

25 October 2019

Our ref: KS- RFNAC

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

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

Dear Committee Secretary

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

Thank you for the opportunity to provide comments on the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 (**the Bill**). The Queensland Law Society (**QLS**) appreciates the opportunity to comments on the bill and thanks the Committee for the extension of time provided.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled with the assistance of members of the QLS Reconciliation and First Nations Advancement Committee.

Purpose of the Bill

The purpose of the Bill is outlined in the Explanatory Memorandum as follows:

- *extends the end date for existing CDC trial areas from 30 June 2020 to 30 June 2021 and establishes an end date for the CDC trial in the Cape York area of 31 December 2021;*
- *removes the cap on the number of CDC trial participants;*
- *removes the exclusion to allow people in the Bundaberg and Hervey Bay trial area to be able to voluntarily participate in the CDC trial;*
- *establishes the Northern Territory (NT) and Cape York area as CDC trial areas and transitions IM participants in these sites onto the CDC trial in 2020;*
- *enables the Secretary to advise a community body when a person has exited the CDC trial; and*
- *improves the workability of the evaluation process.*

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QLS notes that the Law Council of Australia (LCA) provided a submission to the Senate Community Affairs Legislation Committee on the Social Services Legislation (Cashless Debit Card) Bill 2017 which raised concerns at that time that:

- the expansion of the cashless debit card program was insufficiently evidence-based;
- the human rights impacts of the cashless debit card had not been properly assessed and taken into account; and
- that the Bill lacked adequate safeguards, particularly community consultation and consent¹.

QLS holds similar concerns with the current bill. Specifically, QLS raises the following issues:

1. The expansion of the Cashless Debit Card (CDC) into the Northern Territory (NT) and Cape York area is premature and is not grounded in firm evidence as to its anticipated positive outcomes. Where the Bill has the effect of curtailing human rights, in particular the right to social security, the right to a private life and the right to equality and non-discrimination, clear evidence-based and proportional responses are essential.
2. There appears to be no regard for the disproportionate representation of First Nations participants in the income management (Basics Card) program and CDC trials. We agree with submissions made by the Australian Human Rights Commission (AHRC) that although the measures do not specifically target First Nations peoples, their practical effect will continue to disproportionately impact First Nations peoples².
3. The extension of the CDC across all four trial sites until 30 June 2021 also overlooks the long term impacts of further entrenching poverty in communities and the impacts of stigma on its participants.

Each of these matters are explored further below.

Impact on human rights without adequate evidence

Any limitation on human rights must be carefully scrutinised and based on clear evidence-based policy development.

The Explanatory Memorandum relies on research conducted in 2017 and 'A baseline data collection in the Goldfields, Western Australia, undertaken by the University of Adelaide', which was released on 21 February 2019 (**the baseline data collection report**) to justify its extension and expansion to current income management participants. We note in particular that findings from the second impact evaluation are expected to be published later this year.

The baseline data collection report of the CDC in the Goldfields Region states that the findings from this research arises from 'qualitative research' and is 'therefore subject to limitation in their generalisability to broader population groups'³. While the Explanatory Memorandum outlines some of the initial observations as to what may be working, it does not outline areas which may not be working, which were reported to include:

- 'a lack of consultation and insufficient information being provided to participants and some stakeholders prior to the CDC roll-out';⁴

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- technological constraints;⁵
- experiences of stigma and direct discrimination and concerns about ‘the targeting of the CDC policy’ and surrounding its suitability for certain groups of people such as people with a disability and their carers, and people with mental health issues.⁶

QLS strongly urges that the government await collation of a strong evidence base before extending the end date for the CDC trial and increasing its participant numbers.

Community consultation

While the initial baseline data collection report suggests that consultation had occurred for some communities, QLS remains concerned about a lack of consultation, particularly for the approximately 23,000 current recipients of income management in the NT and Cape York areas.

In communities where First Nations peoples represent a large proportion of current and proposed CDC participants, culturally appropriate consultation and First Nations-led programs are essential. If the government is legitimately committed to its objectives of ‘promoting positive outcomes for communities’⁷, prior community consultation and consent must be obtained. Further, ‘Free, Prior and Informed Consent’ is a specific right enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**) (article 19), which the Australian government adopted in 2009.

During the second reading of the Bill on 11 September 2019, Minister Robert, Minister for the National Disability Scheme and Minister for Government Services said that:

The government also recognises that this transition will affect a large number of Indigenous Australians across both the Northern Territory and the Cape York region. We will work with these Indigenous communities and individuals to ensure that resources will be available in a range of local Indigenous languages and there will be access to interpreters as required.

However, post-implementation consultation is simply inadequate and infringes on the right of First Nations peoples to self-determination and potentially on other rights in the UNDRIP ‘(in particular, articles 4 (right to autonomy and self-government), 18 (right to participation in decision-making), 19 (State duty to cooperate in good faith with the indigenous peoples) and 23 (right to determine and develop priorities and strategies for exercising right to development)’⁸.

The positive outcomes of genuine community-driven programs has been highlighted in other submissions to this inquiry. We also reiterate the concerns highlighted in an inquiry earlier this year by NATSILS and the Human Rights Law Centre, that rolling out broad income quarantining measures also diverts ‘much-needed resources from other program areas that could achieve genuine community-driven improvements in social outcomes’⁹.

Opting in and exit options

While QLS is pleased to see that the government has implemented processes for participants to exit the CDC trial, we agree with concerns raised by the AHRC that the new process appears to be onerous and puts participants ‘with English as a second, third or fourth

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language and/or those in remote locations with limited access to the Internet and/or locally-based service at a distinct disadvantage¹⁰. The assessment criteria also includes such matters as 'any convictions or prison sentences in the last 12 months, risks of homelessness and your engagement in the community, including employment or efforts to find work'. These kinds of issues by their very nature are incredibly complex and nuanced. Such criteria is also plainly inconsistent with the government's position that CDC is 'not a punitive measure'¹¹ and risks being discriminatory.

Further, while people in Hervey Bay and Bundaberg will have the ability to voluntarily opt into the program, this is not applied to all trial areas. We agree with AHRC submissions that the 'disproportionate levels of non-voluntary participation in the CDC trials by Aboriginal and Torres Strait Islander persons does not amount to legitimate differential treatment'¹².

Stigma

Finally, QLS is particularly concerned by the reports of discrimination and stigma experienced by existing CDC participants. In its current form, the CDC applies a 'blanket approach' to complex issues and does not take into account the individual circumstances or lived experiences of its participants¹³. Various stakeholders have indicated in their submissions that in a number of ways the CDC has actually made people's lives worse¹⁴ and participants have been under more stress in determining ways to manage the cashless restrictions.

If there is to be a role for income management measures, it must be as a 'last resort', rolled out with genuine community consultation and consent and be 'supported by case management and support services'¹⁵. Without adequate 'wrap-around' services¹⁶ and recognition of varying social and cultural needs, QLS is of the view that these kinds of approaches are unlikely to achieve the outcomes proposed.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Bill Potts
President

¹ Law Council of Australia, 4 October 2017, Submission to Senate Community Affairs Legislation Committee on Social Services Legislation Amendment (Cashless Debit Card) Bill 2017 at Page 6.

² Australian Human Rights Commission, 2 October 2019, Submission to Senate inquiry into Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 at Page 5-6.

³ K. Mavromaras, M. Moskos, L. Isherwood, and S. Mahuteau, February 2019, Cashless Debit Card Baseline Data Collection in the Goldfields Region: Qualitative Findings, <

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https://www.dss.gov.au/sites/default/files/documents/04_2019/cdc-baseline-data-collection-qualitative-findings-29-march-2019.pdf> at Page 5.

⁴ K. Mavromaras, M. Moskos, L. Isherwood, and S. Mahuteau, February 2019, Cashless Debit Card Baseline Data Collection in the Goldfields Region: Qualitative Findings, <
https://www.dss.gov.au/sites/default/files/documents/04_2019/cdc-baseline-data-collection-qualitative-findings-29-march-2019.pdf> at Page 6.

⁵ K. Mavromaras, M. Moskos, L. Isherwood, and S. Mahuteau, February 2019, Cashless Debit Card Baseline Data Collection in the Goldfields Region: Qualitative Findings, <
https://www.dss.gov.au/sites/default/files/documents/04_2019/cdc-baseline-data-collection-qualitative-findings-29-march-2019.pdf> at Page 7.

⁶ K. Mavromaras, M. Moskos, L. Isherwood, and S. Mahuteau, February 2019, Cashless Debit Card Baseline Data Collection in the Goldfields Region: Qualitative Findings, <
https://www.dss.gov.au/sites/default/files/documents/04_2019/cdc-baseline-data-collection-qualitative-findings-29-march-2019.pdf> at Page 7, 112-113.

⁷ Explanatory Memorandum: Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 at Page 19.

⁸ Law Council of Australia, 4 October 2017, Submission to Senate Community Affairs Legislation Committee on Social Services Legislation Amendment (Cashless Debit Card) Bill 2017 at Page 18.

⁹ Joint submission by National Aboriginal & Torres Strait Islander Legal Services & Human Rights Law Centre, Submission to Submission to the Inquiry into the Social Security (Administration) Amendment (Income Management and Cashless Welfare) Bill 2019 at Page 3.

¹⁰ Australian Human Rights Commission, 2 October 2019, Submission to Senate inquiry into Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 at Page 7.

¹¹ Explanatory Memorandum: Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 at Page 20.

¹² Australian Human Rights Commission, 2 October 2019, Submission to Senate inquiry into Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 at Page 6.

¹³ Law Council of Australia, 4 October 2017, Submission to Senate Community Affairs Legislation Committee on Social Services Legislation Amendment (Cashless Debit Card) Bill 2017 at Page 14.

¹⁴ See submission by Dr Janet Hunt, October 2019, 'Submission on the Social Security (Administration) Amendment (Cashless Debit Card Transition) Bill 2019' at Page 7.

¹⁵ Australian Human Rights Commission, 2 October 2019, Submission to Senate inquiry into Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 at Page 3.

¹⁶ Joint submission by National Aboriginal & Torres Strait Islander Legal Services & Human Rights Law Centre, Submission to Submission to the Inquiry into the Social Security (Administration) Amendment (Income Management and Cashless Welfare) Bill 2019 at Page 1.