



North Australian Aboriginal Justice Agency

NAAJA Submission

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

21 October 2019

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1. EXECUTIVE SUMMARY

The North Australian Aboriginal Justice Agency (**NAAJA**) is an Aboriginal Community Controlled Organisation, and the largest provider of legal services in the Northern Territory. We work under direction from an Aboriginal Board who come from the communities we work in, and are led by an Aboriginal Executive. We provide legal aid and justice agency services to Aboriginal people across the NT, including in remote and very remote locations. Many of our clients are subject to income management. Our work has given us insight into income management and the impact it can have on people's lives.

NAAJA opposes the *Social Security (Administration) Amendment (Income Management to Cashless Debit Card (Transition) Bill 2019* (Cth) (the **Bill**), which expands compulsory income management (**IM**) in the NT through the rollout of the Cashless Debit Card (**CDC**) scheme.

NAAJA remains opposed to compulsory income quarantining in all forms. Compulsory income quarantining strips away a person's ability to make decisions about their own life. It takes away choices that many of us take for granted about how we spend our money and organise our personal life. These are significant restrictions on a person's freedoms and human rights, and they are not justified. There is no clear and compelling evidence that compulsory income quarantining achieves its objectives.

NAAJA opposes the introduction of the CDC Scheme as proposed by the Bill on the basis that it is a blanket, compulsory income quarantining scheme with discriminatory impacts.

NAAJA has serious concerns about specific aspects of the Bill. In particular:

- The Bill expands the cohort of people who will become subject to compulsory welfare quarantining measures to all people in receipt of certain payments, thereby exacerbating the already blanket nature of the current IM scheme. It is not targeted towards people with specific vulnerabilities;
- Whilst the CDC scheme will, at least initially, keep the quarantined portions at their current rates - usually 50%, there is no guarantee that the proportion of income that is restricted will remain at that level;
- Once a person is made subject to the CDC scheme it is likely to be very difficult for them to exit, and the application process to exit involves significant and unwarranted scrutiny of individual's personal lives, in breach of their privacy;
- There is no right to review the Secretary's decision to issue the notice that makes an individual subject to the CDC Scheme;
- The Bill gives the Secretary broad powers to obtain and share information about an individual's personal circumstances;
- The Bill removes the requirements that evaluations of the "trials" be conducted by independent experts and that recommendations as to their effectiveness are made;

- Both the IM and the CDC scheme are costly measures. It is concerning that the government is spending public funds on schemes that lack any firm evidence and have been unsuccessful in achieving their objectives to date.

The CDC scheme would continue to disproportionately impact on Aboriginal people, with approximately 82% of people currently subject to IM and who will transfer to the CDC scheme being Aboriginal.

NAAJA acknowledges that there are some positive aspects of the CDC scheme's card when compared with the functionality of the BasicsCard and the scope of the products that are restricted under the NT income management scheme. However, NAAJA has concerns that many of the significant issues relating to the operation of restrictive income quarantining practices will also be present under the proposed CDC scheme, including the experience of having a card declined even when attempting to purchase non-prohibited items or being subject to increased costs imposed by the providers or goods or services, the experience of barriers participating in aspects of community life that depend on the cash economy, shame and stigma associated with being a person subject to social security payment quarantining and the loss of agency and accountability in managing their financial affairs.

In addition, NAAJA has concerns about what is currently known about plans for the rollout of the CDC scheme, including a concern that there will be insufficient time for individuals to transition from IM to the CDC scheme under arrangements proposed in the Bill. NAAJA is also concerned that individuals in remote communities will be particularly disadvantaged during the proposed rollout of the scheme unless there is appropriately designed and funded support to individuals in remote communities, given the significant costs barriers to accessing services faced by these communities.

Aboriginal organisations and communities in the NT most impacted by the Bill were not consulted about the decision to introduce the CDC scheme to the NT - a decision that continues and entrenches a highly restrictive policy and that will potentially create significant disruption to lives of users. Compulsory income quarantining was first introduced into the NT during the Federal Government's Northern Territory Emergency Response (**NTER**, also known as 'the Intervention'), with limited consultation, in a hurry and with little consideration of the research and experience of ACCOs and other community organisations into how to address entrenched social disadvantage, particularly in relation to the remote and Aboriginal communities that it overwhelmingly impacted on. The proposed introduction of the CDC scheme bears these hallmarks: it is a second intervention into the NT focussed on controlling and restricting social security payments.

2. INTRODUCTION

a) About NAAJA

NAAJA provides high quality, culturally appropriate legal aid services to Aboriginal and Torres Strait Islander people throughout the Northern Territory. NAAJA was formed in February 2006, bringing together the Aboriginal Legal Services in Darwin (North Australian Aboriginal Legal Aid Service), Katherine (Katherine Regional Aboriginal Legal Aid Service) and Nhulunbuy (Miwatj Aboriginal Legal Service). From 1 January 2018 NAAJA has been providing legal services for the southern region of the Northern Territory formerly provided by CAALAS (Central Australian Aboriginal Legal Aid Service). NAAJA and its earlier bodies have been advocating for the rights of Aboriginal people in the Northern Territory since 1974.

NAAJA serves a positive role contributing to policy and law reform in areas affecting Aboriginal peoples' legal rights and access to justice. NAAJA's legal practice areas are broad, encompassing criminal, civil, care and protection and family law. NAAJA has offices in Darwin, Alice Springs, Katherine and Tennant Creek and travels to remote communities across the Northern Territory to provide legal advice, representation, community legal education and consult with relevant groups to inform policy submissions.

NAAJA's civil law practice includes providing legal advice and assistance to Centrelink beneficiaries. This includes assisting clients with income management related matters. Detail about the income related issues that clients present with is contained in Part 4 of our submission.

This submission draws on the cultural authority of an Aboriginal board which governs NAAJA as an Aboriginal Community Controlled Organisation. NAAJA staff are inspired by the strength and resilience of the Aboriginal people who are board members and come from across the Northern Territory including a strong focus and representation from regional and remote areas. We particularly acknowledge the Elders of our board and the contribution of Aboriginal and Torres Strait Islander people who developed and strengthened NAAJA and its earlier bodies over the years.

b) Brief overview of the Bill

On 21 September 2019, the Commonwealth Government introduced the *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019* (Cth) (the **Bill**) to Parliament.

The Bill introduces the CDC scheme to the NT and to Cape York in QLD as "trials". The trial in the NT is to conclude on 30 June 2021 and in Cape York the trial is to conclude on 31 December 2021.

The Bill also extends the end date for the current CDC trials in Ceduna and surrounds (SA), East Kimberley region (WA), Goldfields region (WA), Bundaberg and Hervey Bay (QLD) to from 30 June 2020 to 30 June 2021.

In addition, the Bill removes the existing caps on the number of people that can be made subject to the CDC trials.

c) NAAJA's position and focus of submission

NAAJA welcomes the opportunity to make a submission on the Bill to the Senate Community Affairs Legislation Committee.

NAAJA is strongly opposed to the Bill.

NAAJA is opposed to all forms of compulsory welfare quarantining. We have consistently opposed the IM regime in the NT. We opposed the introduction of the CDC scheme to current trial sites.

As NAAJA operates within the NT, the focus of this submission is the Bill's likely impact in the NT. Our submission draws on consultations and conversations with men and women in regional centres and remote Aboriginal communities across the Top End, around Katherine, the Barkley Region and Central Australia.¹ It also draws on NAAJA's casework (both historic and ongoing) servicing these regions, and the practice and professional experience of NAAJA's Criminal, Civil, and Throughcare teams.

¹ One group from a remote community has requested that NAAJA submit to the Committee a statement written under their direction: see Attachment B to the submission.

3. BACKGROUND TO NAAJA'S OPPOSITION TO BILL

To appreciate the impact this Bill is likely to have on the people it targets, it is vital to understand the context in which it proposes to operate.

a) History of income management in the NT

Compulsory welfare quarantining measures were first introduced in the NT in 2007 as part of the Federal Government's (NTER), i.e. the Intervention. Within two months of the release of the *Little Children are Sacred* report, which triggered the Intervention, the Federal Government began enacting "emergency measures", including widespread IM. IM applied to all people who lived in 73 remote communities in the Northern Territory and restricted 50% of their social security entitlements.

The IM scheme was rolled out with no prior consultation with the communities that would be affected. This failure to consult with communities rejected the first recommendation of the *Little Children are Sacred* report. In addition, the *Racial Discrimination Act 1975* (Cth) (the RDA) was suspended in order for the NTER to be lawfully implemented.

IM persisted after the Intervention resolved under a new name, New Income Management, which was introduced in late 2010. This extended compulsory welfare quarantining to the entire NT. People that fell within certain categories (as detailed below in section 5) were subject to IM. The RDA was reinstated.

In 2014, 90.2 per cent of those subject to IM were Aboriginal. It was estimated that 1.3 per cent of non-Aboriginal people and 34.0 per cent of Aboriginal people aged 15 years and over living in the NT are subject to IM.

b) Current context of income management in the NT

The lack of jobs and wrap around services in remote communities: A troubling context for IM

There is a real lack of employment opportunities for Aboriginal people living in remote communities. The barriers experienced by many Aboriginal people living remotely in relation to accessing education and training means that the small number of jobs that do exist may require formal prerequisites that many community members find difficult to meet. Territory wide, 14.2% of Aboriginal people have completed year 12, compared with 58.7% of non-Aboriginal Territorians.² 25% of Aboriginal Territorians are unemployed, compared with 2.3% of non-Aboriginal people living in the NT.³ This lack of opportunity contributes to Aboriginal

² Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander Health Performance Framework Report* (2018), Cat. No. IHW 194, Canberra, table 2.06. Accessed at <https://www.aihw.gov.au/reports/indigenous-health-welfare/health-performance-framework/contents/tier-2-determinants-of-health/2-06-educational-participation-and-attainment-of-adults>

³ Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander Health Performance Framework Report* (2017): Northern Territory, Cat. No. IHW 186, Canberra, 2017, 82. Accessed at <https://www.aihw.gov.au/reports/indigenous-health-welfare/health-performance-framework/contents/overview>

people in remote communities receiving social security benefits for prolonged periods of time, therefore often automatically falling within the current criteria for income management to apply.

The stated objectives of the CDC scheme include reducing “the amount of certain restrictable payments available to be spent on alcoholic beverages, gambling and illegal drugs.”⁴ However, there is a lack of wrap around services to address the issues that welfare quarantining purportedly aims to address.

In our submission to the Productivity Commission study on Expenditure on Children in the NT, NAAJA highlighted youth specific, and family inclusive residential rehabilitation as a significant gap in service delivery.⁵ It is NAAJA’s understanding that the Council for Aboriginal Alcohol Program Services (CAAPS) in Darwin is the only drug and alcohol residential rehabilitation facility in the NT where there is scope for women to stay at the facility with their children. NAAJA staff have observed that the demand for this service is high, and that the waiting list can be lengthy. Clients from across the NT seek to access this service so that they do not have to find alternative arrangements or undergo separation from their children when engaging in rehabilitation. There is a high need for services like this that cater for families. There is also a need for improved transition and aftercare planning for clients exiting drug and alcohol rehabilitation.

Young people also experience a lack of options in relation to residential drug and alcohol rehabilitation. We note that Bushmob in Alice Springs often accommodates children from Katherine and the Top End, due to a lack of equivalent services in those regions. Meaningfully addressing the harmful use of alcohol requires a multi-faceted approach that targets supply, demand, and harm reduction. Attempting to address alcohol abuse through income management does not respond to the underlying reasons driving demand for alcohol; or the harm that results from its use. Until these elements are addressed, approaches which focus solely on the issue of supply, or access to alcohol, will fail to have any meaningful impact.

Compulsory welfare quarantining is at odds with the Aboriginal Justice Agreement and its sentiments

NAAJA is concerned by the inconsistency between compulsory welfare quarantining and other contemporary policy development in the NT, such as the Aboriginal Justice Agreement. The Aboriginal Justice Agreement was released in draft form in September 2019, and is the culmination of extensive consultation by the NT Department of Attorney-General and Justice with Aboriginal community members, organisations, and relevant Government departments throughout the remote and urban settings of the NT.

The guiding principles of the draft Aboriginal Justice Agreement are as follows:

1. Establish respectful and collaborative relationships and form a partnership built on mutual trust between government, Aboriginal communities and individuals

⁴ Part 3D(a) of *the Social Security (Administration) Act 1999* (Cth)

⁵ NAAJA Submission to the Productivity Commission study of Expenditure on Children in the NT, (July 2019) – accessible at https://www.pc.gov.au/__data/assets/pdf_file/0005/243779/sub028-nt-children.pdf

2. Uphold the highest standards of honesty, integrity, transparency and accountability when working together
3. Respect the diversity of Aboriginal people and communities across the Northern Territory, accepting that each has unique needs, histories and strengths that must be considered in the design and delivery of strategies, policies and services
4. Adhere to the highest standards of cultural competence and best practice including accepting and respecting Aboriginal knowledge and the enduring connection of Aboriginal Territorians to country, culture, kinship and language
5. Respect and honour the strength of Aboriginal Territorians and communities, and actively discourage bias and the use of deficit labelling
6. Value and promote Aboriginal leadership and autonomy recognising that this will lead to greater and more meaningful change
7. Ensure that Aboriginal Territorians have the same rights and opportunities as other Territorians
8. Eliminate unfair treatment including conscious and unconscious bias⁶

In NAAJA's view compulsory income management is at odds with these guiding principles, whether in its current or proposed incarnation. The unilateral application of such a policy solely based on receipt of a social security benefit and irrespective of a person's other personal circumstances does not recognise the diversity of Aboriginal people and communities. Compulsory welfare quarantining also perpetuates negative stereotypes about Aboriginal people receiving social security benefits, and could be considered a form of deficit labelling. Further, the restriction of a person's decision making as a consumer amounts to an erosion of the rights and opportunities that other Territorians enjoy.

Compulsory welfare quarantining operates alongside other paternalist and discriminatory interventions

Many recipients of social security payments in remote communities are subject to the Community Development Program (**CDP**), the government's remote work for the dole program. NAAJA has continuously advocated for the abolition of CDP.

CDP is an extremely onerous and punitive program, which requires participants to undertake up to 20 hours of "activities" per week, almost twice as many hours compared to the non-remote work for the dole program, Jobactive.⁷ Failure to attend activities can result in penalties being applied or a person's payment being suspended or completely cancelled.

⁶ Draft Northern Territory Aboriginal Justice Agreement, (2019) Guiding Principles, 9.

⁷ Department of Employment, Skills, Small and Family Business, 'Work for the dole – information for job seekers' (2018). Accessed at https://docs.employment.gov.au/system/files/doc/other/work_for_the_dole_-_job_seeker_fact_sheet_oct_18.pdf

It is well established that CDP has a significant impact on Aboriginal people living in the NT. Materials published by the Department of Prime Minister and Cabinet report that as at June 2018:

- a) CDP is delivered in 60 regions across Australia, and 23 of those CDP Regions are located in the NT;
- b) More than 80% of the 32,000 people participating in CDP are Aboriginal and Torres Strait Islander people.⁸

In addition to being subjected to income quarantining, people subject to CDP experience a disproportionate number of penalties compared with Jobactive. In 2017 the Australian National Audit Office (**ANAO**) found that “[B]ased on a snapshot of Participation Reports in January 2017 for both Jobactive and the CDP, 54 per cent of all non-compliance reports across the two programs that triggered Human Services’ investigation and decision making process were CDP generated, despite the CDP comprising around 5 percent of the Jobactive caseload.⁹ Clients often report to NAAJA that they have not been receiving their full Centrelink payments as a result of being penalised, their payments being suspended, or their payments being cancelled.¹⁰ Penalties are taken from a person’s overall payment, and the remaining amount is divided into the restricted and unrestricted portions, decreasing the money going into a person’s bank account for them to freely spend, thereby exacerbating the restrictive impacts of compulsory welfare quarantining.

Furthermore, although the work that participants are required to complete are referred to as “activities”, they carry the essential features of regular employment. We have often see and/or speak to people in remote communities who are undertaking activities which include stacking shelves or working at the check-out at the local store, garden maintenance, furniture making, and picking up rubbish. A CDP participant must complete these prescribed activities in return for regular Centrelink payments. Many CDP participants are thus working a significant number of hours in jobs that resemble regular employment, in a context where no paid work is available, in order to receive a social security benefits, and are then subject to restrictions on their ability to spend that money imposed by income management.

Many of NAAJA’s clients receiving social security benefits in remote communities are thus subject to two highly restrictive and disempowering schemes. Subjecting these individuals to compulsory income management cannot be said to have any benefit in encouraging participation in the work force. A significant number of these individuals in the NT also live in dry communities where access to alcohol is already restricted.

⁸ Department of Prime Minister and Cabinet, *The Community Development Program Regions* (2018) 1-3. Accessed at https://www.pmc.gov.au/sites/default/files/publications/cdp-regions_25-June-18.pdf

⁹ Australian National Audit Office (ANAO), *The Design and Implementation of the Community Development Programme*, (2017), [3.29]. Accessed at <https://www.anao.gov.au/work/performance-audit/design-and-implementation-community-development-programme#2-1-conclusion>

¹⁰ We note that from our experience, the large number of penalties imposed is often a result of highly inappropriate requirements being imposed and people struggling to comply. As a result, NAAJA’s civil law practice includes assisting clients with challenging such decisions, by making complaints to the Commonwealth Ombudsman, seeking exemptions or reductions in activity requirements. CDP related matters would make up a large proportion of some lawyers caseloads.

Compulsory Income management schemes are based on harmful assumptions about the causes of drug and alcohol problems and demonise people in receipt of social security payments as having deficiencies which contribute to their inability to find a job.¹¹ In the Northern Territory we know that many people captured by Compulsory Income Management are meaningfully engaged in CDP work activities, being the primary model of employment available across very remote NT. Others care meaningfully for family, both their children and the elderly, without other vulnerability factors and yet are stigmatised.

c) Current cashless debit card trials

The CDC scheme has to date been introduced to:

- a) Ceduna and Surrounds on 15 March 2016, and in the East Kimberley region on 26 April 2016.
- b) Goldfields region (WA), rollout from 26 March 2018.
- c) Bundaberg and Hervey Bay (QLD) region, rollout from 29 January 2019.
- d) Barkley region (short trial).

On 5 April 2019, the Commonwealth Government passed the *Social Security (Administration) Amendment (Income Management and Cashless Welfare) Bill 2019* which:

- a) extended the cashless debit card trial in the Ceduna region, East Kimberley region and Goldfields region until 30 June 2020; and
- b) extended the operation of an income management program in Cape York (a program which operates very differently to the other cashless debit card trials) to 30 June 2020.

The CDC scheme currently applies to all people who receive a working age payment within the Ceduna, East Kimberley and Goldfields regions. This includes people on the Disability Support Pension.¹²

In the Bundaberg and Hervey Bay region, the CDC scheme applies to all people aged 35 years and under who receive Newstart Allowance, Youth Allowance, and Parenting Payment (Single or Partnered) and excludes some payments including the Disability Support Pension.¹³

Once a person is placed on the CDC scheme, they remain on the program so long as they continue to meet the payment and age criteria, even if they move to a non-CDC scheme area.¹⁴

People on the CDC scheme receive:

- a) 20 per cent of their welfare payment in their regular bank account.
- b) 80 per cent of their welfare payment onto their cashless debit card.
- c) 100 per cent of any lump sum payments onto their cashless debit card.

¹¹ E Kelin and S Razi 'The cashless debit card trial in the East Kimberley' (2017) *Centre for Aboriginal Economic Policy Research*.

¹² This is the case for all CDC scheme trial areas apart from Bundaberg and Hervey Bay.

¹³ Department of Social Services 'Cashless Debit Card' (2019). Accessed at <https://www.dss.gov.au/families-and-children-programs-services-welfare-quarantining-cashless-debit-card/cashless-debit-card-frequently-asked-questions#how-does>.

¹⁴ *ibid*.

Currently, there are over 5,000 people are on the CDC.¹⁵ There is currently a cap of 15,000 people who can be subject to the scheme¹⁶ (we note that the Bill removes this cap).

¹⁵ L Allam, 'Exiting the cashless welfare care almost impossible, critics say', *The Guardian* (17 September 2019). Accessed at <https://www.theguardian.com/australia-news/2019/sep/17/exiting-the-cashless-welfare-card-trial-is-almost-impossible-critics-say>.

¹⁶ See section 124PF *Social Security (Administration) Act 1999* (Cth)

4. DISCRIMINATION AND RESTRICTION OF LIBERTIES

a) Discrimination

The CDC scheme would continue to perpetuate the infringement upon the right to equality and non-discrimination of Aboriginal and Torres Strait Islander peoples.

The proposed transition for NT welfare recipients from the current system of compulsory income quarantining to the new CDC scheme is a missed opportunity to rectify the discriminatory impacts of the current regime.

We note that in 2018, a Parliamentary Joint Committee on Human Rights (**Parliamentary Joint Committee**) raised concerns about compulsory welfare quarantining undermining certain human rights, including the right to equality and non-discrimination.¹⁷

Building on a history of discrimination

For Aboriginal income managed welfare recipients in the NT, the legacy of racial discrimination and welfare is significant. As outlined above, compulsory welfare quarantining was introduced with the Intervention, which required the suspension of the RDA.

This income management measure continues to disproportionately impact on Aboriginal people. As at March 2018, 82% of people on income management in the NT were Aboriginal or Torres Strait Islander people. We note that those subject to IM will be transferring to the CDC scheme.

Demographics of CDC trial sites

From the outset, Aboriginal and Torres Strait Islander populations have been disproportionately impacted by the CDC trials. Around 75 per cent of people captured by the trial in Ceduna, and 80 per cent in East Kimberly identify as Aboriginal and Torres Strait Islander. In the Goldfields, nearly half of those captured by the trial are Aboriginal and Torres Strait Islander people. This is in the context of Indigenous people only making up 2.8% of the national population in the 2016 Census.¹⁸

The Explanatory Memorandum identifies that “with the addition of the Goldfields areas, Western Australia, and the Bundaberg and Hervey Bay area, Queensland, the proportion of Indigenous participants across the four sites is around 38 per cent.” This still captures a rate that is 13.5 times higher than the national Indigenous population.

¹⁷ Parliamentary Joint Committee Report on Human Rights, ‘Human Rights Scrutiny Report’ (Report No 8/2018, 21 August 2018) 44–5.

¹⁸ Aboriginal and Torres Strait Islander Population, ABS 2016 Census data summary, *Australian Bureau of Statistics* (2016). Accessed at <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20Population%20Data%20Summary~10>

Discriminatory operation of the exemption provisions

As detailed below in Section 7(c), the evidence in the NT and at trial sites suggests that Aboriginal people subject to both income management and the CDC scheme are less likely to apply for an exemption and much more likely to be rejected when they do apply.

An unjustified incursion on equality and non-discrimination

The Explanatory Memorandum acknowledges that the legislation “may *indirectly* limit these rights”, that being the rights to equality and non-discrimination. However, the stated core agenda of the proposed legislation is “reducing immediate hardship and deprivation, reducing violence and harm, encouraging socially responsible behaviour, and reducing the likelihood that welfare payment recipients will remain on welfare and out of the workforce for extended periods of time.” The sites for these trials were thus selected as locations with a high prevalence of these kinds of community harms.

Although this explanation is for the four trial sites only, the proposed legislation nevertheless impacts the entirety of the NT. It is a blanket approach that captures communities that do not experience the kinds of harms envisioned by the legislators. This broad brush methodology is disproportionately at the expense of Indigenous people across the NT. The Parliamentary Joint Committee shared this view, by stating that they had “serious doubts” about whether the CDC scheme was the least rights restrictive way of achieving its objective, given that its blanket application.¹⁹

In any event, using income quarantining is a blunt instrument to resolve complex community issues affecting Indigenous communities. As is outlined below at Section 8, it is an instrument that lacks any firm evidence base and prospects of success.

Sensitivity to the impacts of compulsory welfare quarantining on Indigenous people is necessary when considering its further expansion. Research has shown that “a substantial group of people subject to income management felt that income management is unfair, embarrassing and discriminatory.”²⁰

Given that this regime disproportionately affects Aboriginal and Torres Strait Islander people, the outcomes must categorically demonstrate that this is a successful program. As there is little evidence to suggest that income quarantining is indeed an effective measure it is worth considering why these proposed amendments are being pursued and why income management has persisted in the NT since 2007.

b) Serious restriction of liberties

The proposed CDC scheme as outlined in the Bill would involve significant restrictions on the freedoms and autonomy of participants.

¹⁹ Parliamentary Joint Committee Report on Human Rights, ‘Human Rights Scrutiny Report’ (Report No 8/2018, 21 August 2018) 44–5.

²⁰ Rob Bray, et al. ‘Evaluating income in the Northern Territory’, *Social Policy Research Centre*, (2014), xx.

Right to self determination

Article 1 of the International Covenant on Economic, Social, and Cultural Rights (**ICESCR**) relevantly provides that:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Quarantining upwards of 50% of a person's welfare is a substantial level of interference in the day-to-day lives of people. It restricts the ability of individuals to decide how they will spend their income, which denies participants essential economic and financial freedom to pursue the aspirations, values, and priorities they have defined for themselves. This is particularly troubling given the broad application of the current and proposed welfare quarantining measures, which apply without there being any evidence of the individuals subject to welfare quarantining not being able to manage their money.

In addition, and contrary to the Bill which provides that "people are able to spend their restricted funds on any goods or services except alcohol, gambling and illicit drugs...", as is outlined below, people do often experience difficulties in being able to spend the quarantined portion of their income on essential items. This interferes with a person's right to freely pursue their economic, social or cultural development.

Right to social security

Article 1 of the ICESCR provides the "right of everyone to social security, including social insurance". As is noted in the Explanatory Memorandum, the United Nations Committee has stated that implementing this right requires a country to provide "a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, food stuffs, and the most basic form of education."

The Explanatory Memorandum provides that this right is not limited as the CDC scheme merely limits a person's ability to use their welfare entitlements to purchase certain items. It also states that given the prevalence of social harm, any limitation on the right to social security is reasonable and proportionate.

However, it is clear that the compulsory welfare quarantining is an incursion on this right, particularly in light of the practical difficulties that people experience with using their quarantined funds to pay for essential items including food and the difficulties people would face in accessing their funds where their CD cards are either lost or stolen (as outlined at Section 6(b)).

Right to a private life and right to be free from self-incrimination

As outlined at Section 7(e) below, we have serious concerns about the Bill's limitation of a person's right to a private life and freedom from self-incrimination as contained in Article 17 and 14(3)(g) respectively of the International Covenant on Civil and Political Rights (**ICCPR**).

We note that similarly to the right to social security, right to equality and non-discrimination, the Parliamentary Joint Committee found that the CDC scheme may also not be compatible with the right to a private life.²¹

²¹ Parliamentary Joint Committee Report on Human Rights, 'Human Rights Scrutiny Report' (Report No 8/2018, 21 August 2018) 44–5.

5. POSSIBLE POSITIVES OF CASHLESS DEBIT CARD

NAAJA acknowledges that there are some positive aspects of the CDC scheme's card (also known as the **Indue card**) when compared with the functionality of the BasicsCard and the scope of the products that are restricted under the NT income management scheme. The following aspects of the CDC scheme may provide participants with a degree of greater freedom around how they use their money:

- The Indue card can be used for online purchases and paying bills, including BPAY (however, not some major online retailers, such as Ebay, because they sell alcohol);
- Participants can, in theory, use the Indue card at more locations than the BasicsCard: the Indue card can be used in any EFTPOS terminals that do not sell alcohol or gambling products (i.e. there will no longer be a need for vendors to apply for an IM approval). However, we note that vendors that sell both restricted and non-restricted products will still need to seek approval from the government in order for the Indue card to be used to purchase non-restricted items;
- It is possible to transfer funds from one Indue card to another Indue card;
- People can accrue interest on savings;
- It has a slightly less restrictive application in that people can purchase tobacco, and it also does not apply to pornography;
- Free balance checking will be available at St George, Westpac, Bank SA, Bank of Melbourne, CBA, ANZ and NAB ATMs. However, we note that it is unclear whether balance checking will be available at banks such as Traditional Credit Union that have tellers in remote communities;
- The Indue card should work interstate and overseas at vendors that do not sell alcohol.

Whilst these aspects may be benefits of the Indue card in comparison to the BasicsCard, they do not in any way justify or outweigh the highly problematic nature of compulsory welfare quarantining, nor the serious concerns with the Bill, as discussed in this submission.

6. ISSUES WITH INCOME MANAGEMENT AND CASHLESS DEBIT CARD

a) Issues relating to income management identified through NAAJA's casework experience

The type of legal assistance sought from NAAJA in relation to the income management scheme has changed over the life of the policy in the NT.

Issues concerning the initial impact of the scheme

NAAJA's experience was that the introduction of the BasicsCard caused significant disruption to individual's personal lives. Initially, when income management was introduced in the NT during the NT Intervention, NAAJA's assistance was focused on assisting clients with complaints about the impact of the scheme, often to the NT Ombudsman.

Issues with broad application of scheme and seeking exemptions

In the early years in particular, clients also approached NAAJA about accessing exemptions in order to no longer be subject to income management. However, in NAAJA's experience, many individuals who are income managed are not aware that they can apply for an exemption from the scheme. Even if they are aware of their options, the services that exist in communities to assist them to do so are very limited, NAAJA being one of a limited number of service providers that regularly travels to remote communities. The significant difficulties in assisting clients to access exemptions under the income management scheme are set out at below in Section 7(c).

The following are case study examples of matters NAAJA has assisted with:

- A client came to NAAJA seeking an exemption from income management as he was struggling to pay debts with his BasicsCard. After considering the client's circumstances, NAAJA had to advise the client that he had limited prospects of being able to seek an exemption.
- A client on the Disability Support Pension was made subject to income management as a result of being placed under the vulnerable welfare recipient measure. He sought NAAJA's assistance with seeking revocation of the decision to place him on income management. NAAJA assisted the client with appealing the decision on the basis that there was no sufficient basis for a finding that he was "vulnerable" according to the legislation for reasons which included that there was no evidence of financial exploitation. The appeal however was unsuccessful.

Individuals seeking assistance understanding income management and with significant reductions in non-income managed funds

In recent years, a common presentation to remote legal clinics relating to income management is a client attending a clinic with concerns about why they are receiving very small payments into their bank accounts or on their BasicsCard (sometimes as little as \$50 or \$70). NAAJA will assist these clients to access a breakdown of their payment, which will often reveal that a large proportion of their payment is being deducted via direct debits, and the remainder is then

being divided between their income managed and non-income managed accounts.²² Often, the imposition of penalties associated with the CDP Program (such as “no-show no pay”) penalties, has further reduced the amount available. Thus, while in theory only 50% of a client’s payment is being income managed, this does not mean that they have access to 50% of the total amount of their payment.

Very often our clients do not understand the reason why they are receiving such small amounts of their social security payment and do not feel that they can do anything about it – such as changing the way that their direct debits are set up or seeking an exemption to the income management scheme – even if being on the scheme places them in hardship. NAAJA’s experience is thus that the impacts of income management includes for some individuals the exacerbation of the feeling of disempowerment about managing their financial affairs and it also further distances individuals from active involvement in managing their own budget.

Issues relating to the criminal justice system

Staff working with clients in NAAJA’s Criminal Law Section have reported that criminal bail sureties are often paid with cash and funds may be raised by different family members. Having less disposable income thus may constitute a barrier to raising bail sureties. This could be mitigated if bail sureties could be paid electronically at court, however in our experience these sureties are usually paid with cash.

Issues relating to limited financial services and advice

The experience of NAAJA’s lawyers running remote civil law clinics is that there are significant barriers to accessing financial services and advice in remote communities. There is also a substantial lack of financial literacy among many of our clients, exacerbated by language barriers and difficulties in reading in English. NAAJA lawyers are often approached for assistance with problems with banking or for assistance with setting up automatic debits or payments for fines, dealing with superannuation and insurance companies or for advice about financial affairs. In some communities, a service provider or program will be available to provide assistance with financial matters. However, in our experience very often available funding is only available for a fly-in-fly out service provider who is unable to spend significant periods of time in community and is thus has a limited ability to address the significant unmet need for financial literacy education, access to financial services and financial counselling. In our experience, the availability of registered financial counsellors in community is even more limited, further reducing the scope of financial issues that service providers can assist with.

NAAJA has often been requested to provide assistance with:

- obtaining replacement BasicsCards.
- clarifying payments or making information requests;
- issues concerning lack of access to income managed funds;
- information and support with using income managed account and BasicsCard.

In NAAJA’s experience, decreased access to social security payments due to income management, a lack of access to the second hand goods through the cash economy and the

²² This can vary depending on how the deductions are set up and structured.

limited access that individuals in remote communities have to banking services (including the provision of credit) is also a contributor to vulnerability of our clients to predatory and unjust consumer practices. These include pay-day lenders charging significant fees, merchants engaging in unlawful practices in relation to the sale of motor vehicles, or “rent-to-buy” schemes that result in individuals entering unconscionable consumer contracts and in some cases paying double or triple the market value for expensive consumer items such as whitegoods.

Number of clients who seek NAAJA’s assistance

NAAJA captures data relating to the number of individuals who seek assistance in relation to Centrelink issues. This data shows that in the years from 2014-2019, there has been a significant increase in demand for legal assistance from NAAJA’s Civil Law Section in relation to Centrelink issues. In 2015, NAAJA saw over three times as many clients seeking assistance with Centrelink matters than in 2014. After a further increase in 2016, the number of clients seen doubled in 2017 (116 clients) and then further increased in 2018 (157 clients) and 2019 (120 clients). Because of the way that data is coded, it is harder to identify what proportion of these clients sought assistance with issues relating to income management. However, it is possible to identify that in the last 5 years the number of individuals seeking assistance for help with Centrelink related legal issues has been steadily growing, increasing demand on NAAJA’s legal services.

b) Issues likely to be present in the rollout of the CDC scheme to the NT

Transfer of funds and automatic deductions between systems

The Explanatory Memorandum to the Bill states that participants will have 60 days to transfer funds from their existing income management account to their CDC account and states that this “allows sufficient time for a person to ensure that their CDC account (and associated card) is activated and deduction arrangements are transferred to their CDC account prior to closure of their IM account.”

NAAJA is concerned that 60 days will not be a sufficient amount of time for many of our clients, particularly those in remote communities, to transition between schemes in light of factors such as remoteness and language and literacy barriers.

Under IM, participants attend a compulsory interview with DHS to identify basic needs and set up payments, including for rent, to repay fines and debts and for community services (such as aged care services, meal delivery and often the provision of utilities and services such as electricity and telecommunications on homelands where families will live for parts of the year). For many individuals on the BasicsCard, these payments are “set and forgot”; they may have been set up many years ago. Some of these payments are set up through Centrepay, and operate as deductions from the amount of social security income payable each fortnight, prior to the distribution of payments into income managed and non-income managed accounts. Other payments are linked to an individual’s income managed account.

It is currently unclear what arrangements will be made to assist participants to transfer payments that are linked to their income managed account to their CDC account, and how income managed account deductions will be affected. Some potential impacts are:

- Individuals getting into arrears with housing (in particular, in relation to private rental) which can result in accrual of significant debt, or the risk of eviction. Housing is a significant expense that is often paid out of an individual's income managed account. It is currently unclear how the transition will affect NT public housing clients. More concerning is the risk that individuals who have private rental direct debits linked to their income managed accounts risk having their rental payments disrupted in the transition.
- It is unclear whether the transition has the capacity to disrupt the payment of NT Fines Recovery Unit fines, which may result in fine amounts increasing, or payment ceasing which could prevent individuals, for example, from getting a licence.
- It is unclear whether the transition could impact on the repayment of consumer debt arrangements or loans, which could result in the imposition of additional fees or the commencement of debt recovery proceedings.

NAAJA's views and concerns regarding proposed funding for services to support the rollout

A lot of questions still remain about how it is proposed that the CDC scheme will operate and be rolled out in the NT. While the Government has committed \$17.8 million for the transition to the Cashless Debit Card scheme, it is unclear currently how these funds will be spent and whether they will be sufficient to provide an adequate amount of support to individuals in remote communities, given the significant costs associated with travelling to, and providing services in, remote locations.

NAAJA has assisted clients during the introduction of income management during the intervention, and during the rollout of the many changes to that system, including the introduction of the BasicsCard. In our experience, Aboriginal people in remote communities are particularly disadvantaged by significant policy changes that have a direct impact on their ability to organise their personal affairs and obtain basic necessities for themselves and their families due to:

- Language barriers;
- Differing degrees of literacy, including financial and digital literacy;
- A lack of culturally appropriate service provision;
- A lack of service providers who visit community frequently enough to meet the demand for assistance with legal and financial services, or to provide assistance to individuals facing these barriers with completing administrative processes and accessing assistance.

Without adequate assistance to understand the proposed changes to the operation of welfare quarantining in the NT, we are concerned that individuals in remote Aboriginal communities will face additional difficulties resolving problems with using their card and accessing their money, with accessing the exemptions and exit procedures, and without taking advantage of changes to the card such as an increased ability to use it for online shopping and BPAY transactions.

We consider that the provision of services should take the following into account:

- The Government should ensure that a significant proportion of the funds allocated to assist with the rollout is directed at card users, and should set aside and publicly disclose an amount which will be used specifically for this purpose separately to funds intended to assist other stakeholders, such as NT businesses required to adapt to the CDC Scheme;
- Services should be designed and delivered in partnership with communities and community organisations and service providers, particularly Aboriginal Community Controlled Organisations;
- Support services should be delivered by members of the community wherever possible, in language, or with the assistance of interpreters; and
- Service provision in remote communities should include a presence in communities that provides sufficient opportunity for face to face communication with individuals who are not digitally literate or who lack access to the internet.

Likely that transition will increase need for legal and financial services

In light of the significant changes to the operation of the card, the expansion of the criteria for entry and the introduction of new exemptions, NAAJA considers that it is highly likely that the proposed roll out of the card would result in an increase in demand for legal services. In addition, in the context of the unmet need for financial services, banking services, financial counsellors and administrative support, it is likely that service providers who regularly visit communities will see a significant increase in approaches from individuals seeking referrals or assistance with accessing these resources.

NAAJA is also concerned that, while there may initially be funding for services during the transition to assist individuals, there is no commitment from the Government to invest in ongoing resources and services of the kind capable of supporting individuals subject to the scheme on a sustainable basis. Time and time again, short term injections of funding have failed to provide ongoing support to individuals who are subject to restrictive interventions into their personal affairs by Government. NAAJA is concerned that when funding for the rollout of the scheme ends, the responsibility for assisting individuals subject to the scheme who live in remote communities will fall back on the limited number of service providers, such as NAAJA, who visit communities and provide face to face, culturally appropriate services. This puts further pressure on the resources of such organisations which are already often operating at the limit of their capacity to respond to significant unmet need for legal and financial services.

Concerns regarding user support provided by Indue

We are concerned about proposed arrangements how user support will be provided by Indue in remote communities and specifically, current proposals for replacing lost or stolen cards. At present, individuals subject to CDC at the trial sites in other jurisdictions are directed to contact the Indue Customer Service Centre in the event that their card is lost or stolen, or log onto their Indue Account. Cards are then distributed through “nominated Australia Post and the Local Partners”.

We are concerned that:

- Many of NAAJA's clients live in remote communities, where postal services are very slow, or unreliable or clients face barriers to accessing their mail (for example, clients often don't have ID- a requirement for accessing mail at many remote post offices - and thus are unable to pick up documents sent to them).
- Many individuals in remote communities don't have access to the internet or don't have consistent access. Phones and laptop are often shared between family members. There are differing degrees of digital literacy in community. Reliance on apps or online accounts to provide services is likely to significantly disadvantage individuals in remote communities with low digital literacy. Face to face service provision will be essential to ensure that individuals have access to their money and can resolve issues.
- The Indue Customer Service Centre number is a 1800 (freecall) number, however, in our experience many 1800 numbers are not free from mobile phones. Any customer service number should be free to all users, otherwise the cost of buying credit to call and resolve CDC card issues is likely to be a significant barrier to accessing services and resolving card problems.
- The Indue service line is currently only open Monday to Friday, 8am–8pm and Saturday 8am–1pm (AEST).
- It is unclear what arrangements will be made for callers to Indue service line to access interpreters and Aboriginal liaison officers. A high proportion of NAAJA's clients in remote communities speak English as a second, third or fourth language. It is essential that language assistance and culturally appropriate support are available when resolving Indue card issues.

In 2015, there had been at least 350 000 BasicsCards issued by the Department of Human Services in the Northern Territory. BasicsCards are not sent in the post because of security concerns; they are distributed by Centrelink offices and visiting remote services teams (as many remote communities do not have a Centrelink Office). We expect that CDC participants require replacement cards to a similar level. NAAJA has concerns regarding whether will be able to quickly provide replacement cashless debit cards across the NT using methods that will actually reach individuals. Any delays involved in providing a new card will most likely cause hardship, and have a restrictive effect on participant mobility, given that a person would be unable to access a significant portion of their already small social security income for the period without a card without taking the risk of transferring money to another person's card.

Reports of unexpected fees associated with cashless debit card use

NAAJA is concerned to hear reports of cashless debit card users at existing trial sites being charged fees in association with the use of their cards. It is currently unclear whether fees that card users are reporting were being imposed by the card provider (Indue) or the goods/services provider. Evidence before the Committee in oral hearings has suggested that fees may be imposed as a result of failed transactions, or delayed processing of payments through the Indue system.

The Government and Indue both describe the Indue card as being "fee-free". Given that the majority of individuals made subject to the CDC scheme are being compelled to participate and are reliant on social security income to cover basic necessities, it would be of significant concern if fees were being imposed either by Indue or by third parties as a result of the use of

the card. NAAJA considers that it would be critical for this issue to be further investigated, particularly given that the Bill proposes to greatly expand the number of individuals using the cashless debit card.

c) Additional practical issues that will be present under the CDC scheme

Card not always accepted

Whilst the CD card may be ameliorating some of the issues people have with the Basicscard in being able to use the card, similar issues are likely to continue under the CDC scheme.

While the card can now in theory be used overseas and interstate, access to goods and services will still be restricted if shops sell alcohol or gambling products and haven't entered into a contact with Indue/the Department regarding arrangements to ensure that these items will not be sold to CDC users. For example, if your local corner store doesn't have the resources or capacity to make arrangements with Indue to prevent the sale of these items, then customers with a CD card will not be able to use that shop. Further, in other jurisdictions there will be less providers who have contracted to be able to sell non-prohibited items to card users despite selling a mix of prohibited and non-prohibited items.

At the Community Affairs Legislation Hearing on 14 October 2019, Dr Bielefeld said about CD card users: 'some people experienced declined card transactions after eating a meal in a restaurant when they went to pay for meals, even when these meals had not included any alcohol purchases.' She also said 'many interviewees indicated that they had encountered consumer problems related to the purchase of everyday items that were not meant to be prohibited by the scheme. These include problems paying for needs such as groceries, prescription medicine from chemists, rent, petrol, transport, second-hand goods and insurance payments.'²³

In addition, NAAJA has also spoken to lawyers working in WA trial sites who have said that they have had clients who were placed on the CDC scheme when they lived in a trial area, and when they returned to Perth, had significant issues using their card. For example, the public transport company in Perth didn't accept the CD card, and the moving company they used also didn't accept the CD card.

Some trial participants in the Goldfields trial CDC area also reported issues with paying bills on time directly through the card. This led to the risk of late payment penalties imposed by service providers and further reduction in their ability to meet basic living expenses.²⁴

Economy is not cashless

Despite an increasingly cashless economy, there are some goods and services that can only be obtained using cash. Some examples we consider relevant include: goods at local food markets, some vending machines, informal service providers, second hand goods via sites such as Gumtree, Facebook and other online forums. Cash is also commonly used for gifts, pocket money and money for children's school excursions and activities and sports registrations.

²³ Community Affairs Legislation Committee, Parliament of Australia (Senate), *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, 14 October 2019, page 4

²⁴ A Murdoch and J Delalande, 'Cashless card fury heard', *The West Australian* (Online), 25 June 2018, <<https://thewest.com.au/news/kalgoorlie-miner/cashless-card-fury-heard-ng-b88875124z>>

Community members in the NT have told NAAJA about some cash-related issues when using the BasicsCard. A community member said: 'people need money in their bank account to give money for kids when they are in high school.' The reduced amount of money going into a person's key card might result in difficulty providing basic things to children.

At the Senate Community Affairs Legislation Committee Hearing on 14 October 2019 Dr Bielefeld reported that 'many parents indicated that there was insufficient cash with the 20 per cent to pay for necessary items for children such as tuckshop money, school uniforms, school photos, school holiday activities and tutoring for children.'²⁵

Black market and exploitation

The restrictions faced by those on the BasicsCard have led to alternative methods to avoid using the card and to obtain cash. There is anecdotal evidence of paying a service providers more than owed in exchange for the remaining amount. Some community members also report that they get humbugged more for their BasicsCard because people think it's more likely there will be money on the card.

Community members have told NAAJA:

'Because family know you can't take money out of the card, they know there's probably always money on it, so there is lots of humbug and card stealing. There is more humbug around the basics card than the normal bank card. That's because people don't know if you've taken out all that cash money. They know there is probably money on that card.'

'People can get around the card easily. I've seen people exchange their card for cash. Person gives cash for the card. I've seen that a couple of weeks ago. They want that cash to go gamble, buy gunja. I've seen grandkids taking that card off their grandparent and do that exchange and then use that money for gambling.'

At the Community Affairs Legislation Hearing on 14 October 2019, Dr Peterie (social science researcher at Queensland University) stated 'strikingly, several individuals who had been in domestic violence situations in the past experienced the card as another form of violation and financial control.'

Added administrative burden and unavoidable costs

a) EFTPOS and ATM fees

Many retailers and service providers impose a charge on payments made by EFTPOS. This imposes unavoidable additional costs on the holders of CD and BasicsCard given the limited access to cash. This, in addition to the potential Indue fees as outlined above at Section 6(b) is of concern, particularly in light of the small payments social security recipients receive.

In addition, the inability to check the balance of a basics card via the ATM system caused significant problems for people who are income managed, as well as retailers. These problems have been ameliorated to some extent by the introduction of a '1800' number, so cardholders can access the balance of their card before shopping. We understand that there will also be a

²⁵ Community Affairs Legislation Committee, Parliament of Australia (Senate), *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, 14 October 2019, 4.

number for cardholders to call and check their balance, and that people will be able to use an app.

However, it should be noted that many people in remote communities do not have a mobile phone in order to call or check an app, and if they do, they may not have credit or data to check their balance. While we understand that several of the big banks have agreed not to charge users of the card fees for balance enquiries, it is unclear whether smaller banks or ATMs in remote communities (such as People's Choice and the Traditional Credit Union) will not charge fees.

b) Minimum purchase requirements

A significant number of restaurants, food outlets and other merchants like service stations impose \$10 or \$20 minimum spends in order to use EFTPOS facilities. For example, the service station in Timber Creek, Northern Territory, imposes a \$10 minimum spend. This may mean that participants will need to spend more than they intended or can afford in order to get access to food or other essential items or they may choose not to purchase the item altogether. For people living in remote communities there are very limited options in terms of places to shop. Small minimum spend requirements in remote areas are likely to have a serious impact on cardholders.

Saving and budgeting

As is noted above under section 7.2, NAAJA acknowledges that some recipients of social security payments may find welfare quarantining to be a useful tool for budgeting. NAAJA would not be opposed to people being given an informed choice to be subject to income management for this purpose.

We are concerned, however, that there is no evidence that welfare quarantining assists people with learning how to manage their finances, yet people are subjected to this compulsory measure. In addition, community members have told NAAJA that welfare quarantining creates difficulties with saving and budgeting.

Community members told NAAJA:

'Money goes everywhere and it's hard to save money for things like a vehicle. I need a vehicle because of where I live and my disability but I can't save because of that basics card. Too much money goes onto it. No positives about the card for me. I want to save. It's my money. I'm on disability, that's all the money I can get. I should be able to choose what I do with my money.'

'People can't budget. It is about educating the young ones. We say spend this much on your car, this much on your phone. In this new generation, what will we be telling them? There are basics cards now. It is a racist thing to do. It is discriminatory.'

Shame and stigma

Of the people that NAAJA spoke to about their experience on income management, many said that they feel shame when using the card. The BasicsCard indicates immediately to a retailer that a cardholder receives Centrelink benefits. This in and of itself caused feelings of shame. The additional difficulties, such as failed transactions at certain outlets, difficulty checking card balance and no cash alternatives, leads to further shame associated with the card.

Some of the people NAAJA spoke with said:

'shop-keepers look down on you when you use the card, they look down on you because they think you're on the dole. I know they are judging me. The key card is fine. But as soon as they see the green card, they judge me. It is a dead giveaway that you're on the dole.'

'I feel shame when I use that card in some stores. Feel shame job. They look at you and people think you don't know how to work.'

Whilst the CD card is white, and therefore perhaps not as obvious as the current green BasicsCard, the card still looks different to other cards, and clearly says "Indue" on it. People can therefore still recognise it. The experiences of shame and stigma are therefore unlikely to be ameliorated.

In addition, at the Community Affairs Legislation Hearing on 14 October 2019 regarding the cashless debit card, Dr Peterie stated there was academic literature that identified a causal link between homelessness and housing insecurity and the stigma associated with being on a welfare card like the cashless debit card. She said there were a lot of the people who explicitly expressed that concern. They were worried that, because they were having these problems paying their rent on time (due to failed transactions on the CD card), either they would be kicked out of their property or alternatively their lease wouldn't be renewed in the future because they were causing these problems.²⁶

Reports from a lawyer who has worked in a CDC trial site in WA also noted that clients subject to CDC have told her that they feel shame and treated like children by the government as a result of having to use the CD card.

Case study

The following case study illustrates the confluence of a number of these factors:

A senior woman in her sixties in a remote community relying on Newstart allowance (Mrs x) told NAAJA that being on the BasicsCard made it difficult for her to save money for significant and necessary purchases, such as white goods, or to buy things second hand. She told NAAJA that she would prefer to have money in her bank account so that she could make decisions about where it goes. Mrs X said that she often experienced problems with "humberging", but that in her experience having a BasicsCard did not help: she reported that other family members often used her BasicsCard at the shop. She told NAAJA that while in community she mostly used her BasicsCard at the local shop where it was accepted. However, on one occasion she had travelled to a regional centre, and tried to use her BasicsCard at a take away restaurant but had her card rejected. Mrs X's reported that when this happened she felt ashamed and that "I felt no good". Mrs X did not know that she could apply to be exempt from income management.

²⁶ Community Affairs Legislation Committee, Parliament of Australia (Senate), *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, 14 October 2019, page 2

7. SPECIFIC CONCERNS WITH THE BILL

a) Criteria

We have grave concerns about the criteria under the Bill which would subject a person to the CDC scheme.

Section 124PGE of the Bill provides the criteria for when a person will be subject to the CDC scheme in the NT.

The following cohorts of people will become subject to welfare quarantining:

- people who receive Youth allowance, Newstart allowance, Parenting Payment or a special payment (section 124PGE(1) of the Bill);²⁷ or
- people who receive a social security benefit, pension or ABSTUDY²⁸ and:
 - a child protection officer or an officer of a recognised authority of the NT refers that person on to the scheme (section 124PGE(2) of the Bill);²⁹ or
 - the person is a vulnerable welfare payment recipient (**VWPR**) (section 124PGE(3) of the Bill);³⁰

A person who is not required to be subject to the scheme but wishes to, would be able to choose to participate.³¹

A person who is undertaking full-time study will not be subject to the CDC scheme.³²

A person whose “usual place of residence is, becomes or was within the Northern Territory”³³ will be subject to the scheme.

Whereas currently, under IM in the NT, the following cohorts of people are subject to income management in the NT:

²⁷ Section 124PGE(1) of the Bill provides that those who receive category E welfare payments would be subject to the CDC scheme. Category E welfare payments are outlined in section 123TC(a) of the Admin Act.

²⁸ Sections 124PGE(2)(b) and (3)(b) of the Bill provide that the person must be in receipt of a category P welfare payment. Category P welfare payments are outlined in section 123TC(b) of the Admin Act.

²⁹ Section 124PGE(2) of the Bill.

³⁰ Section 124PGE(3) of the Bill. The definition of vulnerable payment recipient is contained in 123UGA of *Social Security (Administration) Act 1999* (Cth). A person is a VWPR upon determination by the department, and remains a VWPR for a maximum of 12 months, unless a new determination is made. When determining whether a person should be a VWPR, the department must comply the decision making principles set out in a legislative instrument made by the Minister, which is currently: *Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2013*. Circumstances in which the department may determine that a person should be a VWPR include where the department considers that person to be in financial hardship, experiencing financial exploitation, not be undertaking reasonable self-care, homeless or at risk of homelessness.

³¹ Section 124PH(1) *Social Security (Administration) Act 1999* (Cth)

³² See sections 124PGE(1)(d), (2)(f), (3)(e) of the Bill.

³³ See sections 124PGE(1)(a), (2)(a), (3)(a) of the Bill.

- they have been in receipt of Youth allowance, Newstart allowance, Parenting Payment or a special payment for a certain period of time,³⁴ i.e.:
 - for more than 13 weeks out of the last 26 under the Disengaged Youth Measure;³⁵ or
 - for more than 52 weeks out of the last 104 under the Long-term Welfare Recipients Measure;³⁶
- they are in receipt of a social security benefit, pension or other payment³⁷ and either:
 - are a VWPR;³⁸
 - are subject to the school enrolment or school attendance measures;³⁹
 - a child protection officer or an officer of a recognised authority of the NT refers that person on to the scheme;⁴⁰
- they are not required to be subject to the scheme but choose to participate.⁴¹

A person in the NT is only subject to income management for the time that their usual place of residence is the NT.⁴² If they are subject to the Disengaged Youth or Long-Term Welfare Recipients measure, and their usual place of residence is no longer the NT, they will be subject to income management for a further 13 weeks.⁴³

Concerns

We are extremely concerned that the CDC scheme would capture a broader cohort of people than are currently subject to welfare quarantining in the NT. The Bill collapses the Disengaged Youth and Long-term Welfare Recipient measures, and requires that every person in receipt of Youth allowance, Newstart allowance, Parenting Payment or a special payment, and who is not studying full-time, would become subject to welfare quarantining straight away, after being provided with a notice telling them that they are going to be entered into scheme. The Bill thereby removes the limited safeguards currently in place to prevent a blanket application of welfare quarantining measures in the NT.

In addition, the Bill expands the cohort of people subject to compulsory welfare quarantining in the NT by both subjecting people to the scheme as soon as their usual place of residence becomes within the NT⁴⁴ and by requiring that a person remains on the scheme indefinitely even after their usual place of residence is no longer the NT. This is much more far reaching

³⁴ i.e. a category E welfare payment, which is defined in section 123TC *Social Security (Administration) Act 1999* (Cth) to mean: (a) youth allowance; or (b) newstart allowance; or (c) special benefit; or (d) pension PP (single); or (e) benefit PP (partnered).

³⁵ See section 123UCB *Social Security (Administration) Act 1999* (Cth)

³⁶ See section 123UCC *Social Security (Administration) Act 1999* (Cth)

³⁷ i.e. a category H welfare payment, which is defined in section 123TC *Social Security (Administration) Act 1999* (Cth) to mean: (a) a social security benefit; or (b) a social security pension; or (c) a payment under the scheme known as the ABSTUDY scheme that includes an amount identified as living allowance; or (d) a service pension; or (ae) a veteran payment; or (f) Defence Force Income Support Allowance.

³⁸ See section 123UCA *Social Security (Administration) Act 1999* (Cth)

³⁹ See sections 123UD and 123EU *Social Security (Administration) Act 1999* (Cth)

⁴⁰ See sections 123UC and 123UFAA *Social Security (Administration) Act 1999* (Cth)

⁴¹ See section 123UFA *Social Security (Administration) Act 1999* (Cth)

⁴² See sections 123UCA(1)(b), 123UCB(1)(c), 123UCC(1)(c), *Social Security (Administration) Act 1999* (Cth)

⁴³ See sections 123UCB(3)(e), 123UCC(e)(e), *Social Security (Administration) Act 1999* (Cth)

⁴⁴ See section 124PGE(4) of the Bill.

than the current income management regime, which a person is only subject to for 13 weeks after leaving the NT.

The effect of the broad and blanket approach of the CDC scheme is that it exacerbates the issue of people being subject to welfare quarantining regardless of need. By placing people under welfare quarantining simply because they are in receipt of a certain payment, the CDC scheme is ignoring the complexity of difference between individuals and findings of the evaluation of IM, which identified that:

“Many of the people placed on the Disengaged Youth and Long Term Welfare Payment Recipient measures face challenges in managing on their low incomes. For many this is exacerbated by the high housing costs in Darwin, and for others the high costs associated with living in remote locations. There is, however, little evidence to suggest that the main challenges they face are primarily caused by poor financial management or inappropriate expenditures. There is no evidence that targeting income management on the basis of duration in receipt of income support payment provides a solid basis for identifying those with particular vulnerabilities or a low level of money management skills. Similarly, there is no evidence that the range of income support payments at which Compulsory Income Management is targeted reflects the groups at highest risk... where targeting is based on individual assessment it appears to be successful in identifying those who are most vulnerable and with low skills; whereas with targeting based on automatic criteria such as program type and duration this is not the case.”⁴⁵

For reasons set outlined at Section 8, there is a significant risk that the scheme will impose hardship to all recipients or communities without corresponding and targeted benefits of reduced alcohol or drug consumption. In addition, people who would move away from the NT to a non-CDC scheme area, are likely to experience the serious issues with compulsory welfare quarantining, including inconvenience and shame to a greater degree, given the likelihood of being the only person subject to this restrictive measure.

We are also concerned that the government has been downplaying the expansion of the cohort of people that will be subject to welfare quarantining in the NT. The Explanatory Memorandum provides that “subsection 124PGE(1) reproduces the long-term welfare recipients and disengaged youth measures established under IM but combines the criteria into one subsection for the purposes of the CDC trial” and at a briefing session, we were advised that the CDC criteria would remain the same as the current IM criteria. However, this is not correct and fails to acknowledge that welfare quarantining measures will be expanded to all people who are in receipt of certain social security payments, and will no longer concern the length of time that a person has been on a social security payment.

We note that we do not have any concerns with individuals being given the choice to opt in to welfare quarantining arrangements should they believe it will assist them, provided they are afforded all of the relevant information to make an informed decision.

However, it is our position that no person should be subject to any form of compulsory welfare quarantining.

⁴⁵ Bray et al, *Evaluating New Income Management in the Northern Territory: Final Evaluation Report*, 285.

b) Rate quarantined

For people subject to welfare quarantining in the NT, the Bill broadly maintains the current restricted and unrestricted portion rate under IM:⁴⁶

- Currently, for people under the VWPR,⁴⁷ Disengaged Youth,⁴⁸ Long-term Welfare Recipients,⁴⁹ 50% of their payment is restricted under IM. This will be maintained for people who are subject to the CDC scheme where they receive Youth allowance, Newstart allowance, Parenting Payment or a special payment, or because they are considered to be a VWPR.⁵⁰
- Currently, for people who have been referred by a child protection officer or an officer of a recognised authority of the NT, 70% of their payment is restricted under IM.⁵¹ This will be maintained for people who are subject to the CDC scheme where they have been referred onto the scheme by a child protection officer or an officer of a recognised authority.⁵²

However, we are highly concerned that the Bill provides the Minister with the power to change the portion of a person's payment which is compulsorily quarantined:⁵³

- For people who are subject to the CDC scheme because they receive Youth allowance, Newstart allowance, Parenting Payment or a special payment, the Minister could *increase* the amount restricted from 50% up to 100% of their payment (for particular *areas*);
- For people who are subject to the CDC scheme because they have been referred onto the scheme by a child protection officer or officer of a recognised authority of the NT, or are a VWPR, the Minister could increase or decrease the restricted amount from anything between 0% and 100% (for either an *individual* or for *entire cohorts*).

The Minister is able to change the restricted portions simply by making a notifiable instrument. The Bill does not outline any processes that the Minister must follow before making such an instrument.

Whereas under the current income management provisions, the Minister can change the restricted portion by passing a legislative instrument, and in most cases can only do so if “the

⁴⁶ By amending section 124PJ(1) *Social Security (Administration) Act 1999* (Cth)

⁴⁷ See section 123XJA *Social Security (Administration) Act 1999* (Cth)

⁴⁸ See section 123XJC *Social Security (Administration) Act 1999* (Cth)

⁴⁹ See section 123XJC *Social Security (Administration) Act 1999* (Cth)

⁵⁰ Section 124PJ(1B) of the Bill provides that 50% of the payment is to be restricted and 50% unrestricted for people who are subject to the measure under section 124PGE(1), and section 123PJ(1D) of the Bill provides that 50% of the payment is to be restricted and 50% unrestricted for people who are subject to the measure under section 124PGE(3).

⁵¹ Section 123XI *Social Security (Administration) Act 1999* (Cth) provides that 100% of a person's payment is to be restricted, unless a legislative instrument provides otherwise. *Social Security (Administration) (Deductible portion — section 123XI) Specification 2019*, provides that 70% of a person's payment is to be restricted.

⁵² Section 124PJ(1B) of the Bill provides that 70% of the payment is to be restricted and 30% unrestricted for people who are subject to the measure under section 124PGE(2).

⁵³ Section 124PJ(2A) of the Bill provides that for people who are subject to the CDC scheme under section 123PGE(1), the amount can be varied “to a percentage that is higher than 50% and is less than or equal to 100%”; section 124PJ(2B) of the Bill provides that for people who are subject to the CDC scheme under sections 124PGE(2) or (3), the amount can be varied “to a percentage (not exceeding 100% and including 0%) specified in the instrument”.

Minister considers the higher percentage is necessary to promote the objects of this Part.”⁵⁴ In addition, the requirements for passing a legislative instrument as set out in section 19 of the *Legislation Act* (Cth) apply, which include the requirement to conduct any consultation considered to be appropriate and practicable.

For individuals, the Secretary currently has, and will continue to have, the power to *decrease* the percentage of a person’s restricted payment,⁵⁵ but only if the Secretary is satisfied that the person is unable to use their debit card or account, for example in cases of technological fault, natural disaster and severe financial hardship.⁵⁶

We note that those currently subject to the CDC scheme in other jurisdictions have 80% of their payment compulsorily quarantined, and that 80% as the maximum restricted rate is protected.⁵⁷

In addition, we note that for the current CDC trial sites, the restricted portion of a person’s income can only be changed where a direction has been given by a community body.⁵⁸ We note that this provision would not according to the Bill apply to people subject to the CDC scheme in the NT.⁵⁹

Concerns

We are deeply concerned that there is no protection against the Minister increasing the quarantined rate for entire areas or cohorts of people to up to 100%.

By simply passing a notifiable instrument, the Minister can change the rate that is quarantined. The Bill does not include any legislative guidance or limitations on how this power is to be exercised. This is unlike the Minister’s current power under IM, which at the very least requires the Minister to consider this change necessary to promote the objects of the CDC scheme. In addition, and unlike legislative instruments, notifiable instruments are not subject to any consultation requirements, nor any Parliamentary tabling, disallowance, or sunseting requirements.

For people who are subject to the CDC scheme because they receive Youth allowance, Newstart allowance, Parenting Payment or a special payment, the Explanatory Memorandum provides that this power “will enable the Minister to increase the restricted portion for trial participants under 124PGE(1) for specific communities in the NT to reflect community requests.”⁶⁰ For people who are subject to the CDC scheme because they have been referred onto the scheme by a child protection officer or officer of a recognised authority of the NT, or

⁵⁴ Per sections 123XI and 123XK *Social Security (Administration) Act 1999* (Cth), this is not required for those under the child protection or the school enrolment or attendance measures, however, per sections 123XJA and 123XJC, this is required for those under the VWPR, disengaged youth and long-term welfare payment recipient measures.

⁵⁵ See items 40 – 42 of the Bill.

⁵⁶ Section 124PJ(3) *Social Security (Administration) Act 1999* (Cth)

⁵⁷ See sections 124PJ, 124PK *Social Security (Administration) Act 1999* (Cth)

⁵⁸ Section 124PK *Social Security (Administration) Act 1999* (Cth)

⁵⁹ Section 124PK(1) *Social Security (Administration) Act 1999* (Cth) provides that “(1) A community body may give the Secretary a written direction to vary the percentage amounts in paragraphs 124PJ(1)(a) and (b) that apply in respect of restrictable payments made to a trial participant or voluntary participant after the direction is given.” However, this specifically applies to current trial participants, and the Bill does not extend this section to NT trial participants.

⁶⁰ 13.

are a VWPR, the EM provides that this power “will enable the Minister to either increase or decrease the restricted and unrestricted portions for the entire cohort of trial participants under subsection 124PGE(2) or (3), to reflect requests made by a recognised State/Territory authority in the NT or a child protection officer.”⁶¹ However, there is no requirement that the Minister only exercises their discretion to change the quarantined rate following a request either from a community or a State/Territory authority or a child protection officer.

There is also no clarity in the Explanatory Memorandum (or the Bill) around how communities or relevant authorities would make such a request for increase, or in what circumstances a Minister would consider that a request has been made by a community or a relevant authority.

Further, given that this power to increase the rate is for entire areas or entire cohorts of people, and not for specific individuals, it is a power to make blanket decisions. For reasons outlined above, we are extremely concerned about any powers which allow for blanket decision making.

In addition, and similarly to the expansion of the welfare quarantining criteria, we are concerned that the Government is minimising the power to increase the rate to up to 100%, particularly given that this is contrary to representations made by the Department of Social Services at briefings that the percentages would remain at the current income management rates.⁶²

We note that Bill also goes further than the provisions applicable to the current CDC trial sites, which ensure that the restricted portion of a person’s payment is not greater than 80% and cannot be increased beyond that rate.⁶³

We also note that the Senate Standing Committee for the Scrutiny of Bills⁶⁴ has expressed concern about this broad discretionary power to increase the rate, and has requested further information as to the necessity of such powers being provided to the Minister.⁶⁵

We are seriously concerned that the Government has included this power in order to ultimately increase the quarantined portion of people’s social security payments in the NT beyond the current rates. This is in light of the above outlined concerns and that the quarantined rate in other CDC scheme jurisdictions is currently at a higher rate of 80%. It is also in light of the fact that notifiable instruments appear to most commonly be used to provide notification of the commencement of registered laws⁶⁶ or the entering into force of a treaty,⁶⁷ i.e. to notify of matters that have already been determined. This calls into question whether the government already considers that the rates will eventually be increased.

Noting our opposition to all compulsory welfare quarantining, in addition we say that quarantining anything beyond 50% of a person’s payment would be a heavily restrictive form of welfare quarantining. We are strongly opposed to any blanket power in the Bill to increase the current rates under IM.

⁶¹ 13.

⁶² Jason Oakley from DSS briefing at NAAJA on 2 August 2019 regarding “government transition arrangements from basic card to debit card”.

⁶³ See sections 124PJ, 124PK *Social Security (Administration) Act 1999* (Cth)

⁶⁴ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 6 of 2019* (18 September 2019)

⁶⁵ *Ibid*, 19.

⁶⁶ Sections 8(8)(b) and 4 of the Legislation Act.

⁶⁷ Section 8 item 1 of LEOMR.

c) Exemptions

Issues and concerns about exemptions under IM

In NAAJA's experience, Aboriginal people face significant difficulties in applying for an exemption to being made subject to the income management scheme, or appealing income management decisions, particularly those who live in remote communities.

Out of the 22,069 people on income management in the NT as at 30 March 2018, 82% were Aboriginal and Torres Strait Islander.⁶⁸ Yet, Aboriginal people only accounted for approximately 30% of the exemptions granted to under the IM Scheme. By contrast, non-Indigenous people accounted for 18% of those on IM but received approximately 68% of the exemptions granted.⁶⁹ A key finding of the Final Evaluation Report of IM in the NT was that very few exemptions had been granted and that most exemptions were obtained by non-Indigenous people (a 36.3% for non-Indigenous people, compared with 4.9 per cent for Indigenous people). The report found that Indigenous people had both a low rate of application for exemptions and a high rejection rate.⁷⁰

In part, the low rates of exemptions being granted under the IM Scheme are attributable to the restrictive criteria that apply under Part 3B of SS Act. However, NAAJA is concerned that many of the factors that contributed to the low rates of successful applications for exemptions under the IM scheme would continue to create significant barriers for accessing exemptions under the CDC Scheme.

NAAJA has previously raised concerns that the lack of clear information about the availability of exemptions, and the process for applying for an exemption, was contributing to the low rate of exemptions amongst Aboriginal people in the Northern Territory under the IM scheme. Matters of particular concern identified by NAAJA included:

- The lack of accessibility of the exemption process, particularly for remote clients
- The lack of information about exemptions in remote communities
- The lack of knowledge among Centrelink staff about the exemption process
- Problems with clients who have limited skills in spoken English with accessing IM exemptions through a telephone application process
- The lack of clear information about Centrelink's decisions provided to remote Indigenous customers in exemption rejection letters

Concerns about the barriers facing Aboriginal people from applying for exemptions were also acknowledged by the Commonwealth Ombudsman in 2012:

"IM decisions have far-reaching consequences for affected people, who are often geographically remote or isolated and among the least empowered to pursue review

⁶⁸ Department of Social Services, *Income Management and Cashless Debit Card Summary (31 March 2018)* <https://data.gov.au/dataset/ds-dga-3b1f1fb7-adb5-48ea-8305-9205df0a298c/distribution/dist-dga-986ef7fe-1ba8-460e-b1c4-2cf00145a948/details?q> (accessed 16 October 2019).

⁶⁹ Ibid.

⁷⁰ Bray, J. R., Gray, M., Hand, K., & Katz, I. (2014). *Evaluating New Income Management in the Northern Territory: Final Evaluation Report* (SPRC Report 25/2014). Sydney: Social Policy Research Centre, UNSW Australia.

*rights or complaints mechanisms. They may also be disadvantaged by language, literacy and knowledge barriers.”*⁷¹

These concerns were echoed by the Auditor-General in 2013, in a performance audit that found that there would be benefit to Centrelink investigating whether there were any unintended barriers preventing particular groups from applying for an exemption, or being successful in their application.⁷²

NAAJA's concerns were also shared by the Bray evaluation of the Income Management Scheme in 2014:

*'A very clear theme in views around the experience of trying to obtain an exemption (see Table 5-9) concerned the amount of paperwork people were required to complete and records they had to obtain. In some cases this resulted in people simply walking away from the process. This problem was often compounded by the fact that English was not their first spoken language. In other qualitative data collection this type of experience has been further explored. A particular issue raised by many was the reliance by Centrelink on a centralised exemptions team that people had to deal with by phone. This presented a range of problems for some, including: the cost of contact, difficulties relating to language, and cultural preferences to deal with people face-to-face.'*⁷³

The majority of the clients that NAAJA has consulted with in recent weeks about the proposed amendment to welfare quarantining had no awareness that exemptions were available under the IM Scheme. This was a consistent pattern across individuals consulted in remote and regional centres across NAAJA's Top End, Central and Katherine regions. For example, feedback given to NAAJA from Ampilatwatja Community in Central Australia revealed that many of the residents there did not understand the process for obtaining exemptions, and did not understand the questions that they were asked as part of the process. As a result, none of the residents have been successful in obtaining an exemption thus far.

The barriers to Aboriginal people, particularly those in remote communities, to accessing exemptions to the IM Scheme mean that when Aboriginal people are put on compulsory welfare quarantining, they stay on it, regardless of their personal circumstances.

Further the model of IM in the NT not a case management model that provides tailored support services.⁷⁴ This, together with the lack of employment and study opportunities, has contributed to the very low rate of people transitioned off income management and into work or study.

⁷¹ Commonwealth Ombudsman *Review of Centrelink Income Management Decisions in the Northern Territory: Financial Vulnerability Exemption and Vulnerable Welfare Payment Recipient Decisions* (June 2012) 1.

⁷² Commonwealth Auditor-General, *Performance Audit of New Income Management in the Northern Territory*, Audit, 2012-2013, Report No. 19.

⁷³ Bray, J. R., Gray, M., Hand, K., & Katz, I. (2014). *Evaluating New Income Management in the Northern Territory: Final Evaluation Report* (SPRC Report 25/2014). Sydney: Social Policy Research Centre, UNSW Australia, p 112.

⁷⁴ Dr Luke Buckmaster, "Does Income Management Work?" *Parliamentary Library Briefing Book, 44th Parliament, Canberra*, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook44p/IncomeManagement (accessed 16 October 2019).

⁷⁴ Parliament of Australia, *2014-2015 Budget Estimates, Community Affairs, Document 1, 05/06/2014, 11.15am, Secretary Mr Finn Pratt, Canberra*, at p 1.

Exemptions under the CDC Scheme

Under the proposed Bill, the exemptions that existed under the income management scheme⁷⁵ will no longer apply in the NT. The exemptions that apply under CDC will now apply in the NT. Under existing CDC trials in other jurisdictions, other exemptions have applied: including exemptions for individuals on the basis of their age (for example, in Ceduna, East Kimberley and Goldfields trial areas, persons who have reached age pension were exempt; in Bundaberg and Hervey Bay trial area, persons aged 36 years or older or those turning 36 years during the first 12 months of the trial in the trial area). These age based exemptions will not apply in the NT.

There are two key pathways for exemption or exit from the CDC Scheme under Part 3D of the SSA Act:

- The first allows the Secretary to exempt a person if being on CDC is a serious risk to their psychological, physical or emotional health.⁷⁶
- The second allows a person to apply to exit the scheme if they can “demonstrate reasonable and responsible management” of their “affairs”, which includes financial affairs.⁷⁷

It is currently unclear exactly how the process of applying for an exemption or from the CDC Scheme will operate in practice: these provisions have only been in place in their current form since 1 August 2019. However, on the basis of the structure of these provisions at law and what is known about the application process at this time, NAAJA have concerns about the potential operation of these provisions.

NAAJA considers that these exemption and exit provisions do not have the capacity to ensure that the CDC Scheme is targeted only at members of the community involved in the types of “social harms” identified in the “Objectives” section of the legislation, particularly considering what is currently known about the application process. This is particularly concerning in light of the expansion of who will be made subject to welfare quarantining in the NT as a result of the Bill.

Wellbeing exemptions

The threshold for being granted a “wellbeing” exemption is high: there must be a “serious risk” to their wellbeing. The Secretary doesn’t have to make inquiries about a person’s health, however, before giving a person notice that they are being placed on the Cashless Debit Card.⁷⁸ It will thus be up to an individual to apply for a wellbeing exemption. The current process appears to be for an individual to contact a “Cashless Debit Card Hotline” to discuss their situation further. If the person answering the call considers that they may be eligible, then they may then be referred to a social worker.

⁷⁵ ie: ss 123UGC and 123UGD, as well as the Secretary’s power to exempt classes of persons under s 123UGB. These exemptions were broadly in two categories applying to individuals who care for children and those that do not. For individuals with children, it was necessary to show an absence of financial vulnerability and also a certain level of school attendance in order to be exempt. Individuals without children needed to demonstrate they were working a certain number of hours a week.

⁷⁶ SSA Act, s 124PHA.

⁷⁷ SSA Act, s 124PHB.

⁷⁸ SS Act, s 124PHA.

NAAJA considers that many of our clients in remote communities are likely to face language and cultural barriers when accessing exemptions over the phone, particularly if they are required to discuss highly personal matters relating to their psychological, physical or emotional health. We consider that this is likely to significantly impact on the rate of access to exemptions granted to Aboriginal people in remote communities.

Exit criteria

NAAJA has concerns about the potential operation of the exit application process that would apply in the NT under the CDC scheme.

In determining whether to exit an individual from the scheme, the Secretary has a broad discretion and can take into account matters that include:

- the interests of any children the person is responsible for;
- whether the person has been convicted of a criminal offence, or was serving a sentence for an offence, any time in the previous 12 months;
- risks of homelessness;
- the health and safety of the person and the community;
- the responsibilities and circumstances of the person;
- the person's engagement with the community, including employment and efforts to obtain work; and
- any other requirements that are set by the Minister via legislative instrument (the Minister must consult with communities and trial participants and have regard to their feedback before setting additional requirements).

Several of these criteria are expansive and vague considerations (for eg: "the responsibilities and circumstances of the person") that give the Secretary a wide discretion to refuse an application. Rather than focusing on an assessment of an individual's capacity to manage their financial affairs, and their risk of engaging in social harms targeted by the scheme (for eg alcohol abuse, drug abuse, or problem gambling), these criteria allow scrutiny and assessment of all aspects of an individual's personal life. Individuals could, for example, potentially be placed in a situation where they are required to explain why they are homeless or detail their health issues in order to justify being granted the ability to exit. Individuals who have been imprisoned and served their sentences risk being punished again for the same conduct.

It is also clear that consideration of these criteria will involve invasive scrutiny of individuals' personal lives. Individuals seeking to make an exit application must consent to the Department accessing information in its possession, as well as that in the possession of other Commonwealth Agencies and information obtained by Indue, including information from their Indue account. The Department's Exit Application Form indicated that the Department may obtain and consider:

- Cashless Debit Card information including Indue account information, transaction and transfer history and Cashless Debit Card hotline information
- Centrelink payment information, including payment reductions, suspensions and cancellations, and requests for urgent payments
- child protection information
- public housing information, such as eviction notices and public housing debts
- convictions and prison sentences
- protection orders made against you including for domestic and family violence
- health information, such as episodes of medical care relating to drug and alcohol issues

- barring orders relating to drug, alcohol or gambling issues.⁷⁹

Information currently available on the Department's website states that individuals seeking to access exemptions will need to complete an "exit application form" and then submit the form by post, email or in person at a "local partner shopfront". It is unclear what assistance with obtaining or completing these forms will be available to individuals living in remote communities where there is no permanent Centrelink Office.

Applicants will then be contacted for a phone interview, during which an office of the Department will contact the individual 3 times. If the person is not able to be contacted after 3 calls, then the application will be closed. This measure is likely to significantly disadvantage individuals living in remote communities, where mobile phone reception may be intermittent, mobile phones are often shared between family members and recipients of social security payments often struggle to afford credit and electricity.

Applicants will in some circumstances be required to provide significant amounts of documentation to support an application, including:

- a school attendance report for each school aged child they are responsible for (for 4 school terms)
- credit or store card statements for the last 12 months
- bank statements
- proof of rent payments
- direct debit arrangements
- rental statements or details of your housing situation (for example, staying temporarily with friends or relatives while trying to find permanent accommodation).⁸⁰

On the basis of NAAJA's experiences assisting clients in remote communities, we consider that the majority of the individuals who attend our legal clinics would struggle to successfully complete this application process without assistance from a lawyer, social worker or other service provider or advocate.

NAAJA is also concerned that given Aboriginal people are:

- disproportionately represented in the criminal justice system and the child protection system;
- at a greater risk of homelessness than the general population;
- if living in a remote community, are likely to face significantly greater barriers to obtaining employment;

these criteria will make it significantly more difficult for Aboriginal people to demonstrate they should be exited from the scheme.

⁷⁹ Department of Social Services, *Cashless Debit Card Exit Application*

https://www.dss.gov.au/sites/default/files/documents/09_2019/exit-application-form.pdf

⁸⁰ See: Department of Social Services, *Cashless Debit Card Exit Application, Supporting Information*

https://www.dss.gov.au/sites/default/files/documents/09_2019/supporting-information_0.pdf

Information regarding exemptions under existing CDC trials to date

Participants of the trials have given feedback about the difficulties of obtaining an exemption,⁸¹ with one calling it a ‘long and painful fight’.⁸² A media report from 17 Sept 2019 has said that more than 5,000 people have applied to get out of the existing CDC trials, but only 100 have succeeded.⁸³

Data released by the Department of Social Services demonstrates that very few exemptions have been granted under the CDC scheme: ⁸⁴

As at March 2018

Total number of participants switched on to the trials in Ceduna, East Kimberley and Goldfields	Total number of participants who received well-being exemptions
2,470	>60

Data collected regarding the trial in Ceduna shows that there were 828 participants switched onto the trials as at March 2018.⁸⁵ However, very few exemptions are granted and largely to non-Indigenous people. The table below demonstrates this: ⁸⁶

Between 15 March 2016 and 31 August 2018

	Indigenous	Non-Indigenous	Total
Number of exemptions in Ceduna	5	23	28

⁸¹ See for example, Lorena Allam, Exiting the Cashless Welfare Card trial is almost impossible, critics say, *The Guardian*, 17 September 2019 <https://www.theguardian.com/australia-news/2019/sep/17/exiting-the-cashless-welfare-card-trial-is-almost-impossible-critics-say> (accessed 16 October 2019); Tegan Guthrie, How I kicked the Cashless Card, *Kalgoorlie Miner* <https://thewest.com.au/news/kalgoorlie-miner/how-i-kicked-the-cashless-card-ng-b881159095z> (accessed 16 October 2019).

⁸² Tegan Guthrie, How I kicked the Cashless Card, *Kalgoorlie Miner*, 7 April 2019, <https://thewest.com.au/news/kalgoorlie-miner/how-i-kicked-the-cashless-card-ng-b881159095z> (accessed 16 October 2019).

⁸³ Lorena Allam, ‘Exiting the cashless welfare card trial is almost impossible, critics say’, *The Guardian*, 17 September 2019, <https://www.theguardian.com/australia-news/2019/sep/17/exiting-the-cashless-welfare-card-trial-is-almost-impossible-critics-say> (accessed 16 October 2019).

⁸⁴ The Department of Social Services, *Income Management and Cashless Debit Card Summary* (31 March 2018) <https://data.gov.au/dataset/ds-dga-3b1f1fb7-adb5-48ea-8305-9205df0a298c/distribution/dist-dga-986ef7fe-1ba8-460e-b1c4-2cf00145a948/details?q> (accessed 16 October 2019).

⁸⁵ The Department of Social Services, *Income Management and Cashless Debit Card Summary* (31 March 2018) <https://data.gov.au/dataset/ds-dga-3b1f1fb7-adb5-48ea-8305-9205df0a298c/distribution/dist-dga-986ef7fe-1ba8-460e-b1c4-2cf00145a948/details?q> (accessed 16 October 2019).

⁸⁶ Eve Vincent (Centre for Aboriginal Economic Policy Research, Australian National University) *Lived Experiences of the Cashless Debit Card Trial, Ceduna, South Australia* (Working Paper 129/2019) https://openresearch-repository.anu.edu.au/bitstream/1885/164009/1/Working_Paper_129_2019_final.pdf_p14.

It was noted that while Indigenous people comprise 75% of CDC trial participants in Ceduna, they seemingly comprise just 18% of exemptions. Non-Indigenous people comprise 25% of CDC trial participants, but seemingly comprise 82% of exemptions.⁸⁷

These figures indicate that it is likely that the trends seen in relation to the limited access of Aboriginal people (particularly in remote communities) to exemptions under the IM Scheme would likely continue under the CDC Scheme. We anticipate that Aboriginal people in the NT will struggle to engage with the process for obtaining exemptions due to remoteness, language and literacy barriers, as well as the complexity and subjectivity of the exemptions process.

d) Review rights

NAAJA has concerns regarding the limitations on review rights contained in the Bill.

Under the CDC scheme, individuals on certain social security payments will have their payments compulsorily restricted straight away, after being provided with a notice telling them that they are going to be entered into the scheme. This notice will not be reviewable: there are specific provisions in the Bill that take away the right of an individual to seek review of the decision by the Secretary to issue that person with a CDC notice. Item 44 of the Bill removes the right to apply to the Secretary to seek review; item 45 removes the right of a person to apply for review of that decision by the Administrative Appeals Tribunal.⁸⁸

The EM argues that the exclusion of a right to review in the decision to issue a notice is justified because the issue of a notice is an “administrative process” that “merely reflects other decisions made by other bodies such as... child protection officers of the NT or officers or employees of recognised State/Territory authority [sic] of the NT”. For the vast majority of individuals who are made subject to CDC, this characterisation is incorrect. A large number of CDC participants will enter the scheme as a result of the type of payment that they receive (as outlined above at Section 7(a)), rather than as the result of a decision by a State or Territory official that may or may not be subject to its own review process. For the majority of participants, the issue of the notice will be the act that enters them onto the scheme: there is no other decision making that assesses their individual circumstances or whether it is appropriate that they are income managed. Further, section 124PGE(5) makes it clear that the power of the Secretary to issue a notice will be discretionary.

It is concerning that the Bill excludes individuals both from accessing internal review within the Department, or independent review by a Tribunal of a discretionary power that will be the key step that enters an individual onto the CDC Scheme. This is particularly the case given the wide criteria for entry into the scheme, which will mean that the majority of individuals who are entered into CDC income restriction will be entered into the scheme without any consideration of their personal circumstances.

⁸⁷ Ibid.

⁸⁸ The bill inserts three new paragraphs into subsection 127(4) and 144(k) of the SSA Act preventing, respectively, an individual from applying for review of a decision of the Secretary to make a payment into a CDC account, a decision to give a notice entering an individual into the scheme and a decision to revoke a notice entering someone onto the scheme.

In effect, this means that an individual cannot seek review at the time they are placed on the scheme (for example because they think they have been placed on it in error) and instead would need to apply for an exemption (section 124PHA) or to exit the scheme (124PHB). As described above in Section 7(c), these provisions will require individuals to either meet a high threshold regarding a risk to their well-being, or consent to invasive scrutiny of a large number of aspects of their personal life in order show that they can reasonably and responsibly manage their personal affairs, in the hope of being permitted to exit the scheme.

The restriction of review rights in relation to entry into the scheme is a feature of the proposed CDC scheme that further exacerbates and reinforces its blanket, untargeted and compulsory operation on a large proportion of individuals receiving social security payments in the NT.

The Bill's explanatory memorandum also states that the decision to issue a notice, or revoke a notice will be excluded from merits review due to "the inefficiencies associated with reviewing these matters". In our view, a concern that individuals exercising a right of review concerning the decision to enter them into the scheme will create "inefficiencies" is misplaced: such rights of review are required to ensure that the scheme does not operate in a manner that is unduly harsh and disproportionate.

e) Privacy, data and information sharing provisions

Power of the Secretary to obtain information under s 192 of the SSA Act

The Bill gives the Secretary the power to obtain information or documents that she or he considers may be relevant to "the operation of Part 3D (ie the CDC scheme)".⁸⁹

This is a very broad power. Its effect is that the Secretary can compel a person to give the Department information, regardless of the purpose for which the information is sought, as long as the Secretary considers that the information "may be relevant" to a matter concerning any aspect of the CDC scheme.

The power enables the Secretary to obtain information from any individual, corporation, Government department or body about an individual who has been made subject to the CDC Scheme.

The other circumstances in which this broad power to require disclosure of information (in s 192 of the SSA Act) is applicable for the most part relate to measures that ensure the integrity of the Social Security: for example by confirming that individuals who are not eligible for certain benefits or entitlements are not improperly obtaining them, or administering compliance schemes and the imposition of penalties on individuals subject to participation obligations. The proposed s 192(db), as amended by the Bill, extends the expansive powers used for these types of investigation and extends them to any matter related to "the operation" of the CDC Scheme.

⁸⁹ See Item 46 of the Bill, which amends s 192 of the SSA Act.

It is inappropriate for such wide powers to compel the disclosure of information to apply broadly to any matter bearing on “the operation” of the CDC Scheme. This is particularly the case in light of the possible changes to the functionality of the card, and the fact that the process of applying for an exemption is likely to involve substantial scrutiny of an individuals’ personal life. While this power exists currently in the SSA Act in relation to the income management scheme,⁹⁰ it is of concern that it will now be applied to the CDC scheme given that:

- The broad power to obtain information has not applied so far in relation to any of the CDC trials;
- The “Indue” card is being promoted as containing more sophisticated technology (for example, potentially enabling shops to differentiate between items and “block” prohibited items) and may capture a greater field of information about the way that participants use the cards.
- One of the only ways for an individual to exit the scheme is to apply for an exemption and to demonstrate that they can responsibly manage their personal and financial affairs: a process which (as described above) involves close scrutiny of their personal life.

It is of particular concern that the EM specifically states that this amendment is “essential” to allow the Secretary to determine whether a person is eligible for exemption or exit from the scheme on the basis of their mental, physical or emotional wellbeing or where they can demonstrate reasonable or responsible management of their personal affairs. NAAJA is concerned that this broad power to require information will be used by the Department to obtain personal information, including about a person’s health, family life, work, activities in community and other aspects of their personal life for the purpose of assessing if they are entitled to an exemption from the CDC Scheme. In effect, the extension of information gathering powers, in conjunction with the exemption criteria will enable the Department to engage in intense and unchecked scrutiny of the personal lives of individuals on the scheme as a necessary step to obtaining an exemption: see section 7(c), above.

The Statement of Compatibility for the Bill also identifies that one purpose of the proposed s 192(db) is to “investigate the operation of the Cashless Debit Card including to determine whether a person is or should be a Cashless Debit Card participant or how payments are administered”. It is otherwise unclear what type of information the Department intends to collect using the amended s 192(db), and for what purposes. This of significant concern.⁹¹ Very little is currently known about the scope of the information the CDC Card provider will make available to Government. The EM states that “the Government cannot see what items or products people are purchasing, only the merchants in which the money is being spent”. Such information (a merchants’ name and the amount of money spent) is already highly personal information. Further, it is unclear if data captured will include, for example, the number of attempted uses of the card to buy prohibited items, or at shops where the card is blocked. Evidence given by a representative of the Department before the Committee at the hearing on 14 October 2019 in Canberra indicates that the Department has both the capacity

⁹⁰ SSA Act, s192(db)

⁹¹ This concern has also been raised by the Senate Standing Committee for the Scrutiny of Bills: see pp 18-21 of Scrutiny Digest 6/19.

and intention to track and monitor transactions made by individuals on the cashless debit card, including the rates of expenditure at a particular store.⁹² The representative of the Department further confirmed that while the Department is not currently doing active monitoring of whether individuals are using their cards under the Income Management Scheme in the NT, it can run reports to obtain information at any time.

The risk that using electronic cards to issue social security payments, in places including Australia, enables monitoring and surveillance of behavioural data by welfare authorities and private actors. This has recently been identified as raising important human rights concerns by the UN Special Rapporteur on Extreme Poverty and Human Rights.⁹³

The Statement of Compatibility for the Bill seeks to argue that a limitation of the Bill on a person's right to privacy is justified on the basis that the scheme, in general, seeks to address the "extensive social harm" that is described in the "objectives" of the CDC Scheme as set out in the legislation. This argument fails to adequately explain why the information sharing provisions that are sought to be introduced are required to be so broad and involve such a significant incursion on the privacy of individuals who are made subject to the scheme. The Explanatory Memorandum to the Bill also refers to "effective community safeguards" over the extent of the restrictions imposed. It is unclear what these safeguards would be.

NAAJA is concerned that these powers are not sufficiently targeted to avoid an unwarranted incursion on the privacy of individuals subject to the scheme.

Information sharing between the Commonwealth Department and NT authorities

Item 43 of the Bill seeks to introduce a number of further information sharing provisions into the SSA Act. Relevantly to the proposed roll out of the CDC Scheme to the Northern Territory, this item seeks to introduce two new sections that provide for disclosure of information between NT child protection officers and other NT officials the Secretary of the Department of Human Services. Again, these provisions permit the sharing of any as long as the information is relevant to the Scheme's operation.

Subsections 124POC(1) and s 124POD(1) enable the disclosure of a wide range of information held by NT child protection officers, or by any officer or employee of a recognised NT authority to the Commonwealth Department of Social Services about individuals who are made subject to the CDC Scheme, and in some cases also prospective entrants into the Scheme.⁹⁴ The disclosure of this information is not limited only to the decision about whether to enter or exit a person from the scheme: the power to share information is so expansive that information held by these NT authorities about individuals on the Scheme can be shared, as long as some nexus to operation of the Scheme can be demonstrated.

⁹² See *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, Community Affairs Legislation Committee, Hearing 14 October 2019, Hansard transcript, pp 15-16.

⁹³ United Nations Office of the High Commissioner of Human Rights, *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, 11 October 2019, UN Doc A/74/48037, p 24.

⁹⁴ Ie in circumstances where the official is considering to enter someone into the scheme by issuing a written notice requiring that person to participant in the CDC scheme under s 124PGE(2)(c).

Subsections 124POC(2) and s 124POD(2) enables the Commonwealth Department of Social Services to disclose information about a person made subject to the CDC scheme, or a prospective participant, to NT Child protection officers and recognised NT authorities. Information may be disclosed by the Department to NT authorities for the performance of their functions or duties, or for the care, protection and welfare of children. The only limitation on the Commonwealth's power to share information to these parties is that information about that person must have previously been disclosed by an NT authority to the Commonwealth Department under subsection 1. This is not time limited: once information is disclosed once by the Commonwealth for any reason relevant to the operation of the scheme, then information can be passed to NT authorities. The Statement of Compatibility to the Bill acknowledges that the collection, storage, use and disclosure of personal information under these provisions "represents a loss of personal liberty for a welfare recipient".⁹⁵

The Explanatory Memorandum to the Bill suggests that these information sharing provisions are essential to ensure the Scheme "operates effectively" and that they are mainly intended to assist with decisions about exiting or entering the scheme.⁹⁶ As noted above, it is concerning that the Government intends to use broad information sharing powers in the exercise of its power to grant exemptions to the Scheme, as this will enable expansive and intrusive scrutiny of the lives of individuals on the CDC scheme. The Statement of Compatibility to the Bill states that the purpose of disclosures by the Secretary (in addition to the effective administration of the scheme) is so that "appropriate information can be shared about a participant to provide protective support". It is unclear what type of "protective support" is envisaged or what would fall within the scope of "appropriate information". This is of concern. As with the proposed expansion of the powers in s 192, the lack of safeguards or restrictions on the type of information that can be shared, or the purpose for which it can be shared mean that these provisions could also be used far more broadly than is suggested in the Explanatory Memorandum, to collect and monitor individuals who have a cashless debit card. This is of particular concern given that the nature of the information that can be gathered about individuals on the CDC Scheme by the Commonwealth Department of Social Services is broad, and the detail is likely to be highly personal.

NAAJA is concerned that the lack of safeguards and restrictions on the use of these broad powers have the potential to further expand monitoring and surveillance of individuals in the communities that we work with and represent an incursion into the private lives of individuals that is not sufficiently justified.

Indue's role in data collection and management

Under existing legislation for the CDC Scheme, the CDC Card Provider has the power to disclose information to the Department about CDC participants "if the disclosed information is relevant to the operation of this part (ie relevant to the CDC Scheme)".⁹⁷ If the Bill is passed, this provision will now apply in the NT. This power to disclose information is an exemption to

⁹⁵ Parliament of Australia, *Explanatory Memorandum: Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, p 25.

⁹⁶ *Ibid*, p 14.

⁹⁷ SSA Act, s124PN.

State and Territory privacy laws, but not to Commonwealth privacy and information sharing legislation.

NAAJA has concerns about a for-profit commercial entity having access to what will be a large, complex and valuable data set concerning the personal information and spending habits of a large section of the community in the NT.

While information collected by the Department or Services Australia is subject to the provisions in the SS Act such as those under Part 5, Division 3, it is unclear whether those protections would apply to Indue (or the commercial entity that is contracted as the card provider in the NT).

The Department has asserted in the course of briefing sessions to date that Indue “complies with banking regulations relating to privacy and is contractually obliged not to share the data with any third party, and to act in accordance with the Australian Privacy Principles.” The type of information capable of being collected by the cashless debit card is in many respects identical to information collected by banks in relation to the use of credit or debit cards, and is due to its nature, highly personal and private information. However, Indue is not a bank, and is thus not subject to regulatory regimes that provide individuals with recourse in the event that banking standards relating to information security or privacy are breached. It is unclear whether Indue’s compliance with banking standards is voluntary or contractually based. In either event, it is unclear how these standards would be enforceable by an individual in the event of a data or privacy breach.

Concerns about the role played by the private sector in relation to the provision of social security payments, including the role of Indue in the Cashless Debit Card trials, have recently been raised by UN Special Rapporteur on Extreme Poverty and Human Rights. The Special Rapporteur stated that the lack of information about the precise role and responsibility of private actors in proposing, developing and operating digital technologies in welfare states around the world was “deeply problematic” and “seriously impedes efforts to hold governments and private actors accountable”.

f) Requirement to evaluate

Bill removes the requirement for independent evaluations to be conducted in relation to CDC trial sites. This is highly concerning.

Currently, section 124PS of the ac provides that where the Minister or Secretary causes a review of the CDC scheme in the trial sites, an evaluation must be conducted by an independent expert within 6 months, and recommendations as to the scheme’s effectiveness must be made. In addition, it provides that consultations with trial participants must take place.

The Bill, however, only proposes to keep the requirement that an evaluation be conducted and a report prepared.⁹⁸ It intends to remove all other requirements, being:

- a) that evaluations are conducted within 6 months;

⁹⁸ See para 51 of the Bill – that subsections 124PS(2) and (3) are to be repealed.

- b) that evaluations are conducted by an independent evaluation expert;
- c) that the independent expert consults with trial participants;
- d) that the independent expert makes recommendations as to the effectiveness of the scheme.

NAAJA has significant concerns in regards to the repeal of these requirements, namely:

- The reliability of any evaluation would be significantly undermined if not conducted by an independent expert. The existing concerns about the adequacy of the government's previous evaluations, i.e. the ORIMA evaluations, only adds to the importance of protecting measures that maintain the impartiality and expertise of evaluations. The lack of clear existing evidence to support the effectiveness of a CDC scheme (as outlined in part 8 below) also only adds to the importance of maintaining the integrity of further evaluations.
- The adequacy of any evaluation about a measure imposed on individuals in order to change their behaviour would also be undermined if those individuals were not consulted. The reasoning for repealing these provisions as provided in the Explanatory Memorandum are that: "This addresses the potentially circular nature of current section 124PS. The repeal of subsection 123PS(3) removes the requirement on independent experts to consult trial participants which, in turn, will avoid the ethical implications of unnecessary repeat contact with vulnerable individuals." However, as is highlighted at part 9 below, it is vital that the government consults with the individuals who are affected by these measures. In addition, the government's alleged concerns about the ethical implications of speaking with people about the CDC scheme, seems at odds with their clear lack of concern around imposing this heavy blanket measure on people without any prior consultation, consent or clear evidence.
- Further, by no longer intending to seek and consider recommendations made by independent experts about the effectiveness of the CDC scheme in the "trial" sites, the government's genuine commitment in merely introducing the scheme as a "trial" is called into question.

8. BILL UNLIKELY TO ACHIEVE ITS AIMS

To expand the CDC scheme to the NT, is to expand a compulsory welfare quarantining measure that has no firm evidence base and is unlikely to achieve its aims. In fact, research suggests that welfare quarantining has had a detrimental impact on certain social outcomes, instead of alleviating them.

Objectives of the CDC scheme

The objectives of the CDC scheme, as set out in the legislation, are to:⁹⁹

- “reduce the amount of certain restrictable payments available to be spent on alcoholic beverages, gambling and illegal drugs; and
- determine whether such a reduction decreases violence or harm in the trial areas; and
- determine whether such arrangements are more effective when community bodies are involved; and
- encourage socially responsible behaviour.”

The Explanatory Memorandum explains that “...the Cashless Debit Card trial has the objective of reducing immediate hardship and deprivation, reducing violence and harm, encouraging socially responsible behaviour, and reducing the likelihood that welfare payment recipients will remain on welfare and out of the workforce for extended periods of time.”

At the Senate Committee hearing, the Department of Social Services reiterated that the policy driver of the CDC scheme is to “test the reduction in social harm that could be caused as a result of alcohol, gambling and the purpose of drugs.”¹⁰⁰

Income management evaluations

Given that the CDC scheme is an expansion of the NT’s current welfare quarantining model, income management, the focus for determining the efficacy of the introduction of the CDC scheme should be on the evidence about income management that has come out of the NT.

What studies clearly show is that income management in the NT has been unsuccessful in achieving its legislative aims,¹⁰¹ and that to continue compulsory welfare quarantining measures in the NT would be to continue a failed model.

⁹⁹ SSA Act, s 124PC.

¹⁰⁰ Ms Teena Blewitt, Group Manager, Communities, Department of Social Services, *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, Community Affairs Legislation Committee, Hearing 14 October 2019, Hansard transcript, p 17.

¹⁰¹ See section 123TB of the SSA Act for aims of income management: “The objects of this Part are as follows: (a) to reduce immediate hardship and deprivation by ensuring that the whole or part of certain welfare payments is directed to meeting the priority needs of: (i) the recipient of the welfare payment; and (ii) the recipient’s children (if any); and (iii) the recipient’s partner (if any); and (iv) any other dependants of the recipient; (b) to ensure that recipients of certain welfare payments are given support in budgeting to meet priority needs; (c) to reduce the amount of certain welfare payments available to be spent on alcoholic beverages, gambling, tobacco products and pornographic material; (d) to reduce the likelihood that recipients of welfare payments will be subject to harassment and abuse in relation to their welfare payments; (e) to encourage socially responsible behaviour, including

The largest and most authoritative assessment of the impacts of IM can be found in the 2014 report of the evaluation of New Income Management in the Northern Territory (the **2014 report**).¹⁰² The research was commissioned by the Department of Social Services and was undertaken by a team of researchers from ANU, the Australian Institute of Family Studies and UNSW Australia. Specifically, in regards to outcomes in child health, school attendance, alcohol and tobacco use, alcohol-related harms and imprisonment, the report found that there was no evidence of changes in aggregate outcomes that could plausibly be linked to compulsory income management.¹⁰³

Further key findings from the report are:

- There was no evidence of any overall improvement in financial wellbeing, including reductions in financial harassment or improved financial management skills.¹⁰⁴
- More general measures of wellbeing at the community level show no evidence of improvement, including for children.¹⁰⁵
- There was no evidence of changes in spending patterns, including food and alcohol sales for those on compulsory income management.¹⁰⁶
- Across a wide range of child health indicators there was no evidence of any consistent positive change.¹⁰⁷
- Rather than building capacity and independence, for many the program has acted to make people more dependent on welfare.¹⁰⁸
- In general, the program was not seen as being transformative of either individuals or communities. To the extent changes were reported at the community level the people consulted during the research tended to credit these to other programs and initiatives.¹⁰⁹

We understand that no further evaluations have been commissioned by the government into income management since the 2014 report. However, the ANU did very recently release a report that re-examined data considered in the 2014 report to the most recently available.¹¹⁰ Its findings broadly echoed those of the 2014 report and could not identify any positive impacts of the measure on social outcomes.

in relation to the care and education of children; (f) to improve the level of protection afforded to welfare recipients and their families.”

¹⁰² Bray, J. R., Gray, M., Hand, K., & Katz, I. (2014). *Evaluating New Income Management in the Northern Territory: Final Evaluation Report* (SPRC Report 25/2014). Sydney: Social Policy Research Centre, UNSW Australia.

¹⁰³ Ibid, p 235.

¹⁰⁴ Ibid, p xxi.

¹⁰⁵ Ibid, p xxi.

¹⁰⁶ Ibid, p xxi and p 324.

¹⁰⁷ Ibid, p 235.

¹⁰⁸ Ibid, p xxii.

¹⁰⁹ Ibid, p 324.

¹¹⁰ Bray, J. R. (8 October 2019) *Measuring the social impact of Income Management in the Northern Territory – an updated analysis*, ANU Centre for Social Research and Methods.

A working paper published by the Australian National University in 2016, reviewed the body of evaluations and research into income management. It found a degree of consistency across the research as to the lack of any positive impact of income management. To the extent that income management has had any positive impact, it found that this was limited to those who were being income management voluntarily, or those who had very high-needs and were also receiving necessary wrap around support, but that these gains were small.¹¹¹ The report found no evidence of compulsory income management having any positive outcomes for anyone else.¹¹²

Researchers from Menzies School of Health Research have also found that compulsory welfare quarantining in the NT has had detrimental impacts, specifically in regards to child wellbeing.¹¹³ In relation to school attendance outcomes and birth weight, the researchers found that the introduction of income management coincided with significant negative outcomes for children in the short term, and no notifiable improvements in the long run.¹¹⁴

Ultimately, it is clear that 12 years since the Intervention, there has been almost no improvement to people's lives which can be attributed to compulsory income management. Not only has there been no improvement, but it has had detrimental impacts on, at the very least, children's lives. Expanding compulsory welfare quarantining through the CDC scheme to the NT is to expand a measure that is unlikely to achieve its aims and cause harm....

Cashless debit card evaluations

We are seriously concerned that there is no firm evidence arising from the current CDC trial sites to support the introduction of the scheme to the NT. Evaluations that have been commissioned by the Department of Social Services into the current CDC trial sites have either been heavily criticised or are still ongoing.

The government has to date only completed one evaluation into the effectiveness of CDC in current trial sites, being the ORIMA evaluations of the Kimberley and Ceduna sites, which was released in September 2017.¹¹⁵ This evaluation, however, has been found to be seriously flawed, with the Auditor General and academics stating that it cannot be relied upon as an

¹¹¹ Bray, J. R., (2016) *Income management evaluations – what do we now know? Placing the findings of the evaluation of New Income Management in the Northern Territory in context*, (CAEPR Working Paper No. 111/2016) Australian National University, p 464.

¹¹² Ibid.

¹¹³ See Cobb-Clark, D. A., Kettlewell, N., Schurer, S. and Silburn, S., (2018) *The Effect of Quarantining Welfare on School Attendance in Indigenous Communities* (IZA Discussion Paper No. 11514); Doyle, M-A, Schurer, S. and Silburn, S. (2017) *Do Welfare Restrictions Improve Child Health? Estimating the Causal Impact of Income Management in the Northern Territory*. (Life Course Centre Working Paper 23).

¹¹⁴ Ibid.

¹¹⁵ ORIMA Research, *Australian Government Department of Social Services — Cashless Debit Card Trial Evaluation: Initial Conditions Report*, 2017; ORIMA Research, *Australian Government Department of Social Services — Cashless Debit Card Trial Evaluation: Wave 1 Interim Evaluation Report*, February 2017; ORIMA Research, *Australian Government Department of Social Services — Cashless Debit Card Trial Evaluation: Final Evaluation Report*, August 2017.

indicator that CDC is reducing social harm.¹¹⁶ Concerns include the robustness in data collection, which was made up of self-reported behavioural change and a small number of respondents. The Auditor General found that the “approach to monitoring and evaluation was inadequate. As a consequence, 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.”¹¹⁷

Earlier this year, the government released a further report into the effectiveness of the CDC scheme in the Goldfield region. ¹¹⁸ However, this is only a report on baseline qualitative findings. It merely comprises of responses to interview questions mostly about the expected impact of the scheme. It therefore provides no substantive data upon which to measure the scheme. In addition, it is concerning that the interview guide was based on the flawed ORIMA evaluation, and that this baseline was obtained after the introduction of the scheme.

Despite the significant criticisms of the ORIMA evaluation and that the report on the Goldfields merely concerns baseline data, the government in the Explanatory Memorandum references both of these reports in order to justify the expansion of the CDC scheme.¹¹⁹ No further evidence is provided to explain any alleged benefits or reasons for expanding the scheme.

In addition, we note that independent academic research has shown that CDC scheme has had negative impact on people’s lives. A report released by ANU¹²⁰ showed that all but one of the 35 people interviewed and subject to the CDC scheme said that the trial had made their lives worse. It suggests that this hardship was a result of the chaotic implementation of the trial, and its “ill-conceived theory of change and design.”¹²¹ Further, findings from a study conducted in the Bunderberg and Hervey Bay region between May and September this year by the University of Queensland suggest that the CDC scheme is failing to achieve some of its core objectives, and also making life more difficult for people.¹²²

We understand that the government has commissioned the University of Adelaide to undertake a second impact evaluation in the Ceduna, East Kimberley and Goldfields regions, and a baseline data collection in the Bunderberg and Hervey Bay region.¹²³ Given the lack of

¹¹⁶ See, for example: Australian National Audit Office (2018) *The implementation and performance of the Cashless Debit Card Trial*, (Auditor-General Report No 1 2018-19, Performance Audit); Klein, E and Razi, S. (2017) *The Cashless Debit Card trial in the East Kimberley* (CAEPR Working Paper No. 121/2017) Canberra: Australian National University.

¹¹⁷ Australian National Audit Office (2018) *The implementation and performance of the Cashless Debit Card Trial*, (Auditor-General Report No 1 2018-19, Performance Audit), p 8.

¹¹⁸ Mavromaras, K, Moskos, M, Isherwood, L, and Mahuteau, S. (2019) *Cashless Debit Card Baseline Data Collection in the Goldfields Region: Qualitative Findings*, Adelaide: Future of Employment and Skills Research Centre.

¹¹⁹ Parliament of Australia, *Explanatory Memorandum: Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*.

¹²⁰ Klein, E and Razi, S. (2017) *The Cashless Debit Card trial in the East Kimberley* (CAEPR Working Paper No. 121/2017) Canberra: Australian National University.

¹²¹ Ibid, p 5.

¹²² *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, Community Affairs Legislation Committee, Hearing 23 September 2019, Hansard transcript, p 3.

¹²³ Department of Social Services, *Cashless Debit Card – Evaluation, Second independent impact evaluation of the Cashless Debit Card trial*, <https://www.dss.gov.au/families-and-children-programs-services-welfare-quarantining-cashless-debit-card/cashless-debit-card-evaluation>

current firm evidence to support the expansion of the CDC scheme, we consider it to be crucial that the government at the very least waits for the outcome of these evaluations to be released (which is due late 2019) before determining whether it should push ahead with expanding the CDC scheme to other regions.

Ultimately, it is very clear that the evidence base for income management in the NT and the CDC scheme fails to substantiate the continuation of these compulsory welfare quarantining measures in their current form, nor the extension of the CDC scheme as proposed by the Bill.

9. LACK OF CONSULTATION AND RUSHED PROCESS

Consultations have not taken place in the NT prior to the introduction of the Bill and the Bill is being rushed through Parliament. This is seriously concerning.

The Explanatory Memorandum to the Bill states that “the rollout of the Cashless Debit Card has been and continues to be the subject of an extensive community consultation and engagement process.”¹²⁴ However, in the context of introducing the scheme to the NT, this does not appear to have been the experience of communities. Based on evidence given at the Senate Committee Hearing into this Bill and NAAJA’s experiences speaking with clients and members of remote NT communities, it is clear that consultations have not yet taken place.

The Department of Social Services held information sessions at NAAJA¹²⁵ and some other Aboriginal organisations prior to the introduction of the Bill.¹²⁶ However, information sessions are clearly not consultation (for reasons further outlined below).

In addition, information sessions do not appear to have been held in remote communities with the people likely to be most impacted by this Bill. Since the introduction of the Bill, NAAJA has spoken to various clients and community members about the proposed introduction of the CDC scheme. Very few people were aware of this proposed change, and no one we spoke to had been made aware through any government information or consultation session in their community. People were surprised and confused to hear about this scheme through NAAJA for the first time. One community member who works at a community council office said “*Will someone come out here and give us information? The government should be coming out and asking people what they think, and giving us information.*” When we asked a group of women in Barunga Community if they knew about the proposed CDC scheme, they said they had never heard about it before and were concerned that the government hadn’t spoken to them yet, given the impact this change would have on their community.

The information provided at the initial briefing sessions was also incomplete and partly inconsistent with the final Bill. The sessions were brief¹²⁷ and focused on the improved technology and operation of the card that will be given to those captured by the scheme, and implied that the CDC scheme would more or less simply be a “new card” However, as is discussed in this submission, it is clearly more than a new card. The briefings failed to discuss some key significant changes including the expansion of the measure and the ability for the rate to be increased. This experience is supported by the evidence given by the Department

¹²⁴ Parliament of Australia, *Explanatory Memorandum: Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, p 20.

¹²⁵ Department of Social Services briefing session by Jason Oakley at NAAJA on 2 August 2019 regarding “government transition arrangements from basic card to debit card”.

¹²⁶ *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, Community Affairs Legislation Committee, Hearing 23 September -Danila Dilba Health Service and AMSANT also had a briefing session by DSS.

¹²⁷ See for example evidence given by Danila Dilba Health Service which noted that the information session went for half an hour or three quarters of an hour.

of Human Services at the Committee Hearing, which noted that the sessions have to date just been initial engagements with little detail about the change proposed.¹²⁸

Further, given that the Bill intends to expand the measure to the NT, whether or not consultations have or haven't taken place in other CDC trial sites is not relevant. The only relevant question is whether they have taken place in the NT. It is concerning that in response to a question asked at the Senate Committee hearing about whether consultation has taken place, the answer from the Department of Social Services was that there had been consultations in trial sites.¹²⁹ This shows that the government has not consulted with people in the NT, and that the government considers consultations in other jurisdictions to justify the imposition of this measure to the NT.

In addition, the Explanatory Memorandum provides that consultations will take place following the introduction of the scheme in relation to the rollout. However, whilst this is also important, what is most important is that any major change that is going to have a significant impact on Indigenous communities in the NT, is driven by the community. To assist with ensuring this, it is absolutely vital that consultations take place *prior* to the introduction of such legislation, and not merely after. As Dr Bielefeld from Griffith University stated at the Senate Committee hearing "Consultation, at least human rights compliant consultation, involves free, prior and informed consent. It doesn't involve telling people that they're going to be forced onto a program that they don't consent to."¹³⁰ Affected people and communities should have been asked a) do you want compulsory welfare quarantining measures to continue? and if so b) what they should look like if they do continue? Further, any discussion of proposed changes must be in the form of Aboriginal led co-design, i.e. with Aboriginal leaders and organisations, in order to ensure meaningful conversations and culturally appropriate sessions.

We are also concerned that the government is rushing the Bill through Parliament. Top End Organisations barely had a week and a half to review the Bill, consult with stakeholders and communities in relation to its contents, and arrange attendance at the Senate Committee hearing in Darwin. This made it extremely challenging for individuals in remote communities to participate, or for organisations like NAAJA to consult with its members and stakeholders about the changes in order to reflect their views. Furthermore, there were only about 5.5 weeks between introduction of the Bill and written submissions being due. We are deeply concerned that many people affected by the Bill will not be heard.

The lack of consultation and rushed implementation of this program is reminiscent of the rollout of income management and the subsequent introduction of the BasicsCard. People on income management in the Northern Territory suffered hardship because of the lack of adequate consideration of the consequences of its introduction and the practical difficulties that it would

¹²⁸ See for example the evidence of Ms Goddard, *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, Community Affairs Legislation Committee, Hearing 14 October 2019.

¹²⁹ Evidence of Ms Patrick *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, Community Affairs Legislation Committee, Hearing 14 October 2019.

¹³⁰ Evidence of Dr Bielefeld, *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, Community Affairs Legislation Committee, Hearing 14 October 2019.

create, particularly in its early stages. Adequate consultation could have ameliorated or avoided at least some of these hardships.

This rushed process lacking any prior consultation raises serious questions about the government's commitment to engage with Aboriginal communities and controlled organisations in relation to a major legislative decision that will disproportionately impact upon Aboriginal people.

10. SIGNIFICANT PUBLIC FUNDS ON BASELESS MEASURES

We are concerned that the government has been and will continue to spend public funds on compulsory welfare quarantining measures.

Indeed, a major gap in the evaluations of these measures to date would appear to be the absence of any assessment of cost-effectiveness. This was most certainly the case with the 2014 report, as the initial evaluation framework was altered after a request from the Department of Social Services to rule out undertaking a detailed investigation into the cost-effectiveness of the program.

There is not much publicly available information about the cost of the income management and CDC schemes. From the information that is available, we have gauged the following.

In regards to income management in the NT:

- In 2012, it was reported that income management overall cost over \$1 billion.¹³¹ Presumably it has now cost far more than that seven years on.

In regards to the CDC scheme:

- The Department of Social Services, in their evidence at the Committee Hearing on 14 October 2019, stated that in the four years since 2015-2016, it has cost a total of \$50.367m.¹³² This is for participants already subject to the scheme, of which there are currently 11,547.¹³³
- The extension of the CDC scheme to the NT and Cape York is to cost \$128.8m over four years,¹³⁴ and the EM notes that an additional \$17.8m will be allocated for support services to assist with the transition from the current income management regime to the CDC scheme. This is for the NT and Cape York participants that are to be covered by the scheme, which the government projects will be about 23,000.¹³⁵
- The above-outlined figures for the implementation and operation of the CDC scheme amount to at least \$180m. Dr Janet Hunt from the ANU in her submission to this Inquiry notes that “conservatively, the total cost to date may well far exceed \$510m (i.e. three times the cost we know about.”¹³⁶

¹³¹ Australian National Audit Office (2013) *Administration of New Income Management in the Northern Territory* (Auditor-General: Audit Report No.19 2012-13, Performance Audit) at page 17 found that DHS was not able to directly isolate the costs of income management. The report said that ‘the departments [Human Services/Families, Housing, Community Services and Indigenous Affairs] estimate that the cost of providing Income Management services is in the order of \$66000 to \$79000 per annum’.

¹³² Ms Teena Blewitt, Group Manager, Communities, Department of Social Services, *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, Community Affairs Legislation Committee, Hearing 14 October 2019.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Dr Janet Hunt (2019) *Submission to Inquiry on the Social Security (Administration) Amendment (Income Management to Cashless Debit Card) Transition Bill 2019*.

This is a significant amount of money for the government to be spending on a compulsory welfare quarantining measures, measures which lacks any firm evidence base and have to date failed to achieve their objectives (as is detailed at part 8 above). Given that such money is therefore likely to go to waste, it would seem be highly irresponsible of the government to be spending further public funds on the implementation and operation of the CDC scheme in the NT.

11. ATTACHMENT A TO SUBMISSION – ANSWERS TO QUESTIONS TAKEN ON NOTICE

The following are our responses to the questions we took on notice at the Senate Committee Hearing in Darwin on 23 September 2019:

- a) What is the scale of the number of people that NAAJA is working with that are getting small social security payments because of penalties?
 - It is not possible to provide exact figures in response to this question, as NAAJA's data about legal matter types does not capture this level of detail. However, in some service regions NAAJA civil solicitors report receiving between 1-6 queries of this nature over the course of a week-long trip holding civil law clinics in remote locations.
 - Please see sections 3(b), at pp 10-12 and section 6(a) at pp 19-20 of this submission.
- b) Have you had many instances where you've been representing people or working with people because of legal issues or problems around the operation of this current scheme? If clients are not currently presenting with such legal issues or operations, were they previously?
 - We note that at the Committee hearing, Ms Mills said: "NAAJA is not asked to do that regularly because this has been a scheme that's been happening in the Northern Territory now for 12 years."
 - Please see section 6(a) of this submission for our further response to this question.
- c) Does NAAJA have its own evidence about the Basics Card and how NAAJA has had to work with that in terms of its clients?
 - We note that at the Committee hearing, Ms Mills said: "As was in our written submission, NAAJA is hoping to go out and consult with the communities we'll be visiting over the period of the next few weeks as well. We want to talk to people about their lived experiences of current income management. We'll also refer senators to other evaluations that exist, such as the Menzies evaluation of 2017 and the evaluation from the Kimberley that I believe was published at the beginning of this year."
 - Please see sections 6(a) and (c) of this submission for our further response to this question.
- d) Are you aware of examples of matters where the BasicsCard has been at the forefront, or part of, any of the cases that you've had to deal with, in terms of the circumstances of your clients?
 - Please see section 6(a) of this submission for the matters that NAAJA has assisted clients with which relate to income management issues.
- e) In regards to the interaction between CDP and current income management under the BasicsCard: i) how does that operate in terms of penalties that some of your clients have received? ii) do you have any thoughts on or evidence from your clients around people doing work for the dole and still having their income quarantined?
 - Please see section 3(b), at pp 10-12 of this submission.

NAAJA also seeks to make a minor clarification to its evidence given at the oral hearing before the Committee in Darwin on 23 September 2019. In its evidence, as recorded on p 31 of the Hansard of the Committee hearing, NAAJA states that representatives from the organisation attended a briefing with members of the Department before the Bill was announced. NAAJA wishes to clarify that this briefing occurred *after* the Government's announced its intention to introduced the CDC Scheme to the NT, but *before* the Bill itself was introduced to Parliament and its contents became known.