. As respondents are also asked for their ID for what is an official government supported survey, coercive effects and sense of need to give the answers sought cannot be ruled out.

It should be noted that the Parliamentary Joint Committee on Human Rights (PJHCR) has also made note of the significant limitations of the ORIMA report, including a lack of government acknowledgement of mixed findings²². While problems with methodology, data, and associated findings are freely acknowledged by ORIMA, reporting of the evaluation is skewed by government to provide a (false) simplistically positive view.

Most recently, the ANAO’s report on the CDC has explicitly condemned both ORIMA’s evaluation process and final report. The ANAO undertook an audit of the CDC trials to identify whether the Department of Social Services was appropriately informed and positioned to justify further roll-out of the CDC. The ANAO’s report concluded that the Department of Social Services’ “approach to monitoring and evaluation was inadequate. As a consequence, it is difficult to conclude whether there had been a reduction in social harm and whether the card was a lower cost welfare quarantining approach.”²³ The report also noted that the Department of Social Services failed to “actively monitor risks identified in risk plans and there were deficiencies in elements of the procurement process.”²⁴ Referring specifically to the ORIMA evaluation of the trial, “there was a lack of robustness in data collection and the department’s evaluation did not make use of all available administrative data to measure the impact of the trial including any change in social harm.”²⁵ Crucially, the Auditor-General found that “the trial was not designed to test the scalability of the CDC and there was no plan in

²⁰ ORIMA Research 2017, *Cashless Debit Card Trial Evaluation: Final Evaluation Report August 2017*, Department of Social Services, page 28.

²¹ See Eva Cox’s analysis: https://www.theguardian.com/commentisfree/2017/sep/07/much-of-the-data-used-to-justify-the-welfare-card-is-flawed?CMP=share_btn_link.

²² Parliamentary Joint Committee on Human Rights 2018, *Human rights scrutiny report: Report 6 of 2018*, Department of the Senate, Commonwealth of Australia, page 35.

²³ Australian National Audit Office 2018, *The Implementation and Performance of the Cashless Debit Card Trial*, Australian National Audit Office, Commonwealth of Australia, page 8.

²⁴ Ibid.

²⁵ Ibid.

place to undertake further evaluation.”²⁶ This indictment of the trials specifies that there is no clear basis for expansion of the CDC, and casts doubt on the validity of the current trials.

In their response to the ANAO report on the CDC, the Australian Council of Social Service has recently called on the federal government to explain the expansion of the CDC to the Goldfields and the continuation of existing trials due to the lack of a definitive confirmation (through evaluation) that the CDC works.²⁷

Misreported and Missing Information

- While rates of domestic violence have been collected there is no coherent reporting, analysis or commentary of family violence behaviours in the ORIMA report, yet anecdotal assertions are made that such behaviours have increased, without evidence to support assertions. As the ANAO report indicates, the key performance indicator (medium-term, judged on the basis of reliability) relating to the incidence of violent and other types of crime and violent behaviour had no baseline or specific targets set to determine measurability by the Department of Social Services²⁸.
- No baseline of gambling, alcohol or drug consumption to compare to – as noted by Dr Elise Klein, the evaluation implies there has been a decrease in alcohol, drug use and gambling amongst CDC participants yet it does not examine that based on interim report data, most on the card were not over consumers of alcohol, drugs or gambling in the first place²⁹. According to the ANAO report, the KPI (short-term, judged on the basis of reliability) relating to the frequency/volume of gambling and associated problems also had no baseline or specific targets set to gauge success of the trial³⁰.
- Gambling behaviour has been on the decline in South Australia particularly, with a steady downward trend in gambling revenue since 2006/7 with the highest drop this year 2016/7 in SA³¹. It is not possible to claim that the CDC trial has been the cause of such behaviour change.

²⁶ Ibid.

²⁷ https://www.acoss.org.au/media_release/mandatory-cashless-debit-must-cease-following-damning-report/.

²⁸ Australian National Audit Office 2018, *The Implementation and Performance of the Cashless Debit Card Trial*, Australian National Audit Office, Commonwealth of Australia, page 58.

²⁹ In the ORIMA Interim report, 57% evaluation participants on the card reported that before the card, they did not have more than 6 drinks of alcohol at one time (page A33); 90% reported that they did not use illegal drugs (4% reported doing so), 80% reported that they did not gamble (3% more than once a week) (pg A41). In the final ORIMA report released on 1/9/2017, it is claimed that 48% of people were doing one of the three behaviours (alcohol/ drug consumption or gambling) less. However, there is does no accounting for the people who were not doing the behaviours in the first place, who may have said yes to ‘consuming less’, to reflect not doing the behaviours at all (summary based on research by Dr Else Klein).

³⁰ Australian National Audit Office 2018, *The Implementation and Performance of the Cashless Debit Card Trial*, Australian National Audit Office, Commonwealth of Australia, page 57.

³¹ See research by the SA Centre for Economic Studies at the University of Adelaide: <http://www.adelaide.edu.au/news/news94882.html>.

- While the card targets people on payments, it fails to analyse reasons for unemployment and underemployment. In both Ceduna and the East Kimberley, the biggest cause of unemployment is the lack of formal, dignified and secure jobs.

Negative Impact on Children

- Tables on page 79 of the ORIMA report³² make it clear that (n=198) in East Kimberley 49% feel they can NOT better look after their children on the CDC, while 44% feel they can look after their children better on the card. In Ceduna 48% of respondents feel they can NOT better look after their children on the CDC, while 40% feel they can better look after their children.
- Elsewhere the report details that in the past 2 months:
 - 52% of respondents have run out of money to buy food;
 - 45% have run out of money to pay for things children needed for school like books
 - 44% had run out of money to pay for essential non-food items for children such as nappies, clothes and medicine
 - 55% had borrowed money from family or friends

Disinvestment in Wraparound Services

Wrap-around services have been identified by the Australian Council of Social Service as a key component in addressing disadvantage in communities, as income limiting alone cannot 'treat' addiction- people need integrated and long-term support³³. Throughout the CDC trial duration in all current sites, there still appears to be very limited government understanding of how these changes might articulate with community-sector supports such as alcohol and other drug rehabilitation services, family violence services, financial counselling services, and so on. This disconnect is particularly salient when considering that the latest federal budget indicates that there will be further spending cuts to Australians receiving income support payments- particularly people who are unemployed, people with a disability, low-income families and students³⁴. This is even more concerning in the case of remote Indigenous communities due to the failure of the government to renew its investment in remote Aboriginal housing³⁵.

Reliance on Technocratic Recommendations

The Federal Government's announcement of intent to expand the CDC to the new sites at Goldfields/Kalgoorlie and Bundaberg and Hervey Bay received immediate approval from the

³² ORIMA Research 2017, *Cashless Debit Card Trial Evaluation: Final Evaluation Report August 2017*, Department of Social Services, page 79.

³³ https://www.acoss.org.au/wp-content/uploads/2018/02/010218-Cashless-Debit-Card-Briefing-Note_ACOSS.pdf.

³⁴ <https://www.acoss.org.au/social-security/>.

³⁵ <https://www.theguardian.com/australia-news/2018/may/10/indigenous-leaders-say-remote-housing-in-jeopardy-after-devastating-budget-cut>.

Minderoo Foundation³⁶, whose founder Andrew Forrest has been a staunch supporter of the CDC, having been one of the earliest and most vocal proponents of cashless welfare. In late 2017, the Minderoo Foundation presented a report³⁷ to the Minister for Human Services- the Hon Alan Tudge MP- containing 11 recommendations to facilitate the further expansion of the CDC program of income management³⁸. Features of the Technology Report's influence on the present Bill include the push for point-of-sale blocking techniques to restrict 'illegitimate' cardholder transactions³⁹.

Silencing of Dissenting Voices

Across existing trial sites there have been widespread critiques, condemnation and concern expressed by community members and concerned non-government welfare agencies. In Ceduna, local resident Jocelyn Wighton who is on the debit card has spoken out publicly:

"The evaluation shows a decrease in alcohol, drugs and gambling but it doesn't cover that most of us put on the card weren't over-consumers of those things...While some stakeholders say people's shopping has improved ... 82% of people said there was no difference of how they shop.... [Wighton] expressed concern about ...domestic violence and crime in the community from the ongoing use of the scheme: 'I know the cycle and used to work with Centacare, there's a cycle of domestic violence - giving people less money makes people more needy, more desperate and leads to more crime.'" ⁴⁰

The Western Australia Council of Social Services chief Louise Giolitto said trials of the card had shown mixed results:

"What you are finding is that people who have got addictions, alcohol addictions, they'll sell the cards that maybe are worth \$200 for \$100 and they are leaving themselves with a lot less cash...There's also some really horrendous stories of young people and children selling themselves or prostituting themselves for money....There's a lot of things that actually go underground and become hidden because of putting people on a cashless welfare card...There's an assumption placed around it that if you need income support, we take away your autonomy and a level of your dignity and there's an automatic assumption you can't manage your own money." ⁴¹

³⁶ <https://www.minderoo.com.au/news/2017/09/22/media-release-cashless-debit-card-extension-will-protect-vulnerable/>.

³⁷ <https://www.minderoo.com.au/news/2017/12/05/minderoo-drives-cashless-debit-card-improvements/>.

³⁸ The report itself was only posted on the Minderoo Foundation's CDC site on the [19th of May 2018](#).

³⁹ Minderoo Foundation 2017, *Cashless Debit Card Technology Report*, Minderoo Foundation.

⁴⁰ See: 'Ceduna residents voice disapproval of the debit card' on the WestCoast Sentinel website from 4/9/2017: <http://www.westcoastsentinel.com.au/story/4898273/not-complete-picture/?cs=1547>.

⁴¹ See report: <http://www.abc.net.au/news/2017-09-01/cashless-welfare-card-to-hit-goldfields-next-pm-to-announce/8861556>.

Save the Children spokesperson in the Kimberley Juan Larranga says clear evidence from his staff working night patrols in the Kununurra show problems with the CDC:

“Our night patrol staff report that they see kids begging for food as a result because there is not enough food in the house.”⁴²

⁴² See report: <http://www.abc.net.au/news/2017-09-01/cashless-welfare-card-to-hit-goldfields-next-pm-to-announce/8861556>.

Concerns with the Bill before Parliament

Insertion of Subsection 124PD(1): Location of New Trial Sites

The Bill continues to apply non-specific geographic targeting for proposed trial sites. The named communities in the Bill are Bundaberg and Hervey Bay, but this is clarified to refer to the Hinkler electorate in totality. This raises the possibility for multiple smaller sites within the electorate to also be subject to rollout of the CDC.

While the Bill's explanatory memorandum cites extensive consultations with community stakeholders⁴³, the nature of stakeholders present at such consultations is not made clear. Additionally, the statement of compatibility with human rights in the Bill's explanatory memorandum asserts that the Bundaberg and Hervey Bay area 'has been selected due to strong levels of support in the area'⁴⁴. This is a false claim, as there has been active push-back against the trials in the named communities. The mayors of both areas have expressed their concerns about the CDC⁴⁵.

"Extensive community consultation process": "From July 2017 to September 2017, the Department of Social Services conducted over 110 meetings in the Bundaberg and Hervey Bay area. After the announcement of the site on 21 September 2017, the Department continued to consult and engage with the community and has conducted a total of 188 meetings to December 2017."⁴⁶

A breakdown of attendees at these consultations has not been released, it is not possible for an independent observer to determine whether or not such consultations were representative of those individuals who would actually become subject to the CDC.

It should be noted, however, that as mentioned by Labor MP Linda Burney at the second reading of the Bill in the House of Representatives, no Aboriginal corporations in the Bundaberg and Hervey Bay area had been directly approached by the federal government with respect to the proposed expansion⁴⁷.

⁴³ Explanatory Memorandum, Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018 (Cth), page 4.

⁴⁴ Explanatory Memorandum, Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018 (Cth), page 2.

⁴⁵ <https://www.theguardian.com/australia-news/2018/may/21/bundaberg-mayor-turns-against-high-cost-of-cashless-welfare-trial>

⁴⁶ Explanatory Memorandum, Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018 (Statement of Compatibility with Human Rights) (Cth), page 4.

⁴⁷ Cth. Parliamentary Debates. House of Representatives. 21 June 2018 (Proof), page 21.

https://www.aph.gov.au/Parliamentary_Business/Hansard?wc=21/06/2018. A direct link to MP Burney's second reading speech can be found here:

http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=BillId_Phrase%3A%22r6130%22%20Dataset%3Ahansardr,hansards%20Title%3A%22second%20reading%22;rec=3

The applicability of the CDC to the Bundaberg and Hervey Bay area is also questioned by the PJHCR due to the government's use of the notably unreliable⁴⁸ ORIMA report to justify this expansion:

“Further, as noted in the statement of compatibility, the Bundaberg and Hervey Bay area has a much larger population than the three current sites, and is not a remote location. It is not clear, therefore, whether the positive findings from the ORIMA report are relevant in determining whether the cashless debit card trial in Bundaberg and Hervey Bay areas would be an effective means of achieving the legitimate objective. In particular, the statement of compatibility emphasises that the cashless debit card trial in the new area is targeted towards the issues of youth unemployment, intergenerational welfare dependency and families who require assistance in meeting the needs of their children. While the ORIMA report identified that 40% of trial participants who had caring responsibility reported that they had been better able to care for their children, the ORIMA report does not discuss effectiveness in relation to youth unemployment or intergenerational welfare dependency. While the statement of compatibility provides information as to the extent of these issues within the Bundaberg and Hervey Bay areas, there is no information provided as to how expanding the cashless debit card trial would be effective to achieve these objectives of the measure.”⁴⁹

[Amendment to Section 124PE: Community Bodies/Panels](#)

In all current trial sites, i.e. the Ceduna, East Kimberley and Goldfields areas, the authorisation of community bodies occurs via Ministerial legislative instrument (retained in the Bill). However, in the proposed new sites at Bundaberg and Hervey Bay, the Bill introduces an alternative form of Ministerial authorisation: via notifiable instrument. According to the Legislation Act 2003's definition of a notifiable instrument, this means that such an authorisation would not be subject to parliamentary scrutiny and would not be subject to automatic repeal (sunsetting) 10 years post-registration. Community bodies have been found to be at risk of bias in both their composition and decision-making in practice⁵⁰, with significant implications for trial participants seeking to augment the level of their payments to minimise financial hardship. This is compounded by the fact that there is no necessary requirement for bodies seeking authorisation to actually provide “services relating to the care, protection, welfare or safety of adults, children or families residing in that area.” The grounds upon which intention to provide services are determined are unclear in the Bill.

From the Bill's explanatory memorandum:

⁴⁸ http://caepr.cass.anu.edu.au/sites/default/files/docs/CAEPR_Topical_Issues_1_2017_0.pdf;

Australian National Audit Office 2018, *The Implementation and Performance of the Cashless Debit Card Trial*, Australian National Audit Office, Commonwealth of Australia.

⁴⁹ Parliamentary Joint Committee on Human Rights 2018, *Human rights scrutiny report: Report 6 of 2018*, Department of the Senate, Commonwealth of Australia, page 36.

⁵⁰ Australian National Audit Office 2018, *The Implementation and Performance of the Cashless Debit Card Trial*, Australian National Audit Office, Commonwealth of Australia, page 56.

“The notifiable instrument empowered by new subsection 124PE(2) will not be disallowable by Parliament, and this is appropriate, as any such instrument will not immediately affect the rights of any individual, other than persons who choose to approach the community to agree a different percentage.”⁵¹

According to the recent ANAO audit of the CDC trials, the Department of Social Services found that “the Community Panels were not as effective as envisaged, resulting in lengthy delays in making decisions and that they would not be introduced into new localities.”⁵² Despite these concerns being known to the Department, however, the panels were still included as a feature of the proposed trial expansion to the Bundaberg and Hervey Bay area.⁵³

Further, the ANAO report reveals that the community panels were not effectively or sufficiently evaluated as a component of the trials in current trial sites, noting that “the indicator developed to assess the operational performance of the Community Panels did not take into account feedback from trial applicants.”⁵⁴

Finally, the ANAO notes that the Department of Social Services did not appropriately report on Community Panels in their report to the Minister in October of 2017:

“Social Services did not refer to the evaluation of the trial, which noted other factors that impacted on the effectiveness of Community Panels, including the ‘...delay in establishing and commencing the Community Panels from the start of the trial’ and that ‘...the panel process was not adequately known and communicated’ to the trial participants and communities. The evaluation report indicated that community leaders and stakeholders indicated they believed the Community Panel was ‘...a good and necessary safeguard process in the trial to ensure that personal/family circumstances and needs were taken into consideration’.”⁵⁵

[Amendments to Subsection 124PF: Duration and Scope of Trial Extension](#)

The Bill replaces Paragraph 124PF(1)(b) to clarify that current trials at all sites will end on 30 June 2019, while they will continue in the Bundaberg and Hervey Bay area until 30 June 2020. The Bill also amends Subsection 124PF(3) to raise the trial participant cap from 10,000 to 15,000- a significant 50% increase in participant numbers.

⁵¹ Explanatory Memorandum, Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018 (Cth), page 6.

⁵² Australian National Audit Office 2018, *The Implementation and Performance of the Cashless Debit Card Trial*, Australian National Audit Office, Commonwealth of Australia, page 31.

⁵³ Australian National Audit Office 2018, *The Implementation and Performance of the Cashless Debit Card Trial*, Australian National Audit Office, Commonwealth of Australia, page 47.

⁵⁴ Australian National Audit Office 2018, *The Implementation and Performance of the Cashless Debit Card Trial*, Australian National Audit Office, Commonwealth of Australia, page 37.

⁵⁵ Australian National Audit Office 2018, *The Implementation and Performance of the Cashless Debit Card Trial*, Australian National Audit Office, Commonwealth of Australia, page 47.

Addition of Subsection 124PGA: Changes to Trial Participant Definitions

The Bill includes proposed changes to trial participant definitions specifically in relation to the Bundaberg and Hervey Bay area, stating that trial participants in this area include those persons 35 and under who are in receipt of Newstart allowance, youth allowance or parenting payment, excluding new apprentices and students who are undertaking full-time study out of area.

The PJCHR raises a key concern about this subsection:

“As the cashless debit card trial applies to anyone below the age of 35 residing in the trial location who receives the specified social security payments, there are serious doubts as to whether the measures are the least rights restrictive way of achieving the objective. In relation to the bill, this concern is heightened insofar as the trial applies not only to persons whose usual place of residence ‘is or becomes’ within the Bundaberg and Hervey Bay area, but also applies to a person whose usual place of residence *was* within the area.”⁵⁶

Subsection 124PGA(5): Consideration of Participant Wellbeing

This part of the subsection seeks to legislatively entrench the notion that the Secretary is not responsible for inquiring into whether participants may experience significant mental, physical or emotional hardship *prior* to the commencement of the trial. The Secretary will only be responsible for determining this after the fact, putting the onus on those experiencing hardship to demonstrate how the CDC compounds this once they have been moved onto the scheme.

From the Bill’s explanatory memorandum:

“...the Secretary is not required to actively take steps to assess every trial participant to decide whether being subject to the cashless debit card trial would seriously risk that person’s mental, physical or emotional wellbeing. The Secretary will consider making this determination once he or she is made aware of facts which indicate that being a trial participant may seriously risk a person’s mental, physical or emotional wellbeing.”⁵⁷

Once again, this is flagged as a concern by the PJHCR:

“...the secretary is not required to make inquiries on this matter but is only required to take action once being made aware of the relevant facts. It is not clear how the

⁵⁶ Parliamentary Joint Committee on Human Rights 2018, *Human rights scrutiny report: Report 6 of 2018*, Department of the Senate, Commonwealth of Australia, page 37.

⁵⁷ Explanatory Memorandum, Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018 (Cth), page 8.

secretary would be made aware of whether a person's participation in the trial is impacting a person's mental, physical and emotional wellbeing."⁵⁸

As noted by the ANAO, key services in trial sites that relate directly to participant wellbeing were not adequately monitored and evaluated to determine their effectiveness and to drive improvement in trial operation by the Department of Social Services:

"Key areas of the CDCT relating to the administrative and operational aspects of the trial such as the Social Services call centre, wellbeing exemptions, community visits, levels of cash available in the community and staff training were not measured with KPIs. This reduced the ability of Social Services to drive improvement in the operational aspects of the CDC."⁵⁹

Insertion of Subsection 124PJ(4A), (4B), (4C), (4D): Changes to the Secretary's Discretionary Powers

Responsibility for determinations on varying the restricted percentage of a participant's payment is in this Bill transferred from the Minister to the Secretary for the Bundaberg and Hervey Bay region. Additionally, while for other trial sites the Minister may vary percentages via legislative instrument, the Secretary can make these changes in Bundaberg and Hervey Bay by written determination. This variation is specified to only occur in the case that a person cannot use their CDC or access their welfare restricted bank account because of technological fault/malfunction, a natural disaster, or if they are experiencing severe financial hardship as determined by the Secretary.

Importantly, this means that these decisions, while subject to Parliamentary disallowance in the Ceduna, East Kimberley and Goldfields regions, will *not* be subject to the same mechanism in the Hinkler electorate.

Insertion of Subsection 124PQ(2A): Legitimising Point-of-Sale Discrimination against Cardholders

This insertion would legitimise the declining of a transaction by a supplier of goods and services involving money in a welfare restricted bank account where such a transaction involves obtaining alcoholic beverages, gambling or gambling products, or cash-like product(s) that could be used to obtain either of the aforementioned. This means that merchants will be authorised to discriminate against trial participants at the point of sale based on their being subject to the trial. We note that the recommendation for further technologisation of the CDC through point-of-sale blocking of restricted products was included and developed in the Minderoo Foundation's report on the CDC from late 2017⁶⁰.

⁵⁸ Parliamentary Joint Committee on Human Rights 2018, *Human rights scrutiny report: Report 6 of 2018*, Department of the Senate, Commonwealth of Australia, page 37.

⁵⁹ Australian National Audit Office 2018, *The Implementation and Performance of the Cashless Debit Card Trial*, Australian National Audit Office, Commonwealth of Australia, page 59.

⁶⁰ Minderoo Foundation 2017, *Cashless Debit Card Technology Report*, Minderoo Foundation.

As mentioned previously, a key concern with the CDC trials is that the card has created a consumer underclass through the selective imposition of restrictions on a cohort of income support recipients. This Bill seeks to extend such discrimination in the following manner:

“The Bill also introduces an exception from Part IV of the Competition and Consumer Act 2010 for merchants that implement product level blocking will be introduced, where systems would automatically identify that a cashless debit card is being used for payment and, if any restricted products are being purchased, decline the transaction.”⁶¹

“This ensures that action by merchants to decline transactions involving these elements will not result in the merchants being in breach of the *Competition and Consumer Act 2010*.”⁶²

While the Bill does not make declining such transactions *mandatory*, it does open the possibility for merchants to undertake such actions without violating the *Competition and Consumer Act 2010*.

When reviewed by the PJCHR, the committee voiced its concern with respect to the above proposition about declinable transactions, that is, “the compulsory quarantining of a person’s welfare payments and the restriction of a person’s agency and ability to spend their welfare payments at businesses including supermarkets.”⁶³ The committee noted that it was not possible to conclude that such a determination was “necessary and effective to achieve the objectives of the trials or was a proportionate limitation on human rights.”⁶⁴

Insertion of 124PQA: Ban on Cash-like Products

This insertion seeks to restrict trial participant purchase of gift card, store cards, vouchers or similar, as well as money orders or postal orders or similar (where any of the aforementioned are in either physical or electronic form). Importantly, it also seeks to restrict participant use of digital currency, locking participants out of potential engagement with viable digital economies. The definition of a ‘cash-like product’ is also troublingly non-specific, leaving the possibility for restriction of a broad scope of items at Ministerial discretion.

⁶¹ Explanatory Memorandum, Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018 (Cth), page 4.

⁶² Explanatory Memorandum, Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018 (Cth), page 9.

⁶³ Parliamentary Joint Committee on Human Rights 2018, *Human rights scrutiny report: Report 6 of 2018*, Department of the Senate, Commonwealth of Australia, page 41.

⁶⁴ Parliamentary Joint Committee on Human Rights 2018, *Human rights scrutiny report: Report 6 of 2018*, Department of the Senate, Commonwealth of Australia, page 42.

Contingent Amendment to 124PM: Changes in Relation to the Social Services Legislation Amendment (Housing Affordability) Bill 2017

According to the PJHCR, the interaction of recommendations in this Bill to the proposed amendment to section 124PM at item 7 of schedule 1 in the Social Services Legislation Amendment (Housing Affordability) Bill 2017 may be incompatible with right to equality and non-discrimination:

“This is because allowing for automatic rent deductions to be made from the unrestricted portion of a cashless debit card participant’s welfare payment, the Housing Affordability Bill appears to further restrict how a person subject to the cashless welfare regime may spend their social security payment or family tax benefit, and may limit, or entirely preclude, a person’s discretionary income if they are subject to both the proposed automatic rent deduction scheme and the cashless debit card trial... To the extent that the bill retains the deletion of the reference to a person’s unrestricted portion and allows for automatic rent deductions from the unrestricted portion of a cashless debit card participant’s welfare payment, the concerns expressed in the committee’s previous report apply equally to the proposed amendment in the bill.”⁶⁵

Conclusion

We reiterate the concerns stated above to assert that the CDC trials should be immediately abandoned in favour of comprehensive and strengths-based social security support for marginalised income support recipients.

We strongly recommend the rejection of both this Bill and of compulsory income management regimes in Australia on the grounds that:

- Compulsory income management in the form of the Cashless Debit Card does not achieve the results claimed, and
- The distress, shame and hardship it causes to people (disproportionately Indigenous peoples across current trial sites), is based on a false assumption that stripping people of autonomy and dignity will solve serious health and social issues.
- The application of compulsory income management is in violation of both human and consumer rights.

⁶⁵ Parliamentary Joint Committee on Human Rights 2018, *Human rights scrutiny report: Report 6 of 2018*, Department of the Senate, Commonwealth of Australia, page 40.

Appendix 1: Network Member Endorsements

The Accountable Income Management Network has received formal endorsement for this submission from the following individuals, groups and organisations.

Anti-Poverty Network South Australia	Community Sector Organisation
Australian Council of Social Service	Community Sector Peak Body
Australian Unemployed Workers' Union	Community Sector Organisation
Consumer Action Law Centre	Community Sector Organisation
Dr Elise Klein , the University of Melbourne	Individual
Eva Cox	Individual
Good Shepherd Australia New Zealand ⁶⁶	Community Sector Organisation
Jenny Williams	Individual
Professor Jon Altman , Deakin University	Individual
Kathryn Wilkes, No Cashless Debit Card/HINKLER REGION	Individual, Facebook Group
Peter Sutherland, Australian National University	Individual
Dr. Shelley Bielefeld , Griffith University	Individual
Uniting Communities	Community Sector Organisation

⁶⁶ Good Shepherd Australia New Zealand have provided a standalone letter of support for this submission directly to the Committee.