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Submission to the Inquiry into the Social Security Legislation Amendment (Debit Card Trial) Bill 2015

The St Vincent de Paul Society (the Society) is a respected lay Catholic charitable organisation operating in 149 countries around the world. Our work in Australia covers every state and territory, and is carried out by more than 60,000 members, volunteers, and employees. Our people are deeply committed to social assistance and social justice, and our mission is to provide help for those who are marginalised by structures of exclusion and injustice. Our programs assist millions of Australians each year, including people living with mental illness, people who are homeless and insecurely housed, migrants and refugees, and people experiencing poverty.

On 21 August 2015, the Senate Standing Committee on Community Affairs invited the Society to make a submission to the present Inquiry. The Society welcomes the opportunity to make this contribution, and is more than happy to provide further information on any point raised.

Executive Summary

The Bill before the Senate seeks to extend compulsory income management into new geographical areas in which there are particularly high levels of people receiving income support payments. Although not explicit in the Bill, it is clear from its background that it will be targeted at Indigenous communities in remote areas.

We believe that the legislation continues Australia's paternalistic approach towards Indigenous Australia, by delivering top down 'solutions' to the deep disadvantage that has developed as a direct result of the invasion of this country more than two hundred years ago. History shows that this will only lead to more suffering, and evidence tells us that compulsory income management simply does not work.

Instead, the Society supports a vision of Australia based on self-determination of the First Peoples, where they have a hand in their own destiny. We believe in deep engagement with those experiencing disadvantage, so that we as a nation can provide whatever tools are required so that all people currently bearing the brunt of structural and historical inequality are able to empower themselves to fulfil their potential.

1) Background

The Forrest Review

The Social Security Legislation Amendment (Debit Card Trial) Bill 2015 was drafted in response to key recommendations from the Forrest Review's report, *Creating Parity*.¹ The Forrest Review recommended the implementation of the Healthy Welfare Card ('the Card') to

¹ Commonwealth of Australia, *Creating Parity: The Forrest Review* (2014), at https://indigenousjobsandtrainingreview.dpmc.gov.au/sites/default/files/files/The_Forrest_Review.pdf

support welfare recipients to manage their income and expenses, with the participation of major financial institutions and retailers.² The Review suggested that the Card be programmed to be unable to withdraw cash, or to purchase certain items such as alcohol and gambling products. There are also to be penalties for retailers who breach these conditions.³

The Legislation and Mechanisms

The most significant effect of the Social Security Legislation Amendment (Debit Card Trial) Bill 2015 is that it amends the *Social Security (Administration) Act 1999* to include 'Part 3D – Trial of Welfare Arrangements'. This Part provides for a 'trial of cashless welfare arrangements', which is *compulsory* for 'recipients of certain welfare payments' belonging to a certain class or living in a certain area.⁴ This approach is not voluntary, or dependant on individual assessments of need, but will place people on the program based on where they live, or whether they are part of a certain 'class'.

According to s 124PC, the object of this trial is to determine whether a reduction in the amount of payments available to be spent on alcoholic beverages, gambling and illegal drugs 'would decrease violence/harm' and 'encourage socially responsible behaviour'.⁵ The Bill further provides that the trial is to be conducted on a maximum of 10,000 participants living in 3 discrete trial areas, from 1 February 2016 to 30 June 2018.⁶ Under s 124PG, the Minister has a broad discretion to declare a 'particular class of person' or people living in a particular trial area as 'trial participants', regardless of whether that class or people have actually consented to participating in the trial.⁷

In the Explanatory Memorandum, the government explains that the trial will attempt to reduce the amounts spent on alcohol, gambling, and illicit drugs, by placing restrictions over 80% of the welfare recipient's payments.⁸ The Memorandum further states that individual participants may work with the 'community bodies' and the Department of Human Services (DSS) to establish a welfare plan with a lower rate of restriction (though no less than 50%), in lieu of the default 80% rate.⁹ Finally, the memorandum notes that debit cards that are to be used in the trial will work 'as similarly as possible to any other bank card', with the only difference being that the card may not be used for cash withdrawals, or to purchase alcohol or gambling products.¹⁰

² Ibid.

³ Ibid.

⁴ Social Security Legislation Amendment (Debit Card Trial) Bill 2015 (Cth) s 124PB.

⁵ Ibid s 124PC.

⁶ Ibid s 124PF.

⁷ Ibid s 124PG.

⁸ Explanatory Memorandum, 2.

⁹ Ibid.

¹⁰ Ibid.

2) Issues with the Legislation

Repeating the Mistakes of History

As noted in the Society's recent submission on Constitutional Recognition,¹¹ Aboriginal and Torres Strait Islander ('ATSI') Peoples have endured staggering discrimination and disempowerment since colonisation, often through policies ostensibly designed to 'help' them. These policies stem from the 'protection era' of Australian history, when the ATSI people were subjected to policies that not only negated their right to vote, but also gave Government the power to determine where they could live, who they could marry, and where they could work.¹² It is clear that the ultimate effect of these policies was to deny Indigenous people control over almost every aspect of their lives; to disconnect them from their culture, land, and family. Indeed, the most notorious example of these paternalistic policies resulted in the Stolen Generation, where as many as '1 in 3 Indigenous children were forcibly removed from their families'.¹³

The outcome of such grave mistreatment in the past has vastly disadvantaged many ATSI Australians today. Indeed, even in 2015, the experience of many Aboriginal or Torres Strait Islander people is characterised by enormous social and economic disadvantage compared to non-Indigenous Australians. For example, a recent Australian Bureau of Statistics Census revealed that the median weekly income for ATSI individuals was \$362, or just 62.7% of the broader population's average income.¹⁴ The same census exposed the disparity in education outcomes, with just 25% of Indigenous Australians completing year 12 or equivalent, compared to 49.2% of the wider population.¹⁵ Furthermore, a 2014 COAG Reform Council report revealed an Indigenous Australian unemployment rate of 21.6%, more than four times the rate for non-Indigenous Australians.¹⁶ Inadequate access to housing is another major issue for Indigenous Australians: despite making up 2.5% of the Australian population in 2011, ATSI people accounted for a disproportionate 25% of all persons who were homeless on

¹¹ St Vincent de Paul Society, *Submission on Constitutional Recognition*, 2014, at https://www.vinnies.org.au/icms_docs/197232_Submission_on_Constitutional_Recognition_of_Aboriginal_and_Torres_Strait_Islander_Peoples.pdf.

¹² Museum of Australian Democracy, *Aboriginal Protection Act 1869 (Vic)* at foundingdocs.gov.au/item-did-86.html.

¹³ Australian Human Rights Commission (AHRC), *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (April 1997) 31 at humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf.

¹⁴ Australian Bureau of Statistics, *First Release media fact sheet: Aboriginal & Torres Strait Islander Peoples (National)* (June 2012) 9 at [abs.gov.au/websitedbs/censushome.nsf/home/mediafactsheetsfirst/\\$file/Census-factsheet-Indigenous-national.doc](http://abs.gov.au/websitedbs/censushome.nsf/home/mediafactsheetsfirst/$file/Census-factsheet-Indigenous-national.doc).

¹⁵ *Ibid*, 13.

¹⁶ Council of Australian Governments (COAG) Reform Council, *Indigenous Reform 2012-2013: Five years of performance* (April 2014) 66 at http://apo.org.au/files/Resource/coag_indigenousreform2012-13_2014.pdf

census night.¹⁷ Finally, Indigenous Australians also remain highly overrepresented in prisons, making up 27% of Australia's prison population in 2013.¹⁸

Missing the Deep Causes

If we take the position that all people are fundamentally equal, then the cause of this disadvantage can only be a result of the different treatment Indigenous Australians have received under our laws. However, despite the clear link between paternalistic, disempowering policies and ATSI disadvantage, in 2015 we continue to see many policies that rob Indigenous Australians of their right to self-determination, and fail to address these deep causes of disadvantage.

As one case study, we may consider the Northern Territory Intervention (the NT National Emergency Response, NTER). This policy was legislated in 2007, and was ostensibly aimed at protecting Indigenous children in the Northern Territory from family violence and sexual abuse by introducing restrictions on access to alcohol and pornographic materials; welfare reforms to restrict the way in which welfare money was spent; the linking of income support and family assistance payments to school attendance; and increased policing levels.¹⁹ Though well intentioned, these measures clearly severely limited the autonomy and freedom of many Indigenous Australians. For example, the UN Human Rights Council noted that the restrictive measures imposed by NTER limited 'the exercise of [Aboriginal Australians'] individual rights on an equal basis with other sectors of the national population, thus amounting to discrimination prohibited under international and domestic law/legislation'.²⁰ More damningly, a report by the Australian Indigenous Doctors' Association argued strongly that these measures negatively impacted on "psychological health, social health and wellbeing and cultural integrity" as well as the "ability of government to work with Aboriginal communities to achieve shared objectives".²¹ It is notable that the report also encouraged closer collaboration with communities themselves, whether through investing in existing

¹⁷ Australian Bureau of Statistics, 'Summary of findings', *2049.0 - Census of Population and Housing: Estimating homelessness, 2011* (November 2012) at abs.gov.au/ausstats/abs@.nsf/Latestproducts/2049.0Main%20Features22011.

¹⁸ Australian Bureau of Statistics, 'Aboriginal and Torres Strait Islander Prisoners', *4517.0 - Prisoners in Australia, 2013* (December 2013) at abs.gov.au/ausstats/abs@.nsf/Lookup/4517.0main+features62013.

¹⁹ Aboriginal & Torres Strait Islander Social Justice Commissioner, 'The Northern Territory 'Emergency Response' Intervention – A Human Rights Analysis', *Social Justice Report 2007* (February 2008) 199 at humanrights.gov.au/sites/default/files/content/social_justice/sj_report/sjreport07/pdf/sjr_2007.pdf.

²⁰ James Anaya, *Report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People* (June 2010) 27 at unsr.jamesanaya.org/docs/special/2010_special_australia_en.pdf.

²¹ Australian Indigenous Doctors' Association (AIDA) and Centre for Health Equity Training, Research and Evaluation, UNSW, *Health Impact Assessment of the Northern Territory Emergency Response* (2010) at http://www.aida.org.au/wp-content/uploads/2015/03/AIDA_HIA.pdf

community-driven initiatives or developing plans together with the communities and their local leadership.²²

On a more practical note, the research into the income management measures that formed part of the NTER (and comprise the majority of the current Bill) shows that compulsory income management simply doesn't work: financial capacity is not built, significant numbers of people feel it makes their lives worse, income is still not necessarily spent on the priority needs that the government has decided are of most importance to people (e.g. spending on fruit and vegetables remains very low), general measures of wellbeing show no improvement, and it makes many people *more* dependent on welfare.²³ For example, while government has stated that one objective of the current trial is to test whether restricting discretion can reduce the harm caused by alcohol, gambling and drug abuse, particularly against women and children,²⁴ in our view the punitive income management measures will not work to achieve this goal. Research very clearly suggests that violence committed by men against women and children is not caused by poverty, alcohol, and gambling, but by deep structural inequalities between men and women.²⁵ For these reasons, the current Bill misses the point about the deep causes of disadvantage, and thus misses the opportunity to really address them.

3) A positive way forward

The Role of Self-Determination

The Society believes that the first step in improving lives is compassion, and understanding. Rather than telling disadvantaged Australians what they need and what they are doing wrong, what has set St Vincent de Paul apart for centuries is how we visit people in their homes, individually, and deeply engage with those we assist, offering tools to empower them, rather than a one-size-fits-all model.

We believe that the same approach must be taken when considering the disadvantage faced in Indigenous communities. We need close collaboration between governments and the *local* communities, with a focus on empowering the ATSI individuals so that 'they can forge and change their own destinies and those of their local community.'²⁶ Local and personal

²² Ibid.

²³ Rob Bray, Matthew Gray, Kelly Hand and Ilan Katz, *Evaluating New Income Management in the Northern Territory: Final Report* (2014) at https://www.sprc.unsw.edu.au/media/SPRCFile/Evaluation_of_New_Income_Management_in_the_Northern_Territory_full_report.pdf.

²⁴ Alan Tudge MP, *Speech, House of Representatives* [Wednesday, 19th August, 2015].

²⁵ Rik Sutherland, *Causes of Domestic Violence, and Implications for Primary Prevention*, 11 June, 2015, St Vincent de Paul Society National Council, at https://www.vinnies.org.au/icms_docs/222951_Speech_on_domestic_violence_prevention.pdf and St Vincent de Paul Society, *Submission on Inquiry into Domestic Violence*, 2014, at https://www.vinnies.org.au/icms_docs/192177_Submission_on_Inquiry_into_Domestic_Violence.pdf

solutions are key in a strengths-based approach to addressing income-management and addiction issues in Indigenous communities, rather than assuming that every person who happens to live in a certain location or have a certain skin colour has exactly the same set of challenges and needs. The Forrest Review itself actually stipulates ‘that community decisions about job seeker compliance and social norms be made locally by a local responsibilities board and not remotely.’²⁷

The Bill before Parliament seems to have forgotten the need to respect local expertise and experience, and in doing so risks violating Article 1 of the International Covenant on Economic, Social and Cultural Rights, which states that ‘all peoples have the right of self-determination’ and ‘by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development’. The government’s argument in the Explanatory Memorandum that the proposed arrangement will be compatible with Article 1 because it is intended to protect vulnerable people ignores the basic legal test of proportionality in weighing up rights: any violation must be proportional to fulfilment of the right that is to be fulfilled. In this case, imposing severe restriction on the majority of a person’s income is a *clear* and *direct* interference with their rights to liberty, to economic and social development, and to self-determination. Moreover, there are myriad other ways that could be undertaken to support disadvantaged Australians rights that *don’t* involve compulsory income management (for example, increasing services in remote areas): the scheme is not necessary to protect rights. Finally, there is in fact no logical connection between the scheme and its intended outcome, given the total lack of evidence that income management is effective in achieving its policy goals. For these reasons, we believe that the form of compulsory income management imposed by this Bill is disproportionate, and poses a significant threat to the human rights of people who will be subject to it.

The right to self-determination and human rights are fundamental to the aspirations of Aboriginal communities and are the gold standard in working with Indigenous populations internationally.²⁸ The St Vincent de Paul Society supports programmes and services such as financial counselling and *voluntary* income management that empower people to take control over their finances. What the Society cannot support is *involuntary* welfare restrictions that limit discretionary cash to a minimum amount under a paternalistic assumption that this will protect vulnerable people from the harm caused by the abuse of alcohol, gambling and illegal drugs. This very measure ignores the complex social consequences that the inability to self-determine has had upon the health and well-being of Aboriginal communities and that it is

²⁶ The St Vincent de Paul Society, *The Rule of the St Vincent de Paul Society in Australia – Seventh Edition* (September 2012) 17 at www.vinnies.org.au/icms_docs/168122_The_Rule.pdf.

²⁷ Forrest Review, above n 1, *Recommendation 23*, 55.

²⁸ M. Davis, Indigenous Constitutional Recognition from the Point of View of Self-Determination and its exercise through Democratic Participation. *Indigenous Law Bulletin*, July/August, 2015, Vol 8(19) at www.apo.org.au/files/Resource/megan_davis_ilb_819.pdf

this very disconnect which has fuelled health, education, and employment inequalities for First Nation Peoples since colonisation.

Next Steps

While these deep issues may seem intractable, it is clear that a Federal ‘command and control’ approach to those living with disadvantage has not worked in the past. Particularly in relation to the First Australians, this paternalism has, on the contrary, had severe and shameful consequences for our nation.

The St Vincent de Paul believes fundamentally in empowering those we assist – we offer a ‘hand up’, rather than just a ‘hand out’. The first step for government, in seeking to address disadvantage, is to engage deeply with communities and individuals that are struggling. While many Indigenous people oppose income management,²⁹ we also know that some support it.³⁰ The debate can be nuanced and made richer by a fuller exploration of lived experience, and the expertise in these communities as to what needs to change.

Secondly, we reiterate our call for services to lead, rather than follow, more severe and punitive approaches. We call, again, for the funding that has recently been stripped out of Aboriginal Legal Aid, and Aboriginal health, to be reinstated and that expenditure on prevention and early intervention be increased rather than retracted.³¹³² Social services are contextual entities and are designed to assist people in countless geographical locations at a level which meets the specific needs of each community. Paternalistic income-management mechanisms imposed upon Indigenous communities from remote locations, such as Parliament House, reflect little to no understanding of the complex issues which exist on the ground in low-income populations, and which require responsive, flexible services.

Thirdly, and relatedly, there is a need for income adequacy, rather than income management. It is unquestionable that the current rates of income support for people looking for work are not enough to maintain basic costs of living – particularly in regional and remote Australia. The stress involved in simply surviving on Newstart Allowance constitutes a barrier, not an

²⁹ See for example, *Northern Territory Emergency Response (NTER) - “The Intervention”* at <http://www.creativespirits.info/aboriginalculture/politics/northern-territory-emergency-response-intervention#ixzz3l1to0Eh2> and ACOSS, *Compulsory Income Management: A flawed answer to a complex issue, 2010*, at http://acoss.org.au/images/uploads/ACOSS_analysis_income_management.pdf

³⁰ ABC News, *Noel Pearson disputes Nova Peris's view on income management in Aboriginal communities*, 5 Aug 2014, 2:40pm, at <http://www.abc.net.au/news/2014-08-05/nova-peris-noel-pearson-debate-aboriginal-income-on-qanda-nt/5649010>

³¹ St Vincent de Paul Society National Council, 2015–2016 Pre-Budget Submission, at https://www.vinnies.org.au/icms_docs/210151_2015%E2%80%932016_Pre-Budget_Submission.pdf

³² St Vincent de Paul Society National Council, Submission on Constitutional Recognition of Aboriginal and Torres Strait Islander People at http://www.vinnies.org.au/icms_docs/197232_Submission_on_Constitutional_Recognition_of_Aboriginal_and_Torres_Strait_Islander_Peoples.pdf

incentive to finding work, and stress is a factor which can fuel violence, gambling and addiction. We must lift Newstart by at least \$50 per week, and index it to wages.³³

Finally, we need a Jobs Plan for Australia. Taking away people's power over their own income will not help anyone into work, when there is only one job for every 12 jobseekers.³⁴ Instead, we want to see government thinking deeply about how to boost job-creation, particularly in areas where there is a high level of unemployment and underemployment.

Conclusion

On our analysis, the current Bill does nothing more than continue this country's shamefully paternalistic approach towards the First Peoples and, by extension, on the basis of class, to non-Indigenous people who experience exclusion, by extending compulsory income management. This approach has not worked in the past, and there is no evidence it will work now.

Instead, we believe in an Australia built on compassion, justice, and human rights. This means we must genuinely and openly engage with all stakeholders, and deepen our understanding of the issues facing people and communities forced into exclusion and poverty by historical and economic forces. We must work, on the ground, to provide tailored services, restoring funding to the many small Aboriginal health, legal, and other organisations that empower people living with disadvantage. Our government must provide a level of income support that genuinely enables people to purchase what they need, and also has an obligation – as macro-economic manager – to develop a real plan for job-creation in Australia. A plan that is more than cutting taxes for businesses or the rich, believing against all the evidence that this will 'trickle down', but a plan that seriously engages with current economic thinking around the employment market, and the skills and training required to transition our economy over the next century.

We believe that this Australia is possible. We see glimpses of it in our work every day. We ask the Parliament to abandon this Bill, and instead join us in creating opportunities for all Australians, help us to empower everyone to live their fullest lives, and imagine relationships that build us all up, together, into the nation we want to become.

³³ St Vincent de Paul Society, *Two Australias: A Report on Poverty in the Land of Plenty*, 2013, at http://www.vinnies.org.au/icms_docs/169073_Two_Australias_Report_on_Poverty.pdf

³⁴ St Vincent de Paul Society National Council, Submission to the Inquiry into a New System for Better Employment, at http://www.vinnies.org.au/icms_docs/193489_Submission_to_the_Inquiry_into_A_New_System_for_Better_Employment_and_Social_Outcomes_Report.pdf