

18 October 2019

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

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

Re: Invited Submission to the Senate Standing Committee on Community Affairs, *Inquiry into the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019.*

We thank the Committee for the invitation to make a submission on the proposed Bill. Our research project on Compulsory Income Management (CIM) programs in Australia and New Zealand has multiple field work sites, including Bundaberg, Hervey Bay, Ceduna, Playford and Shepparton. Our research project aims to:

1. Extend theories of human agency, autonomy and social identity in social policy scholarship using the case of CIM in a cross-national perspective.
2. Interrogate public discourses about CIM as a way of understanding the dynamic relationship between the public sphere (including new forms of social media) and social policy practice.
3. Understand the regulatory context of CIM, specifically the day-to-day governance of policy administration and its socio-legal and socio-cultural dimensions.
4. At the citizen level capture the lived experience of CIM.

Our broader project data analysis is still underway and what we present here are some preliminary findings relating to our Hinkler region field work site, where in-depth qualitative interviews were conducted between May and September this year with individuals on the Cashless Debit Card (CDC).

Our research team called for interview participants through a variety of avenues in the Hinkler region: local employment services providers, NGOs, local television, local radio, local newspapers, and social media sites.

In accordance with the principles of robust qualitative research, interviews were conducted until 'saturation point' was reached. Saturation point is a term used in social science research to describe the point at which (a) interviews are delivering no new information, and (b) all key findings have been confirmed by multiple independent interviewees.

A large quantitative survey is currently underway, which will be used to test and supplement the qualitative findings presented here.

Data from these Hinkler interviews indicates that many people on the CDC are experiencing problems because of the CDC and Indue system. These include:

1. Consumer problems paying for basic everyday goods and services
2. Bill Payment Problems (including rent)
3. Extra fees incurred because of the CDC
4. Problems accessing exemptions
5. Mental health problems, social problems, and stigma

Consumer problems paying for basic everyday goods and services

Although the Human Rights Compatibility Statement accompanying the Bill claims that 'Under the Cashless Debit Card trial, people are able to spend their restricted funds on any goods or services except alcohol, gambling and illicit drugs because of having less access to discretionary cash', this claim is not consistent with the evidence base.

Many people interviewed who have been forced on the CDC in the Hinkler region have experienced a range of consumer problems, including failed CDC transaction experiences in various stores, failed Bpay attempts to pay for goods and services through Indue's system, and exclusion from purchases with the CDC in cash only settings. The following are some examples arising from the interview data:

'I took my son to soccer and I went to use the canteen to get him a bottle of water and it [the CDC] declined at the canteen. ... even declining at kids' soccer games, just to get water, it's pretty stressful and embarrassing.'
(Interviewee, Bundaberg_22)

'Recently I had to buy new - I had to buy glasses, reading glasses, because I'm working at [XXX]. I have difficulty with my eyesight, so I had to buy glasses ... and I couldn't use my Indue card' (Interviewee, Hervey Bay_1)

'I went to pay my RACQ roadside assist on BPAY through Indue and it just wouldn't work.' (Interviewee, Hervey Bay_4)

'I can't even go to the markets because they don't have frigging EFTPOS machines at the markets. ... I used to go to the markets on a Sunday, or Saturday markets. I don't go anywhere now.' (Interviewee, Hervey Bay_7)

'it was last week or maybe the week before I had to go to the chemist and get medicine. I went to use my cashless card and it didn't work. It wouldn't register. It wouldn't work. It wouldn't accept it at the EFTPOS machine.'
(Interviewee, Hervey Bay_4)

'I needed to get the script done and the chemist wasn't accepting any cards'
(Interviewee, Hervey Bay_5)

'I have found once, when I didn't have any cash on me. I went to a fuel station, put fuel in and then my card didn't work. Then I wasn't allowed to leave so I had to wait there until someone could show up to pay for it. ... I filled up my car and then I went in to pay for it and my card declined. Then they said that I couldn't leave and I had all these other cars parked behind me so I had to move my car which made me feel worse. I had to ring my parents to ask them to come and pay for it. Because they were the closest people.' (Interviewee, Bundaberg_10)

Some people also reported experiencing other CDC quarantine issues that interfered specifically with their need for transport:

'I've been going into Supercheap and Autobarn to buy parts for my car that I really need to fix it up and they don't accept the cashless card.' (Interviewee, Bundaberg_10)

'when I go to my mechanic, he's always cash because he's only a backyard [operator]' (Interviewee, Bundaberg_16)

Some interviewees reported difficulties purchasing groceries at Woolworths with the CDC declining the transaction despite money being in their Indue account (Bundaberg_2; Bundaberg_3; Bundaberg_20; Hervey Bay_6; Hervey Bay_5). One person explained that, problematically, their CDC was declined three days in a row (Hervey Bay_5). Woolworths was not the only grocery retailer where people experienced not being able to use their CDC to purchase groceries, with declined transactions also occurring in Coles (Hervey Bay_7) and Costco (Hervey Bay_3). Some people described their experience of being at Woolworths when an announcement was made over the loud speaker that the CDC was not working and seeing people abandoning shopping trolleys of groceries (B_20; HB_7). This was not an occasion where the issue was that the EFTPOS system was down – other cards were being accepted but the Indue card was not working in the system. In addition, when the EFTPOS system is down this also presents difficulties for people on the CDC who are less able to have sufficient cash on them to pay for purchases because most of their income is quarantined on the card. As one interviewee (Hervey Bay_7) explained:

Interviewee: Well, I was managing my money, I've got my own flat, I've been paying my bills, I've never been late on rent, and they go and frigging do this to me. It just stuffs everything up. I've been saving every bit of cash I get because I'm worried what happens if there's a storm and there's frigging no card, I can't get any money out. What do you do?

Facilitator: Because of a blackout, a power outage?

Interviewee: Yeah, a power outage or something goes wrong with the bloody tellers again. Like I've already been down there once and done

my shopping and couldn't pay for it. I had to walk out and leave the shopping trolley there.

Facilitator: That must have been really hard.

Interviewee: It's really embarrassing. To get there and go, oh yeah, I've got money in the bank. You go there, do all the shopping. Then get to the checkout, run it all through the checkout and then go, no, it won't let me pay for it. It's been really hard mentally. Like I don't go anywhere now ...

Some people explained that had been unable to pay for meals at restaurants with their CDC even if they had no alcohol with their meals (Bundaberg_16; Bundaberg_20). Others referred to specific problems in paying for family outings with their children (Bundaberg_1; Hervey Bay_7; Bundaberg_17; Bundaberg_22; Bundaberg_13; Hervey Bay_3; Hervey Bay_6; Hervey Bay_7) and a range of other child specific needs. Some parents also indicated they were unable to pay for necessary items for children that required cash such as tuck shop money, school uniforms, school photos, school holiday activities, and tutoring (Bundaberg_1; Hervey Bay_3; Bundaberg_3; Bundaberg_17). For example, one interviewee explained:

'Being able to pay for excursions, you know all those different things like sporting things. I'd love to get my son into little athletics, but I don't think I can pay for it, using the cashless debit card. Because a lot of these places want cash. I had \$100 one week and \$150 the next, so tell me how that's not making my children suffer, by not being able to give them a sporting thing. He loves to run, he loves to jump, he likes doing all that, he loves being outside. But to me, I don't know how I'm going to afford to put him in to football or whatever he wants to do, because they all want cash up front.' (Interviewee, Bundaberg_17).

Another person described the trouble that the CDC and Indue system had created for them with budgeting and bill payment for kindergarten fees via direct debit:

'I was really good at budgeting my money prior to this and now it's more difficult because it's all shared between two cards and one card, I can't use for doing certain things, but the other card I can. So, I'm constantly having to transfer between the accounts for different things, which makes it harder to budget. I have to set up two separate lists on my computer and decide which thing I can pay with what thing easily. So, the rent I do on the card. I do my car insurance on the card, I do my petrol money on the card, food money on the card. Then for a while I was having issues - they wouldn't, the kindergarten, it wasn't transferring through via direct debit. Because prior to the card I had my kindy fees direct debited because [my child goes] to kindergarten once a week to help [my child] get socialised and prepared for going to school next year. ... But ... the direct debit wasn't working with

[Indue] for some reason. I kept calling Indue and ... they said it was fine on their end.

But for some reason Indue wasn't still wasn't taking it out. So, they were still taking the fees out of my regular bank account, which was annoying. They said they wouldn't approve extra money to transfer, that I would just have to use it out of my 20 per cent [of non-quarantined funds]. But the 20 percent isn't that much, and I use that 20 per cent for things like - I buy most of, I buy a lot of [my child's] clothes off Buy and Sell and The Market ... I have a lot of expenses. I ... buy things second-hand, like my lawn mower. After I moved in, I bought that second-hand and stuff. So that tiny per cent ends up going on things like that. I can't necessarily - yeah, it seems unrealistic to expect me to pay literally just a bill for kindergarten out of my 20 per cent, when it should be allowed out of the 80 per cent. So, I think that was kind of wrong.' (Interviewee, Hervey Bay_1)

The issue of EFTPOS being down was a problem identified in interviews where CDC's could not be used to purchase what people needed. In such circumstances the fact that 80 per cent of their income was quarantined to the card meant that they were less likely to have sufficient cash to pay for the needed items. One participant explained that this can be especially uncomfortable for women:

'So cards - you need to go to the shops to get your monthly things and if it's down you can't get it and it's a problem.' (Interviewee, Hervey Bay_5)

Importantly, these consumer purchase problems show that the card does not operate with restrictions only on the cardholder's 'ability to use a proportion of their payment to purchase harmful goods'—as claimed by the government in the Human Rights Compatibility Statement accompanying the Bill—the restrictions are far more extensive than that. To claim otherwise is misleading. The card creates a class of consumers who experience many problems with day to day purchases that should be simple. In effect, this serves to *restrict* these consumers' access to basic needs, including food and goods/services for children. This directly contradicts the stated purpose of the CDC, which is to ensure that provision is made for basic needs.

Other Bill Payment Problems (including payment of rent, car repayments, personal loan repayments)

Many CDC interviewees indicated that they had difficulty paying bills with the CDC and Indue system (Hervey Bay_1; Hervey Bay_3; Hervey Bay_4; Hervey Bay_8; Bundaberg_3; Bundaberg_7; Bundaberg_14; Bundaberg_15; Bundaberg_18; Bundaberg_21; Bundaberg_22). Some people have had trouble paying off loans on the card, for example, car loans (Bundaberg_20; Bundaberg_22), and personal loans (Bundaberg_20; Hervey Bay_3; Hervey Bay_7). Some people indicated that it

was time consuming trying to resolve CDC and Indue induced bill payment problems (Bundaberg_4; Bundaberg_21; Hervey Bay_1; Hervey Bay_4).

Many people indicated that paying rent was made 'harder' with the CDC and Indue system (Bundaberg_15; Bundaberg_18; Bundaberg_21; Bundaberg_22; Hervey Bay_1; Hervey Bay_3; Hervey Bay_4; Hervey Bay_8). Some people reported that their rent was paid late because of Indue's time frames for making transactions where they hold the money for a few days before releasing it to the party to be paid (eg Bundaberg_2; Hervey Bay_4). Some people reported that their rent was paid late because the money paid bounced back into the person's Indue account (eg Bundaberg_3; Bundaberg_7; Hervey Bay_4). Some people experienced that paying rent was made a problem where the rent payment due exceeded the set threshold for rent by Centrelink and Indue, with the \$200 transfer every 28 days not being enough to cover the rent (eg Bundaberg_14; Hervey Bay_8). Another person indicated that their rent payment repeatedly would not go through because it exceeded Indue's imposed daily spending limit (Hervey Bay_4). During the Hinkler field work period Dr Bielefeld saw firsthand transaction evidence of these types of rental payment problems with several CDC account holders showing her their Indue account transaction information.

Many people reported being very stressed over the rental payment problems, especially when the CDC and Indue system failures resulted in people breaching their legal obligation to pay rent on time under their rental contracts. For example, one interviewee explained:

'I've also tried to pay my rent because I pay it to a private landlord and so you're waiting for it to go through and waiting for it to go through. Then I think it was two days later, next minute, that amount had been bounced back in my account and I'm looking at it and I'm like why has that bounced back?

Then you ring them up and they say, oh it's just a minor teething issue, just keep trying. It's like but that's two more days my rent's due, you're telling me it's a minor teething issue to breach a contract. That's breaching your contract, especially when you're paying late.

I've never paid my rent late; I've never paid any of my bills late and the time that it's taking to finally get there and then you've got the worry of it bouncing back because of whatever reason that they reckon they don't know.

Even when you ring them up after the card has declined, they just deny it. They say oh, nothing has declined on our end. We can't see it where it's declined and it's like, I've got a receipt up here, it declined. They are like no, no, we can't see it on our end, it didn't decline. No, it did, I've got it right here. They're like no, no, no.

It just makes you feel like you are a child essentially. It's quite eye-opening, especially the way that they treat you. Yeah, they are nice and friendly on the

phone, but then as soon as there is an issue, it's like not their fault, it's not happening, it's not true, they are trying to make you out like a liar and it's not on. You don't feel like a person anymore.

Honestly, it just feels like honestly like a test lab rat where they are forcing you to go through the maze or something like that the way they want you to. It's horrible.' (Interviewee, Bundaberg_3)

For further consideration of the capacity for compulsory cashless social security cards to contribute to reduced housing security please see Appendix A, which we just published in the *Australian Journal of Social Issues*.

Extra fees and charges because of the CDC and Indue system

Some people have had their limited incomes further reduced due to fees imposed because of them being forced on the CDC (Bundaberg_1; Bundaberg_2; Bundaberg_4; Bundaberg_17; Bundaberg_20; Hervey Bay_4). Some of these relate to:

- emergency transfer fees of \$10 (eg Bundaberg_4),
- late payments because of flaws and glitches in Indue's system (eg Bundaberg_22),
- overdrawn fees of \$10 each generated because of the CDC/Indue system (eg Hervey Bay_4), and
- some direct debit situations where a \$10 fee was imposed (eg Bundaberg_17).

These were fees people would not have incurred if they had not been forced on the CDC. Although \$10 fees may not sound like much to someone employed on a good income, these fees make a huge difference for people on low incomes. For instance, if we consider that the maximum Newstart rate for a single adult with no children is only \$279.50 per week,¹ just three lots of late fees amount to nearly 11% of weekly income. Even so, this doesn't account for additional surcharges incurred through the use of the CDC.

As one interviewee explained:

'there are extra fees, for example, EFTPOS, especially on a Sunday around here there's a surcharge on everything for EFTPOS on a Sunday, then you've got Afterpay, which generally can have up to \$10 on top for doing a digital transaction through Afterpay. BPAY has a transaction fee, and all of these things we never had to pay at all.' (Interviewee, Bundaberg_20)

¹ Newstart Allowance, 'How much you can get', Department of Human Services
<<https://www.humanservices.gov.au/individuals/services/centrelink/newstart-allowance/how-much-you-can-get>>.

‘The other day, I went to the Caltex and it got declined, then I tried again and each time [it was] declined, I log on later that night and we got 39 cents ... fee, for each time. I’m like that’s unfair on us.’ (Interview, Bundaberg_20)

In terms of paying rent, some participants indicated that paying by a card costs more for them because of the fees charged by real estate agents, which would not otherwise be charged if rent was paid with cash:

‘to pay by card, there’s a \$4 fee every time I pay rent’ (Interviewee, Hervey Bay_8)

‘At the moment I’m just going into the real estate and paying it, but they don’t have a BPAY and they’re charging me a surcharge every time. It adds about \$6 or something onto my rent.’ (Interviewee, Hervey Bay_6)

Removing a cash payment option for rent is therefore leaving some people with less income than they would have had without the CDC.

After needing to pay some bills with money that had been quarantined to the CDC—without having received the CDC that their income was quarantined on—one interviewee explained:

‘They got an emergency transfer of all my payment from the Indue card back to my personal account so I could set it all up [they had direct debits scheduled requiring payment]. I got charged \$10 for that privilege because of Indue’s stuff-up. Then I found out that my bank is one of two banks that charges that fee.’ (Interview, Bundaberg_4)

Although this person indicates it was not Indue charging this fee – it was the problems with the CDC and Indue system that led to the need to transfer funds as an emergency transfer incurring an additional fee cost. This left the person with less income than they would have had if not forced on to the CDC and Indue system.

During the Hinkler field work period Dr Bielefeld saw firsthand transaction evidence of these types of extra fee charges with several CDC account holders showing her their Indue account transaction information. Dr Bielefeld saw enough evidence of this type to be assured that people were not making up stories about extra fees and charges. She mentioned this at the Senate hearing.

Some Senators requested that Dr Bielefeld send this evidence of transaction fees on to the Senate. As Dr Bielefeld explained at the time, she cannot pass on identifying information about our research participants to the government. There are ethical issues with this request because interviewees were promised that their identities would be kept confidential and no identifying data about them would be given elsewhere. This was a requirement with our project’s University ethics approval (which requires that our research aligns with Australia’s National Statement on Ethical Conduct in Human Research), and the guarantee of confidentiality was the basis upon which people had agreed to be interviewed. There is also a possibility

that transaction dates and amounts, if given to the Senate, would allow the government to reidentify our research participants given that the government has an information sharing relationship with Indue.

Dr Bielefeld has since communicated with a Hinkler CDC community group about the Senate wanting information of this type and left it up to that group and specific individuals as to whether they wish to pass on this type of information to the Senate Committee.

Problems accessing exemptions

There were people interviewed who wanted to get off the CDC, and had tried to get off the CDC, but found the exemption process too difficult. There was some confusion about what evidence would satisfy government for the purposes of obtaining an exemption. The exemption process for the CDC has been described by several of our Hinkler interviewees as imposing hoops through which they are supposed to jump without clarity as to what will suffice to get access to an exemption (Bundaberg_1; Bundaberg_2; Bundaberg_3; Bundaberg_4; Bundaberg_21; Hervey Bay_1; Hervey Bay_8). Cardholders described the exemption process as being very difficult with 'a flat out no' being the most common response from the Department of Social Services, regardless of what problems they were experiencing with the CDC and Indue system (Bundaberg_3; Hervey Bay_1; Hervey Bay_8).

There is concern amongst some interviewees with mental health issues that evidence as to mental health problems does not suffice to get people off the card—even when people have provided supporting documentation (Bundaberg_1; Bundaberg_2; Hervey Bay_8).

Some cardholders indicated that the process of getting an exemption was impossible or too difficult for them to be able to succeed in regaining their budgetary autonomy (Bundaberg_3; Bundaberg_5; Bundaberg_22; Bundaberg_21; Hervey Bay_2; Hervey Bay_6; Hervey Bay_8). This was seen as unfair. There was also a concern among some interviewees that applying for an exemption and having this request declined would contribute to a further deterioration in their mental health.

Mental health problems, social problems, and stigma

As previously mentioned, there are numerous bill payment problems and consumer purchase problems that people on the CDC have experienced. These payment issues have negative impacts on individuals' health and wellbeing, which in turn adversely affects their families. For example, many participants reported mental health problems such as anxiety, depression, panic attacks and Obsessive Compulsive Disorder surrounding their being forced on the CDC, and around their inability to make bill payments on time under the CDC and Indue system (eg Bundaberg_1; Bundaberg_2; Bundaberg_3; Bundaberg_17; Bundaberg_21; Hervey

Bay_1; Hervey Bay_2; Hervey Bay_8;). For example, one interviewee (Bundaberg_2) explained:

‘the length of time it takes for my rent money to turn up, that whole time my anxiety is through the roof because you don’t know where it is and when it’s going to turn up, and then how long before my [rental property] owner gets sick of it. Because she’s a person too, she has bills to pay, a mortgage, rates, you know? To rely on our rent money being on time beforehand and now it’s all over the shop, she has to then wait.’

Our research conducted with Hinkler interviewees revealed that there is significant social stigma that surrounds the card, and this stigma compounds the mental health related harms referred to in the preceding paragraphs. Numerous interviewees had received disparaging comments from members of the public who had seen their cards or witnessed them being declined. These were stories of ordinary Australians who had no history of substance abuse being called ‘junkies’ as they shopped for groceries to feed their children. For some people the stigma induced by the CDC is acute. Some interviewees indicated that this was because of the way the government and media has portrayed the card as something to address substance abuse and because of instances where card transaction failures draw unwanted attention to social security recipients when they attempt to shop. The following interviewees highlight these issues well:

‘I was at the shops and one of the machines, it was a bit of an older machine and I was trying to get the chip to read and it wouldn’t read. I’m putting it in and out and in and out and it just would not read. Usually, after the third attempt, it asks you to swipe. With this card, it doesn’t.

So after the third attempt, the self-serve light on the top started flashing and I had to wait for the lady to come over and then I had two tradies just behind me and they were like oh, that’s one of them junkie cards.

I was already a bit panicky because the card wasn’t working and I just burst into tears and I was like oh my goodness like I’ve never touched drugs in my life. I just burst into tears trying to get it to work ...

But yeah, it just made me in tears, so I ended up - I’ll show you what I did because yeah, I was so upset about it that I ended up covering my card with contact because there is a big Indue logo up the top and that - I mean it’s all over the media. They show you photos of the actual card with the big Indue logo, so I went home and I put [on the] book contact. ...

Yeah and I think the stigma is especially when you go into a new shop like you can’t help but sit there and think please approve, please approve, please approve because then people are going to go oh, what, why isn’t it working and why isn’t the card and it’s just like the sense of you are guilty of something and it’s just overwhelming.

Mental health wise, I was going pretty good until I got the card and then it instantly just makes you feel like you are guilty of doing something when I'm out there. My [child] is in kinder program at the moment, so whenever [my child] is in school, I'm handing resumes out like I've always got some in my glove box. I'm going out and I'm handing out resumes, but the second that you pull it [the CDC] out, you just instantly feel guilty. It's just a huge stigmatism and all you see on the news is to stop drugs and alcohol and gambling and it's just constant in your face; drugs, alcohol, gambling and I'm like, I don't do any of that.' (Interviewee, Bundaberg_3)

'I don't go anywhere anymore. It makes me feel small. I don't know how to explain it. It's made me antisocial. I don't leave the house. I only go to Coles and get food and come home.' (Interviewee, Hervey Bay_7)

The combination of issues – that is, the combination of reduced access to funds, emotional distress and social stigma – is causing some individuals to withdraw from participation in their communities (eg Hervey Bay_7). This is concerning for a range of reasons, not least because research tells us that informal social networks are one of the main avenues through which unemployed Australians find work.²

Strikingly, some people who had been in domestic violence relationships experienced the CDC as another type of abuse of power (Bundaberg_4; Bundaberg_14). One woman reported that her financially abusive ex-partner had taken her CDC details to use to pay his debts through an automated system and then would not remove her card details from his automated repayments. As a consequence, she lost control over her finances for a period of time. This woman said of the CDC: 'I don't see it breaking the cycle of domestic violence at all. I don't see how it helps. It makes it worse.' (Bundaberg_17).

Conclusions on the preliminary findings from the Hinkler region

People forced on the CDC in Hinkler have experienced a range of consumer problems, including failed CDC transaction experiences in various stores, failed Bpay attempts through Indue's system, delayed payments through Indue's system, and exclusion from purchases in cash only settings.

Many interviewees indicated that they had encountered consumer problems related to purchase of everyday items that were not meant to be prohibited by the scheme. These include problems paying for needs such as groceries, medicine from chemists, rent, petrol, transport, second hand goods, insurance payments and goods/services for children. This directly contradicts the notion that the CDC encourages people to use their income for basic goods and services. In many cases,

² Michelle Peterie, Gaby Ramia, Greg Marston and Roger Patulny (2019) 'Social Isolation as Stigma-Management: Explaining Long-Term Unemployed People's "Failure" to Network', *Sociology*.
<<https://journals.sagepub.com/doi/abs/10.1177/0038038519856813?journalCode=soca>>.

the CDC has made it *impossible* to make timely purchases of basic goods and services.

Many interviewees reported experiencing aggravated mental health issues as a consequence of being placed on the CDC. This is concerning. Social security systems should not be causing harm to people in need of government income support.

The evidence from our study suggests that that the CDC is not only failing to achieve some of its core objectives, but in many cases is making things worse. The overarching finding here is that the CDC is having a disabling, rather than motivating, impact in many welfare recipients' lives. This raises grave concerns regarding the proposed extension of the trials and the expansion of this policy across the Northern Territory and Cape York.

Human Rights Issues with the Bill

At the Senate CDC hearing, Northern Territory Senator Malarndirri McCarthy asked Dr Bielefeld whether income management in the Northern Territory is racially discriminatory, to which she responded 'yes', and this point is argued more comprehensively in Dr Bielefeld's book chapter, attached as Appendix C. The proposed Bill extending the CDC to the Northern Territory would also be racially discriminatory, due to it perpetuating indirect racial discrimination in effect towards Indigenous peoples who will be grossly overrepresented under the CDC if this Bill becomes law.

The publicly released income management summary data as of 30 March 2018 indicated that Indigenous people comprised 78% of the 25,270 people subject to income management nationwide.³ This Bill would therefore overwhelmingly apply to Indigenous people in receipt of government income support – raising issues of racial discrimination 'in effect' in violation of Article 1 of the [International Convention on the Elimination of All Forms of Racial Discrimination](#) .

As it has been implemented to date, the CDC has had a disproportionate impact on Indigenous peoples, and is arguably racially discriminatory in its present form.⁴ Concerningly, the CDC scheme has been repeatedly extended despite the government being informed about problems created for many people forced to use the CDC. Importantly, there is no credible evidence of the success of the CDC, as

³ Department of Social Services, Cashless Debit Card (CDC) and Income Management (IM) Summary, 5 <<https://data.gov.au/dataset/income-management-summary-data/resource/986ef7fe-1ba8-460e-b1c4-2cf00145a948>>.

⁴ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2016* (Australian Human Rights Commission) 91-92; Shelley Bielefeld, Submission No 55 to the Senate Standing Committee on Community Affairs, *Social Services Legislation Amendment (Cashless Debit Card) Bill 2017*, 29 September 2017, 1-20.

indicated by the Australian National Audit Office in 2018.⁵ This is central to the need to prove there is a rational connection between the measure and its stated objectives.

The following quote from an article by Dr Bielefeld⁶ explains further why the CDC legislation violates human rights principles, and is included here to save Dr Bielefeld from making an additional submission to the Committee based on her other DECRA research project which looks specifically at the impact of welfare conditionality programs on Indigenous peoples:⁷

Like other forms of income management that preceded it, the Cashless Debit Card (CDC) has a disproportionate impact on Indigenous peoples, and this [raises concerns about racial discrimination](#) under the [International Convention on the Elimination of All Forms of Racial Discrimination](#) ('the ICERD'), which Australia has ratified.

Although human rights violations can be difficult to redress in Australia due to limited domestic implementation of international human rights, they represent one of several possible strategies for placing pressure on the government. This can occur at an international level, through bodies such as the Committee on the Elimination of Racial Discrimination, and also at a national level with NGOs and others taking up these arguments in their dialogue with Government in the quest for accountability over these unjust measures.

The language of human rights therefore has a role to play and the concept of proportionality is another avenue to ensure that due attention is paid to the need for a solid evidence base rather than conducting endless poorly designed social policy experiments on Indigenous communities.

Proving that limits on human rights satisfy the requirement of proportionality is not an easy undertaking. Essentially, where evidence indicates that trial programs have not been '[definitively positive](#)' the threshold for proportionality is unlikely to be met. In terms of the CDC trials, [Orima's 2017 evaluation](#) reports a range of adverse effects for numerous people forced to use the CDC.

⁵ Australian National Audit Office, *The Implementation and Performance of the Cashless Debit Card Trial* (Auditor-General Report No.1 2018–19) 8-9.

⁶ Shelley Bielefeld, 'Human Rights and the Cashless Debit Card: Examining the Limitation Requirement of Proportionality', *The Power to Persuade*, 23 March, <<http://www.powertopersuade.org.au/blog/human-rights-and-the-cashless-debit-card-examining-the-limitation-requirement-of-proportionality/22/3/2018>>.

⁷ Australian Research Council Discovery Early Career Researcher Award (DECRA): Regulation and Governance for Indigenous Welfare: Poverty Surveillance and its Alternatives (DE180100599).

The [Parliamentary Joint Committee on Human Rights](#) (PJCHR) has [regularly pointed to proportionality problems with income management](#). This federal Committee examines the compatibility of bills, legislation and legislative instruments with human rights. The Committee has concluded that income management via the BasicsCard and the CDC limit rights to social security, privacy, equality and non-discrimination.

Even so, the Federal Government has asserted that the CDC regime is compatible with the international human rights instruments to which Australia is a signatory. The government maintains that any limitations placed upon human rights via the CDC are '[reasonable, necessary and proportionate to achieving the objectives of the welfare quarantining measures](#).' These claims warrant further scrutiny, paying particular attention to the requirement of proportionality.

Limitations can be placed on human rights in some circumstances. Such limits must 'be in pursuit of a legitimate objective', 'be rationally connected' to that stated objective, and 'be a proportionate way to achieve that objective' (PJCHR, 2016 [Review of Stronger Futures Measures](#): v). Legislation that limits human rights requires an 'evidence-based assessment of the measures against these limitation criteria' (ibid). A favourable evidence base is therefore an important consideration in justification for placing limitations on human rights. This has not occurred with the passage of the initiating CDC legislation—the [Social Security Legislation Amendment \(Debit Card Trial\) Act 2015](#) (Cth), nor the Bill proposed to extend the scheme—the [Social Services Legislation Amendment \(Cashless Debit Card\) Bill 2017](#) (Cth).

The PJCHR found that threshold requirements for permissible limitations on human rights were not satisfied by the government's assertions in the Human Rights Compatibility Statement accompanying the 2017 Amendment Bill. They pointed to problems with the criteria of rational connection and proportionality, noting the lack of 'definitively positive' evidence in relation to the CDC trials (PJCHR, [Report Number 9 of 2017](#), 37).

A large number of cardholders have reported that the CDC has made their lives worse because they have been prevented from paying essential bills, unable to purchase desired personal items, and lacked access to sufficient cash. The evidence base to date suggests that the CDC has [led to social and financial exclusion problems for many people](#) coerced to use the card — from difficulties buying products which are meant to be permitted expenditure on the card to difficulties engaging in a range of social settings that require cash.

Assessing the proportionality of limitations on human rights requires consideration as to whether the measures are ‘the least rights restrictive way’ of ensuring any legitimate objectives (PJCHR, [Report Number 9 of 2017](#), 37). The blanket application of the measure regardless of individual circumstances is deeply problematic in terms of sustaining a proportionality rationale.

The PJCHR noted that while [evidence on voluntary income management](#) indicates that it may have some perceived benefits, the same cannot be said for compulsory cashless welfare measures. They suggested that voluntary income management or an easily accessible exemption process would be a less rights restrictive measure for achieving the government’s trial objectives. Other genuinely supportive voluntary programs are alternatives worthy of exploration (see further [Bielefeld, Submission No 55](#) to the Senate Standing Committee on Community Affairs, *Social Services Legislation Amendment (Cashless Debit Card) Bill 2017*).

The fact that the federal government has persistently refused to countenance alternatives in favour of compulsory measures says something about bipartisan fears and beliefs about the character and capacity of welfare recipients. Yet these perceptions about widespread addiction amongst people in receipt of government income support are ill founded. Australian Bureau of Statistics (ABS) data reveals that government income support recipients [spend a smaller proportion of their total funds on alcohol](#) than all other Australian households.

Mandatory income management schemes involve the government implementing the most coercive possible measures for people irrespective of their behaviour and regardless of consequent harm. This does not honour Australia’s international human rights obligations to people in need of government income support. Australia needs to do better, and provide social security that allows people to live with dignity rather than pilloried ‘in kind’ support.

As concerns Indigenous peoples, the CDC as implemented to date is the antithesis of self-determination, and fails the criteria of ‘free, prior and informed consent’ contained in Article 19 of the *United Nations Declaration on the Rights of Indigenous Peoples*.⁸ Dr Bielefeld’s previous submissions on the CDC make these and other human rights based points at length.⁹ It is significant that Aboriginal organisations

⁸ See the arguments set out in Shelley Bielefeld, Submission No 55 to the Senate Standing Committee on Community Affairs, *Social Services Legislation Amendment (Cashless Debit Card) Bill 2017*, 29 September 2017, 1-20.

⁹ These include: Submission to the United Nations Special Rapporteur on Extreme Poverty and Human Rights, *Thematic report to the UN General Assembly on digital technology, social protection*

have been critical of the proposal to extend the CDC outlined in this Bill, arguing that it undermines autonomy for First Peoples.¹⁰

Importantly, no First Nations group in Australia has the right to speak on behalf of another without authorisation, so government consultations in limited areas and handpicking people to be consulted will be inherently problematic if this excludes particular First Nation groups from having control over outcomes for their communities. Handpicking some people for consultation and excluding others has been a key criticism of how the CDC was introduced into the East Kimberley, together with the government refusing to abide by conditions upon which the four people consulted said they wanted the CDC.¹¹ We note that one of these four individuals, Lawford Benning, has also now very publicly retracted his support for the CDC.

An attached publication by Dr Bielefeld and Dr Beaupert also elaborates on other human rights incompatibility issues in the context of the CDC, notably disability discrimination inconsistent with Australia's international human rights obligations under the *Convention on the Rights of Persons with Disabilities* (Appendix B). This issue has previously been ignored by the Government, and has been notably absent from all Human Rights Compatibility Statements that have accompanied CDC Bills to date—yet this issue of specific disability related difficulties and disability discrimination introduced by the CDC scheme warrants further attention.

Indeed, as Dr Bielefeld has previously argued in other submissions on the CDC,¹² the CDC perpetuates indirect race, disability, and gender discrimination – with no reasonable and proportionate limitations on rights to be free from discrimination – because people targeted by the government with the CDC are *presumed* to have budgetary capacity problems and addiction issues rather than *proven* to have such problems. Prejudicial stereotypes do not provide an ethical rationale for rights restrictions.

and human rights, 16 May 2019, 1-8 (cited in the recently released UN report); Submission No 22 to the Senate Standing Committee on Community Affairs, *Inquiry into the Social Security (Administration) Amendment (Income Management and Cashless Welfare) Bill 2019*, 7 March, 1-5; Submission to the Australian Human Rights Commission, *Human Rights and Technology Issues Paper*, 16 October 2018, 1-23; Submission No 68 to the Senate Standing Committee on Community Affairs, *Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018*, 20 July 2018, 1-13; Submission to the Australian National Audit Office, *The implementation and performance of the Cashless Debit Card trial*, 15 January 2018, 1-9; Submission No 55 to the Senate Standing Committee on Community Affairs, *Social Services Legislation Amendment (Cashless Debit Card) Bill 2017*, 29 September 2017, 1-20; Submission to the Senate Standing Committee on Community Affairs, *Social Security Legislation Amendment (Debit Card Trial) Bill 2015*, 18 September 2015, 1-15.

¹⁰ Shahnai Wellington, 'Aboriginal organisations attack cashless welfare card "intervention"', NITV, SBS, 12 September 2019, <<https://www.sbs.com.au/nitv/nitv-news/article/2019/09/12/aboriginal-organisations-attack-cashless-welfare-card-intervention>>.

¹¹ Lawford Benning, 'Media Statement: "My People Have Spoken"', MG Corporation, 22 August 2017, <<http://www.mgcorp.com.au/wp-content/uploads/2016/11/170822-MY-PEOPLE-HAVE-SPOKEN-Cashless-Debit-Card.pdf>>.

¹² As above in footnote 9.

Conclusion

In addition to being ineffective, regular legislative extensions of compulsory income quarantining programs have unjustly infringed upon consumer rights, citizenship rights, and human rights of affected social security recipients.

For the preceding reasons, we cannot support the Bill proposed. It is especially concerning that it provides for Ministerial discretion to increase the amount quarantined on the CDC from 80 per cent to 100 per cent for people in the Northern Territory (s 39), and that this drastic and draconian measure can be undertaken by legislative instrument without appropriate democratic debate in the Parliament. The findings from our study indicate that people on the CDC are finding it difficult enough having 80 per cent of their income quarantined on the card let alone making it 100 per cent.

Yours sincerely,

Dr Shelley Bielefeld
(Submission's lead author/corresponding author)
ARC DECRA Fellow/Senior Lecturer
Griffith Law School
Arts, Education and Law Group
Building N61, Nathan campus, Griffith University
170 Kessels Road, Nathan QLD 4111 Australia

Dr Michelle Peterie
Postdoctoral Research Fellow
School of Social Science
Michie Building, St Lucia, University of Queensland
QLD, 4067, Australia

Dr Zoe Staines
Postdoctoral Research Fellow
School of Social Science
Michie Building, St Lucia, University of Queensland
QLD, 4067, Australia

Professor Greg Marston
Head of School
School of Social Science
St Lucia, University of Queensland
QLD, 4067, Australia

Appendix A

Michelle Peterie, Shelley Bielefeld, Greg Marston, Philip Mendes and Louise Humpage (2019) 'Compulsory Income Management: Combatting or compounding the underlying causes of homelessness?' *Australian Journal of Social Issues* 1–12. <<https://doi.org/10.1002/ajs4.79>>.

Appendix B

Shelley Bielefeld and Fleur Beaupert (2019) 'The Cashless Debit Card and Rights of Persons with Disabilities' *Alternative Law Journal* 44(2): 114-120. <<https://doi.org/10.1177/1037969X19831768>>

Appendix C

Shelley Bielefeld (2017) 'The Intervention, Stronger Futures and Racial Discrimination: Placing the Australian Government under Scrutiny' in Elisabeth Baehr and Barbara Schmidt-Haberkamp (eds), 'And there'll be NO dancing'. *Perspectives on Policies Impacting Indigenous Australia since 2007* (Newcastle upon Tyne, Cambridge Scholars Publishing) 145-166.