



North Australian Aboriginal Justice Agency

Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Bill 2022

Submission to the Senate Community Affairs Legislation Committee

11 August 2022

1. Executive Summary

The North Australian Aboriginal Justice Agency (**NAAJA**) is an Aboriginal Community Controlled Organisation, and the largest provider of legal services in the Northern Territory.

This submission is made in relation to the *Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Bill 2022* (**the Bill**).

NAAJA has made two prior submissions to the Senate Community Affairs Legislation Committee (**Committee**) regarding Income Management (**IM**) and the Cashless Debit Card (**CDC**). These submissions, made in October 2019¹ (**the October 2019 Submission**) and October 2020² (**the October 2020 Submission**), came in response to legislation creating³ and then furthering⁴ the legislative regime underpinning the CDC.

Consistent with these prior submissions, NAAJA calls for an abolition of all forms of compulsory quarantining of welfare payments. To achieve this end, NAAJA calls for an amendment of the Bill to additionally repeal Part 3B of the *Social Security (Administration) Act 1999* (Cth) (**the Act**), the legislative regime which implements the IM regime and the BasicsCard.

We have had the benefit of reviewing the submission advanced by the Northern Territory Council of Social Services (**NTCOSS**) for this Committee's review. We endorse all that is contained in that submission.

2. About NAAJA

NAAJA was formed in February 2006, bringing together the Aboriginal legal services in Darwin (North Australian Aboriginal Legal Aid Service), Katherine (Katherine Regional Aboriginal Legal Aid Service) and Nhulunbuy (Miwatj Aboriginal Legal Service). From 1 January 2018, NAAJA has been providing legal services for the southern region of the Northern Territory (**NT**) formerly provided by CAALAS (Central Australian Aboriginal Legal Aid Service).

¹ <http://www.naaja.org.au/wp-content/uploads/2020/12/Social-Security-Administration-Amendment-Income-Management-to-Cashless-Debit-Card-Transition-Bill-2019-Cth-Part-1.pdf>.

² <http://www.naaja.org.au/wp-content/uploads/2020/12/Social-Security-Administration-Amendment-Income-Management-to-Cashless-Debit-Card-Transition-Bill-2019-Cth-Part-2.pdf>.

³ *Social Security (Administration) Amendment (Income Management to Cashless Debit Card (Transition) Bill 2019* (Cth).

⁴ *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020* (Cth).

NAAJA and its earlier bodies have been advocating for the rights of Aboriginal people in the NT since 1974. NAAJA serves a positive role contributing to policy and law reform in areas affecting Aboriginal peoples' legal rights and access to justice. NAAJA's legal practice areas are broad, encompassing criminal, civil, care and protection, and family law. NAAJA has offices in Darwin, Alice Springs, Katherine, and Tennant Creek and travels to remote communities across the NT to provide legal advice, representation, community legal education, and consult with relevant groups to inform policy submissions.

NAAJA's civil law practice includes providing legal advice and assistance to recipients of Centrelink payments administered by Services Australia. This includes assisting clients with IM-related matters. Detail about the IM-related issues with which our clients present is contained in Part 4 of NAAJA's October 2019 Submission. Further detail is contained in our 2022 submission to the Parliamentary Inquiry into the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia (**UNDRIP**), which touches on this topic on Page 10 and in Annexure A.⁵

3. Brief Overview of the Bill

The Bill was introduced to Parliament on 27 July 2022. The effect of the Bill is to abolish the CDC arrangements (contained in Part 3D of the Act) (**the CDC Program**) and to set out a framework to re-direct Centrelink recipients in the CDC Program who were once subject to IM back onto the IM regime contained in Part 3B of the Act (**the IM Regime**).

The Bill sets out that all classes of Centrelink recipients who were subject to the IM regime under Part 3B of the Act will be required to be reintegrated to the IM regime. Importantly, the Bill perpetuates these pre-existing classes, namely those:

- referred by state child protection agencies;
- designated as "vulnerable welfare payment recipients";
- designated as "disengaged youth";
- designated as "long term welfare payment recipients";
- whose children are not enrolled in school or are not attending to a satisfactory rate;
- affected by the Queensland Commission provisions; and
- referred to the Secretary of the Department of Social Services by an officer or employee of a recognised State or Territory authority.

⁵ Submission No. 47, accessible at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/UNDRIP/Submissions.

4. Background to the IM Regime and CDC Program

A brief history of the Commonwealth Government's compulsory quarantining of welfare payments (i.e. IM) is set out in Part 3 of the October 2019 Submission.

5. Reasons Underlying NAAJA's Position

We commend the Bill for seeking to abolish the CDC Program, a scheme which has failed to deliver conclusive evidence of achieving its stated objective of reducing social harm, and which has led to the majority of CDC participants across trial sites experiencing feelings of "discrimination, embarrassment, shame and unfairness as a result of being on the card".⁶

However, as it stands, this Bill is a missed opportunity to remedy the IM Regime - a scheme that has no justification morally, politically, or economically. In accordance with the October 2019 Submission and the October 2020 Submission, there are 6 reasons why NAAJA is calling for the abolition of all forms of compulsory quarantining of welfare payments and the repeal of Part 3B of the Act.

(i) *Compulsory quarantining of welfare payments is discriminatory and paternalistic*

IM disproportionately affects Aboriginal and Torres Strait Islander people in the NT. A 2014 study found that 90.2% of IM recipients in the NT were Aboriginal.⁷

IM is a blunt tool that has been implemented to resolve extremely complex issues affecting Aboriginal communities in the NT. As will be noted below, it has been ineffective in achieving the goals that underpinned its creation. Consequently, the IM Regime's primary effects have been negative. Amongst the people subject to it, it has resulted in unjustifiable incursions on their liberty and autonomy,⁸ confusion,⁹ logistical problems with budgeting and

⁶ K Mavromaras, M Moskos, S Mahuteau and L Isherwood, *Evaluation of the Cashless Debit Card in Ceduna, East Kimberley and the Goldfields Region: Consolidated Report* (University of Adelaide, January 2021) at page 3 (accessible at [fac_evaluation-cdc-ceduna-east-kimberley-and-goldfields-region-consolidated-report_012021.pdf](https://dss.gov.au/sites/default/files/2022-03/4349-evaluating-new-income-management-nt.pdf) (dss.gov.au)).

⁷ JR Bray, M Gray, K Hand, & I Katz, *Evaluating New Income Management in the Northern Territory: Final Evaluation Report* (SPRC Report 25/2014). Sydney: Social Policy Research Centre, UNSW Australia at page 54 (accessible at <https://aifs.gov.au/sites/default/files/2022-03/4349-evaluating-new-income-management-nt.pdf>) (2014 Report).

⁸ See Part 4 of the October 2019 Submission.

⁹ See Part 6 of the October 2019 Submission.

accessibility,¹⁰ inability to purchase food for days-on-end during telecommunication outages in remote communities (see further below),¹¹ and shame.¹²

As noted in the October 2019 Submission, the IM Regime operated alongside other paternalistic and discriminatory interventions into the lives of Aboriginal Territorians during the NT National Emergency Response (**the Intervention**). Examples of this include the Community Development Program (CDP), bans on the sale and consumption of alcohol, compulsory acquisition of remote Aboriginal communities, and the exclusion of customary law as a factor relevant to sentencing and bail decisions. It bears repeating that the original imposition of the IM Regime was only achievable through the suspension of the operation of Part 2 of the *Racial Discrimination Act 1975* (Cth).

(ii) *The IM Regime is ineffective*

As set out comprehensively in Part 8 of the October 2019 Submission, there is no evidentiary basis to suggest that the IM Regime is effective in achieving its aims. In fact, research suggests that rather than alleviating social problems, compulsory quarantining of welfare payments has actually exacerbated certain social outcomes.

The largest and most authoritative assessment of the impacts of IM can be found in the 2014 Final Evaluation Report of New Income Management in the Northern Territory (**2014 Report**).¹³ The research was commissioned by the Department of Social Services and was undertaken by a team of researchers from ANU, the Australian Institute of Family Studies and UNSW Australia. Specifically, with respect to outcomes in child health, school attendance, alcohol and tobacco use, alcohol-related harms and imprisonment, the report found that there was no evidence of changes in aggregate outcomes that could plausibly be linked to compulsory IM.¹⁴

Further key findings from the report are:

- There was no evidence of any overall improvement in financial wellbeing, including reductions in financial harassment or improved financial management skills.¹⁵

¹⁰ For example, <https://www.abc.net.au/news/2019-05-08/basics-card-welfare-cashless-northern-territory-darwin/11087340>.

¹¹ As discussed in this media report: <https://www.theguardian.com/australia-news/2021/dec/20/residents-in-northern-territory-indigenous-community-unable-to-buy-food-for-four-days-after-internet-outage>.

¹² Research has shown that “a substantial group of people subject to income management felt that income management is unfair, embarrassing and discriminatory”, *2014 Report* at page xxi.

¹³ *Ibid*.

¹⁴ *Ibid*, page 235.

¹⁵ *Ibid*, page xxi.

- More general measures of wellbeing at the community level show no evidence of improvement, including for children.¹⁶
- There was no evidence of changes in spending patterns, including food and alcohol sales for those on compulsory IM.¹⁷
- Across a wide range of child health indicators there was no evidence of any consistent positive change.¹⁸
- Rather than building capacity and independence, for many the program has acted to make people more dependent on welfare.¹⁹
- In general, the program was not seen as being transformative of either individuals or communities. To the extent changes were reported at the community level the people consulted during the research tended to credit these to other programs and initiatives.²⁰

We understand that no further evaluations have been commissioned by the government into compulsory IM since the 2014 Report. However, the research to date was reviewed in a 2016 working paper published by ANU's Centre for Aboriginal Economic Policy Research. The author concluded that there was:

*"...consistency across the research as to the impact of income management, or, more precisely, the lack of impact of the program on changing adverse outcomes and behaviours, in particular for those placed on the program on a mandatory basis."*²¹

A 2020 working paper published by the ANU's Centre for Aboriginal Economic Policy Research re-examined the data considered in the 2014 Report to the most recently available data.²² Its findings broadly echoed those of the 2014 Report. The author concluded that the findings:

*"strongly suggest that income management has failed to achieve any systematic community level improvements in outcomes for the Indigenous population of the Northern Territory".*²³

¹⁶ Ibid.

¹⁷ Ibid, page xxi and page 324.

¹⁸ Ibid, page 235.

¹⁹ Ibid, page xxii.

²⁰ Ibid, page 324.

²¹ JR Bray, *Income management evaluations – what do we now know? Placing the findings of the evaluation of New Income Management in the Northern Territory in context* (CAEPR Working Paper No. 111/2016) Australian National University at page 31.

²² JR Bray, *Measuring the social impact of income management in the Northern Territory: An updated analysis* (2020, Working Paper no. 136/2020, Centre for Aboriginal Economic Policy Research, Australian National University).

²³ Ibid, page 2.

In February 2020, the University of Queensland also published a report in relation to the ongoing expansion of IM in Australia. That report found that 87% of survey respondents on IM did not see any benefits in the scheme, whereas only 13% thought there were some advantages.²⁴ Survey respondents also indicated that not only had IM failed to alleviate challenges, but it had also caused financial and other problems that did not previously exist, including:

- not allowing enough cash for essential items;²⁵
- creating difficulty for providing for children and other family members as result of a lack of access to cash;²⁶
- creating difficulties for participating in the cash economy;²⁷
- creating difficulties for paying rent and other bills;²⁸ and
- a decline in mental health and wellbeing as a result of the challenges faced by being on IM, including feelings of stigma and shame.²⁹

(iii) *The Bill perpetuates top-down policy without Aboriginal leadership*

Compulsory IM by the Commonwealth Government sits at odds with contemporary pushes within the NT to empower leadership within Aboriginal communities. Of primary importance is the recently signed Northern Territory Aboriginal Justice Agreement 2021 – 2027³⁰ (**the NT AJA**), an agreement between the NT Government, Aboriginal Territorians, aligned Aboriginal organisations, and other NGOs. The NT AJA sets out how the NT Government will work to improve justice outcomes in the lives of Aboriginal Territorians.

Of relevance is the second of the three aims espoused by the NT AJA – that being to “Engage and support Aboriginal leadership”. We note the following extract:

“Aboriginal Territorians emphasised during the Aboriginal Justice Agreement consultations, and as outlined in other reports, that many past policies and practices have actively undermined Aboriginal Territorians’ capacity to lead and make decisions. This has resulted in a breakdown of social structures and kinship systems,

²⁴ G Marston, P Mendes, S Bielefeld, M Peterie, Z Staines, and S Roche, *Hidden Costs: An Independent Study into Income Management in Australia* (2020, School of Social Science, The University of Queensland: Brisbane, Australia) at page 9.

²⁵ *Ibid*, 9.

²⁶ *Ibid*, 9.

²⁷ *Ibid*, 10.

²⁸ *Ibid*, 10.

²⁹ *Ibid*, 10-11.

³⁰ Accessible here: https://justice.nt.gov.au/_data/assets/pdf_file/0005/1034546/nt-aboriginal-justice-agreement-2021-2027.pdf.

loss of languages, restriction to lands, waters and cultures, as well as the gradual erosion of Aboriginal rights and responsibilities.

Examples include: (...)

- *Introducing the BasicsCard and Income Management policies.”³¹*

We note that Federal Labor’s own website states that it will abolish the CDC and “*instead support First Nations communities to make their own decisions about the way forward*”.³²

This ambition requires the spirit of the NT AJA to be honoured.

Furthering the IM Regime – a top-down policy reform that was first implemented without any meaningful Aboriginal co-design during the Intervention – represents a failure of the Commonwealth Government to bestow Aboriginal Territorians with the power to make decisions about the policies that affect their own lives.

(iv) *The IM Regime is prone to practical failures in remote Aboriginal communities*

A number of the NT’s remote Aboriginal communities, including but not limited to Ampilatwatja, Arlparra, and Galiwinku, have recently suffered prolonged rolling telecommunications outages of up to two weeks.³³ During these outages, communities are left without EFTPOS facilities.

This is a disastrous situation for community members who are subject to the IM Regime (i.e. limited in the amount of cash they can withdraw from an ATM). As is noted in Part 6(c) of the October 2019 Submission, the economy is not cashless. A substantial percentage of NAAJA’s client base still withdraw large portions of their welfare payments for on-hand cash.

However, those remote clients on the IM Regime are prohibited from doing so. When faced with a telecommunications outage they are left unable to purchase food, fuel, electricity, drinking water,³⁴ and other basic necessities for themselves and their families.

Maintaining the IM Regime in a context of unreliable telecommunications in remote communities causes direct harm to the affected residents of those communities.

³¹ Ibid, 17.

³² Accessible here: <https://www.alp.org.au/policies/first-nations>.

³³ As reported in the following media articles: <https://www.abc.net.au/news/2020-01-24/ampilatwatja-arlparra-mobile-outage-nt-telstra-remote-community/11898266> and <https://www.theguardian.com/australia-news/2021/dec/20/residents-in-northern-territory-indigenous-community-unable-to-buy-food-for-four-days-after-internet-outage>.

³⁴ A practice common in remote Aboriginal communities given safety concerns with potable tap water (<https://www.abc.net.au/news/2022-05-25/laramba-northern-territory-has-no-safe-water-laws-court-action/101094600>).

(v) *Compulsory quarantining of welfare payments fails to target underlying systemic problems*

Of the individuals on compulsory IM, the vast majority (71.66%) are captured under the “long term welfare payment recipient” stream.³⁵

As the October 2019 Submission emphasises, compulsory IM punishes Aboriginal recipients of welfare payments – especially those in remote Aboriginal communities – for something altogether out of their control: this being the lack of meaningful work opportunities in remote communities. Forcing people onto compulsory IM does nothing to address the root cause of their long-term dependence on welfare payments. The barriers to work in remote communities, such as a lack of local education and training options for skilled jobs, as well as a lack of available unskilled jobs, means that many residents will invariably and unwillingly be long-term recipients of welfare payments.

Quarantining access to the welfare payments of residents of remote communities does nothing to undo the systemic problems underlying their position. NAAJA calls for fundamental reform to address the root of this problem: a rethink of the current ‘Mutual Obligations’ policy in remote communities, investment in genuine education and training opportunities for Aboriginal Territorians who live remotely, incentives for corporate investment and on-country employment in remote communities, and engagement with individual communities to co-design sustainable pathways to long-term employment.

(vi) *The Commonwealth Government has a popular mandate to repeal the IM Regime*

The Bill’s failure to abolish the IM Regime, a scheme that has failed so comprehensively for the reasons set out above, is made all the more concerning by the fact that Federal Labor has a popular mandate to do so. In the lead-up to the 2022 Federal Election, then-Shadow Minister for Indigenous Australians and Social Services, Linda Burney, made a commitment to abolish compulsory quarantining of welfare payments should Labor be elected:

*“Our fundamental principle on the basics card and the cashless debit card, it should be on a voluntary basis. If people want to be on those sorts of income management, then that’s their decision. It’s not up to Labor or anyone else to tell them what to do. At the moment it’s compulsion and that’s not Labor’s position.”*³⁶

³⁵ 2014 Report at page 56 Table 4-2.

³⁶ As quoted in <https://www.theguardian.com/australia-news/2022/apr/19/cashless-welfare-labor-vows-to-end-compulsory-use-of-basics-card>.

This Bill does not honour Federal Labor's pre-election commitment. Curiously, the current Minister for Social Services, Amanda Rishworth, has made commitments to abolish compulsory quarantining of welfare payments as recently as 23 June 2022 (i.e. *after* the Federal election).³⁷

We note that the Bill's Explanatory Memorandum states that "a further Bill, to be introduced later in 2022 after consultations with affected areas and communities" will address those individuals who have transitioned from CDC to IM. This statement makes no indication that Labor's pre- and post-election commitments to wholly abolish compulsory quarantining of welfare payments will be honoured.

There is no logical reason why this Bill should not be extended to repeal Part 3B of the Act (in addition to the Bill's current repeal of Part 3D). The Government's desire to co-design a workable voluntary IM scheme with affected communities would not be hampered by the repeal of the compulsory IM. The two goals are mutually exclusive.

Maintaining the current IM Regime subjects affected individuals to the problems outlined above without any political justification and is at direct odds with Labor's stated position on this issue.

6. NAAJA's Recommendations

NAAJA recommends:

1. That the Bill be amended to additionally repeal Part 3B of the Act;
2. That the Commonwealth Government adhere to the principles of the NT AJA and the National Agreement on Closing the Gap and consult fully with Aboriginal communities and individuals before implementing any future voluntary IM schemes;
3. That the Commonwealth Government adequately funds legal services in the Northern Territory to provide advice and legal education on the complex social security legal framework, especially in light of frequent reform in this area; and
4. That the Commonwealth Government work with key stakeholders, including government service providers, educational institutions, and the corporate sector, to:

³⁷ "Because that's where the Government wants to move to, is voluntary income management" and "We are moving to a voluntary income management." (as accessed from <https://ministers.dss.gov.au/transcripts/8341>)

- a. increase 'on country' education and employment opportunities; and
- b. establish and adequately invest in a Remote Jobs Fund to make a material difference to closing the remote employment gap.