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Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
community.affairs.sen@aph.gov.au

Dear Committee Members

Senate Standing Committee on Community Affairs Inquiry into the Social Security Legislation Amendment (Debit Card Trial) Bill 2015

Thank you for the opportunity to comment on the *Social Security Legislation Amendment (Debit Card Trial) Bill 2015*.¹

About FCA and Consumer Action

Financial Counselling Australia (FCA) is the peak body for financial counsellors in Australia. FCA's member groups are the eight State and Territory financial counselling associations. We support financial counsellors and provide a voice on national issues.

The Consumer Action Law Centre (Consumer Action) is an independent, not-for-profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for vulnerable and disadvantaged consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

¹ Some of our comments reflect additional information about the Ceduna trial provided by the Department of Social Services (DSS) via email to stakeholders on 10 September 2014.

Policy Position

FCA was a signatory to the December 2014 joint statement by Australia's community welfare sector and Aboriginal and Torres Strait Islander peak organisations that called on the Federal Government not to proceed with the implementation of the Forrest Review proposal for a cashless welfare card.² While this legislation does not implement exactly the approach set out in the Forrest Review, it contains many of the same elements.

We share the Government's concerns about welfare payments being used to fund expenditure on gambling, alcohol or drugs, particularly where this has a detrimental impact on a person's ability to meet other living expenses or to look after children. For this reason, we acknowledge that there may be circumstances where a trigger-based system of compulsory income management may be appropriate for some individuals, or where an individual may volunteer for income management as they find it a useful money management tool³. This is quite different to a mandatory system that applies across the board. We therefore remain very concerned about the imposition of mandatory income management in any communities or for specific groups. Financial counsellors work from a model of empowerment and in a non-judgmental way – the best way to effect positive and sustainable change is for people to make and give effect to their own choices.

If there is a mandatory imposition of income management, as is the case in the Ceduna trial, there need to be clear rules around its imposition. In particular, where there are decisions to remove or reduce fundamental freedoms, this discretion should be exercised with caution and wherever practical through a judicial, rather than administrative process.

Summary of recommendations

- Participation in the trial be optional
- Consumer, competition and legal aspects of the trial be confirmed - including the terms and conditions of the card and account, and advice sought from regulators
- The Government provide funding to programs that will assist welfare recipients with money management, gambling and addiction issues - this seems to be the policy goal of this trial
- Prohibit deductions from welfare payments to payday lenders and consumer lease providers, which would prioritise these payments under these high cost credit arrangements over other essentials
- Legislate that all costs associated with the requisite accounts are cost free for recipients, including merchant surcharges for use of the card in trial areas. Where 'good faith' is the regulatory approach (eg surcharges for using the card that are proportionate and fair), direct the ACCC to specifically monitor the impact and behaviour of businesses involved. Alternatively, the government reimburse fees paid by consumers
- Clarify whether transfers of non-cash income are allowed and whether appropriate controls of the proposed Paywave services are possible and appropriate
- Clarify the aim of clauses that claim to override privacy laws and ensure appropriate restrictions around use of personal information

² http://www.acoss.org.au/media_release/groups_call_for_rejection_of_forrest_review_healthy_welfare_card/

³ At this stage, Consumer Action Law Centre does not have a position in relation to trigger-based income management systems.

Consumer sovereignty is at risk

The proposed Debit Card trial is presented as a welfare reform mechanism, seeking to prevent the purchase of products and services identified as being harmful to benefit recipients, their dependents and/or the broader community. In that sense, the trial replicates elements of Income Management trials that have been operating in various places around Australia for many years. There is no clear or consistent evidence from any of the Income Management trials that the intended outcomes have been achieved.

There are key differences however between Income Management and the proposed Debit Card trial. The most significant difference is that the Debit Card and the account it will provide access to are delivered separate to Government, via a contract between the participant consumer and a yet to be identified financial services provider.

We have a number of concerns about the Debit Card and the manner of its operation. Many of those concerns take the form of questions, because little information about how the card and account will operate has been made available with the Bill. Those questions include but are not limited to:

- Which card platform will be used to deliver the Debit Card?
- Which financial services provider will host the trial?
- What are the terms and conditions of the proposed savings account product? Specifically, what are the fees and charges associated with the product and use of the card, how are those fees and charges structured, are there any usage limitations, penalties associated with misuse and who is responsible for any and all of those costs?

Whilst the Debit Card trial is presented as a welfare reform measure, our gravest concerns relate to the apparent interference in normal consumer sovereignty. It is our considered view that this trial represents more than a test of an alternate mechanism for delivering benefit payments in a specific location. It potentially:

- Removes the rights of participants to select and contract for their primary savings account; and
- Reduces or removes participants' rights to normal consumer and privacy protections enjoyed by every other Australian consumer.

The Committee should request additional information about the impacts of the proposed Debit Card trial on the consumer, competition and related legal rights of participants, including:

- Precise details of the proposed card and account, including the terms and conditions of both;
- Any advice that the Department has sought from relevant regulatory bodies, including the Australian Securities and Investments Commission, the Australian

Competition and Consumer Commission and the Office of the Australian Information Commissioner; and

- An explanation as to why the intended policy outcomes could not be successfully pursued without removing or reducing basic legal rights.

Cash restrictions alone won't change problem behaviour – support services are key

Financial counsellors see the damage done when families are unable to adequately balance their income with their expenditure. Similar to the rationale applied for Income Management, the restriction on access to cash assumes that low income people are poor money managers, when this is often not the case. Restricting how people can spend welfare payments undermines their financial independence – an important concept that is encouraged and expected of all Australians. Undermining personal autonomy and an individual's ability to make decisions about day-to-day purchases fundamentally disenfranchises people – this is not a blueprint for helping people get the skills to manage their expenditure. More importantly, it risks creating a group of disengaged people with no confidence or ability to make basic financial decisions for themselves and their families. We note the summary of Income Management evaluations tabled by J Rob Bray, to which the Committee already has access, in support of the proposition that removing personal agency decreases financial capacity and increases dependence.

The legislation also seems to tacitly assume that if people have substance abuse problems, it is because they can afford to buy these substances, rather than because of the addiction itself. People who prioritise their income toward expenditure on gambling, alcohol and drugs need help through specialised assistance and rehabilitation, such as financial counselling, or addiction counselling, or training in money management.

DSS has advised that as part of the consultation around the Ceduna trial a Memorandum of Understanding will see the introduction of financial counselling and transitional support, economic development including training and employment, early childhood and community safety projects.

The inclusion of financial counselling support services in at least the Ceduna trial is a sensible step that will help individuals get the skills they will need to manage their personal budgets and could potentially facilitate referrals to other services that may be relevant. We strongly urge the Committee to recommend the government invest in programs that can actually address the needs of problem gamblers and those with drug and alcohol problems. Funding for those services should be compulsorily packaged with the roll out of trial, rather than considered as an add-on at a future unspecified time.

We note also that helping people learn how to manage their money optimally will not resolve the deeper issue of welfare payments being too low.

Payment by instalments must not be accessible by predatory businesses

Proposed clause 61A allows a person to ask to make deductions from instalments of a social security payment payable to the person, and to pay the amounts deducted to a business or organisation nominated by the person. This clause needs clarification.

We are concerned permitting predatory businesses such as consumer lease providers and payday lenders to make deductions directly from participants' welfare payments will encourage these business models and provide priority access to the funds of welfare recipients ahead of other essentials such as food and rent. We have raised similar concerns about consumer lease or rent-try-buy businesses accessing Centrepay, Centrelink's bill paying service, as these businesses typically rent household goods to consumers by instalment at high rates that result in the consumer paying two to five times the retail price.⁴

A recent ASIC report documented the considerable consumer detriment from consumer leases.⁵ Their research found that lessors often charged higher amounts to Centrelink recipients than they advertised to other customers. In general, the effective interest rates charged by consumer lease providers were higher than if the consumer had taken out a payday loan to purchase the goods. In one particularly egregious example, a Centrelink recipient was paying an equivalent of 884% for a rental contract. In 20 out of 39 leases to Centrelink recipients with a two year term, the cost of the lease was more than five times the retail price of the goods.

Consumer advocates have been campaigning to ensure that the full cost of rental products are made clear to consumers in advertisements, and that they be regulated like other credit contracts - including being subject to an interest cap. It is critical that these businesses are not able to access Centrepay or similar arrangements under the trial, which should be only for basics like food and transport rather than high cost credit products – more information is available in FCA's 2012 report *Centrepay: A good idea that has lost its way*.⁶ We note that in early September, a Bill proposing to remove consumer leases from Centrepay passed the Senate and will soon be considered by the House of Representatives.⁷

Similarly, we are wary of permitting payday lenders to make deductions from the welfare payments of trial participants. Payday loans are debt traps that are designed to ensure repeat borrowing, due to high repayment amounts. Recent legislative amendments that require lenders to deem a loan to be unsuitable if it is the third in a three-month period have not adequately addressed the harm caused by these loans. Indeed, one of the potential consequences of restricting access to cash may be to feed demand for these predatory businesses. Specific monitoring and evaluation should be undertaken to see whether reduced access to cash will increase the use of payday loans by trial participants.

The damage done to low income and vulnerable Australians by these businesses is already well documented. It is critical that these businesses are not given a green light to continue targeting their expensive products at those who can least afford them.

Account fees and charges need to be explicitly prohibited

People who will have their access to cash restricted by virtue of their location and receipt of a particular welfare benefit are going to be required to have a new bank account set up for them. The legislation is silent on costs and DSS advises (via email) that the terms and

⁴ See: <http://consumeraction.org.au/dont-make-the-poor-pay-more-consumer-action/> accessed 15/9/2015

⁵ Australian Securities and Investments Commission, Cost of Consumer Leases for Household Goods, Report 447, September 2015.

⁶ Available at:

<http://www.financialcounsellingaustralia.org.au/getattachment/Corporate/Publications/Reports/Centrepay-A-Good-Idea-that-Has-Lost-Its-Way-February-2013.pdf>

⁷ See www.aph.gov.au

conditions for these accounts have not yet been decided. Trial participants will need to have two accounts – one for their cashless card, and one to access their cash.

If welfare recipients are forced to have a bank account with fees and charges they will not be able to avoid, it will represent a significant step backward for both consumer sovereignty and banking competition in this country. It is critical that usage of the account will be totally free to the users – that is, no account keeping fees, transaction fees, or other such charges.

The banking industry has made significant efforts in recent years to ensure that low income Australians have access to fee-free basic bank accounts. For example, we welcomed the Australian Bankers Association's (ABA) Affordable Banking website published in 2013.⁸ The site lists basic bank accounts that offer features that help banking customers keep costs down, such as no account keeping fees, no overdrawn fees and free and unlimited transactions. Such accounts allow low income Australians to keep these costs to a minimum.

The legislation needs to ensure that the new account to be offered has terms and conditions that replicate those applying to the basic bank accounts offered by a number of financial institutions. Account fees and charges need to be explicitly prohibited.

Merchants and surcharges

We note that the ABA's initial submission to *Creating Parity – the Forrest Review* indicated that blocking of some purchases at the EFTPOS terminal using merchant codes, as DSS suggests in email correspondence to stakeholders, would not actually be possible. To quote the ABA "currently there is no technology that would enable a card to block transactions or payments at individual purchases or allow some purchases and not others from a particular MCC [Merchant Category Code]". Furthermore it would require an overhaul of the entire EFTPOS system which would disrupt the efficiency of the payment systems and potentially increase costs to users.⁹

DSS has advised, via stakeholder email, that in the Ceduna trial consultations, "merchants who sold a mixture of allowed and restricted goods were generally happy to enter into a contract with the Commonwealth agreeing not to sell restricted items to people using the debit card". It appears that this effectively means merchants will be acting in good faith in not allowing payments for restricted goods. It is unclear why a merchant would willingly reject a sale to implement a government policy.

Consumer Action's submission to the Forrest Review noted reports of inappropriate merchant behaviour where customers buy goods then sell them back to the retailer at a reduced price for cash¹⁰. How therefore would merchant compliance be policed and enforced? One possible option, although it may not fully address the problem, would be to direct the ACCC to specifically monitor the impact and behaviour of businesses involved in the trial. However, given the way "book up" is offered in remote Indigenous communities, we are sceptical that merchants will in the long term act in good faith, whatever the level of monitoring.

⁸ www.affordablebanking.info

⁹ See paragraph 2.1.1: https://indigenousjobsandtrainingreview.dpmc.gov.au/sites/default/files/get-involved/public-submissions/australian_bankers_association.pdf accessed 15/9/2015

¹⁰ See <http://consumeraction.org.au/submission-the-forrest-review-and-the-healthy-welfare-card/>

The ability of merchants to levy a surcharge should also be specifically prohibited. It is simply unfair to force people to transact in a way that attracts a surcharge. For welfare recipients on low incomes who are already struggling to manage, additional charges that they simply cannot avoid could be the difference between successfully balancing their budget or falling behind. This card should not create opportunities for exploitation of people who are already in a vulnerable position. Legislative prohibition is the only mechanism that will give a clear and unequivocal message about acceptable merchant behaviour. Alternatively, or in addition, the Commonwealth should refund reasonable fees to merchants that choose to charge them and carry the burden of determining what fees are reasonable.

Cash transfers

Another question that arises is whether fund transfers between accounts will be allowed and how this can be policed. There are many legitimate reasons for transferring money, for example buying second hand goods in private sales using online marketplaces like EBay or Gumtree, or repaying an informal loan. What is to stop a funds transfer to another person who can then deduct that cash?

Paywave

The ability to use Paywave also remains unresolved. At present, consumers can use Paywave with no use of a PIN for amounts up to \$100.¹¹ Clearly \$100 could be a significant amount of money to a person on welfare payments, and the prevention of misuse needs to be certain. If Paywave cannot be restricted or blocked, the use of this card in the trial should be reconsidered. We note that public information on the website of at least one bank that issues Paywave cards note that it is a permanent feature of the card and cannot be disabled, and users should instead swipe their credit card to avoid using it.¹²

Privacy

Clauses 124PN and 124PO allows employees of financial institutions and community bodies to give the Secretary personal information, “despite any law”. It is unclear how exactly this clause can override all privacy laws and the Australian Privacy Principles, and why such a broad exemption to privacy law is required for this trial - we are very concerned about it. We ask that the Committee investigate what precisely the inclusion of this Clause will achieve and whether the broad reach of the clause is appropriate.

Conclusion

People who receive welfare payments are not inherently bad at managing money; for people who struggle to make ends meet, it is often that their ongoing living costs simply exceed their income – and nothing to do with spending on alcohol, gambling or drugs. We urge the Committee seek changes legislative amendments to ensure this trial causes the least amount of harm to the welfare recipients who will have access to cash restricted by the card.

Specifically we recommend:

¹¹ See <http://www.visapaywave.com.au> accessed 15/9/2015

¹² <https://www.commbank.com.au/support/faqs/687.html> accessed 15/9/2015

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- Clarify whether transfers of non-cash income are allowed and whether appropriate controls of the proposed Paywave services are possible and appropriate
- Clarify the aim of clauses that claim to override privacy laws and ensure appropriate restrictions around use of personal information

Thank you for considering these issues.

Yours sincerely

Fiona Guthrie
Executive Director
Financial Counselling Australia

Denise Boyd
Director of Policy and Campaigns
Consumer Action Law Centre