

10 August 2022

Senate Community Affairs Legislation Committee

PO Box 6100

Parliament House

Canberra ACT 2600

RE: Inquiry into the Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Bill 2022

The Accountable Income Management Network (AIMN) welcomes the opportunity to make a contribution to the Senate Community Affairs Legislation Committee's inquiry into the Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Bill 2022 (hereafter referred to as 'the Bill'). While we appreciate the Labor government's commitment to bringing forward the end of the Cashless Debit Card (CDC), currently legislated until 31 December 2022, we identify some key considerations relevant to the proposed legislative amendments. In addition to the brief submission below, we direct the Committee to our more substantive consideration of the process of ending compulsory income management (CIM) in the attached Policy Paper. We also direct the Committee to our list of recommendations in the attached letter sent to Minister Amanda Rishworth in early July, which covers immediate action that can be taken to bring CIM under the CDC to an end within current legislation.

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 compulsory income management (CIM), which operates in Australia in the form of Income Management under the BasicsCard and via the CDC program.

Introduction

CIM in Australia was initially introduced in 2007 to specifically target remote Aboriginal communities as part of the Northern Territory Emergency Response (the Intervention). This decision garnered significant concern regarding its impacts on human rights and due to its initial implementation via the suspension of the *Racial Discrimination Act 1975*. While the reach of CIM has since expanded to capture non-Indigenous people and has spread outside the Northern Territory, Aboriginal people continue to be disproportionately targeted by these punitive and paternalistic measures. 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.

As recently reported by the Auditor-General in a follow-on audit investigating the implementation and performance of the CDC, the Department of Social Services (DSS) and Services Australia under the

Morrison government repeatedly failed to demonstrate that the CDC meets its intended objectives.¹ This has been compounded by DSS' ineffective approach to monitoring and evaluation and lack of robust cost-benefit analysis. Independent research has showed clear signs of harm associated with CIM, including the exacerbation of financial hardship, experiences of stigma and discrimination and evidence of disproportionate targeting of Indigenous communities.² The failures of the CDC are consistent with the aforementioned longer standing concerns about CIM under the BasicsCard, which disproportionately targets Indigenous communities and has had demonstrated detrimental impacts on child and family wellbeing.³

On 1 July 2022, there were a total of 17,795 CDC participants across all CDC regions, with Indigenous people making up approximately 50% of this figure.⁴ On 1 July 2022, there were also 22,595 IM participants with active BasicsCards in the Northern Territory, 532 in Western Australia, 515 in Queensland, 332 in South Australia, 106 in Victoria, 64 in New South Wales, and 41 in the Australian Capital Territory/Tasmania/unknown locations.⁵

The Auditor General has reported the costs of the CDC program over 2020-21 at \$36.5m,⁶ and Minister for Rishworth stated in June 2022 that the former government had spent over \$170m on the CDC over the life of the scheme.⁷

Key concerns

The passing of the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020 created a legislative relationship between the CDC and IM under the BasicsCard by virtue of introducing the former in the Northern Territory and Cape York as an intended replacement for the latter. The present Bill intends to bring forward the end of the CDC program, allowing participants across the Ceduna, East Kimberley, Goldfields and Bundaberg and Hervey Bay sites to leave the program via a request to the Secretary.

- The Bill does not end CIM, instead providing two pathways open to people in the Northern Territory who are not voluntary CDC participants. Compulsory CDC participants will be assessed in line with existing IM measures, which currently constitute 8 streams – child

¹ Australian National Audit Office, *Implementation and Performance of the Cashless Debit Card Trial – Follow-on*, Auditor-General Report No. 29 2021-22 (Canberra, ACT, 2022), https://www.anao.gov.au/sites/default/files/Auditor-General_Report_2021-22_29.pdf.

² For CDC, see *Hidden Costs: An Independent Study into Income Management in Australia* by Greg Marston, Phillip Mendes, Shelley Bielefeld, Michelle Peterie, Zoe Staines and Steven Roche (2020), "*Income Management of Government Payments on Welfare: The Australian Cashless Debit Card*" by Luke Greenacre, Skye Akbar, Julie Brimblecombe, and Emma McMahon (2020), *University of Adelaide Future of Employment and Skills research centre's impact evaluation* (2021), and *ORIMA evaluation reports* (2014). For Basics Card, see *'Evaluating New Income Management in the Northern Territory: Final Evaluation Report'* by J Rob Bray, Matthew Gray, Kelly Hand and Ilan Katz (2014) and "*Measuring the social impact of income management in the Northern Territory: An updated analysis*" by J Rob Bray (2020).

³ <https://lifecoursecentre.org.au/news/drop-in-birth-weights-and-school-attendance-could-be-linked-to-nt-welfare-restrictions/>.

⁴ <https://data.gov.au/data/dataset/e5a6ca38-b17c-4e65-af70-84e7759a0ffa/resource/6628c9ae-8bd3-46fb-941b-ac41903bdacf/download/cashless-debit-card-data-summary-july-2022.pdf>

⁵ <https://data.gov.au/data/dataset/fd464dd1-0031-4e4a-abdd-c08282192d86/resource/d6404d7b-f3ea-4446-8500-76d54b18215a/download/income-management-data-summary-july-2022.pdf>

⁶ Australian National Audit Office, *Implementation and Performance of the Cashless Debit Card Trial – Follow-on*, Auditor-General Report No. 29 2021-22 (Canberra, ACT, 2022), https://www.anao.gov.au/sites/default/files/Auditor-General_Report_2021-22_29.pdf.

⁷ <https://ministers.dss.gov.au/media-releases/8251>

protection, vulnerable, disengaged youth, long-term welfare recipient, school enrolment, school attendance, other State/Territory referrals (Supporting People at Risk) and voluntary. On the basis of this assessment, compulsory CDC participants will then be transferred from the CDC *back* onto IM under the BasicsCard via one of these streams. Alternatively, if they have been put onto the CDC since the commencement of the NT rollout *or* fulfil participant eligibility criteria for CIM under the BasicsCard, individuals may be transferred onto IM under the BasicsCard for the first time.

- In Cape York, participants will also be transitioned back onto IM from the CDC under the oversight of the Queensland Commission.
- While the Explanatory Memorandum for the Bill states that a second bill will be put forward in 2022 that will explicitly deal with the program of IM, there is no guarantee that CIM has been ruled out altogether as a policy measure. In practice, this means that a cohort of primarily Aboriginal people may continue to languish on CIM under the BasicsCard in the Northern Territory indefinitely, depending on the outcome of community consultations. It should also be noted that CIM under the BasicsCard operates across other States, though the largest number of participants are located in the Northern Territory.
- A number of legislative instruments enabling the operation of CIM under the BasicsCard in New South Wales, Queensland, South Australia, Victoria, on Anangu Pitjantjatjara Yankunytjatjara Lands and in the Northern Territory are due to sunset on 1 October 2022, and were listed as not to be replaced, pending consultation, in a briefing document provided to the incoming government by the Department of Social Services in May.
- Given that the CDC is already legislated to end in December 2022, it is unclear why the Minister has not elected to use pre-existing legislated measures to fast-track exit and wellbeing exemption applications, and has instead made a guaranteed, timely exit from the CDC prior to 31 December a condition of the Bill passing. The Secretary is empowered under 124PHA (wellbeing) and 124PHB (responsible management of affairs) to decide that a person is no longer subject to cashless welfare arrangements. The Minister is also currently empowered under Section 124PHB(6) to, by legislative instrument, determine requirements for participants to no longer be a program participant.
- There is a continued lack of clarity around the definition of key concepts relevant to the implementation of IM such as ‘voluntary’, ‘consent’ and ‘consultation’.

Other issues

We note with concern that the very short submission turnaround for this inquiry will negatively impact upon the Committee’s ability to hear from individuals subject to CIM under the Cashless Debit Card and BasicsCard, as well as advocacy groups and organisations engaging in front-line work with CIM participants. This issue will likely disproportionately affect Aboriginal community-controlled organisations and community legal services which, while engaging in the majority of client-facing work with CIM participants, are significantly under-resourced to carry out this work and engage in vital advocacy on behalf of their respective client bases.

Recommendations

1. Government must make a strong commitment to ending *all* forms of CIM – the BasicsCard as well as the CDC. This must be clearly and publicly communicated, with timely progress updates.
2. Any consultation taking place with impacted communities about income management measures must be co-designed and carried out with due notice to community members, advertised at least 2-3 weeks in advance to ensure maximum opportunity for their participation. Consultation sessions must be of an appropriate duration and format to ensure broad representation of community concerns.⁸
3. The Secretary or Minister (as relevant) must urgently use pre-existing measures under Part 3D of the Social Security (Administration) Act 1999 to fast-track exit and wellbeing exemption applications by current CDC participants, and streamline these processes to facilitate transition off the CDC irrespective of whether the present Bill passes.
4. Immediate arrangements must be put in place for people impacted by the Bill to access social security legal help, both in on the ground in affected areas and provided remotely as required for out-of-area individuals. This is essential to protect the rights and wellbeing of persons affected by income management under the CDC and/or BasicsCard during the transition and going forward.
5. Government must establish a holistic, permanent approach to the provision of social security legal help. This legal assistance must be ongoing not only in relation to the present Bill but to all social security entitlements, ensuring the rights and wellbeing of people entitled to social security. Social security legal help must be available to people in remote, very remote, rural and regional areas, and services must be trauma informed, culturally safe and co-designed.
6. Government must commit to ensuring that the right to social security in Australia is duly protected and strengthen the operation of human rights oversight mechanisms with regard to both current and future social security legislation. In practice, this will require government to commission an independent review to:
 - a. Gauge the extent to which the right to social security is unjustly limited by policies including but not limited to compulsory income management, mutual obligations requirements, prohibitive eligibility requirements for the Disability Support Pension and overarching concerns about the below-poverty-line rate of social security payments, and
 - b. Develop a set of measures to rectify identified issues and to prevent the future implementation of failed retrogressive social security policy measures.
7. All of the above listed recommendations must be implemented consistent with Article 22 of the Universal Declaration of Human Rights and its articulation with the United Nations Declaration on the Rights of Indigenous Peoples, and with Australia's obligations as a party to the International Covenant on Economic, Social and Cultural Rights.⁹

⁸ In determining the future of income management in the Northern Territory and Cape York, as well as in other impacted Aboriginal communities, consultation and policy development should be guided by a set of core principles such as those outlined in the Productivity Commission's 2020 [Indigenous Evaluation Strategy](#).

⁹ <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, <https://humanrights.gov.au/our-work/un-declaration-rights-indigenous-peoples-1>, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>