



Australian
Human Rights
Commission

Aboriginal and Torres Strait Islander Social
Justice Commissioner

June Oscar AO

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Committee Secretary
Senate Standing Committees on Community Affairs
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Dear Secretary

Senate inquiry into Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019

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

The Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 seeks to:

- extend the end date for existing cashless debit card trial areas from 30 June 2020 to 30 June 2021 and establish an end date for the cashless debit card trial in the Cape York area of 31 December 2021;
- remove the cap on the number of CDC trial participants;
- remove the exclusion to allow people in the Bundaberg and Hervey Bay trial area to be able to voluntarily participate in the CDC trial;
- establish the NT and Cape York area as CDC trial areas and transitions IM participants in these areas onto the CDC trial in 2020;
- enable the Secretary to advise a community body when a person has exited the CDC trial; and
- improve the workability of the evaluation process.

Human rights concerns

The Commission has previously raised human rights concerns in respect of the Cashless Debit Card (CDC) trial, particularly in relation to the right to social security, the right to a private life and the right to equality and non-discrimination.¹

In September 2017, the Commission made a submission to the Committee for its inquiry into the Social Services Legislation Amendment (Cashless Debit Card) Bill 2017. The 2017 Bill provided for the continuation of the trial in the existing locations of the East Kimberley and Ceduna and enabled the expansion of the CDC to further locations.²

The Commission did not support the Bill and the concerns raised in that submission are equally applicable to the present Bill. We have attached our previous submission for reference. See Appendix A.

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*.³ The Commission endorses the human rights analysis of the PJCHR in that Report.

In July 2018, the Commission made a submission to the Committee for its inquiry into the Senate inquiry into Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018. The 2018 Bill was to expand the CDC trial to a further trial site in the Bundaberg and Hervey Bay areas until 30 June 2020.

The Commission did not support the Bill and reiterated the human rights concerns outlined in its 2017 submission. We have also attached our submission to that inquiry for reference. See Appendix B.

Recommended approach to income management

The Commission is of the view that the causes of social disadvantage are complex. Policies intended to help people require a multidimensional approach in collaboration with the people affected. Limiting people's ability to access their welfare payments in cash does not address the reasons for drug and alcohol misuse, poverty, trauma, and lack of education.

The Commission has previously stated and continues to recommend to the Government its preferred features of an income management measure which are:

- an approach that enables participants to voluntarily opt-in to the scheme, rather than an automatic quarantining model (which relies upon individual applications for exemptions);
- 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); and
- measures that are applied for a defined period and in a manner proportionate to the context.

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

Limitations of the independent evaluations and data collection

The explanatory memorandum notes the evaluation reports: *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.

As previously stated in our 2017 submission, the information provided by the ORIMA report offers mixed evidence regarding the effectiveness of the measures. While the report indicates some positive findings in relation to perceptions of safety and levels of alcohol and gambling reduction, it also raises several 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;⁴
- limited evidence of crime reduction;
- occurrence of “grog running”, humbugging and gambling with debit cards;⁵
- instances of swapping goods and services for cash well below their value;⁶ and
- purchase of substitute cards.

The Auditor-General released a report in 2018 into the implementation and performance of the CDC trial, which found ‘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, being stakeholder responses of personal experience.

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

For example, there were reports of different methods being used to access cash to purchase drugs, including the selling of goods which participants were permitted to buy with a cashless debit card, or passing on a card to drug dealers by way of payment. There were also reports of people resorting to criminal activities to obtain money to purchase illicit drugs. The report stated:

However, other participants were pessimistic that the CDC could ever have a positive impact on the drug habits of people experiencing addiction, commenting that many of these people did not want to quit and instead would seek alternative ways to feed their habit.¹²

The Commission considers that it is inappropriate to extend the CDC trial to additional sites given there is insufficient evidence to demonstrate that it has been an effective and proportionate measure in existing trial sites.

Wider application of trial participants

The Bill proposes to extend the end date for existing CDC trial areas and to also transition income management (IM) participants from NT and Cape York trial areas onto the CDC trial in 2020.¹³

The Commission does not support this over-inclusive application of the cashless debit card trial and notes that the statement of compatibility with human rights does not provide a compelling justification for the proposed transition.

While the Commission acknowledges the move to allow participants in the Bundaberg and Hervey Bay trial area to voluntarily participate, this opt-in process should be across all trial areas and the process should not be arduous for participants who wish to opt out.

Proportionality

The Commission does not concur with the rationale laid out in the explanatory memorandum's statement of compatibility with human rights which concludes:

The Bill is compatible with human rights. The extension of the Cashless Debit Card trial and the transition of participants on Income Management to the Cashless Debit Card will advance the protection of human rights by ensuring that welfare payments are spent in the best interests of welfare recipients and their dependents by restricting spending on alcohol, drugs and gambling. To the extent that the Bill will limit human rights, those limitations are reasonable, necessary and proportionate to achieving the objectives of the welfare quarantining measures. The Cashless Debit Card program aims to reduce immediate hardship and deprivation, reduce violence and harm, encourage socially responsible behaviour, and reduce the likelihood that welfare payment recipients will remain on welfare and out of the workforce for extended periods of time.¹⁴

In the Commission's view, this explanation only goes so far as to identify the disadvantage facing these particular groups, rather than adequately justifying how the imposition of CDC will resolve this disadvantage. An underlying assumption of this analysis is that the program is a net benefit to all participants and therefore that the human rights limits are justified. However, as stated previously, the application of the CDC has not been shown to be reasonable, necessary and proportionate. For the same reasons, the evidence has not demonstrated that current trials of the CDC are warranted.

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.¹⁵

While the measures may not directly target Aboriginal and Torres Strait Islander peoples, their practical effect will disproportionately make an impact, with the trial areas having significant numbers of Aboriginal and Torres Strait Islander

populations. 51.6% of people living in Cape York identify as Aboriginal and/or Torres Strait Islander¹⁶ and an estimated 14% of participants in the Bundaberg and Hervey Bay area are Aboriginal and/or Torres Strait Islander people.¹⁷

Although the population of the group in the Bundaberg and Hervey Bay area is comparatively lower than other trial sites, such as the East Kimberley and Ceduna, the Commission maintains its concerns.¹⁸ The CDC trial unduly affects Aboriginal and Torres Strait Islander peoples because government pensions and allowances are a main source of income for approximately 46.9% of this group.¹⁹

The explanatory memorandum's statement of compatibility with human rights states:

Discrimination is impermissible differential treatment among persons or groups that results in a person or a group being treated less favourably than others, based on a prohibited ground for discrimination, such as race. However, the UN Human Rights Committee has recognised that 'not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective, and if the aim is to achieve a purpose which is legitimate under the Covenant'.²⁰

However, in the Commission's view, it is not sufficient to merely assert that differential treatment is reasonable and objective and that the purpose is legitimate. This must be demonstrated. That is particularly the case when the differential treatment results in a detriment to a group of people disproportionately identifiable by their race.

The Commission is of the view that disproportionate levels of non-voluntary participation in the CDC trials by Aboriginal and Torres Strait Islander persons does not amount to legitimate differential treatment. Its imposition does not guarantee full and equal enjoyment of human rights and fundamental freedoms. Instead, it undermines and diminishes the equal enjoyment of those rights for particular geographic groups, most of which have a proportion of Aboriginal and Torres Strait Islander residents at a rate significantly above the national average.

Inadequate consultation with Aboriginal and Torres Strait Islander peoples

The Commission notes the public hearings into Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 on Monday 23 September 2019 where the Aboriginal Peak Organisations Northern Territory (APO NT) alliance addressed the senate committee with

concerns around the short timeframes to provide advice on the impacts of CDC. The APO NT stated:

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.²¹

They also advised that:

The cashless welfare card will directly impact on more than 23,000 Territorians currently on income management as a result of the intervention. Aboriginal income support recipients in the Northern Territory have now been subject to more than a decade of costly, paternalistic interventions, including income management and Work for the Dole. Over this period, poverty and unemployment have worsened. It is evident that income management has failed, yet the government is intent on continuing to try to coerce us into change by further extending the policy. It simply will not work.²²

The Commission does not support the transition of IM participants to CDC in its current form and is particularly concerned with the lack of community consultation in rural and remote areas.

While the Commission acknowledges the recent changes to CDC to allow people to apply for exemptions to the program, the current process is onerous and puts Aboriginal and Torres Strait Islander peoples with English as a second, third or fourth language and/or those in remote locations with limited access to the Internet and/or locally-based service at a distinct disadvantage.

Conclusion

For the reasons expressed in this letter and in our previous submissions in relation to the cashless debit card trials, and for the reasons raised by the PJCHR, 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 transition participants currently on IM in trial areas as well as extending or expanding the trial without giving due regard to the inherent human rights concerns. The Government should not transition current IM participants, extend or expand the cashless debit card trials until the existing arrangements are made more compatible with human rights. The existing trials need to be intensively, appropriately monitored and evaluated to establish clear evidence of workability prior to any further extensions of time or any expansion to new communities.

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 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 2018); 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/SJRNT2015.pdf> (viewed 16 July 2018).
- ² 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. At https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/CashlessDebitCard/Submissions (viewed 16 July 2018).
- ³ 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).
- ⁴ Orima Research, 'Cashless debit card trial evaluation: final evaluation report', (Department of Social Services, 2017) 82, 88-89, 118
- ⁵ Orima Research, 'Cashless debit card trial evaluation: final evaluation report', (Department of Social Services, 2017) 86.
- ⁶ Orima Research, 'Cashless debit card trial evaluation: final evaluation report', (Department of Social Services, 2017), 88-89.
- 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 University of Adelaide, *Cashless Debit Card Baseline Data Collection in the Goldfields Region: Qualitative Findings* (2019) 90.
- ¹³ *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, proposed section 124PGD and 124GE.
- ¹⁴ Parliament of Australia, *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, Explanatory Memorandum, (2019), 26-27
- ¹⁵ 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.
- ¹⁶ 2016 Census, https://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/3150113

⁹⁶ (viewed 23 September 2019), In the 2016 Census, there were 7,513 people in Cape York (Statistical Area Level 2). Of these 52.8% were male and 47.2% were female. Aboriginal and/or Torres Strait Islander people made up 51.6% of the population.

¹⁷ Statement of Compatibility with Human Rights, Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018, 9.

¹⁸ The Commission notes that 77% of Trial participants in Ceduna and 81% of Trial participants in the East Kimberley are Aboriginal and Torres Strait Islander people. See 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) 16. At <https://www.anao.gov.au/work/performance-audit/implementation-and-performance-cashless-debit-card-trial> (viewed 18 July 2018).

¹⁹ 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 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> (viewed 18 July 2018).

²⁰ Parliament of Australia, *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, 23.

²¹ 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

²² 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