Australian Human Rights Commission

Aboriginal and Torres Strait Islander Social Justice Commissioner

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Committee Secretary
Senate Standing Committees on Community Affairs
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Dear Secretary

Senate inquiry into Social Services Legislation Amendment (Cashless Debit Card) Bill 2017

The Commission welcomes the opportunity to make comments to the Senate Affairs Legislation Committee in relation to the above inquiry.

The Social Services Legislation Amendment (Cashless Debit Card) Bill 2017, (the "Bill") (Cth), seeks to remove section 124PF of the *Social Security (Administration) Act 1999*, which currently provides for the trial of the cashless debit card in three discrete locations, to no more than 10,000 participants, expiring on 30 June 2018.

The Bill proposes to amend these arrangements, allowing for the continuation of the trial in existing sites and enabling the expansion of the cashless debit card to further locations.

The Explanatory Memorandum claims that this expansion would help to achieve the objectives of Part 3D of the Act, to:

a. reduce the amount of certain restrictable payments available to be spent on alcoholic beverages, gambling and illegal drugs; and
b. determine whether such a reduction decreases violence or harm in trial areas; and
c. determine whether such arrangements are more effective when community bodies are involved; and
d. encourage socially responsible behaviour. [1]

[1] *Social Security (Administration) Act 1999* (Cth), s 124PC.

Human rights concerns

As a form of income management, the Social Services Legislation Amendment (Cashless Debit Card) Bill 2017 raises a number of human rights concerns, specifically around the right to social security, the right to a private life and the right to equality and non-discrimination.

The Commission has previously reported its concerns about the cashless debit card (also known as the Healthy Welfare Card) in our submission to the Inquiry into the Social Security Legislation Amendment (Debit Card Trial) Bill 2015 and in the Social Justice and Native Title reports for 2015 and 2016.[2]

The Commission has particularly been concerned about the effects of these income management measures in relation to Aboriginal and Torres Strait Islander peoples, whom we have previously identified to be a group that are disproportionately impacted by such measures.[3] As at September 2016, 75% of trial participants in Ceduna and 82% of trial participants in the East Kimberley were Indigenous.[4]

Whilst the Explanatory Memorandum acknowledges that trials of the cashless debit card are already underway in areas with high Indigenous populations, it proposes that future sites will give priority to locations with lower proportions of Aboriginal and Torres Strait Islander peoples.[5]

The Commission remains concerned that the measures will continue to disproportionately affect Aboriginal and Torres Strait Islander people, not just in the existing locations of the East Kimberley and Ceduna where Indigenous populations are high, but also in future locations.

This is the case because the measures proposed in the Bill target a section of the population who are receiving income support payments.

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[2] Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Submission to the Senate Standing Committee on Community Affairs*, Inquiry into the *Social Security Legislation Amendment (Debit Card Trial) Bill 2015*, 6 October 2015, At http://www.aph.gov.au/DocumentStore.ashx?id=14a9925c-245c-4a2e-9bfa-eeb6c843e505&subId=403485; Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2016*, 88-97, At http://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_SJNTR_2016.pdf; Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2015*, 55-58, At http://www.humanrights.gov.au/sites/default/files/document/publication/SJRNTR2015.pdf.

[3] Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Submission to the Senate Standing Committee on Community Affairs*, Inquiry into the *Social Security Legislation Amendment (Debit Card Trial) Bill 2015*, 6 October 2015, 5.

[4] Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2016*, 91-92. See also Orima Research, 'Cashless debit card trial evaluation: final evaluation report' (Department of Social Services, 2017), 38, showing similar proportions as at June 2017.

[5] Social Services Legislation Amendment (Cashless Debit Card) Bill 2017, Statement of compatibility with human rights, 4, 7.

Hence, whilst the measures may not directly target Aboriginal and Torres Strait Islander peoples, their practical effect will unduly impact upon them, as government pensions and allowances are a main source of income for approximately 46.9% of this group.[6]

There are therefore concerns about whether the measures are inconsistent with the *Racial Discrimination Act 1975* (Cth) and guarantee Aboriginal and Torres Strait Islander peoples equality before the law.

The Commission considers that the measures are not proportionate to the benefits sought by the Bill because their purpose could be achieved through other, less restrictive means and emphasises what it considers to be the preferred features of a system of income management:

- an approach that enables participants to voluntarily opt-in, rather than an automatic quarantining model (which then relies upon individual applications for exemptions)
- an approach that utilises income management as a 'last resort', particularly for targeted risk areas such as child protection (that is supported by case management and support services), similar to the Family Responsibilities Commission model in Queensland
- measures that are applied for a defined period and in a manner proportionate to the context.[7]

The Commission does not accept the arguments in the Statement of Compatibility with Human Rights that the measures justifiably limit the right to social security, privacy and non-discrimination and equality in pursuit of the objectives of Part 3D of the Act.[8]

As non-voluntary measures, they are applied to all income support recipients of working age in the trial areas,[9] including those who do not have any issues with drugs, alcohol or gambling.

For the reasons outlined above and in the Commission's previous submissions, the Commission does not agree with the assessment that the Bill or existing cashless debit card measures are compatible with human rights standards.[10]

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[6] Productivity Commission, *Overcoming Indigenous Disadvantage Report 2016*, 9.31. At: https://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2016/report-documents/oid-2016-chapter9-economic-participation.pdf.

[7] Australian Human Rights Commission, Submission No 76 to Senate Standing Committees on Community Affairs, *Inquiry into the Welfare Reform and Reinstatement of Racial Discrimination Act Bill 2009 and other Bills* (10 February 2010), 26.

[8] Social Services Legislation Amendment (Cashless Debit Card) Bill 2017, Statement of compatibility with human rights, 7-8.

[9] Orima Research, 'Cashless debit card trial evaluation: final evaluation report', (Department of Social Services, 2017) 3.

[10] Social Services Legislation Amendment (Cashless Debit Card) Bill 2017, Statement of compatibility with human rights, 8.

Limitations of the independent evaluation

The Commission notes the recent release of a report, which was commissioned by the Government to provide an independent evaluation of the cashless debit card in both the East Kimberley and Ceduna regions.[11]

The information provided by the Orima report offers mixed evidence regarding the effectiveness of the measures. Whilst the report indicates some positive findings in relation to perceptions of safety and levels of alcohol and gambling reduction, it also raises a number of concerns regarding the measures, such as:

- almost a third of participants stated that the Trial had actually made their and their children's lives worse [12]
- limited evidence of crime reduction
- occurrence of "grog running", humbugging and gambling with debit cards[13]
- instances of swapping goods and services for cash well below their value,[14] and
- purchase of substitute cards.

It is difficult to attribute the reported positive effects to the current trials as distinct from other factors such as increased support services, and other policy interventions.[15] This is further exacerbated by the self-reporting nature of the report's findings, which the evaluation itself states should be interpreted with caution and are subject to desirability bias.[16]

However, it is important to consider that where people have experienced modest benefits as a result of income management, when compared to its stated objectives,[17] that these need to be weighed against its significant drawbacks.

The Commission does not accept that it is appropriate to extend these measures to additional sites in order to "build on these positive findings, and offer an opportunity to continue to test the card's effectiveness in different settings and on a larger

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[11] Department of Social Services Website. At: https://www.dss.gov.au/families-and-children/programs-services/welfare-quarantining/cashless-debit-card-trial-evaluation-reports.
[12] Orima Research, 'Cashless debit card trial evaluation: final evaluation report', (Department of Social Services, 2017) 82, 88-89, 118.
[13] Orima Research, 'Cashless debit card trial evaluation: final evaluation report', (Department of Social Services, 2017) 86.
[14] Orima Research, 'Cashless debit card trial evaluation: final evaluation report', (Department of Social Services, 2017), 88-89.
[15] L Buckmaster and C Ey, *Is income management working?*, Background note, Parliamentary Library, Canberra, 5 June 2012. At: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fprspub%2F1603602%22.
At:http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/IncomeManagement#_Toc326674769
[16] Orima Research, 'Cashless debit card trial evaluation: final evaluation report', (Department of Social Services, 2017) 118.
[17] Department of Social Services, *Guide to Social Security Law* [11.1.1.30] http://guides.dss.gov.au/guide-social-security-law/11/1/1/30.

scale".[18] There is limited evidence to demonstrate that previous income management efforts have been effective and this is confirmed by the findings from the Orima report.

The Commission is therefore of the view that these measures unjustifiably impinge on the rights of trial participants, for little substantive benefit.

Community-driven approach

The Commission respects community-led efforts to build a better future for individuals, families and the broader community. However, should a community choose to introduce income management measures, these measures need to be underpinned by participation in decision making, based on free, prior and informed consent and good faith.

The Commission believes that community governance structures and processes should be developed with the aim of empowering community members to take control of their own identified issues and aspirations. As such, income management measures should be applied on a case-by-case basis, upon assessment of particular circumstances of individuals and with access to appropriate support.

Conclusion

Human rights protections are inadequately addressed in the Bill, the Explanatory Memorandum and in the Statement of Compatibility. The Commission is particularly concerned about the non-voluntary nature of the measures, and the disproportionate impact on Aboriginal and Torres Strait Islander peoples and those income support recipients who do not have drug, alcohol or gambling concerns.

The Commission is of the view that income management measures which are imposed and not community-driven lack efficacy.

The Commission is of the view that less intrusive measures aimed at changing behaviour rather than limiting access to and use of income will be more effective. It is for this reason that the Commission welcomes the investment of support services into these communities, but hopes that the appropriateness and level of engagement with such services improves.[19]

In light of these views, the Commission does not support the expansion of these measures as outlined in the Bill.

[18] Social Services Legislation Amendment (Cashless Debit Card) Bill 2017, Statement of compatibility with human rights, 3.
[19] According to the Orima report, only 19% of those surveyed indicated that they used the drug and alcohol support services provided. Orima Research, 'Cashless debit card trial evaluation: final evaluation report', (Department of Social Services, 2017) 8.

Yours sincerely

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