

Chapter 2

Concluded matters

2.1 This chapter considers the responses of legislation proponents to matters raised previously by the committee. The committee has concluded its examination of these matters on the basis of the responses received.

2.2 Correspondence relating to these matters is included at **Appendix 3**.

Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018

Social Security (Administration) (Trial of Cashless Welfare Arrangements) Determination 2018 [F2018L00245]

Social Security (Administration) (Trial – Declinable Transactions and Welfare Restricted Bank Account) Determination 2018 [F2018L00251]

Purpose	<p>The bill seeks to expand the operation of the cashless debit card trial to the Bundaberg and Hervey Bay area</p> <p>F2018L00245: determines the trial area and trial participants for the Goldfields trial area, East Kimberley trial area and the Ceduna trial area</p> <p>F2018L00251: sets out the kind of bank account to be maintained by a participant in the trial</p>
Portfolio	Social Services
Introduced	<p>House of Representatives, 30 May 2018</p> <p>F2018L00245: 15 sitting days after tabling (tabled Senate 20 March 2018)</p> <p>F2018L00251: 15 sitting days after tabling (tabled Senate 20 March 2018)</p>
Rights	Social security; private life; family; equality and non-discrimination (see Appendix 2)
Previous report	6 of 2018
Status	Concluded examination

Background

2.3 The committee first reported on the Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018 (2018 bill) and the determinations in its *Report 6 of 2018*, and requested a response from the Minister for Social Services by 11 July 2018.¹

2.4 The minister's response to the committee's inquiries was received on 24 July 2018. The response is discussed below and is reproduced in full at **Appendix 3.**

2.5 The 2018 bill includes an amendment to section 124PM of the *Social Security (Administration) Act 1999* which will come into effect if the proposed amendments to section 124PM in the Social Services Legislation Amendment (Housing Affordability) Bill 2017 (Housing Affordability Bill) have commenced at the time these amendments commence. The committee previously considered that the proposed amendments to section 124PM introduced by the Housing Affordability Bill may be incompatible with the right to equality and non-discrimination.² In its *Report 6 of 2018*, the committee drew the human rights implications of section 124PM to the attention of the parliament.³

2.6 The committee has examined the income management regime in its 2013 and 2016 Reviews of the Stronger Futures measures.⁴

2.7 The committee has also previously considered the trial of cashless welfare arrangements in the two trial locations of Ceduna (and its surrounding region) and East Kimberley in previous reports, including in relation to the Social Security Legislation Amendment (Debit Card Trial) Bill 2015 (Debit Card Bill 2015).⁵

2.8 The Debit Card Bill 2015 amended the *Social Security (Administration) Act 1999* (Social Security Administration Act) to provide for a trial of cashless welfare arrangements in up to three prescribed locations. Persons on working age welfare payments in the prescribed sites would have 80 percent of their income support restricted, so that the restricted portion could not be used to purchase alcohol or to

1 Parliamentary Joint Committee on Human Rights, *Report 6 of 2018* (26 June 2018) pp. 30-43.

2 Parliamentary Joint Committee on Human Rights, *Report 1 of 2018* (6 February 2018) pp. 123-137.

3 See, Parliamentary Joint Committee on Human Rights, *Report 6 of 2018* (26 June 2018) p. 40.

4 See Parliamentary Joint Committee on Human Rights, *Eleventh Report of 2013: Stronger Futures in the Northern Territory Act 2012 and related legislation* (27 June 2013) and *2016 Review of Stronger Futures measures* (16 March 2016).

5 Parliamentary Joint Committee on Human Rights, *Twenty-seventh report of the 44th Parliament* (8 September 2015) pp. 20-29 and *Thirty-first report of the 44th Parliament* (24 November 2015) pp. 21-36. Also see, Parliamentary Joint Committee on Human Rights, *Social Security (Administration) (Trial - Declinable Transactions) Amendment Determination (No. 2) 2016 [F2016L01248]*, *Report 7 of 2016* (11 October 2016) pp. 58-61.

conduct gambling. A person subject to the trial is prevented from accessing this portion of their social security payment in cash. Rather, payment is accessible through a debit card which cannot be used at 'excluded businesses' or 'excluded services'.⁶

2.9 The trial arrangements were initially extended to a period of twelve months in two instruments⁷ and, subsequently, by a further six months.⁸ The trial was further extended in the Ceduna region for a further six months (until 14 March 2018) and in East Kimberley for a further six months (until 25 April 2018).⁹

2.10 The committee also considered amendments to the cashless debit card trial proposed to be introduced by the Social Services Legislation Amendment (Cashless Debit Card) Bill 2017 (the 2017 bill).¹⁰ After the committee's consideration of the 2017 bill, the 2017 bill was amended and the version as passed specifically defined the 'trial areas' of the cashless debit card trial to be the Ceduna area, the East Kimberley Area and the Goldfields area in the Social Security Administration Act.¹¹ Section 124PF of that bill (as amended) also provided that the cashless debit card trial in the 'trial areas' was to end on 30 June 2019 and include no more than 10,000 trial participants.

Expansion of the cashless debit card trial to the Bundaberg and Hervey Bay area

2.11 The 2018 bill expands the cashless debit card trial to the Bundaberg and Hervey Bay area, to run until 30 June 2020.¹² It also expands the number of trial

6 See, further, Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Futures measures* (16 March 2016) p. 39.

7 Social Security (Administration) (Trial Area - Ceduna and Surrounding Region) Amendment Determination (No. 2) 2016 [F2016L01424] and Social Security (Administration) (Trial Area – East Kimberley) Amendment Determination 2016 [F2016L01599]. See Parliamentary Joint Committee on Human Rights, *Report 8 of 2016* (9 November 2016) p. 53.

8 See Parliamentary Joint Committee on Human Rights, *Report 5 of 2017* (14 June 2017) 31-33 and *Report 8 of 2017* (15 August 2017) pp. 122-125.

9 Social Security (Administration) (Trial Area) Amendment Determination (No. 2) 2017 [F2017L01170]; see Parliamentary Joint Committee on Human Rights, *Report 9 of 2017* (5 September 2017) pp. 34-40; Parliamentary Joint Committee on Human Rights, *Report 11 of 2017* (17 October 2017) pp. 126-137.

10 Parliamentary Joint Committee on Human Rights, *Report 9 of 2017* (5 September 2017) pp. 34-40; Parliamentary Joint Committee on Human Rights, *Report 11 of 2017* (17 October 2017) pp. 126-137.

11 Item 1, Section 124PD(1) of the *Social Services Legislation Amendment (Cashless Debit Card) Act 2018*. Each of these areas were defined in section 124PD(1).

12 Proposed section 124PF(1)(b) of the bill.

participants for the cashless welfare trial (including in the other trial sites) to 15,000.¹³

2.12 The trial participants in the Bundaberg and Hervey Bay area are defined in the bill. A 'trial participant' is a person whose usual place of residence 'is, becomes or was' within the Bundaberg and Hervey Bay area; is receiving newstart allowance, youth allowance (except those receiving the allowance as new apprentices or undertaking full-time study) or parenting payment; and is under the age of 35 years on the day the provision commences and has not turned 36 years of age.¹⁴ There are also several circumstances identified in the bill where the person would not be a trial participant, including where the person has a payment nominee; where the person is subject to a determination under section 43(3A) (that is, where their social security periodic fortnightly payment may be paid in two instalments); and where the person is already subject to certain types of income management.¹⁵ A person will also not be a trial participant if they are undertaking full-time study outside of the Bundaberg and Hervey Bay area.¹⁶

2.13 Section 124PGA(4) and (5) further provide:

- (4) The Secretary must determine that a person is not a trial participant under this section if the Secretary is satisfied that being a trial participant under this section would pose a serious risk to the person's mental, physical or emotional wellbeing.
- (5) The Secretary is not required to inquire into whether a person being a trial participant under this section would pose a serious risk to the person's mental, physical or emotional wellbeing.

2.14 The 2018 bill also includes provisions for the minister to make a determination varying the percentages of restricted and unrestricted portions for a person who is a trial participant in the Bundaberg or Hervey Bay area in certain circumstances. Circumstances include where the secretary is satisfied that the person is unable to use the person's cashless debit card as a direct result of a technological fault or natural disaster, or where the secretary is satisfied the person is being paid in instalments (at a time determined by the secretary pursuant to section 43(2) of the Social Security Administration Act) because the person is in severe financial hardship as a result of exceptional and unforeseen circumstances, or

13 Proposed section 124PF(3) of the bill.

14 Proposed section 124PGA(1)(a)-(c) of the bill.

15 Proposed section 124PGA(1)(d)-(f) of the bill. The relevant types of income management are income management under section 123UC (child protection income management), 123UCB (disengaged youth income management), 123UCC (long-term welfare payment recipient income management), or 123UF (Queensland Family Responsibilities Commission income management).

16 Proposed section 124PGA(1)(g); 124PGA(3) of the bill.

where a person is being paid in advance following a determination under section 51 of the Social Security Administration Act.¹⁷

Compatibility of the measure with multiple human rights

2.15 The previous human rights assessments of the cashless welfare trial measures raised concerns in relation to 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. These concerns related to the right to social security, the right to privacy and family and the right to equality and non-discrimination.¹⁸ Each of these rights is discussed in detail in the context of the income management regime more broadly in the committee's 2016 Review of Stronger Futures measures (2016 Review).¹⁹

2.16 The expansion of the trial to the Bundaberg and Hervey Bay area also engages and limits these rights. The statement of compatibility acknowledges these rights are engaged and limited by the bill.²⁰ These rights may be subject to permissible limitations where they pursue a legitimate objective, are rationally connected to (that is, effective to achieve) and proportionate to that objective.

2.17 The statement of compatibility states that the objectives of the cashless debit card trial are 'reducing immediate hardship and deprivation, reducing violence and harm, encouraging socially responsible behaviour, and reducing the likelihood that welfare payment recipients will remain on welfare and out of the workforce for extended periods of time'.²¹ The statement of compatibility describes the pressing and substantial concern justifying the expansion of the trial to the Bundaberg and Hervey Bay area as being that the area has 'significant issues regarding youth unemployment, intergenerational welfare dependency and families who require assistance in meeting the needs of their children'.²²

17 Proposed sections 124PJ(4B); 124PJ(4C).

18 See Parliamentary Joint Committee on Human Rights, *Thirty-first report of the 44th Parliament* (24 November 2015) pp. 21-36; *2016 Review of Stronger Futures measures* (16 March 2016) p. 61; and *Report 7 of 2016* (11 October 2016) pp. 58-61; Parliamentary Joint Committee on Human Rights, *Report 9 of 2017* (5 September 2017) pp. 34-40; Parliamentary Joint Committee on Human Rights, *Report 11 of 2017* (17 October 2017) pp. 126-137.

19 Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Futures measures* (16 March 2016) 43-63. It is noted that the statement of compatibility states that in the Bundaberg and Hervey Bay area, it is estimated that 14% of participants will be Aboriginal and Torres Strait Islander peoples. The statement of compatibility also states that the proportion of Indigenous participants across the four trial sites will be approximately 33%: SOC, p. 9.

20 Statement of compatibility (SOC) p. 1.

21 SOC, p. 2.

22 SOC, p. 2. The SOC also provides some statistics as to the prevalence of these issues in the Bundaberg and Hervey Bay area on page 2 of the SOC.

2.18 The committee has previously accepted that the cashless welfare trial measures described above may pursue a legitimate objective.²³ However, concerns have previously been raised as to whether the measures are rationally connected to (that is, effective to achieve) and proportionate to this objective.²⁴

2.19 The statement of compatibility cites the evaluation of the cashless debit card trial by ORIMA Research as evidence of the effectiveness of the trial.²⁵ The interim research undertaken by ORIMA had previously been relied upon for similar purposes in previous statements of compatibility for cashless welfare measures.²⁶ The statement of compatibility explains that the evaluation found that the cashless debit card trial has had a 'considerable positive impact' in the communities in which it operated, and that the trial had been effective in reducing alcohol consumption and gambling in both of the trial sites.²⁷ Statistics cited in the statement of compatibility from the ORIMA report include that 41 per cent of persons reported drinking alcohol less frequently,²⁸ and 37 per cent of binge drinkers were doing this less frequently,²⁹ 48 per cent reported gambling less;³⁰ and 48 per cent reported using illegal drugs less often.³¹

2.20 However, the initial analysis of the 2018 bill noted that the report also contains some more mixed findings on the operation of the scheme. For instance, while the statement of compatibility notes that nearly 40 per cent of non-participants in the trial perceived that violence in their community had decreased,³²

23 See, for example, Parliamentary Joint Committee on Human Rights, *Report 11 of 2017* (17 October 2017) pp. 126-137.

24 See, for example, Parliamentary Joint Committee on Human Rights, *Report 11 of 2017* (17 October 2017) pp. 126-137.

25 SOC, pp. 2-3. See ORIMA Research, *Cashless Debit Card Trial Evaluation: Final Evaluation Report* (August 2017).

26 See, most recently, Parliamentary Joint Committee on Human Rights, *Report 11 of 2017* (17 October 2017) pp. 36-37.

27 SOC, p. 3.

28 SOC, p. 3; ORIMA Research, *Cashless Debit Card Trial Evaluation: Final Evaluation Report* (August 2017) p. 4.

29 SOC, p. 3; ORIMA Research, *Cashless Debit Card Trial Evaluation: Final Evaluation Report* (August 2017) p. 4.

30 SOC, p. 3; ORIMA Research, *Cashless Debit Card Trial Evaluation: Final Evaluation Report* (August 2017) p. 4.

31 SOC, p. 3; ORIMA Research, *Cashless Debit Card Trial Evaluation: Final Evaluation Report* (August 2017) p. 4. The report caveats, however, that self-reports of illegal drug use in a survey context are subject to a high risk of social desirability bias and should be interpreted with caution.

32 SOC, p. 3.

and the ORIMA report pointed to evidence of the reduction in alcohol-related harm in the trial sites based on administrative data,³³ the ORIMA report states that 'with the exception of drug driving offense and apprehensions under the Public Intoxication Act (PIA) in Ceduna, crime statistics showed no improvement since the commencement of the trial'.³⁴ The ORIMA report also notes that 32 per cent of participants on average reported that the trial had made their lives worse;³⁵ 33 per cent of participants had experienced adverse complications and limitations from the trial, including difficulties transferring money to children that are away at boarding school and being unable to make small transactions at fundamentally cash-based settings (such as canteens);³⁶ 27 per cent of participants on average noticed more 'humberging',³⁷ as did 29 per cent of non-participants;³⁸ and in the East Kimberley, a greater proportion of participants felt that violence had increased rather than had decreased.³⁹ These statistics are not cited in the statement of compatibility.⁴⁰

2.21 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.⁴¹ It was not clear, therefore, whether the positive findings from the ORIMA report are relevant in determining whether the cashless debit card trial in the 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

33 ORIMA Research, *Cashless Debit Card Trial Evaluation: Final Evaluation Report* (August 2017) pp. 4-5.

34 ORIMA Research, *Cashless Debit Card Trial Evaluation: Final Evaluation Report* (August 2017) p. 4.

35 ORIMA Research, *Cashless Debit Card Trial Evaluation: Final Evaluation Report* (August 2017) p. 6.

36 ORIMA Research, *Cashless Debit Card Trial Evaluation: Final Evaluation Report* (August 2017) p. 7.

37 Defined as 'making unreasonable financial demands on family members or other local community members'. See ORIMA Research, *Wave 1 Interim Evaluation Report of the Cashless Debit Card Trial* (February 2017) p. 6.

38 ORIMA Research, *Cashless Debit Card Trial Evaluation: Final Evaluation Report* (August 2017) p. 76.

39 ORIMA Research, *Cashless Debit Card Trial Evaluation: Final Evaluation Report* (August 2017) p. 64.

40 It is noted that the ORIMA report findings and methodology have also been criticised in a review by the Centre for Aboriginal Economic Policy Research (CAEPR) at the Australian National University: see J Hunt, *The Cashless Debit Card Evaluation: Does it really prove success?* (CAEPR Topical Issue No.2/2017).

41 SOC, p. 2.

assistance in meeting the needs of their children.⁴² While the ORIMA report identified that 40 per cent of trial participants who had caring responsibility reported that they had been better able to care for their children,⁴³ 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.

2.22 It was also unclear that the extension of the trials is a proportionate limitation on human rights. The existence of adequate and effective safeguards, to ensure that limitations on human rights are the least rights restrictive way of achieving the legitimate objective of the measure, are relevant to assessing the proportionality of these limitations.

2.23 Of particular concern, as has been discussed in previous reports, is that the cashless debit card trial would be imposed without an assessment of individuals' suitability for the scheme. In assessing whether a measure is proportionate, relevant factors to consider include whether the measure provides sufficient flexibility to treat different cases differently or whether it imposes a blanket policy without regard to the circumstances of individual cases.

2.24 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.⁴⁴ By comparison, the income management regime in Queensland's Cape York allows for individual assessment of the particular circumstances of affected individuals and the management of their welfare payments.⁴⁵ The committee has previously stated that this regime may be less rights restrictive than the blanket location-based scheme applied under other income management measures.⁴⁶

42 SOC, p. 2.

43 SOC, p. 3; ORIMA Research, *Cashless Debit Card Trial Evaluation: Final Evaluation Report* (August 2017) p. 6.

44 Proposed section 124PGA(1)(a).

45 See Parliamentary Joint Committee on Human Rights, *Social Services Legislation Amendment (Queensland Commission Income Management Regime) Bill 2017*, *Report 5 of 2017* (14 June 2017) pp. 45-48.

46 Parliamentary Joint Committee on Human Rights, *Report 5 of 2017* (14 June 2017) 47.

2.25 The statement of compatibility identifies that the bill includes several safeguards to protect persons whose mental, physical and emotional wellbeing may be at serious risk if they participate in the scheme. This includes the requirement that the secretary determine that a person no longer be a trial participant if satisfied that being a trial participant is seriously risking a person's mental, physical or emotional wellbeing.⁴⁷ However, this safeguard is qualified in the bill, as 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.⁴⁸ It was not clear how the secretary would be made aware of whether a person's participation in the trial is impacting a person's mental, physical and emotional wellbeing.

2.26 The compulsory nature of the cashless debit card trial also raises questions as to the proportionality of the measures. In its 2016 Review, the committee stated that, while income management 'may be of some benefit to those who voluntarily enter the program, it has limited effectiveness for the vast majority of people who are compelled to be part of it'.⁴⁹ The application of the cashless debit card scheme on a voluntary basis, or with a clearly defined process for individuals to seek exemption from the trial, would appear to be a less rights restrictive way to achieve the trial's objectives. This was not discussed in the statement of compatibility.

2.27 The committee therefore sought the advice of the minister as to:

- how the measures are effective to achieve the stated objectives (including whether there is evidence in relation to how the measures will be effective to achieve the objectives of 'reducing the likelihood that welfare payment recipients will remain on welfare and out of the workforce for extended periods of time');
- how the limitation on human rights is proportionate to achieve the stated objectives, including:
 - why it is necessary for persons whose usual place of residence was the Bundaberg or Hervey Bay area to be included within the definition of 'trial participant'; and
 - whether the use of the cashless debit card could be restricted to instances where there has been an assessment of an individual's suitability to participate in the scheme rather than a blanket imposition based on location, or where individuals opt-in on a voluntary basis.

47 SOC, pp. 5-6.

48 Proposed section 124PGA(5) of the bill.

49 Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Futures measures* (16 March 2016) p. 52.

Minister's response

2.28 The minister's response restates the broad objectives of the cashless debit card trial as to reduce harm from alcohol, drugs and gambling and to help welfare recipients 'stabilise their lives' and participate in the workforce. As indicated above, the committee has previously assessed that the cashless welfare trial measures may pursue legitimate objectives for the purposes of international human rights law.

2.29 In relation to how the measures are effective to achieve the stated objectives, the minister refers to the findings of the ORIMA Research evaluation report, as set out in the statement of compatibility, as 'evidence as to the ability of the Cashless Debit Card to address the expected objectives of the trial'. However, as outlined above, it is unclear whether the positive findings from the ORIMA report, which assessed the cashless debit card trial in Ceduna and the East Kimberley, are relevant in determining whether the implementation of the trial in the Bundaberg and Hervey Bay area would be an effective means of achieving the legitimate objectives.

2.30 In particular, the ORIMA report does not discuss the effectiveness of the trial in relation to addressing youth unemployment or intergenerational welfare dependency. The statement of compatibility explains that the cashless debit card trial in the Bundaberg and Hervey Bay area 'has been tailored to best target these issues'.⁵⁰ While the minister notes that the ORIMA report indicated an increase in the percentage of surveyed respondents who spent 11 hours or more per week looking for paid work (from 11 per cent to 23 percent between the initial and final evaluation reports),⁵¹ no further information is provided as to how the expansion of the trial may be effective to address these specific issues. As such, based on the information provided, it remains unclear whether the measures are rationally connected to the stated objectives.

2.31 Further, as set out at [2.20] above, the final evaluation report contains some mixed findings on the scheme which indicate concerns over its effectiveness and operation. The minister's response states that, as outlined in the statement of compatibility,⁵² a second evaluation of the cashless debit card trial has been commissioned by the government to assess the ongoing effectiveness of the scheme in the existing trial sites of East Kimberley, Ceduna and the Goldfields. While further evaluation of the scheme is important, it is noted that the 2018 bill provides for the expansion of the trial to a new location in advance of the findings of this evaluation.

50 Another key issue cited is families who require assistance in meeting the needs of their children. See, SOC, p. 2.

51 ORIMA Research, *Cashless Debit Card Trial Evaluation: Final Evaluation Report* (August 2017) p. 73.

52 SOC, p. 5.

2.32 In relation to the proportionality of the measures, the minister states that the restrictions on how social security payments may be spent 'are proportionate given the high levels of harm in potential communities, and the demonstrated positive results of the program to date'. The minister further states that:

All decisions around the extension of the Cashless Debit Card have been made and will continue to be made in close partnership with community leaders. Engagement with community members and leaders has been ongoing, informally and formally, in all locations to help Government better understand local needs and gauge interest in the continuation of the program.

The 2018 Bill enables the option for a community body in the Bundaberg and Hervey Bay area. This mechanism would allow the community to take ownership of variations to the amount of a person's welfare payment that is placed on the Cashless Debit Card and encourage positive social behaviour.

2.33 It is relevant that consultation with community members on the operation of the scheme is ongoing and that decisions have been and will be made in partnership with community leaders. It is also acknowledged that the Department of Social Services conducted over 100 meetings in the Bundaberg and Hervey Bay area between July to September 2017, before the announcement of the area as a new trial location.⁵³ However, previous human rights assessments of the cashless welfare scheme have noted that there is no requirement to undertake consultation and secure community agreement in the enabling legislation.⁵⁴ The ability of a community body to give a written direction to vary the restricted portion of a person's welfare payment may assist to provide some flexibility to the operation of the scheme.⁵⁵ However, this does not address broader concerns over the compulsory nature of the scheme for all persons receiving specified social security payments.

2.34 Further, the imposition of the cashless debit card trial without an assessment of individuals' suitability for the scheme remains a particular concern. The minister's response does not directly address whether the use of the cashless debit card could be restricted to instances where there has been an assessment of an individual's suitability to participate or where individuals opt-in on a voluntary basis. This raises specific concerns that the measure may not be the least rights restrictive method of achieving its legitimate objective as required in order to be a proportionate limit on human rights.

53 SOC, p. 4.

54 See, Parliamentary Joint Committee on Human Rights, *Report 11 of 2017* (17 October 2017) p. 135.

55 See proposed section 124PE(2).

2.35 As stated above, a further concern arises 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 In relation to this matter, the minister states:

The Cashless Debit Card is designed so that it can be used outside of trial locations if a participant moves during the trial period. Participants that do not spend a large proportion of their income support payment on alcohol, gambling or drugs, will see little impact.

2.36 No further information is provided as to why it is necessary to include persons whose usual place of residence was within the area under the definition of a trial participant.

2.37 Finally, as outlined above, the bill includes a requirement that the secretary determine that a person no longer be a trial participant if satisfied that being a trial participant is seriously risking a person's mental, physical or emotional wellbeing. However, this safeguard is qualified in the bill, as 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. No further information on this matter is provided in the minister's response. It therefore remains unclear how the secretary would be made aware of whether a person's participation in the trial is affecting their mental, physical and emotional wellbeing.

Committee response

2.38 The committee thanks the minister for his response and has concluded its examination of the bill.

2.39 The preceding analysis indicates that the expansion of the cashless welfare trial to the Bundaberg and Hervey Bay area may not be rationally connected to (that is, effective to achieve) the stated objectives of the measures.

2.40 The analysis further indicates that, based on the information provided, the measures may not be a reasonable and proportionate limitation on human rights.

2.41 Accordingly, and noting concerns raised by previous human rights assessments of the cashless welfare card trial, as well as related concerns regarding income management identified in the committee's *2016 Review of Stronger Future measures*, the measures may not be compatible with the right to social security, the rights to privacy and family, and the right to equality and non-discrimination.

Amendments to the cashless welfare arrangements through the determinations

2.42 The Social Security (Administration) (Trial of Cashless Welfare Arrangements) Determination 2018 [F2018L00245] (the trial of cashless welfare arrangements

56 Proposed section 124PGA(1)(a).

determination) revokes and remakes previous determinations in light of the amendments introduced by the *Social Services Legislation Amendment (Cashless Debit Card) Act 2018*.⁵⁷ The measures contained in the determination include:

- defining the class of persons who will be trial participants in the Goldfields, Ceduna and East Kimberley regions pursuant to section 124PG(2) of the Social Security Administration Act;⁵⁸
- removing the locality of Plumridge Lakes from the Goldfields trial area;
- repealing and remaking several determinations which were due to expire on 30 June 2018, extending their operation to 30 June 2019.⁵⁹

2.43 The Social Security (Administration) (Trial – Declinable Transactions and Welfare Restricted Bank Account) Determination 2018 [F2018L00251] (the declinable transactions determination) sets out the kind of bank account to be maintained by participants in the cashless debit card trial, as well as setting out terms and conditions relating to the establishment, ongoing maintenance and closure of bank accounts, and declares the kind of business in relation to which transactions involving money in a welfare restricted bank account may be declined by a financial institution.

Compatibility of the determinations with human rights

2.44 The determinations raise the same human rights issues as those discussed above. The statement of compatibility to each of the determinations acknowledges these rights are engaged and limited by the determinations, and raises the same justifications for human rights limitations as discussed above in relation to the bill.

2.45 The committee has previously commented upon the human rights compatibility of earlier versions of the determinations. In relation to the declinable transactions determination, the committee raised concerns as to 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. The committee drew the human rights implications of the earlier version of the

57 Previously, the trial areas of East Kimberley and Ceduna were primarily governed by legislative instruments, but the trials are now included in the primary legislation: section 124PD of the *Social Security (Administration) Act 1999*.

58 See Part 2 of the Social Security (Administration) (Trial of Cashless Welfare Arrangements) Determination 2018.

59 The determination repeals and remakes the following legislative instruments: Social Security (Administration) (Trial-Community Body- Ceduna Region Community Panel) Authorisation 2016, Social Security (Administration)(Trial-Community Body- East Kimberley Regional Community Panels) Authorisation 2015, Social Security (Administration)(Trial – Excluded Voluntary Participants) Determination 2016, Social Security (Administration)(Trial - Variation of Percentage Amounts) Determination 2016.

declinable transactions determination to the attention of parliament noting the concerns previously discussed in relation to the cashless debit card trial.⁶⁰

2.46 In relation to the trial of cashless welfare arrangements determination, the committee previously noted that the earlier version of the determination raised similar concerns to those raised in the 2016 Review of Stronger Futures measures, but since no response was received from the minister at the time of finalising the report, it was not possible to conclude that the previous determination was necessary and effective to achieve the objectives of the trials or was a proportionate limitation on human rights.⁶¹ The previous analysis noted that the new determination retains the provisions from the previous determination as to the class of trial participants insofar as it applies to the Ceduna and East Kimberley determinations,⁶² but introduces new provisions to reflect the expansion of the trial to the Goldfields region.

2.47 As discussed above, while it is accepted that the cashless debit card trial may pursue a legitimate objective, there are concerns as to whether the measures are rationally connected to this objective. To the extent the determinations rely on the ORIMA report as evidence of the effectiveness of the cashless welfare regime,⁶³ the concerns discussed above in relation to the ORIMA report apply equally in relation to the determinations. It was also not clear from the statement of compatibility to the trial of cashless welfare arrangements determination how the findings of the ORIMA report are relevant to the effectiveness of the measure as it applies to the Goldfields region.

2.48 The concerns discussed above in relation to proportionality also apply in relation to the determinations. Additionally, in relation to the trial of cashless welfare arrangements determination, the determination provides that the class of persons who fall within the Goldfields area and would be subject to the cashless debit card trial includes the class of persons who 'have not reached pension age and will not reach pension age during the 12 month period commencing on 26 March 2018'.⁶⁴ It is not explained in the statement of compatibility the rationale for

60 Parliamentary Joint Committee on Human Rights, *Report 7 of 2016* (11 October 2016) p. 61.

61 Parliamentary Joint Committee on Human Rights, *Report 8 of 2017* (15 August 2017) pp. 124-125.

62 See Explanatory Statement, p. 1.

63 SOC to the Social Security (Administration) (Trial of Cashless Welfare Arrangements) Determination 2018 [F2018L00245], 5-6; SOC to the Social Security (Administration) (Trial – Declinable Transactions and Welfare Restricted Bank Account) Determination 2018 [F2018L00251], 4-5.

64 See section 8 of the Social Security (Administration) (Trial of Cashless Welfare Arrangements) Determination 2018.

excluding persons of pension age in the Goldfields trial area but not the Ceduna or East Kimberley areas.

2.49 The committee therefore sought the advice of the minister as to:

- how the measures are effective to achieve the stated objectives (including whether there is evidence in relation to how the measures will be effective to achieve the stated objectives as they apply to the Goldfields area); and
- how the limitation on human rights is proportionate to achieve the stated objectives (including whether there are other, less rights restrictive measures available, and the rationale for excluding persons who have reached pension age in the Goldfields trial area but not the Ceduna or East Kimberley area).

Minister's response

2.50 The minister's response provides some general information on the extent of alcohol-related harm in the Goldfields area, which was also included in the statements of compatibility for the determinations. This provides some context as to why the Goldfields area was selected as a trial location, in light of the stated objectives of the trial, which include reducing alcohol-related harm.

2.51 The minister's response generally relates to the broader cashless debit card trial across all three current sites, as well as the expansion to the Bundaberg and Hervey Bay area. No specific information is provided in the response as to how the measures as they apply to the Goldfields area are effective to achieve (that is, rationally connected to) the stated objectives. To the extent that the determinations rely on the ORIMA report as evidence of the effectiveness of the trial, it remains unclear whether the measures are rationally connected to the stated objectives.

2.52 In relation to the basis for excluding persons from the trial in the Goldfields area who have reached pension age during the 12 month period commencing on 26 March 2018, but not in the Ceduna or East Kimberley area, the minister states:

The Cashless Debit Card Trial is designed to provide assistance to people receiving welfare and who are of working age. Payments such as Mature Age Allowance, Age Pension or Bereavement Allowance for a person of pension age are not captured.

However, as some people may transition to the Age Pension during the trial period, these measures are necessary. A transitional provision has been inserted for the Goldfields site to ensure people reaching age pension age in the first twelve months of operation will not be captured when they would only be on the card for a short period of time and may not see the full benefits of the program. As the Cashless Debit Card has been in operation since 2016 in Ceduna and East Kimberley, a transitional provision for this class of person in these sites is no longer required.

2.53 This information clarifies that the measure excludes this class of persons from the trial in the Goldfields area as they would only be subject to the measures

for a short period of time before transitioning to the age pension. It is acknowledged that this measure is less applicable in Ceduna and East Kimberley, where the trial has been operating since 2016.

2.54 As to how the measures are a proportionate limitation on human rights, no further reasoning is provided in the minister's response specific to the determinations, outside the information discussed above in relation to the 2018 bill. As such, the concerns discussed above in relation to the proportionality of the 2018 bill also apply in relation to the determinations. That is, there are concerns that the measures may not be the least rights restrictive alternative in order to constitute a proportionate limitation on human rights.

Committee response

2.55 The committee thanks the minister for his response and has concluded its examination of this issue.

2.56 The preceding analysis in relation to the Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018 applies in relation to the determinations. That is, broadly, that concerns remain as to whether the cashless debit card trial is effective to achieve its stated objectives and is a proportionate limitation on human rights.

2.57 Accordingly, and noting concerns raised by previous human rights assessments of the cashless welfare card trial, as well as related concerns regarding income management identified in the committee's *2016 Review of Stronger Future measures*, the determinations may not be compatible with the right to social security, the rights to privacy and family, and the right to equality and non-discrimination.

Mr Ian Goodenough MP

Chair