



**NORTHERN
LAND COUNCIL**

Northern Land Council Submission to the:

**Social Security (Administration) Amendment
(Continuation of Cashless Welfare) Bill 2020**

November 2020

1. Introduction

The Northern Land Council (**NLC**) welcomes the opportunity to provide comments on the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020 (**Bill**).

We note the Government's commitment to improve the welfare of Aboriginal people in the Northern Territory. However, the NLC believes that far from supporting this objective, the Government's proposed continuation of income management through implementation of the Cashless Debit Card (**CDC**) will further entrench inequality and disadvantage, particularly for Aboriginal people in remote locations of the Northern Territory. The NLC therefore opposes the Bill.

2. About the Northern Land Council

The NLC is an independent statutory authority responsible for assisting Aboriginal people in the northern region of the Northern Territory to acquire and manage their traditional lands, waters and sea country. A key function of the NLC is to express the wishes and protect the interests of Traditional Owners¹ throughout its region.

The *Aboriginal Land Rights (Northern Territory) Act 1976 (Land Rights Act)* combines concepts of traditional Aboriginal law and Australian property law and sets out the functions and responsibilities of the land councils. The NLC is also a Native Title Representative Body under the *Native Title Act 1993 (Native Title Act)*.

Within its jurisdiction, the NLC assists Traditional Owners by providing services in its key output areas of land, sea and water management; land acquisition; protection of sacred sites; minerals and petroleum; economic and community development; Aboriginal land trust administration; native title services; advocacy; information and policy advice.

The NLC's vision is for a Northern Territory in which the rights and responsibilities of every Traditional Owner are recognised and in which Aboriginal people benefit economically, socially and culturally from the secure possession of their lands, seas and intellectual property. Our mission is to assist Aboriginal people in the northern region of the Northern Territory to acquire and manage their traditional lands and seas, through strong leadership, advocacy and management.

3. Issues

The NLC strongly opposes the Bill on the following grounds:

1. The Bill is discriminatory
2. The Bill contradicts the Closing the Gap Priority Reform Areas
3. Failure to consult with participants impacted by compulsory income management
4. The CDC lacks proven outcomes
5. Concerns with technology
6. CDC as a blanket solution

¹ For the purposes of this submission, the term Traditional Owner includes traditional Aboriginal owners (as defined in the *Aboriginal Land Rights (Northern Territory) Act 1976*), native title holders (as defined in the *Native Title Act 1993*) and those with a traditional interest in the lands and waters that make up the NLC's region.

7. The Bill provides the Minister with an expansion of discretionary powers

3.1 The Bill is discriminatory

The continuation of compulsory income management and the roll-out of the CDC in the Northern Territory directly targets Aboriginal people, particularly those residing in remote communities. The proposed changes to income management further entrench inequality amongst the Aboriginal population in the Northern Territory.

The intended outcomes of the CDC are reduction in social harms and reduced time on welfare. However, it is unclear how these objectives will be achieved without any substantial funding to social services or improved employment opportunities.

The Bill limits the agency of welfare participants through restricting their financial independence. The CDC is a paternalistic exercise that many participants have stated is reminiscent of ration days where Aboriginal people were forced to work in exchange for rations of food². The CDC does nothing to address the complexity of disadvantage, instead reinforcing government structures and control over communities.

The NLC is concerned the Bill may be a violation of the rights to equality and non-discrimination. The statement of compatibility with human rights attempts to reconcile this clear discrimination by claiming the program is applied on the basis of location and objective data. Firstly, this data should be accessible and transparent to ensure its objectivity. Secondly, introducing CDC based on high levels of welfare dependence and community harm in an area utilises inequality to rationalise discrimination.

Despite the claims of objective criteria, initial trial sites all registered a high Aboriginal and Torres Strait Islander population, while the unemployment rates were comparable to state capitals. In response to these criticisms, Bundaberg and Hervey Bay was included as a trial site, in order to reduce the average percentage of Aboriginal participants across the trial³. This appears to be a dilution of the data rather than a considered effort to reduce the burden on Aboriginal and Torres Strait Islander populations. Regardless of the inclusion of Bundaberg and Hervey Bay as a trial site, Aboriginal people are unfairly and disproportionately impacted by the CDC.

The lack of data transparency in CDC trial site criteria is reinforced in the Regulatory Impact Statement which refers to social harm nationally without mentioning specific statistics for CDC trial sites. The alleged link between welfare payments and national drug and alcohol misuse and problem gambling is tenuous. Concerns of the annual cost of drug and alcohol misuse and problem gambling in Australia would be better addressed with a national strategy and funding for services rather than targeted welfare measures which considerably affect Aboriginal people in the Northern Territory.

The CDC penalises people who are not problem gamblers or drinkers. Aboriginal people are more likely to abstain from alcohol (31%) than non-Aboriginal people (23%)⁴. Aboriginal and Torres Strait Islanders represent 2.4% of regular gamblers in Australia, while they make up

² Klein, E. & Razi, S. (2017) The Cashless Debit Card trial in the East Kimberley, Working Paper 121.

³ Senate Community Affairs Committee Secretariat. (2018). Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018 [Provisions].

⁴ AIHW (2020) Alcohol, tobacco and other drugs in Australia.

3.3% of the population⁵. In addition only 2.3% of regular gamblers are unemployed, making the link to welfare even more tenuous⁶. Positioning the selection of CDC sites within the context of Australian drug and alcohol use and gambling habits is therefore misleading. Rather than being based on statistical evidence, the roll-out of CDC relies on unproven assumptions of mismanagement of finances and drug and alcohol abuse in Aboriginal communities in order to justify a discriminatory policy.

3.2. The Bill contradicts the Closing the Gap Priority Reform Areas

The Bill is inconsistent with the objectives of the four priority reforms of the National Agreement on Closing the Gap:

1. Formal Partnerships and Shared Decision Making
2. Building the Community-Controlled Sector
3. Transforming Government Organisations
4. Shared Access to Data and Information at a Regional Level⁷

There is a substantial lack of shared decision making evidenced by the lack of consultation with Aboriginal communities affected by compulsory income management and disregard for opposition to the card from individual participants, communities and organisations.

The CDC does not contribute to building of the community-controlled sector, and there is no genuine investment in local support services. There are no employment outcomes for Aboriginal communities despite the intended outcomes of the CDC to reduce perceived welfare dependency. Building the community-controlled sector is an effective step to increase sustainable and meaningful work in Aboriginal communities. There are 141 Aboriginal controlled health services in remote and local communities across Australia and approximately 6000 staff, most of whom are Indigenous⁸. Further investment in community-controlled services is required.

Closing the Gap commits governments to identifying and eliminating racism, delivering services in partnership with Aboriginal and Torres Strait Islander organisations, communities and people and improving engagement with Aboriginal and Torres Strait Islander people. As discussed above the CDC is a discriminatory measure that targets Aboriginal communities and does not promote partnership, or shared decision making. Despite the goal to identify and eliminate racism, CDC will negatively impact Aboriginal people in the Northern Territory.

Shared Access to Data and Information at a Regional Level is a Priority Reform Area in Closing the Gap. The access to and ownership of data by Aboriginal and Torres Strait Islander communities is a significant neglected issue with the CDC. The CDC can be used to capture and monitor data on a user's purchases, movements and patterns of consumer behaviour. There has not yet been adequate information on how this data is managed and protected. Without clarity on the ownership of data and the use of this data by Indue Ltd and the Department of

⁵ AIFS (2017) Gambling in Australia: findings from wave 15 of the HILDA Survey.

⁶ Ibid.

⁷ Closing the Gap (2020) Closing the Gap Priority Reforms.

⁸ NACCHO (2020)

Social Services, it contradicts the priority reform of shared access to data. The potential breach of privacy for users can also be considered a limitation of human rights.

3.3 Failure to consult with participants impacted by compulsory income management

There have been no comprehensive community consultations on the implementation of the CDC in the Northern Territory.

The claim that calls from community leaders and communities in the Northern Territory led to the introduction of the CDC is unsubstantiated and exaggerated. Comprehensive consultations have not taken place in the NT. The Regulatory Impact Statement asserts that “post-decision consultation” took place in the Northern Territory. “Post-decision consultation” does not qualify as consultation, but rather information dissemination.

Similar concerns of inadequate consultation have been raised across the CDC trial sites. Local community groups reported that the main purpose of ‘community consultation’ in the East Kimberley trial site was to explain the trial, rather than seek community input, or approval⁹. The participants in Ceduna argued that the consultation and communication about the CDC was poorly coordinated and unsuccessful in reaching the relevant community members¹⁰. Similarly, many complained that despite the claim that the CDC was developed with local leaders in Kununurra, only four local leaders were consulted and members of the community felt they were not the right people to speak to¹¹. The consistent and significant community opposition to the CDC demonstrates the failure to consult with communities and meaningfully address their concerns.

The implementation of the CDC in the Northern Territory should not occur without comprehensive community consultation.

3.4 The CDC lacks proven outcomes

Compulsory income management has not proven to be effective in ameliorating poverty for welfare participants or reducing substance abuse. Deloitte’s 2015 report on place-based income management found no positive outcomes for people on compulsory income management¹². Income management in the Northern Territory has reported no positive benefits to those on the Basics Card¹³.

In 2014, an evaluation of the Basics Card revealed that the desired outcomes were not achieved, despite \$AU410.5 million spent on the project¹⁴. A report commissioned by the Department of

⁹ Klein, E. & Razi, S. (2017) The Cashless Debit Card trial in the East Kimberley. Working Paper 121.

¹⁰ Marston, G., Mendes, P., Bielefeld, S., Peterie, M., Staines, Z. and Roche, S. (2020) Hidden Costs: An Independent Study into Income Management in Australia. School of Social Science, the University of Queensland.

¹¹ Klein, E. (2020) Settler Colonialism in Australia and the Cashless Debit Card. Social Policy & Administration.

¹² Deloitte Access Economics. (2014). Place Based Income Management.

¹³ Bray, J.R. (2020) Measuring the social impact of income management in the Northern Territory: An updated analysis. Working Paper 136; Bray, J. R. (2016). Income management evaluations - we do we now know? Placing the findings of the evaluation of New Income Management in the Northern Territory in context. Working Paper 111.

¹⁴ Bray, J. R., Gray, M., Hand, K., & Katz, I. (2014). Evaluating New Income Management in the Northern Territory: Final Evaluation Report.

Social Services, establishes that “three-quarters of all participants said that the CDC has made no positive change to their lives and almost half of all participants said it had made their lives worse”¹⁵. A study of CDC in the East Kimberly reported that 34 of 35 people interviewed said that the trial had made their lives worse¹⁶.

Notably, in the CDC trial, there was insufficient data collected to assess if there was a reduction in social harms and the Australian National Audit Office found the trial inadequate¹⁷. The failure to collect any data on the effects of the CDC suggests an inability to evaluate and commit to evidence-based policy. Additionally, there are significant concerns around the validity of data collection, analysis and reporting¹⁸. The lack of information from the forthcoming University of Adelaide report of the Goldfields trial presents further concerns. It is reported no data has been recorded on alcohol consumption and alcohol-related emergency department visits, drug use, gambling, child wellbeing, school attendance, employment, impact on grocery spending or crime rates¹⁹. The University of Adelaide report has also failed to collect any baseline data to measure the effectiveness of CDC. The lack of robust data on the effectiveness of CDC presents concerns for participants transitioning to the CDC in the Northern Territory.

While no positive outcomes of income management have been demonstrated, there are clear negative outcomes in health and wellbeing and housing security. Since the introduction of income management in the Northern Territory there has been an increase in infant mortality and child deaths from injury in Aboriginal families, as well as increasing rates of low birth weight²⁰. It is also reported that income management can exacerbate the factors that lead to homelessness²¹. Research has also shown income management in the Northern Territory negatively affected school attendance rates²².

There is no evidence that compulsory welfare quarantining is effective in Australia²³. The roll-out of the CDC without substantiated outcomes is a needless and costly exercise that demonstrates a lack of evidence-based policy.

3.5 Concerns with technology

The introduction of the CDC will cause significant issues for participants to meet basic needs including food and medicine. While many participants and businesses in the Northern Territory may have adapted to the Basics Card, the CDC presents considerable technical issues. The CDC is unreliable with numerous reports of the card declining when there are sufficient funds,

¹⁵ Hunt, J. (2017). The Cashless Debit Card Trial Evaluation: A Short Review. Topical Issue 1 2017.

¹⁶ Klein, E. & Razi, S. (2017) The Cashless Debit Card trial in the East Kimberley, Working Paper 121.

¹⁷ Australian National Audit Office. (2018). The Implementation and Performance of the Cashless Debit Card Trial.

¹⁸ Hunt, J. (2017). The Cashless Debit Card Trial Evaluation: A Short Review. Topical Issue 1 2017.

¹⁹ ACOSS (2020). Cashless debit cards & income management: a briefing note on the evidence.

²⁰ Bray, J.R. (2020) Measuring the social impact of income management in the Northern Territory: An updated analysis, Working Paper 136.

²¹ Peterie, M, Bielefeld, S, Marston, G., Mendes, P., Humpage, L. (2020) Compulsory income management: Combatting or compounding the underlying causes of homelessness? *Aust J Soc Issues*.

²² Bray, J.R. (2020) Measuring the social impact of income management in the Northern Territory: An updated analysis, Working Paper 136.

²³ Ibid.

at approved retailers, purchasing permissible items²⁴. The participants who experienced these issues reported contacting Indue technical support who advised to simply keep trying²⁵. Many participants have also noted Indue fee charges for declined payments. Participants have little course of action if the only method to troubleshoot issues with the card – that is, ‘keep trying’ and risk further declines – incurs costs. Inexplicable declined purchases and payments are both a stressful and disempowering situation, and limit access to essential items. Furthermore, many businesses have minimum spend on EFTPOS or charge processing fees, both of which are additional expenses for those who do not have a choice but to use the card. This directly contradicts the Department of Social Services claim that people who manage their finances well and do not spend excessively on alcohol, drugs or gambling will not experience any significant difference²⁶. Many users of the CDC have reported that despite their financial competency, they have struggled to pay for essentials, and save money on the CDC²⁷.

The technology used with CDC has further consequences. The use of e-commerce platforms for transaction preferences businesses that are able to pay associated fees, purchase the technology and point-of-sale systems necessary, negatively affecting local businesses. Mixed merchant retailers have additional regulation and compliance responsibilities in order to accept the card.

Crucially, in many remote communities in the NT, phone coverage and access to the internet is unreliable. There have been several recent cases where systems have gone down in remote communities and Aboriginal people have been unable to purchase food²⁸. Income management directly prevents access to essential items.

These are significant infrastructure problems for participants on compulsory income management and local business owners.

3.6 CDC as a Blanket Solution

The CDC attempts to be a blanket solution for multi-faceted issues that cannot be resolved by restricting access to cash.

Perceived welfare dependency cannot be reduced with restrictions. The notion of welfare dependency assumes that there is always work available and a living wage for all citizens, that everyone experiences equal opportunities and has equal ability to work²⁹. In the Northern Territory, as with CDC trial sites, the lack of sustainable employment is the main barrier to

²⁴ Marston, G., Mendes, P., Bielefeld, S., Peterie, M., Staines, Z. & Roche, S. (2020) Hidden Costs: An Independent Study into Income Management in Australia. School of Social Science, the University of Queensland: Brisbane, Australia.

²⁵ Ibid.

²⁶ Department of Social Services, (2020) Cashless Debit Card Frequently Asked Questions.

²⁷ Klein; Marston, G., Mendes, P., Bielefeld, S., Peterie, M., Staines, Z. & Roche, S. (2020) Hidden Costs: An Independent Study into Income Management in Australia. School of Social Science, the University of Queensland: Brisbane, Australia.

²⁸ Vivian, S. (2020) Elcho Island Telstra phone outage at Galiwin'ku leaves NT residents fuming at failing coverage. ABC News.

²⁹ Mendes, P. (2013). Compulsory Income Management: A Critical Examination of the Emergence of Conditional Welfare in Australia. Australian Social Work.

work. The CDC attempts to divert the responsibility of finding paid work onto the individual, ignoring structural factors³⁰.

There are claims that income management improves financial literacy, however, blanket restrictions on access to the cash economy cannot in itself improve financial management. To improve financial literacy for those who struggle to manage their money, community-controlled financial counselling and support is required.

The lack of information on how the \$17 million for CDC support services in the 2019 Commonwealth budget will be allocated in the Northern Territory and Cape York raises concerns. There must be transparency and accountability on the allocation of these funds to ensure communities are supported. Genuine support and investment in community-controlled services is required to address structural issues.

Investment in social programs and infrastructure is required to address issues of health and wellbeing, addiction and unemployment. Genuine support is required. For the wellbeing of communities and sustainability of the sector, there must be a considered approach to community-control as outlined in the Closing the Gap Priority Reform. Aboriginal and Torres Strait Islander community-controlled services often achieve better results, employ more Aboriginal and Torres Strait Islander people and are regularly preferred over mainstream services in these communities³¹. Investment in community-controlled services can present genuine progress and support for these communities rather than a card which simply restricts access to cash. The argument that controlling income will limit exposure to harmful goods and stabilise one's circumstances leading to training and employment opportunities has no evidential basis. Without any available employment opportunities and rehabilitation support services these goals cannot be achieved.

3.7 The Bill provides the Minister with an expansion of discretionary powers

The NLC is concerned about the expansion of the Minister's discretionary powers to make determinations. It is alarming that the discretionary powers of the Minister includes the ability to increase the ratio of income quarantined up to 80% without community consultation.

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³⁰ Bielefeld, S. (2018) Indigenous peoples, neoliberalism and the state: A retreat from rights to 'Responsibilisation' via the Cashless Welfare Card.

³¹ Closing the Gap (2020) Closing the Gap Priority Reforms.