

Submission to Senate Standing Committees on Community Affairs

Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Bill 2022

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Introduction

This submission addresses the Bill put forward to the senate to repeal the cashless debit card and associated measures.

If any of the responses require further explanations, please contact Associate Professor Marina Nehme at the University of New South Wales, Sydney, Faculty of Law and Justice at

General Observation

The use of the cashless debit card has raised a range of issues and criticism regarding the way the card has been administered in the past.¹ The explanatory memorandum of the Bill itself notes that the “cashless welfare arrangements are discriminatory and unfair”.² Furthermore, reliance on the card has attracted concerns regarding the fact that the regime is operating outside of Chapter 7 of the *Corporations Act 2001* (Cth) even though the provision of the card falls under the financial services definition.³

Accordingly, the move to repeal the card is welcomed.

However, the way this is achieved leaves much to be desired. I question the need for a stage transition when there was no such stage when people were introduced to the card. The two-stage approach for the repeal of the card is very convoluted and confusing. The repeal of Part 3D of the *Social Security (Administration) Act 1999* (Cth) is all that is required. Phase one is not a great help for people.

¹ Shelley Bielefeld, ‘Administrative Burden at the Cashless Debit Card: Stripping Time, Autonomy, and Dignity from Social Security Recipients’ (2021) 80(4) *Australian Journal of Public Administration* 891; Shelley Bielefeld, ‘Cashless Welfare Transfers and Australia’s First Nations: Redemptive or Repressive Violence’ (2021) 30(4) *Griffith Law Review* 597.

² Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Bill 2022, *Explanatory Memorandum* 6.

³ Marina Nehme, ‘Welfare meeting Financial Services: The Cashless Debit Card Dichotomy’ (2019) 44 *Alternative Law Journal* 121.

Furthermore, a few questions can be raised regarding the following statement in the explanatory memorandum:

Upon exit, certain participants may be subject to mandatory income management while others will be able to volunteer for income management if they decide to retain restrictions on their ability to access welfare payments in cash.

If the cashless debit card has been viewed as “unfair and discriminatory”, are other programs of mandatory income management any better? Will these programs be subject to a review? Research has noted that the income management program in Australia is problematic.⁴ As Dr Bielefeld noted:

Given the context of Australia’s unsavoury and oppressive colonial history, the government ought to be particularly cautious about imposing such a controversial mechanism on Indigenous peoples without their consent.⁵

Opposition for the BasicsCard is still there with people having burned down image of the card in the past. Further, compulsory income management is contrary to the right of self-determination of Indigenous people. The United Nation Committee on the Elimination of All Forms of Racial Discrimination has noted that the intervention legislation in Australia continues to “to discriminate on the basis of race as well as the use of so-called ‘special measures’ by the State party” and conveyed regret over “restrictions on Aboriginal rights to land, property, social security, adequate standards of living, cultural development, work, and remedies.”⁶

Additionally, the following sentence in the explanatory memorandum raises a range of question about the intention of the legislation:

This is appropriate as the intent is to end compulsory income management in most CDC program areas other than the Northern Territory and Cape York through legislative instruments made before Part 1 of Schedule 1 of the Principal Act commences.

One may question the reason for which people in the Northern Territory and Cape York will still be under compulsory income management. Isn’t singling this group of people in itself discriminatory and unfair in nature?

Accordingly, while the abolishing of the cashless debit card is welcomed, the way it is done and the implication regarding the use of income management program should be reconsidered.

Associate Professor Marina Nehme

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⁴ Shelley Bielefeld, ‘Cashless Welfare Transfers for ‘Vulnerable’ Welfare Recipients: Law, Ethics and Vulnerability’ (2018) 28(1) *Feminist Legal Studies* 1.

⁵ Shelley Bielefeld, ‘Compulsory Income Management and Indigenous Australians: Delivering Social Justice or Furthering Colonial Domination’ (2012) 35(2) *UNSW Law Journal* 522, 523.

⁶ United Nation Committee on the Elimination of All Forms of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the convention: Concluding observations of the Committee on the Elimination of Racial Discrimination. Seventy-seventh session (2010), 4; for an analysis of this statement see Shelley Bielefeld, ‘The Intervention, Stronger Futures and Racial Discrimination: Placing the Australian Government under Scrutiny’ in Elisabeth Baehr and Barbara Schmidt-Haberkamp (eds), *‘And there’ll be NO dancing’*. *Perspectives on Policies Impacting Indigenous Australia since 2007* (Newcastle upon Tyne, Cambridge Scholars Publishing) 145–166.