

Committee Chair  
Senate Community Affairs Legislation Committee  
Parliament House  
CANBERRA ACT 2600

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22 October 2020

Dear Committee Chair

### **Submission to the Inquiry into the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020**

The Human Rights Law Centre (**HRLC**) welcomes the opportunity to provide a submission to the inquiry into the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020 (the **Bill**), which would turn the flawed Cashless Debit Card experiment into a permanent scheme, and forcibly impose a new system of income control on more than 23,000 people across the Northern Territory.

#### **Compulsory income management in the Northern Territory has failed**

[Our submission](#) to the Committee's inquiry into the previous version of this Bill outlines the serious failings of compulsory income management in the Northern Territory, including its racially discriminatory foundation and implementation, and its failure over the past 13 years to achieve beneficial outcomes for individuals or communities.<sup>1</sup> The Cashless Debit Card scheme would replicate, expand and further entrench this racist and harmful policy, while also introducing broader eligibility criteria, limited avenues to escape the scheme, broad information-sharing powers and restricted review rights.

The Bill currently before the Committee is substantially similar to the previous Bill, save for the new amendments addressed below. The matters raised in our previous submission, a copy of which is **enclosed** and [linked](#), form part of our evidence to the Committee in this inquiry.<sup>2</sup> As in that submission, this response is focused on the application of the Bill to the Northern Territory as informed by our collaboration with Aboriginal and Torres Strait Islander organisations in the Northern Territory.

#### **A permanent commitment to a flawed system is a move in the wrong direction**

Despite the extensive evidence to the Committee's previous inquiry, this version of the Bill represents a further move in the wrong direction, away from much needed reform of paternalistic social security policy in the Northern Territory. It is an irresponsible commitment to a scheme that does not work, at a

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<sup>1</sup> Human Rights Law Centre submission to the Senate Community Affairs Legislation Committee, *Ending income control in the Northern Territory: Submission on the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, 22 October 2019.

<sup>2</sup> Since our previous submission, the Minister's ability to increase the portion of restricted income under proposed changes to s 124PJ of the *Social Security (Administration) Act 1999* (Cth) (**Act**) has been varied from 100% to 80%. As such, paragraphs [8], [76] and [77] of our previous submission should now be read as referring to 80%, rather than 100%. We note however there are still no safeguards as to when or why the Minister may make such an increase, and no obligation on the Minister to wait for a request from a community or to consult with communities before increasing restricted amounts.

substantial and undisclosed cost.<sup>3</sup> Most significantly, it is yet another top-down policy the Federal Government seeks to forcibly impose on Aboriginal and Torres Strait Islander people in the Northern Territory without genuine consultation and despite significant opposition.

1. Trial becomes permanent despite incomplete and inconclusive evaluations

While the previous Bill sought to extend and expand the current trials, this Bill would convert the Cashless Debit Card into an ongoing program, and introduce it as a permanent measure in the Northern Territory and Cape York region.<sup>4</sup>

The decision to make the Cashless Debit Card permanent is premature. The purpose of the trials is to determine whether the scheme works to reduce social harm,<sup>5</sup> which is why a process of review and independent evaluation is built into the current law. However, evaluation of the current trials is still incomplete and the evidence which is available does not support their continuation.<sup>6</sup> The Cashless Debit Card has not been trialled in any location with a similar population size or geographical area to the Northern Territory.

Instead of waiting for final, independent evaluation of the existing trials, or giving due consideration to the most comprehensive analysis of income management in the Northern Territory already available,<sup>7</sup> the Federal Government appears to have reached its own conclusions about the Cashless Debit Card. It intends to forge ahead with the policy despite the lack of supportive evidence, and seeks to legislate away the requirement for any future independent evaluation. This does not reflect responsible or informed government decision-making.

The permanent introduction of the Cashless Debit Card also paves the way for the Federal Government, and companies which profit from the scheme, to advocate for broader implementation of the card across Australia in the future.

2. Winding back exit and exemption procedures

Once a person is forced into the Cashless Debit Card scheme it is very difficult to get out, particularly for Aboriginal and Torres Strait Islander people.<sup>8</sup> This version of the Bill would make it easier for the Department of Social Services to put people *back onto* the card after they have successfully exited the program. People must live with the constant threat of compulsory income quarantining, even where they have previously demonstrated it is not necessary or would be harmful in their individual circumstances.

- (a) Exit process: The option for a person to exit the Cashless Debit Card program if they can demonstrate “reasonable and responsible management of their affairs” was introduced

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<sup>3</sup> The cost of continuing the Cashless Debit Card on an ongoing basis in existing sites, and implementing it in the Northern Territory and Cape York region, was not disclosed in the FY2020-21 Federal Budget due to commercial sensitivities.

<sup>4</sup> Section 124PF of the Act, which established the trial, trial period and cap on trial participants, is repealed by item 16 of the Bill. All references in the Act to “trial” would become “program”.

<sup>5</sup> See, eg, s 124PC of the Act.

<sup>6</sup> See paragraphs [44] – [52] of HRLC’s [previous submission](#), enclosed.

<sup>7</sup> Rob Bray et al, *Evaluating New Income Management in the Northern Territory: Final Evaluation Report* (Australian National University, September 2014), which found there was no substantive evidence that compulsory income management has achieved significant change relative to its key policy objectives.

<sup>8</sup> See *Australian Government Cashless Debit Card Program* monthly statistics published in relation to exit and exemption applications: <https://data.gov.au/data/dataset/australian-government-cashless-debit-card-program>. See also, NAAJA’s submission to the Committee Inquiry into the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 (21 October 2019), outlining the particular barriers for Aboriginal and Torres Strait Islander people to accessing the exit and exemption procedures.

against the Federal Government's wishes. This Bill would make amendments to undermine that exit process.

The Bill creates a new obligation for the Secretary to revoke an exit approval if the Secretary is no longer satisfied that a person can demonstrate responsible management of their affairs.<sup>9</sup> This would allow the Secretary to independently revoke an exit approval at any time, without waiting for a referral from a health or community worker, as is currently required.

As well as creating uncertainty and the potential for continued disruption to people's lives, the ambiguous drafting of this section (the Secretary must revoke a determination if no longer satisfied of the requisite facts) could create an onus on the Secretary to continuously review the circumstances of people who have successfully exited the program. This could be an unjustified invasion of privacy as well as a waste of resources. It could also give the Secretary authority to target individuals for ongoing scrutiny.

- (b) Wellbeing exemptions: Previously, a decision of the Secretary to grant a wellbeing exemption was final. The Bill would enable state or territory government employees to request the Secretary to reconsider a wellbeing exemption for "medical or safety reasons relating to the person or the person's dependents."<sup>10</sup> There is no threshold for making such a referral, nor any requirement for a government employee to give reasons or evidence for their referral.

The Explanatory Memorandum offers no evidence that the Secretary needs greater powers to put people back onto the Cashless Debit Card. If such powers are necessary, they must be clearly confined and maintain some degree of procedural fairness.

### 3. Giving the Minister greater control over exit applications

The Bill would give the Minister a new power to issue legislative instruments setting out "decision making principles" which the Secretary must follow when deciding whether to approve a person's application to exit the Cashless Debit Card program.<sup>11</sup> The Explanatory Memorandum states these instruments would not introduce new criteria for exit applications, but would provide "greater clarity" around the existing considerations in s 124PHB of the Act.

This would allow the Minister to substantially raise the threshold of what is required to demonstrate "reasonable and responsible management" of a person's affairs, for example by introducing documentary evidence requirements or expanding the factors that are deemed relevant to each consideration, with minimal Parliamentary scrutiny.

### 4. Continued failure to conduct genuine consultation in the Northern Territory

The Federal Government claims to have conducted "full public consultation" with community members in the proposed Cashless Debit Card expansion sites, via "community information sessions". In keeping with Aboriginal and Torres Strait Islander Peoples' right to self determination, we urge the Committee to listen to the views of Aboriginal and Torres Strait Islander organisations, communities and individuals in the Northern Territory as to the adequacy of that consultation.

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<sup>9</sup> See new paragraph 124PHB(9A), inserted by item 39 of the Bill. This would apply retrospectively, meaning exit approvals made prior to the passage of the Bill could be revoked.

<sup>10</sup> See item 32 of the Bill, amending s 124PHA of the Act. The Secretary must then revoke the exemption if the Secretary is no longer satisfied that participating in the program would be a risk to a person's wellbeing. This also applies retrospectively, meaning exemptions made prior to the passage of the Bill could be revoked.

<sup>11</sup> See item 37 of the Bill, amending s 124PHB of the Act.

We note that community consultation in the Northern Territory has been on hold since March 2020 due to the COVID-19 pandemic, so it could be assumed that the most significant change from the previous Bill – that the Cashless Debit Card will now be permanent – has not been the subject of any consultation. Providing information after decisions have been made and legislation has been passed is not consultation.

It is telling that the Regulation Impact Statement which outlines the consultation process to date, does not include any quantitative assessment of feedback from communities and does not address whether attendees at consultation sessions support compulsory incoming quarantining at all. As the North Australian Aboriginal Justice Agency (**NAAJA**) stated in its submission to the previous inquiry, “...what is most important is that any major change that is going to have a significant impact on Indigenous communities in the NT, is driven by the community.”<sup>12</sup> It cannot be said that the consultation process to date meets this standard.

### **Recommendations**

The Bill and the assumptions underlying compulsory income quarantining are fundamentally flawed and harmful. In the Northern Territory, compulsory income management operates to punish people who have no choice but to turn to the social safety net because of the lack of paid jobs in their communities. The Federal Government now seeks to invest an undisclosed amount of funds to further entrench this failed policy, while refusing to genuinely consult with people who will be impacted and failing to take any action to create real opportunities for paid work in remote communities.

The Committee should recommend that **the Bill not be passed**. The Federal Government should instead **work in genuine partnership with Aboriginal and Torres Strait Islander organisations and communities in the Northern Territory** to manage a transition away from blanket compulsory income quarantining to voluntary and community-driven models consistent with the UN *Declaration on the Rights of Indigenous Peoples*.

Please contact us if we can assist the Committee further in this inquiry.

Sincerely,

**Josephine Langbien**

Senior Lawyer

Human Rights Law Centre

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<sup>12</sup> NAAJA submission to the Committee Inquiry into the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 (21 October 2019), p 54.