



Australian
Human Rights
Commission

Aboriginal and Torres Strait Islander Social
Justice Commissioner

June Oscar AO

23 October 2020

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

By email: community.affairs.sen@aph.gov.au

Dear Secretary

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

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

The Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020 seeks to remove the trial parameters to establish the Cashless Debit Card (CDC) as an ongoing program and transition Income Management (IM) in the Northern Territory and the Cape York region to the CDC. The Bill also seeks to:

- remove a current exclusion to allow people in the Bundaberg and Hervey Bay program area to be able to voluntarily participate in the CDC program;
- allow a voluntary participant to continue to volunteer for the CDC even if they no longer reside in a program area;
- enable the Secretary to advise a community body when a person has exited the CDC program;
- allow the Minister to determine decision-making principles for the purposes of determining whether a person can demonstrate reasonable and responsible management of the person's affairs (including financial affairs);
- enable the Secretary to review a wellbeing exemption or exit determination in certain circumstances and revoke the determination as a result of such review;

- enable the Secretary to issue a notice informing the person that they are a CDC program participant. The Secretary may also issue a notice revoking that notice;
- make changes to the evaluation process; and
- extend the sunset date for IM in Cape York, Queensland from 30 June 2020 to 31 December 2021.

Human rights concerns

The Commission has previously raised concerns in respect of the Cashless Debit Card (CDC) trials, particularly in relation to the right to social security, the right to a private life and the right to equality and non-discrimination.¹ We have attached our previous submissions for reference:

- Submission to the Committee for its inquiry into the Social Services Legislation Amendment (Cashless Debit Card) Bill 2017 (Appendix A);
- Submission to the Committee for its inquiry into the Senate inquiry into the Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018 (Appendix B);
- Submission to the Committee for its inquiry into the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 (Appendix C).

As stated in our previous submissions, the application of the CDC has not been shown to be reasonable, necessary and proportionate, nor has the evidence demonstrated that current trials of the CDC are warranted. As such, the Commission has serious concerns about the current Bill which would see the CDC become an ongoing program.

The Commission also notes that the Parliamentary Joint Committee on Human Rights (PJCHR) reported on:

- the Social Services Legislation Amendment (Cashless Debit Card) Bill 2017 in *Report No 6 of 2018*;²
- the Social Security (Administration) Amendment (Income Management and Cashless Welfare) Bill 2019 in *Report No 2 of 2019*;³
- the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 in *Report No 6 of 2019*.⁴

The Commission has previously endorsed the human rights analysis of the PJCHR *Report No 6 of 2018*.

The PJCHR also reported on the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 in *Report No 1 of 2020*.⁵ The Commission notes that while the PJCHR concluded that the

limitations on human rights are justifiable, the Dissenting Report by Labour and Greens members considers that it has not been clearly demonstrated that the CDC measures are justifiable.

The Commission shares the human rights concerns raised by the dissenting members, including concerns in respect to the right to privacy, the right to social security, the disproportionate impact on First Nations people, the lack of genuine consultation, the mixed evaluation results and the amendments to the evaluation process.

The Commission wishes to add the following comments with respect to the present Bill:

Monitoring and evaluation

The Commission has previously noted its concerns regarding the limitations of the evaluation reports including *Cashless Debit Card Trial* by ORIMA Research in September 2017 and *Cashless Debit Card Baseline Data Collection in the Goldfields Region: Qualitative Findings* by the University of Adelaide in February 2019.

The information provided by the ORIMA report includes limited evidence of crime reduction and shows that almost a third of participants stated that the trial had actually made their and their children's lives worse.⁶ In 2018, the Auditor-General released a report into the implementation and performance of the cashless debit card trial, which found that 'ORIMA did not use all relevant data to measure the impact of the trial'.⁷ The Auditor-General further found that the approach to monitoring and evaluation was 'inadequate' and that 'it is difficult to conclude whether there had been a reduction in social harm and whether the card was a lower cost welfare quarantining approach'.⁸

While the latest report on the efficacy of the CDC, *Cashless Debit Card Baseline Data Collection in the Goldfields Region: Qualitative Findings* by the University of Adelaide, reports a decrease in the use of substance and alcohol use,⁹ it does not use any quantitative data to support the finding of a reduction in alcohol and drug use and misuse, an increase in child welfare and well-being, improved money management, and reduced crime and family violence; key areas for which the CDC was set up to address.¹⁰ The report relies on only qualitative data in the form of stakeholder responses of personal experience. Furthermore, the report contains mixed stakeholder responses, some of which perceive a decrease in illicit drug usage, and others which perceive the incidence of drug use in the Goldfields region as a deeply entrenched challenge which the CDC does not effectively address.¹¹

In February 2020, the first independent study on compulsory income management (IM) in Australia and New Zealand was released: *Hidden Costs: An Independent Study into Income Management in Australia*.¹² The study involved 114 in-depth interviews, conducted at four trial sites—Playford, Shepparton, Ceduna and Hinkler (which includes the cities of Bundaberg and Hervey Bay)—and a mixed-methods survey of 199 people at income management sites across Australia. Whilst the study found some people have experienced stability in their lives and finances, 87% of survey respondents on IM did not see any benefits in the scheme¹³ and expressed facing additional and worsened financial challenges. These include:

- Not having enough cash for essential items or to provide for children and other family members – including for school excursions, taking family out for community activities including fairs and parades, and contributing or participating in important family events like funerals.
- Difficulties participating in the cash economy – including purchasing second-hand goods or produce at local markets.¹⁴

The study also illustrates a decline in social and emotional wellbeing of IM participants with survey respondents expressing feelings of stress and anxiety related to the stigma and shame associated with being on IM and to the practical and financial challenges associated with the card.¹⁵

Further evidence to the ineffectiveness of the CDC is the proportion of participants who resist IM either by seeking exemptions through formal channels (32% of survey respondents) or circumvention methods (44% of survey respondents).¹⁶

Throughout the Wiyi Yani U Thangani project, Aboriginal and Torres Strait Islander women raised many of these concerns including practical challenges of the card, circumventing methods to access cash, few or no benefits to their income management, and an increased sense of loss of control, shame and disempowerment. The Wiyi Yani U Thangani (Women's Voices) Report 2020 has been provided to the Attorney General and the Commission expects that it will become publicly available in December 2020.

The Commission considers that it is inappropriate to establish the Cashless Debit Card (CDC) as an ongoing program and to transition Income Management (IM) in the Northern Territory and the Cape York region to the CDC given there is insufficient evidence to demonstrate that it has been an effective in existing trial sites. The Commission also does not support the proposed approach to amend the evaluation process in this Bill. The proposed amendments to remove the ongoing evaluation requirements will not improve the evaluation process but

impede access to evidence to determine if the card has delivered on its objectives and where improvements should be made.

Recommended approach to income management

The Commission is of the view that the causes of social disadvantage are complex and require policies that take a multidimensional approach in collaboration with the people and communities affected. Limiting people's ability to access their welfare payments in cash does not address the reasons for drug and alcohol misuse. Investment in community-led solutions aimed at targeting root causes and enhancing cultural protective factors and social and emotional wellbeing have more efficacy and evidenced success in reducing alcohol harms, as well as addressing a range of social and economic issues.

The Commission also considers that the CDC measures are not proportionate to the benefits sought by the Bill because their purpose could be achieved through other less restrictive means, and continues to recommend the preferred features of an income management system which are:

- an approach that enables participants to voluntarily opt-in to the scheme, rather than an automatic quarantining model. The current exemption application process is arduous on individuals.
- an approach that utilises income management as a 'last resort' strategy, particularly for targeted risk areas such as child protection (that is supported by case management and support services). The approach should be that, where income management is not voluntary, the onus is on government to demonstrate why the individual should enter the cashless welfare arrangements on a case by case basis.
- measures that are applied for a defined period and in a manner proportionate to the context.

Throughout the Wiyi Yani U Thangani project, women relayed these concerns about the mandatory nature of the CDC. Some women objected to the application of the cards on all individuals, whilst others called for the cards to be opt-in only at the individual level and only as a last resort should they be made mandatory for those with documented chronic alcohol, drug and gambling addictions.

Indirect discrimination against Aboriginal and Torres Strait Islander peoples

The Commission has previously raised concerns about the disproportionate impact of the CDC trials on Aboriginal and Torres Strait Islander peoples. While the measures may not directly target Aboriginal and Torres Strait Islander

peoples, their practical effect disproportionately impacts this group on account of the trial area populations and future locations having a higher—and often significantly higher—proportion of Aboriginal and Torres Strait Islander people than is the national average.

Inadequate consultation with Aboriginal and Torres Strait Islander peoples

The Commission has previously expressed concern about the lack of meaningful community consultation on the CDC, particularly in rural and remote areas. As stated by the Aboriginal Peak Organisations Northern Territory (APO NT):

The compressed time frame for the inquiry and the lack of remote hearings denies those who are most affected by this legislation—particularly those who live in remote and very remote areas of the Northern Territory—an effective voice and say on a policy that fundamentally affects their lives.¹⁷

The Commission emphasises the need for income management measures to be underpinned by whole-of-community participation in decision-making based on free, prior and informed consent. The Commission also emphasises that measures should be applied on a case-by-case basis, upon assessment of particular circumstances of individuals and alongside access to appropriate support.

A lack of genuine consultation was highlighted by Aboriginal and Torres Strait Islander women throughout the Wiyi Yani U Thangani project. Women cited issues with a top-down approach to the design and application of the card and emphasised the need for consultation with prospective participants, their families and their support organisations.

Conclusion

For the reasons expressed in this letter and in our previous submissions in relation to the cashless debit card trials, the Commission considers that the Bill is not compatible with Australia's international human rights obligations. The Commission is concerned that the Government is seeking to establish CDC as an ongoing program and transition participants currently on IM in the Northern Territory and Cape York without giving due regard to the inherent human rights concerns. The Government should not establish CDC as an ongoing program or transition current IM participants in the Northern Territory and Cape York to the CDC until the existing arrangements are made more compatible with human rights.

Further to the above concerns, the Commission is of the view that there is insufficient evidence to demonstrate that the cards have delivered on their objectives. The Commission considers obtaining clear evidence of the effectiveness of the card is essential to any reasonable justification of the continuation and expansion of the CDC.

The Commission supports a community-driven approach, so that if a community choose to introduce income management measures, there is participation in decision-making, based on free, prior and informed consent and good faith. Community governance structures and processes should be developed and supported with the aim of empowering community members to take control of their own identified issues and aspirations. The Commission considers that income management measures should be applied on a case-by-case basis, with opt in and non-arduous opt out processes, upon assessment of particular circumstances of individuals and with access to appropriate support.

Yours sincerely,

June Oscar AO
**Aboriginal and Torres Strait Islander
Social Justice Commissioner**

Endnotes

- ¹ 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> (viewed 16 July 2015); 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/SJNTR2015.pdf> (viewed 16 July 2018).
- ² Parliamentary Joint Committee on Human Rights, *Human Rights Scrutiny Report – Report 6 of 2018* (June 2018). At https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2018/Report_6_of_2018 (viewed 16 July 2018).
- ³ Parliamentary Joint Committee on Human Rights, *Human Rights Scrutiny Report – Report 2 of 2019* (April 2019). At https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2019/Report_2_of_2019 (viewed 21 October 2020).
- ⁴ Parliamentary Joint Committee on Human Rights, *Human Rights Scrutiny Report – Report 6 of 2019* (December 2019). At https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2019/Report_6_of_2019 (viewed 21 October 2020).
- ⁵ Parliamentary Joint Committee on Human Rights, *Human Rights Scrutiny Report – Report 1 of 2020* (February 2020). At https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2020/Report_1_of_2020 (viewed 21 October 2020).
- ⁶ Australian Human Rights Commission, Submission No 30 to Senate Standing Committees on Community Affairs, *Social Services Legislation Amendment (Cashless Debit Card) Bill 2017*, 29 September 2017. See ORIMA Research, *Cashless Debit Card Trial Evaluation: Final Evaluation Report* (August 2017), 6. At <http://apo.org.au/node/104916> (viewed 16 July 2018).
- ⁷ Australian National Audit Office, *The Implementation and Performance of the Cashless Debit Card Trial* (Department of Social Services, Report No 1 of 2018–19, July 2018) 44. At <https://www.anao.gov.au/work/performance-audit/implementation-and-performance-cashless-debit-card-trial> (viewed 18 July 2018).
- ⁸ Australian National Audit Office, *The Implementation and Performance of the Cashless Debit Card Trial* (Department of Social Services, Report No 1 of 2018–19, July 2018) 8. At <https://www.anao.gov.au/work/performance-audit/implementation-and-performance-cashless-debit-card-trial> (viewed 18 July 2018).
- ⁹ University of Adelaide, *Cashless Debit Card Baseline Data Collection in the Goldfields Region: Qualitative Findings*, (2019) 8.
- ¹⁰ University of Adelaide, *Cashless Debit Card Baseline Data Collection in the Goldfields Region: Qualitative Findings*, (2019) 6.

¹¹ University of Adelaide, *Cashless Debit Card Baseline Data Collection in the Goldfields Region: Qualitative Findings*, (2019) 90.

¹² 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: Brisbane, Australia. At <https://static1.squarespace.com/static/5bff47d1da02bc49ad4e890b/t/5e54c6934eb2985cbbf830a5/1582614180484/Hidden+Costs+Report+-+FINAL.pdf> (viewed 20 October 2020).

¹³ 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: Brisbane, Australia, 9. At <https://static1.squarespace.com/static/5bff47d1da02bc49ad4e890b/t/5e54c6934eb2985cbbf830a5/1582614180484/Hidden+Costs+Report+-+FINAL.pdf> (viewed 20 October 2020).

¹⁴ 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: Brisbane, Australia, 9-10. At <https://static1.squarespace.com/static/5bff47d1da02bc49ad4e890b/t/5e54c6934eb2985cbbf830a5/1582614180484/Hidden+Costs+Report+-+FINAL.pdf> (viewed 20 October 2020).

¹⁵ 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: Brisbane, Australia, 11-12. At <https://static1.squarespace.com/static/5bff47d1da02bc49ad4e890b/t/5e54c6934eb2985cbbf830a5/1582614180484/Hidden+Costs+Report+-+FINAL.pdf> (viewed 20 October 2020).

¹⁶ 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: Brisbane, Australia, 13-14. At <https://static1.squarespace.com/static/5bff47d1da02bc49ad4e890b/t/5e54c6934eb2985cbbf830a5/1582614180484/Hidden+Costs+Report+-+FINAL.pdf> (viewed 20 October 2020).

¹⁷ Transcript of Senate Community Affairs Legislation Committee - Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019. Monday, 23 September 2019 Darwin - Aboriginal Peak Organisations Northern Territory.