



25 June 2020

Committee Secretary
Senate Standing Committee for the Scrutiny of Delegated Legislation
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

**SUBMISSION TO THE INQUIRY INTO THE EXEMPTION OF DELEGATED LEGISLATION FROM
PARLIAMENTARY OVERSIGHT**

The Accountable Income Management Network (AIMN) welcomes the opportunity to respond to the Senate Standing Committee for the Scrutiny of Delegated Legislation's (henceforth 'the Committee') inquiry into the *Exemption of delegated legislation from parliamentary oversight*.

The AIMN is a nation-wide group of community members; representatives of national, state and local non-government organisations and community bodies; academics; social researchers and public policy experts. Our members have a strong commitment to social justice and human rights and are concerned about the provision of equitable and appropriate social security support to economically marginalised Australians. The AIMN is particularly concerned with issues raised by compulsory income management, such as through the Cashless Debit Card trials.

Our submission focuses on Term of Reference a(iv), which refers to the appropriateness of exempting delegated legislation made in response to the COVID-19 pandemic from parliamentary oversight. Specifically, we raise concerns about Minister for Families and Social Services Senator the Hon Anne Ruston's extension of the Cashless Debit Card trials across all sites until 31 December 2020.

The AIMN recommends that the Committee:

- Gives notice of a motion to disallow the Coronavirus Economic Response Package (Deferral of Sunsetting – Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572] as a matter of urgency, and;
- Recommends the immediate repeal of the extraordinary legislative powers conferred on Minister Ruston.

Overview of the Cashless Debit Card Trials

The Cashless Debit Card (CDC) trials currently operate across four trial sites - the East Kimberley, Ceduna, Goldfields and Hinkler. Despite being introduced by government as a 12-month trial, the CDC is now in its fifth year of operation in the first two sites and has been extended multiple times. As of 5 June 2020, 12,700 persons are subject to compulsory income management under the CDC across all sites.¹

The harms of the CDC are well-documented and include but are not limited to: increased economic insecurity, detrimental impacts to health and wellbeing, housing insecurity, and social stigma and discrimination.² The Parliamentary Joint Committee on Human Rights has previously raised concerns about the extent to which the measures included in compulsory income management programs are rationally connected to and proportionate to achieving the stated objectives of the legislation.³ This Committee took issue with the government's suggestion that the extension of the CDC trials were a proportionate limitation on human rights, noting the importance of developing and maintaining 'adequate and effective safeguards, to ensure that limitations on human rights are the least rights restrictive way of achieving the legitimate objective of the measure'.⁴

The AIMN has outlined our concerns with the CDC at length elsewhere, and we encourage the Committee to review our past submissions on compulsory income management and the CDC.⁵ Here, we focus on the appropriateness of exempting the decision to extend the trials during the COVID-19 pandemic from parliamentary oversight.

Deferral of Cashless Debit Card Trial Sunsetting

On 5 May 2020, Minister Anne Ruston announced that the CDC trials and income management in the Cape York region would be extended until 31 December 2020 across all sites.⁶ This decision was enabled by deferred sunset provisions in the *Coronavirus Economic Response Package Omnibus Bill 2020*, which passed on 23 March 2020.⁷

Ordinarily, legislation would need to be tabled, debated and passed by Parliament to extend the trials. Minister Ruston used deleted emergency powers despite Parliament returning to

¹ <https://data.gov.au/data/dataset/e5a6ca38-b17c-4e65-af70-84e7759a0ffa/resource/9410d1bb-ae96-4bc1-a394-a721b69d8e14/download/cashless-debit-card-data-summary-june-2020.pdf>

² <https://static1.squarespace.com/static/5bff47d1da02bc49ad4e890b/t/5e54c6934eb2985cbbf830a5/1582614180484/Hidden+Costs+Report+-+FINAL.pdf>

³ Parliamentary Joint Committee on Human Rights, *Report 11 of 2017* (17 October 2017), pp. 126-137.

⁴ Parliamentary Joint Committee on Human Rights, *Report 8 of 2018* (21 August 2018), p. 44.

⁵ <https://accountableincomemanagementnetwork.wordpress.com/resources/>

⁶ <https://ministers.dss.gov.au/media-releases/5801>

⁷ *Coronavirus Economic Response Package Omnibus Act 2020* (Cth), Sch 16.

sit from May 2020 and in the face of a new report being published that confirmed ongoing concerns with the trials.⁸

We are concerned about the fact that the Bill allowed for an extension of the CDC trials in the absence of formal legislative processes accompanied by Parliamentary Committee scrutiny. In addition to this, an extension by ministerial fiat has undermined opportunities for public input which had been previously presented to stakeholders prior to other CDC expansions. Further, while the determination was made by Minister Anne Ruston on 17 April 2020, it is worrying that this decision was only publicised over two weeks after the fact, significantly undermining public expectations of transparency and accountability.⁹

We note that the Committee has raised issues with the Coronavirus Economic Response Package (Deferral of Sunsetting – Income Management and Cashless Welfare Arrangements) Determination 2020 as catalogued in the Index of instruments.¹⁰ In light of concerns about the CDC trials noted above, we support the Committee in taking issue with the present instrument with respect to several scrutiny principles (as set out in Senate standing order 23(3))- specifically, principles (j) matters more appropriate for parliamentary enactment, and (k) parliamentary oversight).

The AIMN supports the Committee’s note in correspondence to Minister Ruston on 11 June 2020 that ‘the measures in the instrument constitute a significant extension of the existing income management arrangements.’¹¹ We agree with concerns raised by the Committee, including the Minister’s failure to sufficiently justify extending the operation of income management by delegated legislation and the fact that it is unclear that Parliament would lack time to debate primary legislation to extend income management arrangements.

As was noted in a submission by the Human Rights Law Centre to the Senate Select Committee on COVID-19, *“greater decision-making powers in the hands of Ministers personally rather than Parliament collectively means more opaque processes of deliberation and less public accountability. It means less public debate and media coverage of decisions*

⁸ K Mavromaras et al, Cashless Debit Card Baseline Data Collection in the Bundaberg and Hervey Bay Region: Qualitative Findings (University of Adelaide, 2019).

⁹ <https://www.legislation.gov.au/Details/F2020L00572>

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https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Index

¹¹ Senate Standing Committee for the Scrutiny of Delegated Legislation, Consolidated correspondence, Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572], available at

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Index



and less scope for input from anyone other than those with close political connections. Ultimately, it means poorer decisions and an increased risk of corruption.”¹²

The Parliamentary Joint Committee on Human Rights recently provided advice on the Coronavirus Economic Response Package (Deferral of Sunsetting – Income Management and Cashless Welfare Arrangements) Determination 2020. This Committee referred the Minister and parliamentarians to its Report 1 of 2020 regarding an assessment of the human rights compatibility of the instrument, reiterating that ‘extending the operation of these measures may engage a number of human rights’.¹³

In the Dissenting Report made by Labor and Greens members of the Parliamentary Joint Committee on Human Rights in response to the Committee’s Report 1 of 2020, members raised significant issues with the *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*, noting that ‘it has not been clearly demonstrated that the extension of the cashless debit card trial is a justifiable limit on the rights to social security and privacy or, to the extent that the trial has a disproportionate impact on First Nations People, that it is a reasonable and proportionate measure and therefore not discriminatory.’¹⁴ This assessment makes the Minister’s decision to extend the trials for a further 6 months in the absence of parliamentary oversight highly concerning.

We strongly encourage the Committee to carefully consider the concerns outlined above, in the interest of the human and economic rights and dignity of people who are subject to compulsory income management under the Cashless Debit Card trials.

Yours sincerely,

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Secretariat
Accountable Income Management Network

¹² Human Rights Law Centre, Submission to the Senate COVID-19 Committee (2020), 6.

¹³ Parliamentary Joint Committee on Human Rights, Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572], *Report 7 of 2020*; [2020] AUPJCHR 93.

¹⁴ Parliamentary Joint Committee on Human Rights, Dissenting Report by Labor and Greens members, *Report 1 of 2020*; [2020] AUPJCHR 23.