

23 October 2020

Committee Secretary
Senate Community Affairs Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email only: community.affairs.sen@apg.gov.au

Dear Committee Secretary,

Economic Justice Australia (EJA) Submission to the Inquiry into the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020

1. Economic Justice Australia (EJA) is the peak organisation for community legal centres providing specialist advice regarding social security issues and rights. Our members across Australia have provided free and independent information, advice, education and representation in the area of social security for over 30 years.
2. EJA draws on its members' casework experience to identify systemic policy issues and provide expert advice to government on reforms needed to make the social security system more effective and accessible. Our law and policy reform work:
 - Strengthens the effectiveness and integrity of our social security system;
 - Educates the community; and
 - Improves people's lives by reducing poverty and inequality.
3. EJA welcomes the opportunity to make this submission to the Committee's inquiry into the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020 (the Bill).
4. We refer the Committee to our submission on the Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2019, accessible [here](#), and to our submissions regarding the Cashless Debit Card (CDC) in 2017 and 2018. These submissions have articulated our ongoing concerns in the light of mounting evidence highlighting the negative impacts of the CDP program. Please note that since lodging these submissions, our organisation changed its name from National Social Security Rights Network to Economic Justice Australia.

Recent research findings

5. *'Hidden Costs: An Independent Study into Income Management in Australia'*, published in February this year by the University of Queensland, reports on the findings of a major multi-

¹ Marston, G., Mendes, P., Bielefeld, S., Peterie, M., Staines, Z. and Roche, S. (2020) Hidden Costs: An Independent Study into Income Management in Australia. School of Social Science, The University of Queensland: Brisbane, Australia. Accessible at <https://www.incomemanagementstudy.com/>

site study examining the experiences of people subject to compulsory income management in both Australia and New Zealand. The report concluded that:

‘... the social, emotional and economic costs of continuing with compulsory (income management) outweigh the benefits. It is hard to draw any other conclusion from the findings presented here and elsewhere. This does not mean that a genuine voluntary scheme could not be maintained, but it would need to sit alongside other measures to tackle poverty that have been recommended by participants in this study and other advocates and experts over many years, such as addressing the adequacy of income support payments, ensuring decent employment and training opportunities, and providing accessible social services and affordable housing. This package of reforms would be a better starting point for creating healthy, economically secure and socially inclusive communities, compared with blunt, punitive and counterproductive policies that are pushing ordinary Australians further towards the margins of their communities.’²

6. These findings add to what is now an extensive body of evidence indicating the need to discontinue the CDC program. This empirical evidence is the result of independent academic research³ as well as government-commissioned reports.⁴ While this research has noted benefits associated with the CDC program,⁵ there is no empirical evidence that compulsory income management has achieved its stated objectives.⁶ Successive reports have instead highlighted the program’s overall negative impacts on individual and community wellbeing.
7. Given the weight of evidence showing the negative impacts that the compulsory CDP program can have on the vulnerable individuals and communities it targets, we reiterate the key concerns outlined in our previous submissions, which are that the CDC program:
 - can cause social harms
 - can make it more difficult for victims of domestic violence to seek safety
 - has been rolled out without adequate consultation with communities
 - has created unnecessary and outsized administrative costs
 - has been developed on the flawed assumption that poverty and social disadvantage are caused by poor financial and self-control skills rather than a basic lack of resources
 - breaches Australia’s human rights obligations in relation to the self-determination of Indigenous peoples, equality, non-discrimination, social security and privacy.
8. Outlined below are several specific issues regarding the Bill.

² Ibid. P122-123

³ Mendes, P., Waugh, J., and Flynn, C. (2014) ‘Income Management in Australia: A Critical Examination of the Evidence’. *International Journal of Social Welfare* 23(4): 362-372; Vincent, E. (2019) *Lived Experiences of the Cashless Debit Card Trial*, Ceduna, South Australia. Centre for Aboriginal Economic Policy Research (CAEPR). The Australian National University (ANU): Canberra.

⁴ K. Mavromaras, M. Moskos, L. Isherwood and S. Mahuteau ‘Cashless Debit Card Baseline Data Collection in the Bundaberg and Hervey Bay Region: Qualitative Findings’, December 2019; Bray, R., Gray, M., Hand, K. and Katz, I. (2014) *Evaluating New IM in the Northern Territory, Final Evaluation Report*. Australian National University and Australian Institute of Family Studies: Canberra.

⁵ Orima Research (2017) *Cashless Debit Card Trial Evaluation: Final Evaluation Report*. Orima Research and Department of Social Services: Canberra.

⁶ *Hidden Costs: An Independent Study into Income Management in Australia*. Op cit. p. 7; ANAO 2018 ‘The Implementation and Performance of the Cashless Debit Card Trial’; Eva Cox, ‘Much of the data used to justify the welfare card is flawed’, *The Guardian* (online), 7 September 2017. Accessible at <https://www.evacox.com.au/content/much-data-used-justify-welfare-card-flawed>

Lack of basis in community consultation and self-determination

9. On 26 December 2017, the United Nations Committee on the Elimination of Racial Discrimination published its *Concluding Observations on the eighteenth to twentieth periodic reports of Australia*.
The Committee expressed concern that:
‘... Indigenous peoples, including those living in remote areas, face discrimination in access to social security benefits, notably through the mandatory income-management scheme and the community development programme.’⁷
10. The Committee recommended that the Australian Government;
‘... reconsider the mandatory income-management scheme, which in effect disproportionately affects indigenous peoples, maintain only an opt-in income-management scheme and remove discriminatory conditions in access to social security benefits by claimants living in remote areas, the vast majority of whom are indigenous.’⁸
11. This recommendation has not been implemented. Instead, the Government has proceeded with extensions of the trial CDP program into new regions via legislative instrument and introduction of the current Bill without due consideration of calls for the program to be voluntary, and opt-in rather than opt-out. There has been no structured process to consult with proposed new communities regarding the Bill and provide the opportunity for community input regarding the underlying policy rationale.
12. Most new CDC program participants will be Aboriginal and Torres Strait Islander people residing in the Northern Territory and Cape York. As noted by Aboriginal Peak Organisations Northern Territory:

‘Support for the bill would directly contradict the recent National Agreement on Closing the Gap that was supported by all levels of government including the Commonwealth. It is not in keeping with the spirit of the agreement and its emphasis on Aboriginal and Torres Strait Islander self-determination.’⁹
13. There has been inadequate regard to the fact that Aboriginal and Torres Strait Islander communities across regional and remote Australia are culturally diverse, with representative community-controlled organisations partnering with a range of agencies to enhance community wellbeing. Given the weight of empirical evidence indicating fundamental issues regarding the CDC program to date, including the overwhelmingly negative experiences reported by participants and communities, the proposed further rolling out of the program without extensive community consultation with organisations representing all affected Aboriginal and Torres Strait Communities is unconscionable.
14. Importantly, the Bill fails to include reference to one of the objects of the trial – i.e., to determine whether the CDC is more effective when community bodies are involved. This lack of regard to evaluating what has purportedly been a ‘trial’, and communicate trial findings to

⁷ United Nations Committee on the Elimination of Racial Discrimination. Concluding Observations on the eighteenth to twentieth periodic reports of Australia [23] https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/AUS/CERD_C_AUS_CO_18-20_29700_E.pdf

⁸ Concluding Observations on the eighteenth to twentieth periodic reports of Australia [24] https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/AUS/CERD_C_AUS_CO_18-20_29700_E.pdf

⁹ <http://www.amsant.org.au/apont/apo-nt-call-on-mps-to-oppose-the-cashless-debit-card-expansion-bill/>

communities, will only serve to deepen existing issues associated with inadequate consultation with affected communities.¹⁰

15. The 'top-down' imposition of the program contradicts its stated objectives of supporting participants with budgeting strategies and encouraging socially responsible behaviour.¹¹ The degree to which people feel that they have autonomy and control over their actions and circumstances is a key determinant of responsible financial management and socially responsible behaviour.¹² Participants in the CDC trials have reported feeling 'powerless' and having 'control ... taken away' by the lack of consultation and the restrictions of the card.¹³ The CDC program's lack of basis in community consultation and self-determination takes away the autonomy of participants in a way that undermines the program's key objectives.

Power to revoke exit determination

16. The further application of the CDC program to residents of entire geographical regions means that new cohorts of participants will lose the right to manage their income despite the fact that they may have had no issues with managing finances, and no gambling or addiction issues. The exit mechanism is intended to ensure that people may opt out of the program. However, the process to exit the CDC is long and complex, with reports of participants waiting up to a year for a decision, and inadequate evidence at times being used to deny exit.¹⁴ Some participants have reported exit applications being declined for reasons not related to capacity to manage income – for example, where debit card rejections have been due to technology failure.¹⁵
17. One of the main issues that EJA's member community legal centres deal with regarding CDCs is where a person loses their job in a non-CDC region, has trouble finding a new job, and then moves to a CDC region in the belief that work is available there. They claim a Centrelink payment in the CDC region while they seek work, and are placed on the CDC program. When it becomes apparent that they are not in fact going to get work, they then move back to their usual place of residence – which is not a CDC region. People in this situation are then often considered to be 'transient', and thereby deemed to be unable to reasonably and responsibly manage their affairs. Clients in this situation state that when they come back to their city or town they feel they are discriminated against if they mention they have a CDC, and feel humiliated and ashamed when using it – perceiving that people think 'this must be a bad person'. Clients in this situation report that when they ask to be exited from the CDC Program, they are subjected to questioning about why they have moved to the non-CDC area and have to justify that it is their usual place of residence.
18. The Bill gives the Secretary the power to revoke a decision that a person be exited from the CDC program if the Secretary becomes aware of information that suggests the person is no longer reasonably and responsibly managing their affairs.¹⁶ Enabling the Secretary to revoke

¹⁰ Goulbourn Valley Community Legal Centre Pilot (GVCLCP) (2012) Shepparton Income Management Survey Report. GVCLCP: Bendigo; Mendes, P., Waugh, J., and Flynn, C. (2014) 'Income Management in Australia: A Critical Examination of the Evidence'. *International Journal of Social Welfare* 23(4): 362-372.

¹¹ s124PC Social Security Administration Act, as proposed

¹² Prawitza, A. and Cohartb, J. (2016) 'Financial Management Competency, Financial Resources, Locus of Control and Financial Wellness'. *Journal of Financial Counselling and Planning* 27(2): 142-157

¹³ Hidden Costs: An Independent Study into Income Management in Australia. Op cit. p 89

¹⁴ <https://www.abc.net.au/news/2020-08-21/queensland-cashless-welfare-card-exit-applications-exit/12579856>

¹⁵ <https://www.abc.net.au/news/2020-08-21/queensland-cashless-welfare-card-exit-applications-exit/12579856>

¹⁶ s124PHB(9A) Social Security Administration Act as proposed

exit decisions on the basis of information that the person is no longer 'reasonably and responsibly managing their affairs' suggests that former participants will be subject to continued surveillance of their affairs and may be placed back on the card without their consent and potentially based on inadequate evidence. This scrutiny will potentially add to the humiliation and shame experienced by many people who have gone through a protracted exit process.

19. The nature and processes involved in this surveillance, and the factors taken into account, need to be explained; and recipients' review and appeal rights need to be spelled out.

Absence of parliamentary scrutiny

20. This Bill comes after Minister Ruston announced, in May this year, that the CDC trials would be extended until 31 December 2020. This extension was made using the Minister's powers under sunset provisions in the Coronavirus Economic Response Package¹⁷. There was therefore no Parliamentary scrutiny of the extension.
21. This lack of Parliamentary scrutiny is further enabled in the Bill, which provides for future expansion of the CDC program beyond current sites via legislative instrument. Especially considering the strong and mounting evidence of the negative impacts of the compulsory CDC program on many individuals and communities, and the lack of community input and consultation regarding the trials or the current Bill measures, this continued lack of Parliamentary scrutiny is of grave concern.
22. It has been reported that major banks and supermarkets have been working to address technical issues to enable a national rollout of the CDC¹⁸; and Minister Ruston has described the card as a potential 'mainstream financial literacy tool'.¹⁹ Any proposed extension of quarantining of social security entitlements to CDCs must be subject to Parliamentary scrutiny, whether the extension is to cover new regions, new cohorts of people, or payment components.

Need to enhance access to legal assistance

23. Some regional and remote areas of Australia have no funded specialist on-the-ground services providing social security legal advice and assistance. This leaves people without access to accessible information, advice and advocacy on social security issues.
24. The Kimberley represents a compelling example. The Kimberley is twice the size of Victoria and the region is thousands of kilometres from the closest community legal centres providing specialist social security legal advice and assistance, these being in Darwin and Perth. Whilst the Kimberley Community Legal Service (KCLS) is a generalist Community Legal Service, neither KCLS nor any of the other non-profit legal services in the Kimberley receive dedicated funding to provide social security legal help.
25. Lack of access to specialist social security legal advice is particularly problematic in the Kimberley given the high proportion of disadvantaged people eligible for social security

¹⁷ Coronavirus Economic Response Package Omnibus Act 2020, Schedule 16

¹⁸ SMH online. 1 February 2020. Available at <https://www.smh.com.au/politics/federal/financial-literacy-tool-bid-to-take-cashless-welfare-card-national-20200131-p53wfm.html>

¹⁹ Crowe, David (2020) "Financial literacy tool: Bid to take cashless welfare card national" <https://www.smh.com.au/politics/federal/financial-literacy-tool-bid-to-take-cashless-welfare-card-national-20200131-p53wfm.html>

benefits, and the dramatic effects of social security problems - including disproportionately high rates of mutual obligation penalties for both mainstream social security payments and the Community Development Program. There is anecdotal evidence in the Kimberley (and other regional/remote areas) of people with high needs withdrawing from the social security system and increasing financial pressure on families and communities due to people receiving Centrelink penalties or suspensions.

26. As initiatives such as extension of the CDC program are rolled out, it appears that no consideration is being given to the fact that a cashless debit card is of no relevance to a person whose social security payment has been suspended or cancelled, and who needs legal assistance to resolve the issue.
27. Many people with valid grounds to seek that they be exited from the CDC program are denied the right to do so because of lack of access to advice and support; and conversely, vulnerable individuals who may benefit from income management are lost to the program because they have disengaged from the social security system. If the measures proposed in the Bill are to be applied with fairness and equity, it is essential that funding is provided to ensure that CDC communities have access to specialist social security legal assistance - especially given the limited community consultation regarding extension of the CDC program.

Recommendations

28. Noting that evidence about the CDC program's ineffectiveness and negative effects has only increased since last year, we recommend that:
 - I. Mandatory income management regimes, including the CDC program, should be abolished. If the CDC program is to remain in place, it should be voluntary or opt-in. As such, we recommend that the Bill be rejected.
 - II. If the Committee considers that the Bill should not be rejected and that the CDC program be further implemented as provided, we propose that The Bill be amended to provide that:
 - a) in delivering the CDC program, the Secretary must
 - i. demonstrate a duty of care to individual participants and communities
 - ii. consider the detrimental impacts the trial may have on individual participants and communities, and
 - iii. be required to provide reasons in writing why it is considered to be in the participant's best interests to be a compulsory participant;
 - b) comprehensive community consultation be undertaken across regional and remote Aboriginal and Torres Strait Islander communities, to inform further roll-out of the CDC program, and evaluation of its impacts on individuals and communities;
 - c) Funding be provided to community legal centres serving regional and remote communities, to enable provision of specialist legal advice assistance on social security, CDP program, and Community Development Program issues.

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