

25 September 2017

Committee Secretary
Senate Standing Committees on Community Affairs

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

Dear Committee Secretary,

NSSRN submission in relation to the *Social Services Legislation Amendment (Cashless Debit Card) Bill 2017*

1. The National Social Security Rights Network (NSSRN) is a peak community organisation in the area of income support law, policy and administration. Our members are community legal centres across the country that provide free and independent legal assistance to current and former social security and family assistance recipients. The NSSRN draws on this front line experience in developing its submissions and policy positions.

Proposed Amendment

2. The NSSRN opposes the continuation and extension of the Cashless Debit Card ("CDC"). We do not endorse the *Social Services Legislation Amendment (Cashless Debit Card) Bill 2017* ("the Bill").
3. The Bill, introduced by Minister for Human Services, the Hon Alan Tudge MP ("the Minister"), removes section 124PF of the *Social Security (Administration) Act 1999*. This has the effect of removing an expiration period of the use of the Cashless Debit Card. It allows for the expansion of the card to multiple locations and to an unlimited number of individuals. The expansion of the CDC to other locations is subject to determination of disallowable legislative instruments.
4. Our position, as stated in our submission to the original Bill introducing the CDC, remains as follows:
 - It is expensive to deliver and administer;
 - It will not achieve its intended outcome;
 - It involves disempowering and demeaning effects that will likely cause long term damage to those subjected to it;
 - It undermines an individual's capacity to learn to manage their finances;
 - It can be embarrassing for users and leaves people in situations of public humiliation;
 - It remains indirectly racially discriminatory and creates situations of inequality and unfairness in its practical application; and
 - It diverts funds away from legitimate purposes such as addressing inadequate levels of income support, or programs and services which, with community consultation, could be

used to better help overcome chronic health conditions, accessibility to housing, and underfunded education provision.¹

5. The Government relies on two evaluation reports to conclude that the card was successfully implemented in the trial sites of Ceduna SA, and East Kimberley WA (specifically the towns of Kununurra and Wyndham):

- Wave 1 Interim Evaluation Report - released in March 2017 (“Interim Evaluation Report”)², and
- Wave 2 Final Evaluation Report - released in September 2017 (“Final Evaluation Report”).³

The NSSRN identifies a number of issues with the evaluation process conducted by ORIMA Research. Furthermore, any purported success of the program does not outweigh the adverse consequences experienced by the communities compelled to use the card. We emphasise that almost half of participants in the first six months of the trial stated the CDC made their lives worse.⁴ The Final Evaluation Report found that a combined 32% of surveyed participants found that the CDC trial made their lives “a bit worse” or “a lot worse”, and 42% stated the card made no difference to their lives.⁵

6. The ANU Centre for Aboriginal Economic Policy Research (“CAEPR”) conducted a thorough review of the Interim Evaluation Report⁶ and have published an overview of the Final Evaluation Report⁷. The NSSRN agrees with the CAEPR assertions that the evaluation processes and published reports are deficient. They do not support the conclusive statements made by government that the CDC had met key performance targets. In our view, the evaluations did not adequately assess all social and economic impacts or attributable factors to changes in the community. The evaluation reports relied too heavily on anecdotal and self-reported evidence.

7. We address some of our key concerns with the proposed extension in the following paragraphs.

Rationale and Diversion of Funds

8. The Minister has stated the purpose of the CDC as aiming to “*reduce the devastating effects of welfare fuelled alcohol, drug and gambling abuse.*”⁸

9. However, the Final Evaluation Report illustrated that only a small proportion of welfare recipients in the trial locations of Ceduna, Kununurra and Wyndham have issues with alcohol, drugs or gambling. The majority of welfare recipients experience financial hardship trying to meet basic needs on their social security payments.⁹

¹ National Social Security Rights Network, Submission No 17 to Senate Standing Committees on Community Affairs, *Social Security Legislation Amendment (Debit Card Trial) Bill 2015*, 18 September 2015, 15.

² ORIMA Research, *Cashless Debit Card Trial Evaluation: Wave 1 Interim Evaluation Report*, released by the Department of Social Services (February 2017).

³ ORIMA Research, *Cashless Debit Card Trial Evaluation: Final Evaluation Report*, released by the Department of Social Services (August 2017).

⁴ ORIMA Research, *Wave 1 Interim Evaluation Report*, above n2, 5.

⁵ ORIMA Research, *Final Evaluation Report*, above n3, 87.

⁶ J Hunt, ‘The Cashless Debit Card Trial Evaluation: A Short Review’ (CAEPR Topical Issues 1, 2017).

⁷ J Hunt, ‘The Cashless Debit Card Evaluation: Does It Really Prove Success?’ (CAEPR Topical Issues 2, 2017).

⁸ Commonwealth, Parliamentary Debates, House of Representatives, 17 August 2017, 11-12 (Alan Tudge).

⁹ We also note recent published statistics on household expenditure from Australian Bureau of Statistics indicated that welfare recipients spend less on alcohol as a portion of their income than all other Australians. See Australian Bureau of

10. In the Final Evaluation Report, many surveyed participants did not answer questions assessing their change in alcohol, drug or gambling behaviours because the question was “not applicable” to their circumstances. This was due to these participants not engaging in those behaviours prior to the commencement of the trial.¹⁰ This means that many CDC trial participants fall outside of the targeted cohort of welfare recipients who may experience alcohol, drugs or gambling issues. The Final Evaluation report records the percentage figures as follows:

- Question re change in use of alcohol since becoming participant of CDC– ‘not applicable’ to 117 of 233 surveyed participants (~50%) in Ceduna, and 100 of 234 surveyed participants (~42%) in East Kimberly.¹¹
- Question re change in use of drugs since becoming participant of CDC – ‘not applicable’ to 199 of 233 surveyed participants (~85%) in Ceduna, and 187 of 234 surveyed participants (~80%) in East Kimberly.¹²
- Question re change in level of gambling since becoming participant of CDC – ‘not applicable’ to 163 of 233 surveyed participants (~70%) in Ceduna, and 176 of 234 surveyed participants (~75%) in East Kimberly.¹³

11. In consideration of these numbers, the CDC clearly places additional burdens on individuals and families already struggling to meet basic needs. In the Final Evaluation Report, many of the surveyed participants disclosed running out of money to buy food, or to pay for items for their children. The report states that 52% of participants ran out of money to buy food at least once in the previous 3 months. Approximately one quarter of surveyed participants reported running out of money to buy food “about once every 2 weeks or more”, which is equivalent to the payment frequency of their benefit allowance.¹⁴

12. The NSSRN recognises that some members of the trial communities have severe and protracted issues with alcohol, drugs and/or gambling, and these impact significantly on their communities. However, we do not support the use of the CDC as a mechanism to address these concerns. Instead, we support recommendations previously made to government for holistic support-based services to address the broad social and economic disadvantages in the trial community areas. Any policy or law development impacting on a community must involve extensive consultation and be led by community members, particularly in Indigenous communities. We note that many previous recommendations made to government have not been implemented or have experienced substantial delays. The CDC should not become a fall-back option for failure to act on past proposals.

13. For instance, in promoting the proposed legislation¹⁵, reference was made to the 2011 South Australian Coronial Inquest into the alcohol-related deaths of six Indigenous people near Ceduna between 2004 and 2009 (“the Sleeping Rough Inquest”).¹⁶ In the inquest report of November

Statistics, 2015-16, Household Expenditure Survey, Cat. no. 6530.0, Australian Bureau of Statistics, Canberra, accessed 21 September 2017, <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6530.0Main+Features12015-16?OpenDocument>>.

¹⁰ ORIMA Research, *Final Evaluation Report*, above n3, 43.

¹¹ *Ibid* 44.

¹² *Ibid* 51.

¹³ *Ibid* 56.

¹⁴ *Ibid* 72.

¹⁵ See Explanatory Memorandum, Social Services Legislation Amendment (Cashless Debit Card) Bill 2017 (Cth), 2.

¹⁶ *Sleeping Rough Inquest - KUGENA, Kunmanara (female) & WINDLASS, Kunmanara & PETERS, Kunmanara & KUGENA, Kunmanara (male) & GIBSON, Kunmanara & MINNING, Kunmanara* (Inquest Number 16/2011 (1095/2005, 2943/2005, 1423/2006, 1424/2006, 1130/2009, 1573/2009), South Australian Coroner's Court, Deputy State Coroner Schapel, 4 November 2011)

2011, Deputy Coroner Anthony Schapel made a number of recommendations, including the establishment of an alcohol rehabilitation facility in the Ceduna region. Mr Schapel noted that this had also been a recommendation made by the 1990 Royal Commission into Aboriginal Deaths in Custody which had not been acted upon, leading to devastating outcomes.¹⁷ Mr Schapel noted the “striking parallels between the deaths that are the subject of these Inquests, and the background against which they occurred, and the situation in this region as it existed 20 to 30 years ago.”¹⁸ Importantly, Mr Schapel also implored the South Australia and Federal governments to promote “primary healthcare, housing opportunities, education, literacy and employment”¹⁹, and recognise the need for Aboriginal communities “to have meaning in their lives such as might be provided by full employment and the pursuit of recreational and educational activities so as to provide those members of the community with a disincentive to abuse substances.”²⁰

14. Following the 2011 Inquest, there continued to be issues of delay with implementing essential treatment and rehabilitation services to those with alcohol abuse issues in the Ceduna region. The construction of the recommended rehabilitation centre did not begin until approximately late April 2012.²¹
15. Whilst both the Interim and Final Evaluation Reports concluded that the CDC led to a reduction in alcohol, drug and gambling practices in the trial communities, we are hesitant to attribute this solely to the CDC. The Interim Report suggested possible influences of seasonal changes, community events and other factors. We also note that increased support services were belatedly provided to some communities and it may not be possible to conduct a thorough assessment of the impact of the provision of these services.
16. We are further reluctant to accept the success of the CDC trial, given that some reports have indicated increases in financially motivated crime. The Final Evaluation Report obtained statistics on criminal activity in the trial areas and found that there was no overall reduction in crime. Some criminal activity had increased.
17. In our view, the CDC program diverts funds away from important and recommended programs and services. We understand that the government has spent \$10,000 per individual throughout the CDC trial process. These funds, with community consultation, could be used to better help overcome chronic health conditions, accessibility to housing, and underfunded education provision.

Undue Hardship

18. The CDC places undue additional hardship on individuals who are struggling to afford basic needs. In August 2017, UNSW's Social Policy Research Centre determined that Newstart

<<http://www.courts.sa.gov.au/CoronersFindings/Lists/Coroners%20Findings/Attachments/481/Sleeping%20Rough%20Inquest.pdf>> at 5 September 2017.

¹⁷ Recommendation 287 of the Royal Commission into Aboriginal Deaths in Custody reads “That the Commonwealth, States and Territories give higher priority to the provision of alcohol and other drug prevention, intervention and treatment programs for Aboriginal people which are functionally accessible to potential clients and are staffed by suitably trained workers, particularly Aboriginal workers. These programs should operate in a manner such that they result in greater empowerment of Aboriginal people, not higher levels of dependence on external funding bodies.” See Commonwealth, Royal Commission into Aboriginal Deaths in Custody, National Report (1991) vol 5, 31.

¹⁸ *Sleeping Rough Inquest*, above n12, [1.7].

¹⁹ *Ibid* [10.2.4].

²⁰ *Ibid* [10.2.5].

²¹ Letter from Warren Snowden to Reverend Peter McDonald, Minister, UnitingCare Wesley, 11 April 2012 <http://www.papertracker.com.au/pdfs/snowdon_inquest_apr2012.pdf> at 5 September 2017.

Allowance was not sufficient to meet the basic standard of living cost.²² The CDC removes the option of seeking out cheaper goods and services, and prevents individuals from reducing spending. CDC holders have reported being unable to purchasing second hand goods or buying items collectively in bulk²³. As food and other goods are typically more expensive in remote locations, this may have a devastating effect on the capacity for individuals to meet basic needs²⁴.

19. The Interim Evaluation Report showed that across the two trial sites, 78% of CDC holders had not change “where and how they shopped”, however 18% reported constraints on their ability to purchase allowable items, causing an additional burden.²⁵
20. We also maintain our concern that the card may enable financial abuse. The Interim Evaluation report made no inquiry of whether participants shared their cards and with whom. Both reports found that since the introduction of the CDC the levels of humbugging had considered to have increased from the perspective of participants and family members.²⁶ Access PINs may be provided by participants to other people. We note anecdotally that cards are commonly lost.
21. Additional financial hardship may also be experienced by some CDC holders who require urgent access to cash. For example, a person experiencing domestic violence may face obstacles in attempting to flee. If the CDC program expands to further locations, so will the administrative responsibility to ensuring that people in crisis situations are not restricted from accessing immediate support.
22. We also note that participants living with disabilities and in receipt of Disability Support Pension, were “significantly less likely” to be aware of the mechanisms and processes of the CDC.²⁷ This places them in a situation of further vulnerability.
23. The NSSRN is concerned that CDC holders are losing benefits due to EFTPOS and other surcharges. It has also been reported that CDC holders also do not earn interest income from the restricted allowance. If this is the case, this is a discriminatory practice as all other welfare recipients receive full payment of the benefit into their nominated bank account.
24. The CDC undermines an individual’s capacity to learn to manage their finances. For some participants, particularly younger people, the inability to develop financial management skills may cause future financial strain and reliance on financial counselling services.

Disempowerment of welfare recipients

25. In August 2017, Dr Elise Klein from the University of Melbourne gave evidence in the Coroner's Court of Western Australia in the *Kimberley Inquest*, before State Coroner Mr R V C Fogliani.²⁸

²² Peter Saunders & Megan Bedford, 'New Minimum Income for Healthy Living Budget Standards for Low-Paid and Unemployed Australians' (Report, Social Policy Research Centre, August 2017).

²³ ORIMA Research, *Wave 1 Interim Evaluation Report*, above n2, C11. See also: Lucy Cetta, 'Cashless card user not happy with system', *West Coast Sentinel* (online), 12 May 2017, <www.westcoastsentinel.com.au/story/4659187/debit-card-has-negative-impact/>.

²⁴ Erin Parke, 'Remote food costs soar as wages and freight spiral', *ABC News* (online), 1 July 2013, <<http://www.abc.net.au/news/2013-07-01/remote-food-costs-soar-as-wages-and-freight-spiral/4791126>>.

²⁵ ORIMA Research, *Wave 1 Interim Evaluation Report*, above n2, 3.

²⁶ ORIMA Research, *Final Evaluation Report*, above n3, 113; & ORIMA Research, *Wave 1 Interim Evaluation Report*, above n2, 6.

²⁷ ORIMA Research, *Final Evaluation Report*, above n3, 104.

²⁸ Kimberley Inquest (Coroner's Court of Western Australia, State Coroner Mr R V C Fogliani, August 2017) as reported in Calla Wahlquist, 'Mayors lobbying for cashless welfare card team up with Andrew Forrest', *The Guardian* (online), 17

This inquest examined the deaths of 11 young people prior to the introduction of the CDC in the Kimberley Region. In addresses contributing factors of social harm and disadvantage, Dr Klein stated that the CDC trial further disempowered vulnerable families in the region, with many considering the card akin to "ration days". Dr Klein stated that "community-led development of therapeutic-based services" would lead to greater preventative outcomes.²⁹

26. There are examples where the CDC unnecessarily discloses an individual's status as a welfare recipient and has limited their participation in community events. For example, at the 2016 Kununurra Agricultural Show, holders of the CDC were subjected to an ineffective ticketing system. We have anecdotally heard that many were turned away from the show. In 2017, the organisers of the show were compelled to provide public reassurance that the CDC holders would be able to access the show in the same manner as other members of the community.³⁰

Mechanism of Disallowable Legislative Instruments

27. Under the proposed amendments, the CDC will only be expanded to other locations subject to disallowable legislative instruments. The Explanatory Memorandum to the Bill explains that these could be "co-designed with interested communities" and "tailored for community needs"³¹. However, the CDC trial locations have demonstrated issues with the consultation and implementation process. In Kununurra, it was reported that some pre-trial undertakings made by government were not implemented until seven months after the CDC's introduction and were not delivered appropriately to the community.³² This includes the provision of employment and drug and alcohol support services. The issue of delay in providing services is a significant concern should the CDC program be expanded. The NSSRN is not confident that the process will involve adequate community consultation.

Community Panels & restricted cash amounts

28. Pursuant to s124PE of the *Social Security (Administration) Act 1999*, the Minister may authorise a body to act as a community body, otherwise known as a community panel. Individuals subject to the CDC may make application to their community panel seeking a reduction of the percentage of income restricted to the CDC. Currently, participants in the Ceduna and Kununurra communities may apply for a reduction of income restricted on the CDC from 80% to 50%.³³ (This reduction is limited to 70% in Wyndham.)³⁴ The Interim Evaluation Report noted that the community panels in Ceduna and East Kimberley had not been established until after the commencement of the trials.

29. NSSRN has concerns about the application process and the evaluation criteria. In our submission to the original bill proposing the CDC trials, we articulated our opposition to the lack of

August 2017, <<https://www.theguardian.com/australia-news/2017/aug/17/mayors-lobbying-for-cashless-welfare-card-team-up-with-andrew-forrest>>.

²⁹ "Oppressive scheme": WA youth suicide inquest slams cashless welfare card", *WA Today* (online), 15 August 2017, <<http://www.watoday.com.au/wa-news/oppressive-scheme-wa-youth-suicide-inquest-slams-cashless-welfare-card-20170814-gxw7f9.html>>.

³⁰ Peter de Kruijff, 'Final set-up for ag show', *The West* (online), 13 July 2017, <https://thewest.com.au/news/the-kimberley-echo/final-set-up-for-ag-show-ng-b88533572z>.

³¹ Explanatory Memorandum, Social Services Legislation Amendment (Cashless Debit Card) Bill 2017 (Cth).

³² Melissa Davey, 'Aboriginal leader withdraws support for cashless welfare card and says he feels used', *The Guardian* (online), 23 August 2017, <<https://amp.theguardian.com/australia-news/2017/aug/23/aboriginal-leader-withdraws-support-for-cashless-welfare-card-and-says-he-feels-used>>.

³³ Department of Social Services, Ceduna Region Community Panel Guidelines (May 2016), 3; & Department of Social Services, Kununurra Region Community Panel Guidelines (September 2016), 4.

³⁴ Department of Social Services, Wyndham Region Community Panel Guidelines (September 2016), 4.

independent review of a percentage decision, either through internal review or review by the Administrative Appeals Tribunal. In the small trial communities, there is a strong likelihood that an applicant will know members of the Community Panels. This raises issues of bias, conflicts of interest, and discrimination. The application process requires applicants to consent to the release or cross-matching of data from a range of government agencies. This process inevitably involves the disclosure of substantial personal information to people personally known to them.

30. The Department of Social Services has made Guidelines for the community panels publically available. These outline the criteria which must be assessed in evaluating an application for the percentage reduction. The community panel must be satisfied of a person's compliance with a number of behaviours or indicators. Some concerning evaluation criteria include:
- Housing issues: The Community Panel will consider whether an applicant's home in good care and whether their rent has been paid. Many of the trial locations have a transient population and many homes experience overcrowding.³⁵ It is unclear how the Community Panel assesses individuals who are on joint leases with shared rental liability and those living in homes with multiple occupants.
 - Police contact: The Wyndham Community Panel Guidelines state that in addition to assessing whether a person has committed an offence in the preceding 6 months, the Panel will also take into consideration whether a person has been detained by police in the previous 6 months.³⁶ This apprehension may be in situations where no criminal finding of guilt is established.
31. We are also concerned that a local police officer is one of four panel members at each meeting of the Kununurra and Wyndham Community Panels, assessing the new applications from the community.³⁷ Unlike other panel positions, this is not rotated to another organisation's representative.
32. We understand anecdotally that many CDC trial participants have issues with the Community Panels. We urge reconsideration of these panels with the view to establishing a fairer, discrete and independent assessment, should the expansion of the CDC occur.

Human Rights

33. The NSSRN rejects any assertion that the CDC program furthers a human rights agenda. We view the program to undermine the rights of individuals to social security³⁸, privacy³⁹, equality and non-discrimination (particularly racial non-discrimination)⁴⁰, and self-determination⁴¹. The infringements of these rights are not justifiable.

³⁵ Overcrowding statistics for Indigenous households in 2011: Kununurra 36.7% of homes; Port Lincoln–Ceduna 15.4% of homes, as reported in Nicholas Biddle, 'Paper 3: Indigenous housing need' (CAEPR Indigenous Population Project, 2011 Census Papers, 2011), 6.

³⁶ Department of Social Services, Wyndham Region Community Panel Guidelines, n31, 9.

³⁷ Ibid 7; & Department of Social Services, Kununurra Region Community Panel Guidelines, n30 8.

³⁸ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 9.

³⁹ Ibid art 17.

⁴⁰ *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) art 2 and 5.

⁴¹ *International Covenant on Civil and Political Rights*, art 1.

34. In our supplementary submission to the original Bill introducing the CDC trial, we noted that there was an absence of direct consultation with the individuals affected by the trial.⁴² Consultation had occurred predominantly with organisations in the area. This is contrary to a human rights model approach where individuals are empowered to participate in decisions affecting their human rights.
35. This submission has also demonstrated that the CDC impinges on the right to an adequate standard of living.⁴³ The additional burdens placed on individuals and families are not justifiable, particularly in view of the numbers of participants who feel that their lives have worsened since the trial commenced, and those who run out of money to purchase food or pass onto their children.
36. We are particularly concerned that the CDC disproportionately impacts on Indigenous communities. We do not regard the indirect discrimination caused by the CDC program to be justifiable. Furthermore, the infringement on the right to culture has not been adequately considered. There has been limited consultation on the effect of the CDC on kinship, sharing and reciprocity arrangements culturally valued in many Indigenous communities.
37. As noted above, we have several concerns with the Community Panel process and the privacy implications for applicants to the panel.

Conclusion

38. The NSSRN considers the Cashless Debit Card to significantly impinge on an individual's right to social security, and places additional financial and social burdens onto already struggling communities. We reject any notion that the CDC has been implemented on compassionate grounds and call for its abolishment.⁴⁴
39. The NSSRN would welcome the opportunity to provide further feedback to the Committee on our submission.

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⁴² National Social Security Rights Network, Supplementary Submission No 17.1 to Senate Standing Committees on Community Affairs, *Social Security Legislation Amendment (Debit Card Trial) Bill 2015*, 18 September 2015, 2-3.

⁴³ *International Covenant on Civil and Political Rights*, art 11.1.

⁴⁴ Eliza Laschon, 'Goldfields to get cashless welfare card after report finds drinking, drug use down', *ABC News* (online), 1 September 2017, <<http://www.abc.net.au/news/2017-09-01/cashless-welfare-card-to-hit-goldfields-next-pm-to-announce/8861556>>.