



**Australian
Human Rights
Commission**

**Aboriginal and Torres Strait Islander Social
Justice Commissioner**

June Oscar AO

20 July 2018

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 Secretary

Senate inquiry into Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018

The Commission welcomes the opportunity to make comments to the Senate Affairs Legislation Committee in relation to the above inquiry.

The Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018 expands the cashless debit card trial to a further trial site, the Bundaberg and Hervey Bay area, to run until 30 June 2020.

Human rights concerns

The Commission has previously raised concerns in respect of the cashless debit card trial, particularly in relation to the right to social security, the right to a private life and the right to equality and non-discrimination.¹

In September 2017, we made a submission to the Committee for its inquiry into the Social Services Legislation Amendment (Cashless Debit Card) Bill 2017. The 2017 Bill provided for the continuation of the trial in the existing locations of the East Kimberley and Ceduna and enabled the expansion of the cashless debit card to further locations.² The concerns raised in that submission are equally applicable to the present Bill. We have attached our previous submission for reference.

The Commission also notes that the Parliamentary Joint Committee on Human Rights (PJCHR) has reported on the present Bill in *Report No 6 of 2018*.³ The Commission endorses the human rights analysis of the PJCHR in that Report.

The Commission wishes to add the following comments with respect to the present Bill:

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- **Wider application.** The Bill proposes to apply not only to persons whose usual place of residence ‘is or becomes’ within the Bundaberg and Hervey Bay area, but also to those whose usual place of residence **was** within the area.⁴ The Commission considers that this over-inclusive application of the cashless debit card trial is unnecessary and notes that the statement of compatibility with human rights does not provide a compelling justification for the proposed amendment.
- **Aboriginal and Torres Strait Islander peoples.** The Commission has previously raised concerns about the disproportionate impact of the cashless debit card trial on Aboriginal and Torres Strait Islander peoples.⁵ The statement of compatibility with human rights notes that ‘[i]t is estimated that 14 per cent of participants in the Bundaberg and Hervey Bay area will be Aboriginal and Torres Strait Islander people’.⁶ Although the population of this group in the Bundaberg and Hervey Bay area is comparatively lower than in existing trial sites, such as the East Kimberley and Ceduna, the Commission maintains its concerns.⁷ The cashless debit card trial unduly affects Aboriginal and Torres Strait Islander peoples because government pensions and allowances are a main source of income for approximately 46.9% of this group.⁸
- **Expanding restrictions.** The *Social Security (Administration) Act 1999* (Cth) provides that certain welfare payments are to be divided into ‘restricted’ and ‘unrestricted’ portions.⁹ Section 124PM(a) does not allow the ‘restricted’ portion to be used to purchase alcoholic beverages or to gamble and s 124PM(b) allows the ‘unrestricted’ portion be used ‘at the person’s discretion’. In relation to s 124PM, the Commission notes that:
 - the Bill proposes to replace it with a new provision which, in effect, omits subsection (b) and extends the restriction in subsection (a) to alcoholic beverages, gambling and ‘cash-like’ products that could be used to purchase alcoholic beverages or gambling (such as gift cards, vouchers and digital currency)¹⁰
 - the Social Services Legislation Amendment (Housing Affordability) Bill 2017 also proposes to remove s 124PM(b) to allow automatic rent deductions to be made from the unrestricted portion, if necessary¹¹
 - by removing the safeguard for persons to use the ‘unrestricted’ portion ‘at their discretion’ and by further restricting the uses to which the ‘restricted’ portion can be directed, both Bills are therefore detrimental to the economic freedom of trial participants.
- **Monitoring and evaluation.** The Commission noted its concerns regarding the findings in the ORIMA report of August 2017, which was commissioned by the Australian Government to provide an independent evaluation of the cashless debit card trial in the East Kimberley and Ceduna regions.¹² Our concerns included that there was limited evidence of crime reduction and that almost a third of participants stated that the trial had actually made their and their children’s lives worse.¹³ The Auditor-General recently released a report

into the implementation and performance of the cashless debit card trial, which found that 'ORIMA did not use all relevant data to measure the impact of the trial'.¹⁴ The Auditor-General further found that the approach to monitoring and evaluation was 'inadequate' and that 'it is difficult to conclude whether there had been a reduction in social harm and whether the card was a lower cost welfare quarantining approach'.¹⁵ The Commission considers that it is inappropriate to extend the trial to additional sites where there is limited evidence to demonstrate that it has been effective.

Conclusion

For the reasons expressed in this letter and in our previous submissions in relation to the cashless debit card trial, and for the reasons raised by the PJCHR, the Commission considers that the Bill is not compatible with Australia's international human rights obligations. The Commission is concerned that the Government is seeking to extend or expand the trial without giving due regard to the inherent human rights concerns. The Government should not extend or expand the cashless debit card trial until the existing arrangements are made more compatible with human rights.

The Commission supports a community-driven approach, so that if a community choose to introduce income management measures, there is participation in decision-making, based on free, prior and informed consent and good faith. Community governance structures and processes should be developed with the aim of empowering community members to take control of their own identified issues and aspirations. The Commission considers that income management measures should be applied on a case-by-case basis, upon assessment of particular circumstances of individuals and with access to appropriate support.

The Commission also considers that strategies and associated actions to address social harm caused by alcohol, gambling and drug misuse should also be understood within a holistic frame. These social harms are not an isolated issue but are a part of a complex range of factors.¹⁶ Interventions should be considered as part of a multipronged approach. When interventions to address an immediate crisis are considered necessary, they must happen simultaneously with holistic community-led approaches. Without taking this approach there is the risk that the intervention may cause negative unintended consequences to the lives of CDC participants, their families, and communities.

Yours sincerely

June Oscar AO
**Aboriginal and Torres Strait Islander
Social Justice Commissioner**

Endnotes

¹ Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Submission to the Senate Standing Committee on Community Affairs, Inquiry into the Social Security Legislation Amendment (Debit Card Trial) Bill 2015*, 6 October 2015, At

[http://www.aph.gov.au/DocumentStore.ashx?id=14a9925c-245c-4a2e-9bfa-](http://www.aph.gov.au/DocumentStore.ashx?id=14a9925c-245c-4a2e-9bfa-eeb6c843e505&subId=403485)

[eeb6c843e505&subId=403485](http://www.aph.gov.au/DocumentStore.ashx?id=14a9925c-245c-4a2e-9bfa-eeb6c843e505&subId=403485) (viewed 16 July 2018). Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2016*, 88-97, At

http://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_SJNTR_2016.pdf; Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2015*, 55-58, At

<http://www.humanrights.gov.au/sites/default/files/document/publication/SJNTR2015.pdf> (viewed 16 July 2018).

² Australian Human Rights Commission, Submission No 30 to Senate Standing Committees on Community Affairs, *Social Services Legislation Amendment (Cashless Debit Card) Bill 2017*, 29 September 2017. At

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/CashlessDebitCard/Submissions (viewed 16 July 2018).

³ Parliamentary Joint Committee on Human Rights, *Human Rights Scrutiny Report – Report 6 of 2018* (June 2018).

At https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2018/Report_6_of_2018 (viewed 16 July 2018).

⁴ Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018, proposed section 124PGA(1)(a).

⁵ Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Submission to the Senate Standing Committee on Community Affairs, Inquiry into the Social Security Legislation Amendment (Debit Card Trial) Bill 2015*, 6 October 2015, 5.

⁶ Statement of Compatibility with Human Rights, Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018, 9.

⁷ The Commission notes that 77% of Trial participants in Ceduna and 81% of Trial participants in the East Kimberley are Aboriginal and Torres Strait Islander people. See Australian National Audit Office, *The Implementation and Performance of the Cashless Debit Card Trial* (Department of Social Services, Report No 1 of 2018–19, July 2018) 16. At <https://www.anao.gov.au/work/performance-audit/implementation-and-performance-cashless-debit-card-trial> (viewed 18 July 2018).

⁸ Australian Human Rights Commission, Submission No 30 to Senate Standing Committees on Community Affairs, *Social Services Legislation Amendment (Cashless Debit Card) Bill 2017*, 29 September 2017. See Productivity Commission, *Overcoming Indigenous Disadvantage Report 2016*, 9.31. At: <https://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2016/report-documents/oid-2016-chapter9-economic-participation.pdf> (viewed 18 July 2018).

⁹ *Social Security Administration Act 1999* (Cth), s 124PB.

¹⁰ There are separate proposed provisions to effect this change in the event that s 124PM remains as it stands and, alternatively, in the event that the Social Services Legislation Amendment (Housing Affordability) Bill 2017 becomes law. See Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018, proposed s 124PQA. See item 17, proposed paragraph 124PM(a).

¹¹ Explanatory Memorandum, Social Services Legislation Amendment (Housing Affordability) Bill 2017, 6.

¹² Australian Human Rights Commission, Submission No 30 to Senate Standing Committees on Community Affairs, *Social Services Legislation Amendment (Cashless Debit Card) Bill 2017*, 29 September 2017. See ORIMA Research, *Cashless Debit Card Trial Evaluation: Final Evaluation Report* (August 2017), 6. At <http://apo.org.au/node/104916> (viewed 16 July 2018).

¹³ Australian Human Rights Commission, Submission No 30 to Senate Standing Committees on Community Affairs, *Social Services Legislation Amendment (Cashless Debit Card) Bill 2017*, 29

September 2017. See ORIMA Research, *Cashless Debit Card Trial Evaluation: Final Evaluation Report* (August 2017), 6. At <http://apo.org.au/node/104916> (viewed 16 July 2018).

¹⁴ Australian National Audit Office, *The Implementation and Performance of the Cashless Debit Card Trial* (Department of Social Services, Report No 1 of 2018–19, July 2018) 44. At <https://www.anao.gov.au/work/performance-audit/implementation-and-performance-cashless-debit-card-trial> (viewed 18 July 2018).

¹⁵ Australian National Audit Office, *The Implementation and Performance of the Cashless Debit Card Trial* (Department of Social Services, Report No 1 of 2018–19, July 2018) 8. At <https://www.anao.gov.au/work/performance-audit/implementation-and-performance-cashless-debit-card-trial> (viewed 18 July 2018).

¹⁶ The Department of Health, *My Life My Lead – Opportunities for strengthening approaches to the social determinants and cultural determinants of Indigenous health: Report on the national consultations*, December 2017, p. 6. At <http://www.health.gov.au/internet/main/publishing.nsf/Content/indigenous-ipag-consulation> (viewed 22 January 2017).