



10 August 2022

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

By email: community.affairs.sen@aph.gov.au

Dear Secretary,

Inquiry into the Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Bill 2022 – Submission of the Northern Territory Women's Legal Services

The Central Australian Women's Legal Service ("CAWLS"), Katherine Women's Information & Legal Service ("KWILS"), and Top End Women's Legal Service ("TEWLS") (collectively, the Northern Territory Women's Legal Services, hereafter referred to as the "NTWLS") welcome the opportunity to make comments to the Senate Affairs Legislation Committee in relation to the above Inquiry.

The submission provided is limited in scope and seeks to provide a high-level response to a large and complex issue. We welcome the opportunity to provide further meaningful input into further policy around Income Management in the Northern Territory ("NT"), if any, and its development.

We echo calls for real and meaningful consultation with Aboriginal Community Controlled Organisations and communities.

I Background

A *Who we are*

Women's legal services are specialist, women-led, accredited community legal centres, specifically developed to improve women's lives through specialist legal representation, support, and advocacy. We provide high-quality and free legal services, including representation and law reform activities, to support women's safety, access to rights and entitlements, and gender equality. In the NT, the three women's legal services cover a geographic region more than 4.5 times the size of Victoria.

Women's legal services prioritise women's safety, access to rights and entitlements and gender equality. We have specialist expertise in safety, risk assessment and management,

maintaining a holistic and trauma-informed legal practice, providing women additional multidisciplinary supports, including social workers, financial counsellors, and trauma counsellors, for long-term safety outcomes. Notably, the holistic legal and socio-legal operating models adopted by specialist women’s legal services are not replicated in mainstream, generalist legal services.

NTWLS’ comments on this Bill are grounded in the experiences of our clients; women from urban, rural, regional, remote and very remote regions and communities of the NT and our observations of legal need. In contrast to trial sites outside of the NT, we note that Compulsory Income Management has been in place in the NT since the Northern Territory Emergency Intervention (“NTER”) commenced in 2007 via the BasicsCard, with the Cashless Debit Card (“CDC”) only recently being introduced to the NT. We understand that the present policy intention is that those on the CDC in the NT will be transitioned back to the BasicsCard, and therefore remain subject to Compulsory Income Management.

II Response to the Inquiry

A Compulsory Income Management – general experiences

NTWLS supports the end of the CDC, as well as a substantial inquiry into the future of Compulsory Income Management in the NT. We call for any future Income Management style scheme to be co-designed with the intended participants prior to implementation; meaning that same will be community led, and operate on a true ‘opt-in’ voluntary basis in line with principles of self-determination, with clear and accessible pathways for participants to opt-in and opt-out as their circumstances change.

We support the assertion that the amendment of this legislation to allow for a considered transition away from the CDC would be in line with human rights principles [including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Australia is a signatory] and rights in respect of self-determination.

Evaluations demonstrate that Compulsory Income Management has generally failed to meet its key policy objectives. The 2014 Report, *Evaluating New Income Management in the Northern Territory: Final Evaluation Report*,¹ found that there had been little to no behaviour change; change in spending patterns; improved financial well-being; and either no change or indeed an increase in severe family problems.² Per the Report’s findings, rather than building independence, Compulsory Income Management appeared to have encouraged increased dependence on the welfare system.³

These findings have been replicated in the Australian National Audit Office’s (“ANAO”) 2022 *Implementation and Performance of the Cashless Debit Card Trial*, which again found there to be no evidence that the CDC met its objectives; that is, it had not resulted in a reduction of

¹ 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 pg xxii.

² As above n 1, pg xxi.

³ As above n 1, pg xxi.

harm related to alcohol, gambling or drugs in the trial sites.⁴ Of concern for Compulsory Income Management, there was little ongoing reporting against KPIs during the CDC trial, and no performance measures in place for the extension of the CDC.⁵ We are concerned that this restrictive, compulsory scheme, may continue in lieu of clear evidence of CDC meeting its KPIs, and future planning of how it will continue to do so.

B Compulsory Income Management and DFSV – Women’s Safety

The Australian Law Reform Commission’s 2011 Report, *Family Violence and Commonwealth Laws – Improving Legal Frameworks*, recommended that “the Australian government should create a flexible and voluntary form of income management—an ‘opt-in and opt-out’ model—to better meet the needs and protect the safety of people experiencing family violence.”⁶ This is due to their conclusion that “the complexity of family violence and the intertwining of family violence with a number of the ‘vulnerability indicators’ that trigger the imposition of compulsory income management leads to serious questions about whether it is an appropriate response.”⁷

In interviews contributing to Equality Rights Alliance’s 2011 Report, *Women’s Experience of Income Management in the NT*, 70% of women interviewed in Darwin and Alice Springs responded that they did **not** feel safer since they got BasicsCard. Per the Report, “[S]ome of these women said that they chose this phrase because they don’t feel that BasicsCard makes any difference to their safety. Others talked about seeing more crime now that cash is harder to access.”⁸ Contrastingly, as also featured in the Report’s findings, 27% of women responded that they did feel safer while holding a BasicsCard due to decreased humbug from family, and less fighting:⁹ this re-enforces our view, as determined following the collation of our client’s lived experiences and instructions, that voluntary Income Management, available as a choice for women, is the preferred choice for some.

The Report goes on to state:

“A domestic violence crisis worker said that some general stores still allow women to book up an account, including alcohol and cigarettes under pressure from an abusive partner, and pay it off once a fortnight using their BasicsCard. Some women in abusive relationships are asked by their partner to trade their BasicsCard for cash at a much lower value than what is on their card. She says these women say they are reluctant to talk to Centrelink about getting help to leave the relationship because they know they have broken the rules for using the BasicsCard, and don’t want to be in even more

⁴ Implementation and Performance of the Cashless Debit Card Trial (June 2022), Auditor-General Report No 29 of 2021-22 <https://www.anao.gov.au/work/performance-audit/implementation-and-performance-the-cashless-debit-card-trial-follow>.

⁵ Ibid.

⁶ Australian Law Reform Commission (2011) *Family Violence and Commonwealth Laws – Improving Legal Frameworks* ALRC Report 117, 2011 at pg 248 https://www.alrc.gov.au/wp-content/uploads/2019/08/whole_alrc_117.pdf.

⁷ Ibid pg 247.

⁸ Equality Rights Alliance (2011) *Women’s Experience of Income Management in the NT* pg 33 https://www.alrc.gov.au/wp-content/uploads/2019/08/cfv_143_equality_rights_alliance_-_womens_voices_for_gender_equality_.pdf.

⁹ Ibid.

trouble with Centrelink. Administrative problems with rent payments made by Centrelink to NT Housing also affect the women's access to NT Housing crisis support services."¹⁰

This quote demonstrates the complexity of women victim-survivors' lived experiences and the intersection between DFSV and Income Management in the NT. Whilst this research was completed more than 10 years ago, our anecdotal experience of women's challenges within the BasicsCard, CDC and Compulsory Income Management framework remains the same.

C Compulsory Income Management and Indigenous peoples

Memorably, Compulsory Income Management was the element that required the suspension of the *Racial Discrimination Act 1975* (Cth) during the NTER. From its introduction in the NT, Compulsory Income Management has disproportionately affected First Nations peoples. This is of great concern to each of our services comprising the NTWLS, as we all provide significant legal advice and representation to Indigenous women.

Per the above noted 2014 Report;

- Between 2010 and 2014, 90.2% of those on Income Management identified as Indigenous;
- Most exemptions were granted to non-Indigenous applicants; and
- Indigenous people made few exemption applications and had a high rejection rate of applications that were submitted.¹¹

D Preliminary concerns held by the NTWLS in respect of the Bill

NTWLS supports the intention of the Bill, however, seeks to raise preliminary concerns in respect of the compulsory return to Income Management for classes of welfare payment recipients in the NT.

Whilst we note that some women report that Compulsory Income Management has enhanced their safety and has been of benefit, for many others it has caused years of difficulties, distress and shame in the NT. As legal services, we are unsurprisingly more likely to see those clients for whom it is not working, and particularly where it has been used as a tool for financial abuse or is otherwise related to women's experiences of domestic, family and sexual violence. It is for this reason that we seek a voluntary, easy to navigate system for those who do wish to utilise Income Management as that is the best choice for themselves and their family.

For some people who 'opted-in' to the CDC, the CDC represented a more flexible approach than NTER-era Income Management. We hold concerns that the same inflexibility and difficulties may be experienced on return to Income Management.

Further, the CDC represented improved technology, addressing issues such as we saw in the NT during 2021 COVID-19 lockdowns. For example, as the BasicsCard can't be used online, those who were in quarantine or lock-down and on BasicsCard were unable to do online grocery shopping and therefore relied on social services, family and friends, both for financial

¹⁰ Ibid.

¹¹ See above n 1 pg xx.

support and logistical support of completing and collecting online orders. Where people lacked community connections, or the ability to reach out for assistance, they were at extreme risk during this time.

There is limited information about how the implementation of this transition will occur, and a significant education piece will need to occur to inform welfare payment recipients of their social security legal rights and the practical changes, including transfer of automatic debits or payment plans currently linked to their CDC. This is particularly important for people who live in remote communities, and it is unclear how this is planned to occur.

The Bill does not rule out the continuation or expansion of Income Management schemes in the NT. Commentary around the Bill has not ruled this out either. We hold concerns around continued Income Management and the next iteration/s of Income Management. In our submission, there is danger that the current uncertainty will cause undue distress for welfare payment recipient, and notably, is not in keeping with the purported intention of the Bill to return autonomy and self-determination to welfare payment recipients.

E The need for wrap-around socio-legal supports; specialist social security legal assistance and holistic service provision

It is critical that vulnerable people can readily access socio-legal supports to ensure essential payments are not at risk; arrangements put in place to support women and children's safety are not compromised; and, distress caused can be minimised. These changes will inevitably cause confusion and concern for welfare recipients, in particular those NT residents who are likely to be returned to the BasicsCard only months after being transferred to the CDC. People subject to Compulsory Income Management in the NT have already been subject to a number of schemes in the past 15 years, leading to a long-standing lack of understanding or disengagement with the welfare system.

We note the intention that as part of the transition, 'welfare payment recipients will be provided with a range of supports that individuals can choose to use'.¹² We are of the view that it is essential to implement specialist social security legal assistance, which is trauma-informed, culturally safe and holistic to ensure participants are aware of, understand, and can exercise their social security legal rights. For example, NAAJA received similar funding to support clients to transition to Compulsory Income Management during the early stages of the NTER, however has not been funded to do so for some years. Community Legal Centres such as the NTWLS and Darwin Community Legal Service continue to provide limited social security legal help, however, the unmet legal need is vast.

In the regional, rural, remote, and very remote ("RRRR") context, consideration must also be given to the disparity in the cost-of-service delivery, such as taking into account the extreme distances clients, legal services, and DSS must travel to either access or provide assistance. This is particularly relevant in the NT, where, coupled with high operational costs in respect of RRRR, clients of the NTWLS experience the highest victimisation rates in the country.¹³ In our

¹² Explanatory Memorandum, Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Bill 2022 35.

¹³ Australian Bureau of Statistics, Recorded Crime – Victims, 2021-22 financial year (28 July 2022), Table 30.

view, both issues necessitate meaningful and ongoing engagement with RRRR locations, including funding for DSS and legal services staff to be on the ground in a permanent capacity, or at the minimum, conducting regular outreach from regional centres. Further, and outside of current discussions in respect of the CDC, the NTWLS, alongside the greater domestic, family and sexual violence sector in the NT, continues to advocate for needs-based Commonwealth funding distribution.

In addition, culturally designed, led and delivered financial literacy education continues to be important and we foresee many practical difficulties in transferring participants direct debits, payment plans or any other established payment relationships. On the ground support must be provided and funded appropriately, with a core recommendation from the NTWLS to implement holistic services models that include financial counsellors working alongside legal professionals.

III Further Consultation and the Future of Income Management

We are heartened to see consultation is intended to continue in 2022 to ‘explore the future of Income Management and determine the types of supports that would benefit communities’.¹⁴ Given the timeframe for response to the Inquiry, and limited information on implementation provided, we have been unable to provide detailed comment and would welcome the opportunity to do so.

In our submission, it is essential that any future Income Management schemes be community-driven and co-designed with the proposed participants. In the NT, we must avoid a return to NTER-era Income Management schemes that strip participants of their basic human rights.

We acknowledge that for some, a level of Income Management has been a useful tool. However, we stress that this is not the case for all, and any Income Management must be truly voluntary with the ability to ‘opt-in’ or ‘opt-out’ to reflect changing circumstances. In particular, there needs to be provision for clear and simple changes to be made in circumstances where women who are separating or leaving a violent relationship need ready access to safe funds. While voluntary Income Management may provide some economic security in cases of financial abuse, being able to self-manage those arrangements is essential.

The NTWLS welcomes being involved in that consultation and reiterate the need for consultation to be deliberate, considered, and guided by relevant Aboriginal Community Controlled Organisations and/or specialist organisations and services in order to truly hear from communities on their views and varied experiences of Income Management and what, if anything, works for the participants. Notably, in our view, any consultations taking place with impacted communities about Income Management measures must be carried out with due notice to community members, including advertisement at least 2-3 weeks in advance to ensure maximum opportunity for their participation. Consultation sessions must be of an appropriate duration and format to ensure broad representation of community concerns.

¹⁴ Amanda Rishworth, ‘Transcript of Interview with Patricia Karvelas: ABC RN Breakfast: Legislation for Family and Domestic Violence Leave; Cashless Debit Card’, media release, 28 July 2022.

IV Conclusion

We thank you for the opportunity to make this submission. Should you require further information in respect of same, please do not hesitate to contact Ruth Storer, Principal Legal Officer, KWILS by email to ruth.storer@kwils.com.au.

Yours faithfully,



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