

Submission to the Senate Community
Affairs Legislation Committee on the
inquiry into the *Social Security
(Administration) Amendment
(Continuation of Cashless Welfare) Bill
2020*

The Accountable Income Management
Network, October 2020

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About the Accountable Income Management Network

The Accountable Income Management Network (AIMN) is a nation-wide group of community members; representatives of national, state and local non-government organisations and community bodies; academics; social researchers and public policy experts. Our members have a strong commitment to social justice and human rights and are concerned about the provision of equitable and appropriate social security support to economically marginalised Australians. The AIMN is particularly concerned with issues raised by compulsory income management through such programs and trials as the BasicsCard and the Cashless Debit Card.

Introduction

The AIMN welcomes the opportunity to respond to the Senate Community Affairs Legislation Committee's inquiry into the *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020* (hereafter referred to as 'the Bill').

This Bill seeks to make multiple amendments to the *Social Security (Administration) Act 1999* in order to expand the Cashless Debit Card (CDC) across the Northern Territory (NT) and the Cape York region, replacing current Income Management programs operating in these areas. Concerningly, despite ample evidence of the failure of the CDC trials to achieve their stated goals, the Bill also seeks to convert the trials into a permanent program across all sites.

Our submission addresses the following key concerns: a) the failure of the CDC trials to achieve their stated aims; b) the disproportionate targeting of Indigenous peoples for welfare quarantining programs; c) the CDC trials' disproportionate and unreasonable limitations on participants' human rights, and; d) the unprecedented level of control over CDC participants afforded to the Minister and Secretary by the present Bill.

The AIMN recommends that the Committee strongly oppose both the current Bill and the application of compulsory income management in Australia more broadly on the grounds that:

1. Compulsory income management does not achieve the results claimed, despite over twelve years of Income Management and nearly five years of CDC trials.
2. The distress, shame and hardship it causes to people (disproportionately Indigenous peoples across all sites) is based on a false assumption that stripping people of autonomy and dignity will solve serious health and social issues.
3. The application of compulsory income management is in violation of both human and consumer rights.
4. The present Bill is being pushed through in the clear absence of adequate consultation or partnership with remote-living Aboriginal and Torres Strait Islander peoples who will be most affected.

5. The present Bill seeks to provide both the Minister and Secretary with a concerning level of control over CDC participants, including giving the latter the power to put people back onto the CDC even if they have already fulfilled the exit criteria.

Overview of the Bill

As described in the Explanatory Memorandum, this Bill seeks to turn the CDC into an ongoing program, expand the CDC across the Northern Territory and Cape York areas, alter and expand the powers of the Minister and Secretary with respect to CDC participants' engagement with the scheme, and restrict the evaluation process.

Neither the Explanatory Memorandum nor the Federal Budget 2020-21 state the costs that will be incurred to run the CDC as an ongoing program. However, the Explanatory Memorandum does note that the financial impact of the Bill is calculated at \$17.5 million for 'support services to assist the transition in the NT and Cape York area'.¹

The AIMN notes that the total cost for the implementation of the CDC to the end of the 2019-20 financial year was \$79.75 million (inclusive of all costs across all sites, including departmental and evaluation costs). The total evaluation cost to the end of the 2019-20 financial year was \$4.83 million.²

Compulsory Income Management in Australia

Compulsory income management programs have been operating in Australia in various forms since the advent of the Northern Territory Emergency Response in 2007. Currently, the two main forms of compulsory income management in Australia are Income Management (comprised of a range of participation streams) and the Cashless Debit Card trials. Both forms involve the use of welfare quarantining, where participants' social security income is partially restricted from cash-access. Both forms operate on the premise that socially undesirable behaviour – defined as expenditure of social security payments on alcohol, drugs and gambling products, as well as pornography in the Northern Territory – can be altered through this quarantining.

While there are significant differences between Income Management and the CDC, it is important to recognise that both regimes heavily rely on attributing individual responsibility

¹ Explanatory Memorandum for the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020, p. 1. This can be compared to the \$17.8 million allocated for the same purpose in the 2019 Bill – see Explanatory Memorandum for the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019, p. 1.

² Figures obtained via Freedom of Information request from the Department of Social Services.

for social harms, placing the blame on persons who may or may not be struggling with financial mismanagement or substance use rather than engaging in a concerted investment in community-requested social support services. For a recent and comprehensive comparison of Income Management and the CDC, including an assessment of evaluation findings highlighting the failures of and harms caused by welfare quarantining, we refer the Committee to the Australian Council of Social Services' recent briefing note.³ We also refer the Committee to our Attachments 1, 2, 3 and 5 for further background information on issues with compulsory income management programs.

As of 25 September 2020, approximately 27,973 persons were subject to Income Management programs across Australia, with around 25,444 of these participants residing in the Northern Territory.⁴ We note with concern that the Department of Social Services has chosen to cease publication of the percentage of Indigenous people subject to Income Management. However, as of November 2018, the total proportion of Indigenous people subject to Income Management at this time was approximately 78 per cent, with Indigenous people making up 83 per cent of those subject to Income Management in the Northern Territory.⁵

As of 25 September 2020, 128 persons were subject to Cape York Income Management,⁶ a program which explicitly targets Indigenous peoples via the Family Responsibilities Commission. Cape York Income Management applies specifically to the Cape York communities of Aurukun, Coen, Hope Vale and Mossman Gorge, and is administered by the Department of Human Services with the guidance of the Family Responsibilities Commission.

The CDC has been operating as a trial since 2016, first implemented in the East Kimberley, (Western Australia) and Ceduna (South Australia) regions. In both of these sites, the majority of trial participants are Indigenous.⁷ Over the past two years, the CDC has been rolled out to the Goldfields region (Western Australia), and to the Bundaberg and Hervey Bay region (Queensland). As of 25 September 2020, approximately 40 per cent of people subject to the CDC trial across all sites identified as Indigenous.⁸ First Peoples are therefore grossly overrepresented under these programs.

³ Australian Council of Social Service, 'Cashless debit cards & income management: a briefing note on the evidence' (Briefing Note, October 2020), <<https://www.acoss.org.au/wp-content/uploads/2020/10/Cashless-debit-cards-1.pdf>>

⁴ Department of Social Services 2018, Income Management Data Summary October 2020.

⁵ Department of Social Services 2018, Income Management Summary 30 November 2018.

⁶ Department of Social Services 2020, Income Management Data Summary October 2020.

⁷ Department of Social Services 2020, Cashless Debit Card Data Summary October 2020.

⁸ Department of Social Services 2020, Cashless Debit Card Data Summary October 2020.

Key Concerns about the Bill

This submission raises a range of concerns in relation to the current Bill, which proposes that the CDC should become a permanent program across all sites, and that it should replace Income Management in the Northern Territory and Cape York.

The AIMN have identified cause for concern with respect to the following points:

1. The failure of the CDC trials to achieve their stated aims and instead cause adverse outcomes for numerous coerced cardholders;
2. The disproportionate targeting of Indigenous peoples for welfare quarantining programs;
3. The CDC trials' limitations on participants' human rights, and;
4. The unprecedented level of control over CDC participants afforded to the Minister and Secretary.

Our submission addresses these points in turn below.

We note that the AIMN has previously provided extensive written analysis of the harms of compulsory income management in Australia with a particular focus on the CDC. We have attached the most relevant of our previous submissions to inquiries on earlier CDC Bills to this submission, including the *Social Security (Administration) Amendment (Income Management to Cashless Welfare Transition) Bill 2019* (Attachment 1) the *Social Security (Administration) Amendment (Income Management and Cashless Welfare) Bill 2019* (Attachment 2) and the *Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018* (Attachment 3). These submissions outline provide important context for our opposition to the proposed changes in the present Bill. We have also attached our submission to the Productivity Commission's Indigenous Evaluation Strategy (Attachment 4), which includes greater detail on concerns related to evidence and evaluation in Indigenous public policy, and our 2018 submission about to the United Nations Special Rapporteur on Extreme poverty and human rights focusing on issues with the CDC (Attachment 5).

1. The CDC trials have failed to achieve their stated aims

While the CDC trials were supposedly rolled out to test whether a reduction in available cash would 'reduce the overall harm caused by welfare fueled [sic] alcohol, gambling and drug misuse',⁹ both government-commissioned and independent research have demonstrated their failure to achieve these goals. In light of this, the government's plan to expand the CDC across the Northern Territory and Cape York, turn it into a permanent program, and restrict independent evaluation that ascertains the views of cardholders is particularly concerning.

⁹ Department of Social Services, 'Cashless Debit Card', *Department of Social Services* (Web Page), <https://www.dss.gov.au/families-and-children/programmes-services/welfare-conditionality/cashless-debit-card-overview>

Desktop review would treat the perspectives of people on the card as though these were not a relevant consideration.

The attempt in the present Bill to characterise the CDC as a ‘budgeting tool’ is both false and offensive. Independent research has shown that the CDC can negatively affect the budgetary capacity of cardholders, and prevent them from being able to pay their bills and provide for their needs in a timely way.¹⁰ Numerous examples of this type are seen in the report *Hidden Costs: An Independent Study into Income Management in Australia*. Such outcomes are the antithesis of what Australia’s social security system should be providing.

Push to turn the trials into a permanent program

One of the most significant concerns raised by the Bill is the push to turn the CDC trials into a permanent program. The new Bill removes the sunset clause included in the previous Bill, meaning that the CDC will become a permanent program rather than a trial requiring legislative approval for any further extension in specified sites. The new Bill expressly deletes the language of CDC ‘trial’ contained within current legislation and replaces it with CDC ‘program’. It is troubling that the CDC appears to have officially achieved ‘ongoing’ status despite its multiple failures, and prior to public release of the final report from the government-commissioned evaluation of the trial across the Ceduna, East Kimberley and Goldfields sites, which was scheduled for release in late 2019. One must question why the government is in such a rush to have the current Bill made into legislation before the release of this final report. Last year, the government used waiting for this final report as an excuse to extend the trials, and yet no longer appear to consider the report relevant.

Expansion across the Northern Territory and Cape York

The present Bill seeks to roll out the CDC through a blanket approach to compulsory income management across the NT and Cape York. This is highly concerning due to the punitive and restrictive nature of the CDC, the lack of appropriate support infrastructure to facilitate such a roll out, the racially discriminatory nature of income management programs in Australia which primarily target First Peoples, and strong opposition to the trials from Indigenous community organisations. The latter two points are discussed in detail in section 2.

The proposed expansion outlined in the Bill involves the removal of the present cap on total number of CDC trial participants, currently set at 15,000 in section 124PF of the *Social Security (Administration) Act 1999*. If passed, this Bill will capture more people than are already subject to Income Management in the Northern Territory under the CDC. Therefore, while the Explanatory Memorandum advises that ‘the Bill does not introduce a new area to welfare

¹⁰ Marston, Greg, Philip Mendes, Shelley Bielefeld, Michelle Peterie, Zoe Staines, and Steven Roche (2020) *Hidden Costs: An Independent Study into Income Management in Australia*. Brisbane: University of Queensland.

quarantining arrangements’,¹¹ this does not necessarily equate to the same number of participants being subject to welfare quarantining under the proposed CDC trial. Instead, the Bill includes the potential for every person living in the NT receiving Youth Allowance, Newstart Allowance, Parenting Payment or Special Payment (who are not studying full time) to be subject to the CDC, with a default base quarantining rate of 50 per cent of one’s payments.

We note that the Bill will move people who are currently child protection or vulnerable income management participants onto the CDC, with 70 and 50 per cent of payments restricted by default, respectively. The Bill also collapses the ‘long term welfare recipient’ and ‘disengaged youth’ Income Management categories and removes the limited safeguards that the current Income Management laws offer. Rather than a person’s length of time on social security being a key trigger, it will simply be a question of which category of social security payment they are receiving.

The Bill also moves persons currently subject to Cape York Income Management onto the Cashless Debit Card, though this will still be under the management of the Family Responsibilities Commission. We are concerned that the age pension appears to be included in payments subject to the trial under this legislation in Cape York.

This proposed expansion of the CDC across the NT is of particular concern due to the lack of support services available to assist Indigenous communities to navigate the circuitous nature of the scheme or to raise complaints. We also note that government has failed to invest in Aboriginal community-controlled organisations, including legal support services, in the latest federal budget, allocating only \$46.5 million over four years to support capacity-building.¹² This is insufficient to support the essential work that these organisations already do, let alone support the roll-out of a massive new income management scheme which suffers from frequent technological failures. Further, it is unclear whether Indue Ltd plans to work in partnership with Aboriginal community-controlled organisations, despite these organisations being on the front lines of service delivery across the NT and in the absence of proper government consultation with respect to concerns about the CDC trials.

¹¹ Explanatory Memorandum for the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020, p. 31.

¹² National Aboriginal and Torres Strait Islander Legal Services, ‘MEDIA RELEASE: COVID-19 recovery impossible when the 2020-21 Federal Budget further entrenches Aboriginal and Torres Strait Islander people into poverty and the justice system’ (Media Release, 6 October 2020), <<http://www.natsils.org.au/portals/natsils/Media%20Releases/MEDIA%20RELEASE%202020-21%20Federal%20Budget.pdf>>

Restriction of independent evaluation provisions

The AIMN also notes with serious concern the Bill's function to repeal subsections 124PS(2) and (3) of the *Social Security (Administration) Act 1999*, which refer to the evaluation of trial review. While retaining the requirement for any review of CDC trial arrangements to be evaluated, this amendment removes the requirement for such an evaluation to be completed within six months of the Minister receiving the review report and for it to be conducted by an independent evaluation expert with significant expertise in the social and economic aspects of welfare policy. Significantly, it also removes the requirement for the independent expert to consult trial participants, and to make recommendations about the effectiveness of CDC arrangements and their broader applicability.

The suggestion that ongoing evaluation triggered under section 124PS is 'circular' and therefore problematic is erroneous. The Explanatory Memorandum states that amendments in the Bill support 'a desktop evaluation to lessen the ethical implications associated with avoidable repeat contact with vulnerable individuals.'¹³ This statement is perverse, considering that the government rarely contacts 'vulnerable' individuals to consult them about such punitive policy interventions in the first place, and then traumatises these groups through the implementation, flawed evaluation, and indefinite legislative extension of income management programs.¹⁴ Framing the removal of face-to-face evaluation mechanisms carried out by independent experts as a mercy to trial participants is highly inappropriate.

Nonetheless, this approach to the integrity of program evaluation is consistent with the government's choice to continue to refer to ORIMA Research's evaluation of the first two trial sites, despite this evaluation process being roundly critiqued by academia, the community sector, and the Australian National Audit Office. The Explanatory Memorandum also refers to the dubious baseline data collection in the Goldfields, stating that 'a majority of respondents were of the opinion that early impacts were starting to be observed'.¹⁵ The collection of opinions after the commencement of the trial in the Goldfields does not constitute baseline data collection, so it is unsurprising that the baseline report has also been the subject of extensive critique.

Despite multiple evaluation reports and testimonies from participants that reveal the impact of compulsory income management as inconclusive at best and significantly harmful at worst,

¹³ Explanatory Memorandum for the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020, p. 7.

¹⁴ These points are made at length in Shelley Bielefeld, 'Cashless Welfare Transfers for "Vulnerable" Welfare Recipients – Law, Ethics and Vulnerability' (2018) 26(1) *Feminist Legal Studies* 1-23. <<https://doi.org/10.1007/s10691-018-9363-6>>.

¹⁵ Explanatory Memorandum for the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020, p. 29.

the government is attempting to both expand the CDC and turn it into a permanent program. This is despite strong recommendations provided by committees including the Parliamentary Joint Committee on Human Rights that no further expansion or extension of these trials be pursued prior to rigorous evaluation. This includes an implicit but significant requirement that government adhere to the recommendations raised in its own commissioned evaluation reports, an issue we have addressed in greater detail in our submission to the Productivity Commission's Indigenous Evaluation Strategy, which we have included as an attachment (Attachment 4) to this submission.

2. Welfare quarantining programs disproportionately target Indigenous peoples

The Explanatory Memorandum states that the CDC trial 'does not affect people according to race, religion, ethnicity or any other factor'¹⁶ and that 'the rights to equality and non-discrimination are not directly limited by the CDC.'¹⁷ However, as identified above, approximately 40 per cent of current CDC trial participants across all sites identify as Indigenous - well over ten times the percentage of Indigenous peoples in the Australian population. Even more concerning is the 78 per cent of Indigenous participants affected by Income Management programs across Australia. To contravene Australia's racial discrimination laws, it is not necessary that the CDC apply expressly on the basis of race. It is also unlawful if the CDC has the *operation or effect* that persons of a particular race enjoy a lesser right to social security.

Considering the targeting of Indigenous peoples by both Income Management and the CDC trials, it is clearly disingenuous to claim that compulsory income management in all forms do not affect people according to race. In addition to this, the Explanatory Memorandum fails to consider the fact that replacing one racialised welfare quarantining program with another still constitutes a disproportionate and racially targeted intervention. John Paterson, spokesperson of Aboriginal Peak Organisations Northern Territory, has described the Bill as follows:

The bill is a new Intervention. It will perpetuate the torment of our powerlessness. It denies our basic freedom to control our lives. It locks the many of us who live below the poverty line out of the cash economy and undermines our small businesses that rely on cash payments.¹⁸

¹⁶ Explanatory Memorandum for the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020, p. 30.

¹⁷ Explanatory Memorandum for the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020, p. 34.

¹⁸ Kerin, L, "A new Intervention': Indigenous groups slam plans to expand cashless debit card scheme', *NITV* (online, 9 October 2020), <<https://www.sbs.com.au/nitv/article/2020/10/09/new-intervention-indigenous-groups-slam-plans-expand-cashless-debit-card-scheme>>

The Productivity Commission has previously critiqued suggestions about the positive potential of the Northern Territory Emergency Response due to its top-down imposition, ignoring the importance of sustained consultation and co-design of social policy interventions with Indigenous communities.¹⁹ The government's continued push to expand and extend compulsory income management programs suggests a profound lack of will to engage with the importance of involving Indigenous communities in the development of any policies or programs that will affect them, as per the right of Indigenous peoples to self-determination contained in the *United Nations Declaration on the Rights of Indigenous Peoples*.

Even Indigenous community leaders who previously expressed support for the CDC trials have retracted this after having the opportunity to see the impact of the card firsthand. For example, Lawford Benning, executive chairman of MG Corporation in the East Kimberley (where the CDC has been operating since 2016) recently stated that the trials have not delivered positive social outcomes, the government's promise of wrap-around support services never materialised, and local leaders were not consulted about the proposal to turn the trials into a permanent program.²⁰ In Mr Benning's own words, 'I've learned now and I believe it is a punitive model that is enforced, I believe, on vulnerable people.'²¹

The AIMN is concerned with the consistent disproportionate targeting of Indigenous peoples with punitive social security legislation and administration amendments, which include compulsory income management programs, the Community Development Programme (and its past iterations) and various types of mutual obligation requirements.²² We note the Australian government's long colonial legacy of implementing restrictive and disempowering welfare regimes in Indigenous communities, and consider compulsory income management to be a contemporary manifestation of this trend.

¹⁹ Steering Committee for the Review of Government Service Provision 2009, *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission, Canberra, p. 11.23.

²⁰ Moussalli, I & Nadge, R, 'Australian Government opts to enshrine cashless debit card, or CDC, system for welfare recipients', *ABC News* (online, 11 October 2020), < <https://www.abc.net.au/news/2020-10-11/centrelink-cashless-welfare-card-how-to-christmas-shopping/12751038>>

²¹ Moussalli, I & Nadge, R, 'Australian Government opts to enshrine cashless debit card, or CDC, system for welfare recipients', *ABC News* (online, 11 October 2020), < <https://www.abc.net.au/news/2020-10-11/centrelink-cashless-welfare-card-how-to-christmas-shopping/12751038>>

²² Klein, E 2016, 'Neoliberal subjectivities and the behavioural focus on income management', *Australian Journal of Social Issues*, vol. 51, no. 4, pp. 503-523.

3. The CDC places unreasonable and disproportionate limits on participants' human rights

The Explanatory Memorandum identifies that the Bill engages and limits the right to social security, the right to a private life, and the right to equality and non-discrimination.²³ We have previously addressed these restrictions at length in our 2018 submission to the United Nations Special Rapporteur on Extreme poverty and human rights (Attachment 5). We outline our concerns about equality and non-discrimination in the section 'Disproportionate impact of welfare quarantining on Indigenous peoples', so our focus here will be on the right to social security and some general concerns with the CDC's infringement on human rights.

The right to social security

The Explanatory Memorandum suggests that the CDC trial constitutes 'a more streamlined approach to welfare quarantining, the use of improved technology, and fewer restrictions on purchases that allow participants to shop from a wide variety of sellers, including online retailers, thereby increasing a participant's ability to spend their welfare payments to meet their essential needs.'²⁴ However, in practice and despite technological improvements, the CDC still presents issues for participants through the severely restricted ability to make cash purchases of essentials including fresh food and second-hand goods.²⁵

The Explanatory Memorandum also suggests that current arrangements for providing customer service to CDC trial participants are user-friendly and workable. In practice, this is demonstrably false, with participants reporting issues including being bounced between the Department of Social Services, Indue Ltd customer service, and local partner service providers with no resolution.²⁶ It is reasonable to expect that this inefficiency will be complicated and compounded by factors including remoteness and language and literacy barriers for participants in the Northern Territory. No amount of technological or customer service improvements will resolve the limitation on the right to social security, as the program itself is designed to restrict spending and therefore removes the flexibility needed by people living below the poverty line to access the basics that they need to survive.

General concerns with the CDC's infringement on human rights

The Parliamentary Joint Committee on Human Rights (PJCHR) has previously raised concerns about the extent to which the measures included in compulsory income management

²³ Explanatory Memorandum for the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020, p. 28.

²⁴ Explanatory Memorandum for the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020, p. 31.

²⁵ Australian Unemployed Workers' Union (SA Division) 2019, *Report into South Australian Regional Road Trip: August 2018*.

²⁶ Information obtained through AIMN and QCOSS consultations with CDC trial participants in the Hinkler electorate.

programs are rationally connected to and proportionate to achieving the stated objectives of the legislation.²⁷ In their first report of 2020, the PJCHR undertook an analysis of the *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019* (hereafter referred to as ‘the previous Bill’) which precedes the present Bill and includes many similar measures.²⁸ In this section, we draw on the PJCHR’s analysis of measures in the previous Bill that are retained in the present Bill to raise concerns about the proposed expansion and extension of the CDC, as well as the PJCHR’s analysis of the CDC trials more broadly.

The PJCHR has raised concerns about government’s suggestion that the extension of the CDC trials were a proportionate limitation on human rights, noting the importance of developing and maintaining ‘adequate and effective safeguards, to ensure that limitations on human rights are the least rights restrictive way of achieving the legitimate objective of the measure’.²⁹ With particular reference to the compulsory nature of the trials, the Committee advised that:

The application of the cashless debit card scheme on a voluntary basis, or with a clearly defined process for individuals to seek exemption from the trial, would appear to be a less rights restrictive way to achieve the trial’s objectives.³⁰

Ultimately, in relation to the extension of the trial across the Northern Territory and Cape York, the Committee determined both that ‘while the stated objectives of the proposed measures appear to constitute legitimate objectives... it is not clear that the measures are rationally connected with those objectives’.³¹

It is worth quoting the Committee’s point 2.93 on the previous Bill at length here:

While the expansion of the cashless debit card trial appears to seek to achieve a number of legitimate objectives, **it is unclear whether the proposed cashless welfare scheme expansion is rationally connected with (that is, effective to achieve) those objectives, noting the mixed results outlined in the trial evaluations completed to date.** Additionally, it does not appear that the proposed measures are proportionate to the objectives sought to be achieved. **In particular, there appears to be extremely limited capacity for flexibility to treat different cases differently, as the scheme applies to all persons on particular welfare payments in trial locations, and not only those deemed to be at risk.** A human rights compliant approach requires that any

²⁷ Parliamentary Joint Committee on Human Rights, *Report 11 of 2017* (17 October 2017), pp. 126-137.

²⁸ Parliamentary Joint Committee on Human Rights, *Report 1 of 2020* (5 February 2020), pp. 132-142.

²⁹ Parliamentary Joint Committee on Human Rights, *Report 8 of 2018* (21 August 2018), p. 44.

³⁰ Parliamentary Joint Committee on Human Rights, *Report 8 of 2018* (21 August 2018), p. 45.

³¹ Parliamentary Joint Committee on Human Rights, *Report 1 of 2020*, (5 February 2020, p. 137.

such measures must be effective, subject to monitoring and review and genuinely tailored to the needs and wishes of the local community. **The current approach, with its apparent lack of genuine consultation, amendments to the evaluation process and lack of legislative requirement to respect community wishes before amending the amount of restrictable income, falls short of this standard.** As such, it has not been clearly demonstrated that the extension of the cashless debit card trial is a justifiable limit on the rights to social security and privacy or, to the extent that the trial has a disproportionate impact on Indigenous Australians, that it is a reasonable and proportionate measure and therefore not discriminatory. (emphasis added)

Despite the forceful comments provided above, the AIMN notes our additional concern about the Parliamentary Joint Committee on Human Rights' complicity in the continued expansion of the CDC. This was made particularly clear in the divergence between the Committee's disparaging assessment of the trials and ministerial responses in Report 1 of 2020, and their statement that the CDC nonetheless represents a justifiable limitation on human rights. Though the Committee went to the extent of applying for legal advice regarding international human rights requirements, they then chose not to logically apply this in their final view on the Bill. While this is not a matter for consideration by the present Committee, these inconsistencies must be subject to Parliamentary scrutiny, as they appear to demonstrate an ideological alignment with government while clearly acknowledging the questionable legal and ethical basis of the trials.

4. The CDC trials afford the Minister and Secretary an unprecedented level of control over participants

Amendments to exemption provisions

The replacement of Income Management with the CDC will mean that participants in the Northern Territory and Cape York will now have to apply for exemptions through a different process. Currently, the law allows the Secretary of the Department of Human Services to exempt a person from the CDC trial if being a participant is determined to be a serious threat to their psychological, physical or emotional health. However, the Secretary does not have to make inquiries about a person's health before giving a person notice that they are being placed on the Cashless Debit Card. The Parliamentary Joint Committee on Human Rights has previously raised rights-based concerns about this process.³²

The criteria for assessment for exemption from the CDC trial are:

- the interests of any children the person is responsible for;
- whether the person has been convicted of a criminal offence, or was serving a sentence for an offence, any time in the previous 12 months;

³² Parliamentary Joint Committee on Human Rights, *Report 8 of 2018* (21 August 2018), p. 44.

- risks of homelessness;
- the health and safety of the person and the community;
- the responsibilities and circumstances of the person;
- the person’s engagement with the community, including employment and efforts to obtain work; and
- any other requirements that are set by the Minister via legislative instrument (the Minister must consult with communities and trial participants and have regard to their feedback before setting additional requirements).

In response to a lack of clarity about how these criteria are being considered in practice, the Bill provides that the Minister will be empowered to make a legislative instrument determining decision-making principles for exit criteria. While the Explanatory Memorandum for the Bill suggests that this will ‘provide participants with greater clarity’³³ about application determinations, this introduces further Ministerial discretion regarding the consolidation of decision-making principles under which applications are assessed. It is as yet unclear how this will affect trial participants who experience multiple intersecting forms of marginalisation.

Alongside wellbeing exemptions, there is also a process for participants to exit the trials based on ‘responsible’ financial management. At present, the process of applying to the Secretary to exit the CDC trial appears to leave the Secretary with a significant amount of discretion when it comes to assessing whether a person can ‘demonstrate reasonable or responsible management of their affairs (including their financial affairs).’³⁴ Our concerns about this measure are outlined below.

Empowering the Secretary to revoke wellbeing exemption and exit determinations

It is highly concerning that the present Bill seeks to remove the possibility of a permanent exit from the CDC. Under current law, after a person has successfully exited the program, if a health or community worker believes that a person should be on the card for ‘medical or safety reasons’, they are empowered to request the Secretary to reconsider the exit approval.³⁵ This Bill will now enable the Secretary to revoke the approval at any time if they are no longer satisfied that a person can ‘reasonably and responsibly’ manage their own affairs.³⁶ This will enable the Secretary to revoke an exit determination *without* waiting for a referral from a health or community worker. This amendment would provide the Secretary

³³ Explanatory Memorandum for the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020, p. 11.

³⁴ Explanatory Memorandum for the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020, p. 11.

³⁵ Explanatory Memorandum for the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020, p. 12.

³⁶ Explanatory Memorandum for the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020, p. 11.

with an unprecedented level of control over CDC participants, and would make all previously approved exit determinations available for review. This is an unreasonable intrusion into people's personal lives and creates continuous uncertainty, particularly as they are placed on the card through a blanket approach rather than through any targeted identification a person's need for support.

The Bill also creates a new ability for State or Territory government employees to ask the Secretary to review wellbeing exemptions on medical or safety grounds. There is no requirement that these government employees have any relevant qualifications – this power is not limited to health or community workers as for the exit procedures – or any evidence to support their referral to the Secretary. There is also no requirement for the CDC participant to be given any notice or opportunity to respond to the new information before the Secretary makes a decision about whether to force them back onto the card.

The process for changing the proportion of restricted payments

The Bill allows the Minister to change the quarantined proportion of CDC trial participants' payments by notifiable instrument, that is, without Parliamentary scrutiny. The Explanatory Memorandum explains that this provision allows the Minister to reflect requests from communities, State and Territory authorities and child protection officers. It also states that the Minister 'will only exercise this power following a request from a community', providing for different approaches communities might utilise to submit a request.³⁷ However, it appears that the Minister's choice to exercise this power is highly discretionary, considering that there is no requirement for requests to directly reflect the concerns of CDC participants in the relevant community.

This provision was also included in the previous Bill, which sought to expand the CDC as a trial across the NT and Cape York. The Senate Standing Committee for the Scrutiny of Bills noted its concern regarding this same provision in the previous Bill as follows:

...the committee remains concerned that proposed subsections 124PJ(2A) and (2B) **would confer on the minister a broad power to determine, in relation to classes of trial participants, the portion of restrictable payments that are restricted, with little or no guidance on the face of the bill as to how this power is to be exercised.** It is also unclear how the secretary's power under subsection 124PJ(3) would be effective to ensure that the minister's powers are exercised appropriately, noting that the minister's powers apply to classes of participants while the secretary's powers apply to individuals.

³⁷ Explanatory Memorandum for the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020, p. 22.

The committee is also concerned that ministerial determinations would be made by notifiable instrument. In this respect, **the committee notes that notifiable instruments are not subject to the tabling, disallowance, and sunseting requirements that apply to legislative instruments under the Legislation Act 2003. Parliamentary scrutiny of the determinations would therefore be limited.**³⁸ (emphasis added)

We endorse the Committee's concerns as raised above.

Issues with information sharing and data sovereignty

The Bill includes broad information sharing powers, providing the Secretary the power to obtain information or documents that they consider may be relevant to the operation of the CDC trial. This means that the Secretary can effectively compel a person to provide a range of information or documents, including information about their personal circumstances as well as information about how the CDC is being used by trial participants.

The Explanatory Memorandum attempts to justify the necessity of conferring this power on the Secretary by stating that it is necessary for the Secretary to be able to obtain information relevant to 'whether a person should not participate in the CDC trial on the basis of their mental, physical or emotion [sic] wellbeing or where they can demonstrate reasonable or responsible management of their affairs (including their financial affairs)'.³⁹ This is highly concerning for multiple reasons. First of all, neither the Bill nor the Explanatory Memorandum clarify what type of information can be shared. Secondly, this reinforces the already problematic and harmful premise under which the CDC operates—that the harms of the trial should only be addressed after a participant has been put under the trial, rather than preemptively identified in order to make sure that certain persons are not put on the trial at all.

This provision was also included in the previous Bill - the Senate Standing Committee for the Scrutiny of Bills raised concerns about information sharing in that Bill. The following comments from the Senate Standing Committee for the Scrutiny of Bills are relevant to the present Bill insofar as they refer to analogous changes proposed in the previous Bill.

Firstly:

...the committee is concerned that allowing the sharing of information about trial participants, and extending the secretary's power to require information and documents, may trespass unduly on individuals' privacy. In this respect, the

³⁸ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 6 of 2019* (18 September 2019), p. 19.

³⁹ Explanatory Memorandum for the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020, p. 24.

committee notes that neither the explanatory memorandum nor the statement of compatibility provide detail as to the type of information that may be shared under proposed sections 124POB, 124POC and 124POD, or the type of information or documents that may be required under paragraph 192(db).⁴⁰ (emphasis added)

In addition to this, the Committee noted that:

...the explanatory materials do not identify any relevant safeguards in relation to the collection of information under paragraph 192(db). In relation to proposed sections 124POB, 124POC and 124POD, the statement of compatibility states that there are 'effective community safeguards' in place. However, it does not provide any further detail (for example, expressly identifying the safeguards or explaining how they will operate in practice). The statement of compatibility states that 'there are still safeguards in place to protect individual privacy', and that some information collected, used and disclosed for the purposes of the CDC will be protected under the Privacy Act 1988. **However, it is unclear whether, and if so, how, these safeguards would apply to the disclosure of information under proposed sections 124POB, 124POC and 124POD, or to the collection of information under paragraph 192(db).**⁴¹ (emphasis added, footnotes omitted)

While this power for information sharing also currently exists within the *Social Security (Administration) Act 1999* in relation to Income Management, there is still a question as to whether such a broad power is appropriate under the CDC, considering that the Indue Card contains more sophisticated technology and may capture a greater field of information, which might then be used against participants (such as when they attempt to exit the trial).

Further, while the Explanatory Memorandum contains an assertion that the Department is not able to see what products are being purchased, but only the merchants that transactions are conducted at, this still raises concerns about individuals right to privacy. However, this claim does not align with the government's own statements about the operation of the trials, where in the second reading of the present Bill, it was stated that:

Card participants were spending more of their welfare payments on essential items for themselves and their families, such as food, bills, clothes, household goods and fuel. This is confirmed by our card usage data that shows that spending at

⁴⁰ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 6 of 2019* (18 September 2019), p. 20.

⁴¹ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 6 of 2019* (18 September 2019), pp. 20-21.

supermarkets is up almost 35 per cent and spending on household goods is up over 160 per cent.⁴²

Based on government's claims about its inability to monitor transactions at the product level in the Explanatory Memorandum, it is either the case that the statement above is a rough estimate of consumer choices based on merchants where participants used the CDC, or that participants' transactions are being tracked more closely than government admits. In the case of the former, it is unclear how government has made these estimates and whether they are actually representative of CDC trial participants' spending. If the latter is correct, this is a serious imposition on consumer privacy and must be flagged by the Committee for investigation. It also is unclear what other kinds of information may be collected and used by the Department, such as failed attempts to use the card.

We also note that in November 2017, the Minderoo Foundation presented a report to the Government suggesting various technological upgrades to the CDC, including product-level blocking of restricted items.⁴³ Therefore, increasing the granularity of surveillance and control of CDC trial participants' spending has already been considered by Government in conjunction with private sector stakeholders, irrespective of what harms and privacy violations this inflicts on people forced on the CDC.

The removal of a mechanism for internal review by the Administrative Appeals Tribunal This Bill removes the ability of the Secretary and the Administrative Appeals Tribunal (AAT) to review certain decisions relating to trial participation. These include the notice that a person is required to receive from the Secretary as one of the criteria for being included in the trial and the revocation of such a notice and apply specifically to trial participants in the Northern Territory. In effect, this means that an individual cannot seek a review from the Secretary or the AAT at the time that they are placed on the scheme (for example, because they think that they have been placed on it in error) and will instead need to apply for an exemption or exit to the scheme. This is highly concerning and appears to be in direct contradiction to procedural fairness afforded to other income support recipients not subject to welfare quarantining. We note that the application of this measure in the Northern Territory will disproportionately target Indigenous peoples, who are well documented to have more trouble accessing exemptions than non-Indigenous participants.⁴⁴

⁴² Commonwealth, *Parliamentary Debates*, House of Representatives, 8 October 2020 (Trevor Evans, Assistant Minister for Waste Reduction and Environmental Management). <

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansardr%2Fa28c39ce-4e49-4b78-914d-ccca686a471e%2F0018;query=Id%3A%22chamber%2Fhansardr%2Fa28c39ce-4e49-4b78-914d-ccca686a471e%2F0017%22>>

⁴³ Minderoo Foundation (2017) *Cashless Debit Card Technology Report*.

⁴⁴ Shelley Bielefeld, 'Income Management and Indigenous Women – A New Chapter of Patriarchal Colonial Governance?' (2016) *University of New South Wales Law Journal* 39(2): 843, pp. 865-866.

Conclusion and Recommendation

The AIMN reiterates the concerns stated above to assert that the Cashless Debit Card regime should be immediately abandoned in favour of comprehensive and strengths-based social services for communities that need them. There are no generalisable benefits attributable to the CDC, and a further roll-out will subject thousands more Australians to these negative and humiliating effects.

The AIMN recommends that the Committee strongly oppose both the current Bill and the application of compulsory income management in Australia.