

# Chapter 1

## Introduction

### Purpose of the bill

1.1 The Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018 (bill) has three purposes:

- (a) To expand existing cashless debit card trial arrangements<sup>1</sup> to a new trial site in the Bundaberg and Hervey Bay region of Queensland until 30 June 2020, for a specific group of trial participants, increasing the total number of trial participants to 15 000.
- (b) To introduce an exemption for merchants from part of the *Competition and Consumer Act 2010* for transactions involving the cashless debit card and certain restricted items.
- (c) To introduce a limitation on the use of the restricted portion of a payment to prevent it from being used to purchase cash-like products.<sup>2</sup>

### Background

1.2 The Senate Community Affairs Legislation Committee (committee) has held two previous inquiries into cashless debit card legislation. The committee tabled its report on the Social Security Legislation Amendment (Debit Card Trial) Bill 2015 (cashless debit card establishment bill) on 12 October 2015<sup>3</sup> and its report on the Social Services Legislation Amendment (Cashless Debit Card) Bill 2017 (cashless debit card expansion bill) on 6 December 2017.<sup>4</sup> The committee recommended in each instance that those bills be passed.

1.3 The cashless debit card establishment bill introduced measures which split income support payments into restricted and unrestricted portions, with the payment of the restricted portion to an account which would be subject to certain restrictions on access and use.<sup>5</sup> For the trial, 80 per cent of a recipient's income support payments would be placed in a restricted bank account which could only be accessed by a debit card and could not be used to purchase alcohol or gambling products or to withdraw

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1 For information on the existing cashless debit card program, see the Department of Social Services website at <https://www.dss.gov.au/families-and-children/programmes-services/welfare-conditionality/cashless-debit-card-overview>.

2 Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018, Explanatory memorandum (Explanatory memorandum), p. 2.

3 Community Affairs Legislation Committee, *Social Security Legislation Amendment (Debit Card Trial) Bill 2015*, 12 October 2015.

4 Community Affairs Legislation Committee, *Social Services Legislation Amendment (Cashless Debit Card) Bill 2017*, 6 December 2017.

5 Social Security Legislation Amendment (Debit Card Trial) Bill 2015, Explanatory memorandum (Debit card trial bill explanatory memorandum), p. 4.

cash. The remaining 20 per cent of income support payments would be available for use at the individual participant's discretion.<sup>6</sup>

1.4 The cashless debit card establishment bill proposed that the trial be introduced into a maximum of three discrete locations, with no more than 10 000 participants at any time, and operate between 1 February 2016 and 30 June 2018.<sup>7</sup> The trial of the cashless debit card scheme commenced in Ceduna, South Australia, on 15 March 2016 and in the East Kimberley region, Western Australia, on 26 April 2016.<sup>8</sup>

1.5 The Government announced in the 2017–18 Budget that it would seek to extend the cashless debit card trial in the existing sites of Ceduna and the East Kimberley by one year to 30 June 2019 and would be expanded to two new sites.<sup>9</sup>

1.6 In August 2017, the Government introduced the cashless debit card expansion bill which sought to amend existing legislation to allow for the expansion of the trial. The cashless debit card expansion bill sought to remove a section of the *Social Security (Administration) Act 1999* which specified that the cashless debit card trial could occur in up to three discrete locations, include no more than 10 000 people and end on 30 June 2018.<sup>10</sup> The removal of this section would have allowed the cashless debit card trial to continue in the two existing sites and expand to other new sites determined by disallowable legislative instrument.<sup>11</sup>

1.7 The Government announced in September 2017 that the new sites would be the Goldfields region of Western Australia, for recipients of working-age income support payments, and the Hinkler electorate (Bundaberg and Hervey Bay area), Queensland, for recipients of Newstart, Youth Allowance (Job seeker), Parenting Payment (Single) and Parenting Payment (Partnered) aged 35 and under.<sup>12</sup>

1.8 The cashless debit card expansion bill was amended by the Senate<sup>13</sup> and was passed with Government amendments which instead specified and defined the trial

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6 Debit card trial bill explanatory memorandum, pp. 2–3.

7 Debit card trial bill explanatory memorandum, p. 4.

8 Department of Social Services, *Welfare Quarantining*, <https://www.dss.gov.au/our-responsibilities/families-and-children/programmes-services/welfare-quarantining> (accessed 14 August 2018).

9 Social Services Legislation Amendment (Cashless Debit Card) Bill 2017, Explanatory memorandum (Cashless debit card bill explanatory memorandum), p. 2.

10 Cashless debit card bill explanatory memorandum, p. 2.

11 Explanatory memorandum, p. 2.

12 Community Affairs Legislation Committee, *Social Services Legislation Amendment (Cashless Debit Card) Bill 2017*, 6 December 2017, pp. 2–3.

13 [Social Services Legislation Amendment \(Cashless Debit Card\) Bill 2017, Schedule of the amendment made by the Senate, 12 February 2018.](#)

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site areas of Ceduna, East Kimberley and Goldfields, and removed the ability for trial areas to be determined by the Minister under legislative instrument.<sup>14</sup>

1.9 For this reason, new legislation is required to expand the cashless debit card trial to the proposed Bundaberg and Hervey Bay area trial site.

### ***Evaluations of the cashless debit card trial***

1.10 The Government commissioned ORIMA Research to undertake an independent evaluation of the cashless debit card trial in Ceduna and the East Kimberley. The evaluation was reported in 3 stages: Initial Conditions Report, Wave 1 Interim Evaluation Report and Final Evaluation Report (Wave 2). The Final Evaluation Report was released on 1 September 2017.<sup>15</sup>

1.11 The Australian National Audit Office also undertook an independent performance audit of the cashless debit card trial, the objective of which was to assess the Department of Social Services' implementation and evaluation of the trial. The Auditor-General presented the report to Parliament out-of-session on 17 July 2018.<sup>16</sup>

1.12 The findings of these reports were referenced frequently in submissions made to this inquiry and are discussed, where relevant, in Chapter 2.

## **Key provisions of the bill**

### ***Bundaberg and Hervey Bay trial site and participants***

1.13 The bill amends the *Social Security (Administration) Act 1999* (the Act) to include the Bundaberg and Hervey Bay area as a trial site for the cashless debit card and introduces a definition of the Bundaberg and Hervey Bay area as the area within the electoral boundaries of the Division of Hinkler (as those boundaries were in force on 31 May 2018).<sup>17</sup>

1.14 To allow for an increased number of participants in the cashless debit card trial, the bill increases the maximum number of participants from 10 000 to 15 000.<sup>18</sup>

1.15 The bill also replaces paragraph 124PF(1)(b) of the Act to end the trial duration in existing sites by 30 June 2019 but to end the trial in the Bundaberg and Hervey Bay area by 30 June 2020. The explanatory memorandum notes that this allows time to implement the trial and for it to operate for at least 12 months in the area.<sup>19</sup>

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14 Social Services Legislation Amendment (Cashless Debit Card) Bill 2017, Supplementary explanatory memorandum, p. 2.

15 The Hon Alan Tudge MP, Minister for Human Services, '[Evaluation finds "considerable positive impact" from cashless debit card trial](#)', *Media release*, 1 September 2017.

16 *Auditor-General Report No.1 2018–1: The Implementation and Performance of the Cashless Debit Card Trial*, July 2018, p. 8.

17 Explanatory memorandum, p. 5.

18 Explanatory memorandum, p. 6.

19 Explanatory memorandum, p. 6.

1.16 A new section 124PGA provides that a person is a trial participant in the Bundaberg and Hervey Bay area if:

- (a) their usual place of residence is, becomes, or was within the area; and
- (b) they receive Newstart Allowance, Youth Allowance (unless they are a new apprentice or a full-time student), or Parenting Payment; and
- (c) they have not turned 36 years of age and are under 35 years of age at the commencement of the trial; and
- (d) they do not have a payment nominee; and
- (e) they are not covered by a determination that results in their fortnightly payment being paid in two instalments; and
- (f) they are not subject to another income management regime; and
- (g) they are not undertaking full-time study outside of the area; and
- (h) the Secretary of the Department of Social Services has not determined that they are not a trial participant.<sup>20</sup>

1.17 Amended paragraph 124PH(1)(b) prevents people in the Bundaberg and Hervey Bay area who are not trial participants from becoming voluntary participants in the trial.<sup>21</sup>

1.18 The bill also removes the legislative instrument-making power for varied percentages of restricted payments under subsection 124PJ(4) of the Act for the Bundaberg and Hervey Bay area. It instead introduces provisions to allow the Secretary of the Department of Social Services to make determinations for these trial participants to access their full welfare payment in cash in circumstances such as technological fault, malfunction or natural disaster which prevents use of the card, or if the person is in severe financial hardship from unexpected or unforeseen circumstances, or is being paid in advance under subsection 51(1) of the Act.<sup>22</sup>

### ***Product-level blocking***

1.19 The bill introduces an exemption for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010* (Cth). This new subsection authorises a supplier of goods or services to decline a transaction which uses money in a welfare restricted bank account and involves obtaining alcohol, gambling or cash-like products which could be used to obtain alcohol or gambling.<sup>23</sup>

1.20 This change to the Act is designed to ensure merchants are not in breach of the *Competition and Consumer Act 2010* if they decline transactions involving these

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20 Explanatory memorandum, pp. 5–8.

21 Explanatory memorandum, p. 8.

22 Explanatory memorandum, pp. 8–9.

23 Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018, cl. 14.

elements and would allow systems that automatically identify that a cashless debit card is being used to decline a transaction if a participant seeks to purchase restricted products.<sup>24</sup>

### ***Cash-like products***

1.21 The bill introduces a category of 'cash-like products' which cannot be purchased using the restricted portion of a welfare payment. These include gift cards, store cards, vouchers or similar (in physical or digital form); money orders, postal orders or similar orders (in physical or digital form); and digital currency. It is intended that this will help to prevent trial participants from circumventing the program and spending their restricted welfare payment on cash-like products which could be used to purchase alcohol or gambling.<sup>25</sup>

### **Financial implications**

1.22 The explanatory memorandum to the bill notes that the financial impact of these amendments is not for publication as negotiations with potential commercial providers are yet to be finalised.<sup>26</sup>

### **Legislative scrutiny**

#### ***Parliamentary Joint Committee on Human Rights***

1.23 The Parliamentary Joint Committee on Human Rights (human rights committee) reported that its previous human rights assessments of cashless debit card trial measures had raised concerns about the compulsory quarantining of welfare payments in the trial and the restriction of individual's agency and ability to spend their welfare payments at certain businesses. The human rights committee's concerns related specifically to the rights to social security, privacy and family and the right to equality and non-discrimination.<sup>27</sup> It noted that the current bill also engages and limits these rights and that this is acknowledged in the bill's statement of compatibility with human rights.<sup>28</sup>

1.24 The statement of compatibility notes that the objective of the bill 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

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24 Explanatory memorandum, pp. 2, 9.

25 Department of Social Services, *Submission 69*, p. 4.

26 Explanatory memorandum, p. 2.

27 Parliamentary Joint Committee on Human Rights (human rights committee), *Report 6 of 2018*, 26 June 2018, p. 33. See also human rights committee reports: *Thirty-first report of the 44th Parliament*, 24 November 2015, pp. 21–36; *2016 Review of Stronger Futures measures*, 16 March 2016, p. 61; *Report 7 of 2016*, 11 October 2016, pp. 58–61; *Report 9 of 2017*, 5 September 2017, pp. 34–40; *Report 11 of 2017*, 17 October 2017, pp. 126–137.

28 Human rights committee, *Report 6 of 2018*, p. 33. See also: Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018, Statement of compatibility with human rights.

time'.<sup>29</sup> The human rights committee expressed repeated concerns whether measures in the bill are rationally connected, effective and proportionate to the stated objective of the bill and sought advice from the Minister for Social Services.<sup>30</sup>

1.25 The Minister's response was not published prior to the tabling of this report.

### ***Senate Standing Committee for the Scrutiny of Bills***

1.26 The Senate Standing Committee for the Scrutiny of Bills had no comment in relation to the bill.<sup>31</sup>

### **Conduct of the inquiry**

1.27 The bill was introduced into the House of Representatives on 30 May 2018.<sup>32</sup>

1.28 On 21 June 2018 the provisions of the bill were referred to the committee for inquiry and report by 14 August 2018, pursuant to the adoption of the Selection of Bills Committee report.<sup>33</sup>

1.29 The bill passed the House of Representatives on 21 June 2018<sup>34</sup> and was introduced in the Senate on 25 June 2018.<sup>35</sup>

### ***Submissions***

1.30 The committee wrote to relevant organisations and individuals and invited them to make a submission to the inquiry by 20 July 2018. Submissions continued to be accepted after this date.

1.31 The committee received 105 public submissions which were published on the committee's website. A further 3 submissions were accepted as confidential. A list of submissions received is included at Appendix 1.

### ***Witnesses***

1.32 A public hearing for the inquiry was held in Canberra on 7 August 2018.

1.33 The committee heard evidence from organisations and individuals from the region proposed as the trial site, as well as from the Department of Social Services. A list of witnesses is included at Appendix 2.

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29 Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018, Statement of compatibility with human rights, p. 2.

30 Human rights committee, *Report 6 of 2018*, p. 38.

31 Senate Standing Committee for Scrutiny of Bills, *Scrutiny Digest 6 of 2018*, 20 June 2018, p. 64.

32 House of Representatives, *Votes and proceedings*, No. 115, 30 May 2018, p. 1573.

33 *Journals of the Senate*, No. 101, 21 June 2018, p. 3242.

34 House of Representatives, *Votes and proceedings*, No. 120, 21 June 2018, pp. 1635–1636.

35 *Journals of the Senate*, No. 102, 25 June 2018, p. 3284.

**Acknowledgement**

1.34 The committee would like to thank those individuals and organisations that made submissions and gave evidence at the public hearing.

**Note on references**

1.35 References to the *Committee Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and official *Hansard* transcripts.

