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Senate Standing Committees on Community Affairs
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Canberra ACT 2600

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

**Re: Invited Submission on the Inquiry into the Social Security
(Administration) Amendment (Repeal of Cashless Debit Card and Other
Measures) Bill 2022**

I thank the Committee for the invitation to make a submission on the proposed Bill. I make this submission as an academic with a disciplinary background in law whose research focuses on issues of social policy, inequality, social justice, human rights and Indigenous peoples.

Points made in this submission arise from my research for the project *Regulation and Governance for Indigenous Welfare: Poverty Surveillance and its Alternatives*.¹ This is a qualitative research project that includes interviews with Indigenous people who are subject to different types of welfare conditionality programs—including the Cashless Debit Card (CDC) and the BasicsCard.

I welcome the government's decision to end the CDC program, which has had adverse impacts for numerous people subjected to it. Yet, I do have concerns about the unnecessary complexity of the Bill.

While the decision to end the CDC is laudable, it is unclear why the government deems it necessary to have this occur through two stages with differing commencement dates.

I note that the Explanatory Memorandum accompanying the Bill states that 'cashless welfare arrangements are discriminatory and unfair', and I agree, as my research attests (see **Appendices A, B, and C**). However, the cashless welfare arrangements in place under the BasicsCard are just as discriminatory and unfair as those put in place via the CDC (see **Appendices B, D, E, F and G**).

I cannot see any 'need' for a staged transition of people off the CDC and back to the BasicsCard in the Northern Territory when the BasicsCard has also been reported to have numerous problems over many years.² I am concerned about the Labor

¹ Australian Research Council Discovery Early Career Researcher Award (DECRA) (DE180100599).

² Rob Bray et al (2014) *Evaluating New Income Management in the Northern Territory: The Final Report* (Social Policy Research Centre, UNSW, September 2014); 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,

government's intention embedded within this Bill to continue the BasicsCard as a compulsory measure for thousands of people in the Northern Territory—a jurisdiction where the vast majority of cardholders are First Nations peoples who have been subject to compulsory income management since the racially discriminatory Northern Territory Emergency Response commenced in 2007. Compulsory income management via the BasicsCard is just as antithetical to self-determination for First Nations peoples as the compulsory CDC. In short, more compulsory cashless social security payment cards are not the solution.

On CDC Community led and Co-design rhetoric

Although the Coalition Federal Government had claimed that the CDC was supported and co-designed in the communities where it has been introduced, this view has been contested by numerous people in the CDC locations.

Many people from these locations who have spoken with me since the CDC was first introduced indicated that they had not been involved in any community consultations about the CDC and/or did not agree to it coming in to their communities in the manner that it did with mandatory application to a broad range of people in need of social security. For example:

- One Aboriginal man explained that people were 'just put on it without permission'.
- One Aboriginal woman explained that with the CDC coming in: 'we were shafted'. She stated that meetings were scheduled so that members of the community could not attend. She said that with the CDC 'we're not allowed to have a voice'.
- One Aboriginal woman stated that she 'doesn't think everyone had an opportunity to have a voice about it'.
- Another Aboriginal woman explained that some Aboriginal corporations in the area said everyone was to go on the CDC and described them as the 'higher mob' that 'control us'.

Strong views were expressed by cardholders in interviews about this being unfair.

Negative Feedback from the Majority of Cardholders about the CDC

In field work sites where the program has been introduced the vast majority of people that I interviewed who were on the CDC stated that they think people should be given a **choice** about whether they are put on programs such as these.

The overwhelming majority of interviewees expressed a clear preference for cash payments rather than having their income restricted to the CDC. One older Aboriginal man explained that his family were always 'wanting' his 'card' and he felt

Australia; Greg Marston, Louise Humpage, Michelle Peterie, Philip Mendes, Shelley Bielefeld, and Zoe Staines *Compulsory Income Management in Australia and New Zealand: More Harm than Good?* (Policy Press).

‘safer with cash – then I know what I’m doing’, saying that with cash he had ‘more control’ over his finances. The financial exploitation of older people on the CDC by younger people came up in several interviews.

The infantilising nature of the CDC was objected to by numerous interviewees who commented that:

- ‘kids should be on Indue not adults’.
- ‘The government is not our father to be telling us what to do’.
- With the CDC the government ‘have invaded our privacy, our independence, they’ve taken it all’.
- ‘you’ve got no freedom with your own money with choice of spending’ on the Indue card.

One young Aboriginal woman said the CDC is about ‘being controlled’ with ‘how to spend our money’. She also described the pitfalls of paternalism in some cases, stating that ‘it’s making people want to drink more because they’re stressed out’ and ‘if they weren’t being controlled as much they wouldn’t be as stressed’.

In terms of life on the CDC, interviewees gave accounts of their struggles to purchase what they needed when they needed it for items such as school photos, school lunches, school excursions, cars, particular items of women’s clothing, online shopping, hotel accommodation when travelling, and local community events requiring cash such as local festivals. Cardholders interviewed repeatedly relayed how the CDC had made managing their money more difficult – contrary to the 2020 legislative objective that the CDC was to ‘support program participants and voluntary participants with their budgeting strategies’ (section 124PC of the *Social Security (Administration) Act 1999* (Cth)).

In all of my field work sites problems have been raised in terms of the Cashless Debit Card not working in the ways that the Federal Government said it would – and many people stated that the Coalition government had responded dismissively to concerns raised by Aboriginal elders and community members. For example, an Aboriginal Elder from one of my field work sites stated that in a meeting with government representatives about the CDC: ‘it was like a kick in the guts ... they didn’t take any notice of what we were saying’.

Although a small number of interviewees had positive things to say about the CDC, the vast majority of people were weary of the program and the impact it had on them and their families. For example, several people commented about the CDC:

- ‘it’s been horrible’,
- ‘it’s been hard’,
- It has ‘caused a lot of drama’,
- ‘this Indue card is hard’,
- ‘it’s pretty hard with the Indue card we want cash in the hand you know’, and

- it is ‘hard to work with a card that is weighing you down’.

This view of the CDC as a burden – a heavy weight for people to carry – is also communicated in my article on the CDC and Administrative Burden, **Appendix A**.

Other feedback about the CDC includes that Indue Ltd are hard to deal with. For instance, one young Aboriginal woman explained that Indue deal with you ‘like you’re a terrorist’, she said that she did not want to be answering questions all the time from Indue staff about why she wanted to make particular purchases.

Others referred to Indue as being unhelpful when there were transactions from their Indue accounts transferring money out elsewhere that they had not authorised. This arose in a concerning number of interviews. CDC stakeholders and cardholders both reported serious problems for some Indigenous people with unauthorised transactions occurring from their Indue Ltd accounts – which left people with low incomes with even less to provide for their needs. The issue of money being stolen from people’s accounts is important and one that requires restitution and reparation. Simply stopping the CDC is not enough to put these people back in the position they would have been in had they not been forced on to the CDC.

Some people interviewed stated that the reason why people were experiencing being ‘ripped off’ with the Indue card was due to ‘not knowing how to use the technology’, or being in a situation where they could not afford to purchase the technology needed to manage their finances online so they borrowed phones from others and the phones saved their banking details. This meant that their money was less secure/safe. One young Aboriginal woman explained that to log on to Indue constantly is expensive and the government does not cover the extra technology costs with online data required. People mentioned that it is difficult for those on a social security payment to cover the cost of mobile phones, computers and internet connection.

The overwhelming majority of interviewees stated that they wanted the CDC stopped, and they wanted the mandatory CDC to end as soon as possible. For example, several people interviewed stated:

- ‘stop the Indue card’,
- ‘stop the card’,
- ‘we want to get off Indue’,
- ‘take the white card away’,
- ‘get us off it’, ‘we’re not on drugs or drinks’, and
- ‘we’ve all had enough’.

It was clear that they did not want to wait until the end of the year—the legislated sunset clause time frame without the current Bill being passed—before freedom to manage their own finances was restored to them.

Most people interviewed thought that the CDC had done nothing to address alcohol or other substance abuse issues for those who had them in their communities—and they mentioned numerous work-a-rounds that people deployed to get access to what they wanted in terms of cash for substance use.

From CDC back to compulsory BasicsCard in the Northern Territory – Human Rights Violations

I am concerned that the Explanatory Memorandum demonstrates that the Labor government plans to put people in the Northern Territory who are currently on the CDC back on to the BasicsCard as a compulsory measure – unless they were so fortunate as to be able to access a CDC exit or exemption. As is made clear in **Appendix A**, the CDC exit and exemption processes are administratively burdensome and have frequently been inaccessible for people seeking to escape CDC strictures. Government data on CDC exits and exemptions shows that Indigenous people have long had lower rates of success with these processes than non-Indigenous people, which is troubling given that Indigenous peoples are so heavily overrepresented under the program.³ That this will now disadvantage them further in terms of their transition back to compulsory forms of income management under the BasicsCard is unjust.

I note that the Explanatory Memorandum states that the Bill will:

Amend Part 3B of the Administration Act to require classes of persons who exit the CDC program in the Northern Territory, to enter or re-enter the income management regime where they meet other specified criteria. This includes the criteria related to child protection; vulnerable welfare payment recipients; disengaged youth; long term welfare payment recipients; school enrolment; school attendance; or other state or territory referrals. A class or classes of persons will be determined by legislative instrument. This approach also allows for a staged return to income management where necessary or appropriate. (p 3)

This statement is troubling because neither Coalition led nor Labor led Federal Governments since 2007 have demonstrated an adequate understanding as to whether compulsory income management measures are ‘necessary’ or ‘appropriate’ for broad categories of social security recipients. Both major parties have treated social security recipients to be put on compulsory income management according to negative stereotypes in ways that are discriminatory—with intersectional class, race, disability, and sex discrimination (see **Appendices D, E, F and G**).

³ In general, see: <https://data.gov.au/dataset/ds-dga-e5a6ca38-b17c-4e65-af70-84e7759a0ffa/details?q=> ; from 1 July 2022 see: <https://data.gov.au/data/dataset/e5a6ca38-b17c-4e65-af70-84e7759a0ffa/resource/6628c9ae-8bd3-46fb-941b-ac41903bdacf/download/cashless-debit-card-data-summary-july-2022.pdf>.

In their 2016 *Review of Stronger Futures Measures*, the Parliamentary Joint Committee on Human Rights (PJCHR) noted that:

compulsory income management provisions operate inflexibly raising the risk that people who do not need assistance managing their budget will be caught up in the regime. This concern is heightened by the exemptions process which appears to discriminate in effect against Indigenous Australians.⁴

The lack of proportionality of mandatory income management measures has been commented upon by the Parliamentary Joint Committee on Human Rights on many occasions. In their 2016 *Stronger Futures* review, the Committee stated that it 'is concerned that the income management regime is not rationally connected to achieving its objectives' and that 'compulsory income management is a disproportionate measure'.⁵ The PJCHR concluded that:

The imposition of significant conditions on the provision of income support payments, including what goods or services may be purchased and where, is an intrusive measure that robs individuals of their autonomy and dignity and involves a significant interference into a person's private and family life.⁶

In making this assessment of new income management the Committee considered evidence on this measure in the form of evaluation reports and concluded that coercive forms of broadly applied income management were not demonstrably effective.⁷

The Committee further stated that:

given the disparate impact on Indigenous people, the committee considers that the measures may be viewed as racially based differential treatment within the meaning of article 1 of the ICERD. Further, in light of the fact that there is some evidence to suggest that the majority of persons subject to income management are women, concerns also arise as to the consistency of the measure with guarantees against non-discrimination on the basis of sex.

The committee considers that a host of less rights restrictive measures may be developed and implemented in place of compulsory income management.

⁴ Parliamentary Joint Committee on Human Rights (2016) *Review of Stronger Futures Measures*. Canberra: Commonwealth Parliament, p 61.

⁵ Parliamentary Joint Committee on Human Rights (2016) *Review of Stronger Futures Measures*. Canberra: Commonwealth Parliament, p 61.

⁶ Parliamentary Joint Committee on Human Rights (2016) *Review of Stronger Futures Measures*. Canberra: Commonwealth Parliament, p 61.

⁷ Parliamentary Joint Committee on Human Rights (2016) *Review of Stronger Futures Measures*. Canberra: Commonwealth Parliament, p 61.

Chief among these is removing the compulsory categories of income management and trialling a voluntary program across all current sites.⁸

In their 2016 review the PJCHR concluded that: ‘The income management measures engage and limit the right to equality and non-discrimination, the right to social security and the right to privacy and family.’⁹ This remains an ongoing concern with the compulsory income management categories.

Numerous Aboriginal peoples in the Northern Territory have objected to compulsory income management with the BasicsCard as a racially discriminatory measure (see **Appendices D and E**). This has been reflected in a complaint made regarding Australia’s violation of the *International Convention on the Elimination of All Forms of Racial Discrimination*.¹⁰ The negative impact that compulsory income management has had on Indigenous peoples’ right to non-discrimination in relation to social security is reflected in international criticism of Australia’s conduct via the United Nations Committee on the Elimination of Racial Discrimination (see a summary in **Appendix D**). In claiming that the Bill does not adversely affect rights to equality and non-discrimination in the Statement of Compatibility with Human Rights, the Labor government is not acknowledging the well documented United Nations criticism of Australia’s compulsory income management laws.

I also note that forcing people back on to compulsory income management in the Northern Territory runs counter to important rights set in the *United Nations Declaration on the Rights of Indigenous Peoples*, including rights to ‘free, prior, and informed consent’ about ‘legislative and administrative measures that may affect them’ under Article 19 and ‘the right to self-determination’ under Article 3. The Northern Territory Aboriginal communities impacted by compulsory income management were never given a choice as to the introduction of the program as part of the 2007 Northern Territory Emergency Response. When there was a belated consultation in 2009:

communities were not given the option in government consultations for income management to cease altogether, but only an option for it to continue in one of two different forms. The first option was that the system continued as

⁸ Parliamentary Joint Committee on Human Rights (2016) *Review of Stronger Futures Measures*. Canberra: Commonwealth Parliament, p 61.

⁹ Parliamentary Joint Committee on Human Rights (2016) *Review of Stronger Futures Measures*. Canberra: Commonwealth Parliament, p 61.

¹⁰ Shaw, Barbara, Marlene Hodder, Geoff Shaw, Harry Nelson Jakamarra, Valerie Martin Napaltjarra, Peggy Brown Nampitjimpa, Johnny Miller Japangardi, Ronnie Agnew, Philip Goodman, Neparrnga Gumbula, Elaine Peckham, Irene Fisher, Rosalie Kunoth-Monks, Yingiya Guyula, Matthew Dhulumburrk, Keith Lapalung, Jane Miyatatawuy, Munyarirr Gurrulpa, Peter Ganbung, and Ronnie Barramala (2009) “Request for Urgent Action under the International Convention on the Elimination of All Forms of Racial Discrimination – Submission in relation to the Commonwealth Government of Australia.” Accessed August 10, 2022.
https://www.uts.edu.au/sites/default/files/RequestforUrgentAction_28Jan09.pdf.

initially designed in 2007, with widespread application to all Indigenous peoples in prescribed areas with no possibility of exemption. The second option was that the system continued, but with modification to allow for some exemptions.¹¹

There never was any ‘free, prior, and informed consent’ to the BasicsCard and any form of compulsion is antithetical to the right of self-determination.

I note that the Statement of Compatibility with Human Rights claims that:

The transition of program participants from the CDC program will not affect or interfere with a person’s right to freely pursue their economic, social or cultural development. Under the CDC program abolition, people will be able to spend the entirety of their welfare payments on any goods or services, when and how they choose.

Yet this is not the case for those who are about to be forcibly transferred back to the BasicsCard in the Northern Territory. Their right to self-determination will be undermined.

For the reasons set out above, I consider that the Bill is incompatible rather than compatible with human rights to the extent that it authorises a return to compulsory income management in the Northern Territory for people who had transitioned off the BasicsCard and on to the CDC. Perpetuating discriminatory dynamics does not advance the situation of those targeted.

I note that the Statement of Compatibility with Human Rights claims that the Bill ‘enables the Minister, by legislative instrument, to determine a class or classes of former CDC program participants who become subject to mandatory income management.’ Mandatory income management takes away important rights to autonomy and self-determination for impacted social security recipients. I think it is inappropriate and undemocratic for any rights removal to take place by way of legislative instrument. The legislative instrument process bypasses democratic protocols and should therefore be omitted from the Bill.

Recommendations

1. That the Labor government make a strong commitment to ending all types of compulsory cashless social security payment cards – the BasicsCard and the Cashless Debit Card.
2. That any consultation with affected communities about cashless social security measures be carried out with adequate notice to community members and advertised at least 2-3 weeks in advance to ensure that there is maximum opportunity for their participation. Notice should be given in a

¹¹ Shelley Bielefeld (2012) ‘Compulsory Income Management and Indigenous Australians – Delivering Social Justice or Furthering Colonial Domination?’ *University of New South Wales Law Journal* 35(2): 522–562, p 541-542.

variety of ways that are likely to reach people impacted by the programs – via television, radio, social media, community groups, and NGOs.

3. That any consultation with affected communities about cashless social security measures take place in accordance with the *United Nations Declaration on the Rights of Indigenous Peoples* – in ‘good faith’ and with the goal of ‘free, prior and informed consent’. Consultations should not be mere information sessions where the government just informs people what is about to be done to them but should provide people on social security payments with the opportunity to shape program outcomes.

If I can be of any further assistance, I would be happy to oblige.

Yours sincerely,

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Appendices

Appendix A

Shelley Bielefeld (2021) ‘Administrative Burden and the Cashless Debit Card: Stripping Time, Autonomy and Dignity from Social Security Recipients’ *Australian Journal of Public Administration* 80(4): 891–911. <https://doi.org/10.1111/1467-8500.12509>

Appendix B

Shelley Bielefeld (2018) 'Cashless Welfare Transfers for "Vulnerable" Welfare Recipients – Law, Ethics and Vulnerability' *Feminist Legal Studies* 26(1): 1–23.
<https://doi.org/10.1007/s10691-018-9363-6>

Appendix C

Shelley Bielefeld (2021) 'Cashless Welfare Transfers and Australia's First Nations: Redemptive or Repressive Violence?' *Griffith Law Review* 30(4): 597–620.
<https://doi.org/10.1080/10383441.2021.1996891>

Appendix D

Shelley Bielefeld (2017) 'The Intervention, Stronger Futures and Racial Discrimination: Placing the Australian Government under Scrutiny' in Elisabeth Baehr and Barbara Schmidt-Haberkamp (eds), *'And there'll be NO dancing'. Perspectives on Policies Impacting Indigenous Australia since 2007* (Newcastle upon Tyne, Cambridge Scholars Publishing) 145–166.

Appendix E

Shelley Bielefeld (2012) 'Compulsory Income Management and Indigenous Australians – Delivering Social Justice or Furthering Colonial Domination?' *University of New South Wales Law Journal* 35(2): 522–562.

Appendix F

Shelley Bielefeld (2016) 'Income Management and Indigenous Women – A New Chapter of Patriarchal Colonial Governance?' *University of New South Wales Law Journal* 39(2): 843–878.

Appendix G

Shelley Bielefeld and Fleur Beupert (2019) 'Income Management and Intersectionality: Analysing Compulsory Income Management through the lenses of Critical Race Theory and Critical Disability Studies ('DisCrit')' *Sydney Law Review* 41(3): 327–357.