



23 May 2023

Pothida Youhorn  
Committee Secretary  
Senate Community Affairs Legislation Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Committee Secretary

**Re: Inquiry into the Social Security (Administration) Amendment  
(Income Management Reform) Bill 2023  
- Supplementary submission**

The Accountable Income Management Network (AIMN) has appreciated the opportunity to provide input into this Inquiry. We provided a written submission which was dated 17 April 2023. David Tennant, CEO of Shepparton-based FamilyCare, appeared at a Public Hearing on the 15<sup>th</sup> of May to represent the AIMN. Mr Simon Schrapel AM the CEO of Uniting Communities attended the same hearing. Uniting Communities currently hosts communications for the AIMN.

In the course of the hearing, Mr Schrapel and Mr Tennant were asked whether they were comfortable with the enhanced smart card being used by income management participants, rather than the current BasicsCard. Both agreed that the increased functionality of the enhanced card is welcome, however reserved their support subject to reviewing the terms and conditions of the enhanced card.

Subsequent to the hearing, the AIMN has become aware that the enhanced card is already in use and being issued by the Traditional Credit Union (TCU). The TCU joined Indue Ltd as a provider of the Cashless Debit Card (CDC) from October 2021. From March 2023 the SmartCard enhanced Income Management program replaced the CDC. TCU customers using the CDC and general participants using the BasisCard, had the choice to take up the TCU SmartCard, or revert to the use of the Basics Card.

As noted at the hearing, the AIMN acknowledges that the TCU SmartCard has a number of features that are superior to the BasicsCard. We also note its appearance as a blue TCU Visa card is inherently less likely to cause stigma and shame for card users. Unfortunately, the compulsory nature of income management undermines these positive elements, and, in our view, there are significant additional problems with the terms and conditions that raise questions about the card's legality and potentially expose the TCU to risk.



In the time available for preparing this supplementary submission, it is not possible to obtain specific legal advice. We believe the issues to be significant however and summarise them as follows:

- We note customers who opt to change their CDC to a SmartCard receive the TCU SmartCard enhanced Income Management (eIM) Account Conditions of Use.
- The nature of the eIM account and SmartCard, including a description of account restrictions, consistent with those applied under compulsory income management and the CDC, is set out on page 4 of the Conditions of Use.
- Previously concerns had been raised that the CDC, issued by a commercial financial service provider rather than government, being sent to compulsory participants in the post without their direct request or consent would breach section 12 DL of the ASIC Act.
- Section 12 DL of the ASIC Act prohibits the provision of unsolicited credit and debit cards.
- CDC card issuers changed their practices in light of these concerns, by making cards available for collection, or posting them with the consent of participants.
- Clause 3.2 of the TCU SmartCard Conditions of Use adopts a similar approach to avoid breaching section 12 DL of the ASIC Act.
- The TCU SmartCard Conditions of Use make clear throughout, that income management policy, including who is required to participate and restrictions in access and using funds in the account, are determined by the Commonwealth Government.
- The TCU makes very clear representations about ownership of the SmartCard:
  - 33.1 Your Visa Card is issued by TCU to you and is for use on your account.
  - 33.2 The Visa Card remains our property at all times and we may reissue you with a new Visa Card at any time and the use of any new Visa Card will be subject to these Conditions of Use.
- Access to funds in the Account is contingent on activating the SmartCard:
  - 3.3 You will not be able to access your Account and use your Visa Card until you have activated it.
- In our view, the combined impact of the TCU's ownership of the card and the requirement for participants to activate it before they can access funds in the Account, removes the reasonable exercise of free will and is therefore coercive.
- Section 12 DJ of the ASIC Act notes the following:
  - s. 12 DJ (1) A person contravenes this subsection if:
    - (a) the person uses physical force or undue harassment or coercion; and



- (b) the person uses such force, harassment or coercion in connection with the supply or possible supply of financial services to a consumer, or the payment for financial services by a consumer.

(2) Strict liability applies to paragraph (1)(b).

- In addition to the strict liability operation of section 12 DJ of the ASIC Act, the restrictions imposed by the SmartCard Conditions of Use, limitations to its operation and diminution of other legal rights, particularly privacy, suggest other problems under the ASIC Act, including:
  - o Potential that some terms may be unfair under sections 12 BF and 12 BG of the ASIC Act; and
  - o TCU's conduct in potentially coercing customers to adopt terms of use that are unfair, may amount to unconscionable conduct under section 12 CB of the ASIC Act.

In the course of giving evidence at the hearing on 15 May, Mr Tennant drew comparison between the outcome of the Robodebt issues and compulsory income management. Reducing or removing existing legal rights and protections on the basis of benefit status and place of residence is fraught. The problems may not just include unfairness. When the Commonwealth works with and relies upon third party service providers who have existing legal obligations, those obligations must still be met. Our view in relation to the TCU's SmartCard enhanced Income Management (eIM) Account Conditions of Use, is that those legal obligations may not be currently met in full.

We repeat our recommendation that the Bill should provide a clearer pathway and timeline for transition from compulsory to voluntary income management. There is no compelling reason of which we are aware that would prevent that occurring for most, if not all compulsory participants, now.

In the event that government is not inclined to transition compulsory participants to voluntary income management now, we believe the potential issues of coercion, unfair contract terms and unconscionable conduct require immediate attention. One option might be to reduce the unfair provisions as far as practical, including for example no longer requiring the sharing of participants' private information with the Commonwealth.

We will be raising our concerns about the operations of the ASIC Act directly with the Chair of the Australian Securities and Investments Commission.

Yours sincerely,

Simon Schrapel AM

CE Uniting Communities and convenor of AIMN