



North Australian Aboriginal Justice Agency

NAAJA Submission

***Social Security (Administration) Amendment (Continuation of
Cashless Welfare) Bill 2020 (Cth)***

30 October 2020

1. INTRODUCTION

a) About NAAJA

The North Australian Aboriginal Justice Agency (NAAJA) provides high quality, culturally appropriate legal aid services to Aboriginal and Torres Strait Islander people throughout the Northern Territory. NAAJA was formed in February 2006, bringing together the Aboriginal Legal Services in Darwin (North Australian Aboriginal Legal Aid Service), Katherine (Katherine Regional Aboriginal Legal Aid Service) and Nhulunbuy (Miwatj Aboriginal Legal Service). From 1 January 2018, NAAJA has been providing legal services for the southern region of the Northern Territory formerly provided by CAALAS (Central Australian Aboriginal Legal Aid Service). NAAJA and its earlier bodies have been advocating for the rights of Aboriginal people in the Northern Territory since 1974.

NAAJA serves a positive role contributing to policy and law reform in areas affecting Aboriginal peoples' legal rights and access to justice. NAAJA's legal practice areas are broad, encompassing criminal, civil, care and protection and family law. NAAJA has offices in Darwin, Alice Springs, Katherine and Tennant Creek and travels to remote communities across the Northern Territory to provide legal advice, representation, community legal education and consult with relevant groups to inform policy submissions.

NAAJA's civil law practice includes providing legal advice and assistance to Centrelink beneficiaries. This includes assisting clients with income management related matters. Detail about the income management related issues with which our clients present is contained in part 4 of NAAJA's October 2019 Submission.

This submission draws on the cultural authority of an Aboriginal board which governs NAAJA as an Aboriginal Community Controlled Organisation. NAAJA staff are inspired by the strength and resilience of the Aboriginal people who are board members and come from across the Northern Territory including a strong focus and representation from regional and remote areas. We particularly acknowledge the Elders of our board and the contribution of Aboriginal and Torres Strait Islander people who developed and strengthened NAAJA and its earlier bodies over the years.

b) NAAJA's position and focus of submission

NAAJA welcomes the opportunity to provide a submission to the Inquiry into the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020 (the **Bill**).

NAAJA is strongly opposed to the Bill. We submit that the Committee should recommend that it does not pass.

In October 2019, NAAJA made a submission to the Commission's inquiry into the previous version of this Bill (**NAAJA's October 2019 Submission**). That submission outlines why we oppose the expansion of compulsory income management in the NT through the rollout of the Cashless Debit Card Scheme, and highlights a number of serious concerns that we have about specific aspects of the Bill. In drafting that submission, we drew on consultations and conversations with men and women in regional centres and remote Aboriginal communities

across the Top End, around Katherine, the Barkley Region and Central Australia. NAAJA's October 2019 Submission also draws on NAAJA's casework (both historic and ongoing) servicing these regions, and the practice and professional experience of NAAJA's Criminal, Civil, and Throughcare teams. A copy of NAAJA's October 2019 Submission is attached.

NAAJA remains opposed to compulsory income management in all forms. Compulsory income quarantining strips away a person's ability to make decisions about their own life. It takes away choices that many of us take for granted about how we spend our money and organise our personal life. These are significant restrictions on a person's freedoms and human rights, and they are not justified. There is no clear and compelling evidence that compulsory income quarantining achieves its objectives.

The introduction of the CDC scheme to the NT would continue to disproportionately impact on Aboriginal people. Approximately 82% of people currently subject to income management in the NT who will transfer to the CDC scheme are Aboriginal.

2. NAAJA'S ONGOING CONCERNS

NAAJA opposes the introduction of the CDC Scheme to the NT as proposed by the Bill on the basis that it is a blanket compulsory income quarantining scheme with discriminatory impacts.

NAAJA continues to have serious concerns about the proposed extension of the CDC Scheme to the NT as well as specific aspects of the Bill. In particular:

- The Bill expands the cohort of people in the NT who will become subject to compulsory income quarantining measures to all people in receipt of certain payments, thereby exacerbating the already blanket nature of the current Income Management scheme.
- Whilst the CDC scheme will, at least initially, keep the quarantined portions at their current rates in the NT (usually 50%), there is no guarantee that the proportion of income that is restricted will remain at that level. We are concerned that over time the rate is likely to be increased to 80%, in line with other sites at which the CDC Scheme has been imposed. This is possible under the Bill.
- There is no right to review the Secretary's decision to issue the notice that makes an individual subject to the CDC Scheme.
- The Bill gives the Secretary broad powers to obtain and share information about an individual's personal circumstances.
- The CDC Scheme set out in the Bill is a serious and significant infringement on the fundamental rights and freedoms of those who are made subject to it on a compulsory basis.
- Compulsory welfare quarantining operates alongside other paternalistic and discriminatory interventions, such as the Community Development Program (the remote Work for the Dole Scheme), that further disempower communities and entrench disadvantage.
- The Bill is inconsistent with the National Agreement on Closing the Gap and the principles set out in the Aboriginal Justice Agreement.

The Regulatory Impact Statement for the Bill refers at numerous points to the Northern Territory as a “current site” or “existing site” in relation to the CDC scheme apparently on the basis that many individuals receiving social security benefits are already subject to the Income Management Scheme. This significantly underplays the differences between the Income Management and CDC Schemes, and the scope of the potential impact on social security recipients of transitioning from one scheme to the other. Based on NAAJA’s experience of the introduction of the Basics Card, and the implementation of several changes to that scheme, we consider that transitioning social security recipients onto the CDC scheme is likely to be a significant disruption to individuals’ personal lives, particularly in the case of those living in regional or remote communities. Further, as noted by APO NT in its submission, the Northern Territory has not been subject to a trial, yet the government intends to introduce the CDC Scheme permanently without allowing for the process to be tested in the unique NT context.¹

NAAJA has previously voiced concerns in its October 2019 Submission that the proposed extension of the CDC Scheme to the NT would result in increased demand for already under-resourced legal services and further contribute to the unmet need for financial services, banking services, financial counsellors and administrative support in remote communities.² NAAJA continues to be concerned that the responsibility for assisting individuals subject to the scheme who live in remote Aboriginal communities will fall back on the limited number of service providers, such as NAAJA, who visit communities and provide face to face, culturally appropriate services. Without additional resourcing being provided to these services, there is a significant risk that social security recipients may struggle to get help with any problems associated with activating or using their CDC Scheme accounts, or accessing exit or exemption provisions, and that this problem will disproportionately affect individuals who live in remote communities.

The current Bill removes all references to the CDC Scheme as a “trial” subject to further evaluation and instead seeks to introduce it to the NT on a permanent basis.

Since the 2019 Bill was put forward, no further empirical evidence capable of demonstrating that the CDC Scheme achieves its stated social or behavioural objectives has been put forward. Conversely, recent studies have raised further questions as to whether the CDC Scheme in fact addresses social harms and assists individuals to manage their money and whether the benefits of compulsory income management schemes such as the CDC Scheme outweigh the social, emotional and economic costs imposed on those required to participate.³

Both the Income Management and CDC schemes are costly and highly restrictive measures. It is concerning that the Government is spending public funds on schemes that lack any firm evidence and have been unsuccessful in achieving their objectives to date.

Further, as highlighted in NAAJA’s October 2019 Submission, Aboriginal organisations and communities in the NT most impacted by the Bill were not consulted about the decision to introduce the CDC Scheme to the NT prior to this decision being made by the Commonwealth

¹ Aboriginal Peak Organisations Northern Territory submission to the Senate Community Affairs Legislation Committee on the *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020*, 23 October 2020 (**AP0 NT Submission**) at [14].

² See NAAJA October 2019 Submission, p23.

³ Economic Justice Australia (EJA) Submission to the Inquiry into the *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020*, 23 October 2020 at [5]-[6]; APO NT Submission, at [18]-[19].

Government. The lack of consultation prior to the Commonwealth's decision to impose the CDC Scheme is evident in the Regulatory Impact Statement for the Bill, which refers to the Department's efforts to speak with affected individuals and communities in the NT as "post-decision consultation" and outlines an "engagement process" focused on holding information sessions with individuals and stakeholders between October 2019 (after the decision to extend the CDC Scheme to the NT was made) and March 2020. This is consistent with NAAJA's experience and understanding of what occurred at these sessions: namely efforts to promote the positives of the scheme and receive some feedback on aspects of how the proposed roll out would occur. It is clear that the consultation did not extend to whether communities support the introduction of the CDC Scheme into the NT, whether there is support for continuing compulsory income quarantining, or whether the Scheme has the capacity to achieve its stated goals of reducing social harms and assisting with budgeting and financial literacy.

The only consultation in the NT prior to the Government's decision to extend the CDC Scheme to the NT appears to be one in 2018/2019 primarily in Tenant Creek and some nearby communities in the Barkley region. The outcomes of the Barkley consultation, including the extent to which there was support for the continuation of compulsory income management or the roll out of the CDC Scheme in the NT is unclear from the Bill's Regulatory Impact Statement.

Taken at its highest, the Department states in the Regulatory Impact Statement that the results of the engagement sessions were "mixed" and that "a number of participants ... indicated that they would welcome the introduction of the Cashless Debit card over the Basics Card" or were "positive". This is hardly indicative of a comprehensive consultation of the kind that would be expected for the proposed roll out of a scheme that continues and entrenches a highly restrictive policy, potentially creating significant disruption to lives of users.

Given the lack of further consultation or new evidence supporting the CDC Scheme, NAAJA's concerns about the introduction of the card remain unchanged.

Compulsory income quarantining was first introduced into the NT during the Intervention, with limited consultation, in a hurry and with little consideration of the research and experience of ACCOs and other community organisations into how to address entrenched social disadvantage, particularly in relation to the remote and Aboriginal communities that it overwhelmingly impacted on. The proposed introduction of the CDC scheme bears these hallmarks: it is a second intervention into the NT focussed on controlling and restricting social security payments. NAAJA urges the Committee to recommend that the Bill not proceed.

3. ADDITIONAL ISSUES ARISING FROM THE 2020 BILL

a) Changes to exit and exemption processes

As with the previous iteration of the Bill, there are two pathways for exemption or exit from compulsory income quarantining under the CDC Scheme, namely where:

- a. being on the scheme poses a risk to a person's mental, physical and emotional wellbeing (exemption);⁴ or
- b. a person applies to exit the scheme on the basis that they can demonstrate an ability to reasonably and responsibly manage their personal affairs (exit).⁵

NAAJA reiterates the concerns previously addressed in detail in its October 2019 Submission at pages 35-39, namely that:

- In NAAJA's experience, Aboriginal people, particularly those who live in remote communities, face significant barriers in applying for an exemption to the current Income Management Scheme, or appealing income management decisions.
- Studies of exemptions granted under the Income Management Scheme have shown that very few exemptions from the scheme have been granted to Aboriginal people, and there is a high rejection rate for their applications.
- Based on NAAJA's experience, these barriers will continue to operate to significantly impair the ability of Aboriginal people to access the exemption and exit provisions under the CDC Scheme. This will mean that once an individual is made subject to the compulsory income controls under the CDC Scheme, they are likely to struggle to obtain an exemption or exit even when they meet the criteria and are eligible.
- The criteria for exiting the CDC Scheme are vague, expansive and paternalistic, giving the Secretary a wide discretion to refuse an application and permitting invasive scrutiny and assessment of all aspects of an individual's personal life.

NAAJA is concerned that the new provisions set out in Items 32, 37 and 39 of the 2020 Bill will create an even more onerous exit and exemption process and give greater control to the Secretary to return individuals back onto the CDC Scheme further entrenching the disadvantage that Aboriginal people are likely to experience when trying to leave the scheme.

Wellbeing exemptions

Item 32 of the Bill inserts several new subsections under section 124PHA of the Bill. The previous safeguard against re-entry into CDC is removed, and under the contemplated subsection 124PHA(3A), an individual *must* be placed back on the CDC if the Secretary is no longer satisfied that involvement in the CDC Scheme places that person's wellbeing at risk.

Under the new Bill, if a State or Territory government employee or officer disagrees with the Secretary's decision to grant an exemption, or thinks that a person should not continue to hold

⁴ Social Security (Administration) Act 1999 (Cth), s 124PHA.

⁵ SSA Act, s 124PHB.

one for “medical or safety reasons” relating to that person or to their dependents, they can request the Secretary to reconsider the decision to grant an exemption. The Secretary must then revoke the exemption if she or he is no longer satisfied that being under compulsory income management would be a risk to that person’s mental, physical or emotional wellbeing.

This new provision raises a number of concerns. Firstly, it allows a large range of government employees (at any level, and in any role and with any set of qualifications) to in effect recommend that an individual is placed back on a highly restrictive scheme that has a significant impact on that person’s economic and social rights. To allow such a broad range of people to exercise an important discretion with respect to matters that are highly personal is of significant concern.

Secondly, the basis on which such a government employee can make a request is broad and ill-defined. There is no threshold for making a request to the Secretary, rather a referral can be made in any circumstances that a government employee “considers” that an individual should be on the card relating to any “medical or safety” reason. There is no obligation for the person making the request to give reasons or provide evidence for their referral. No sufficient basis for such a significant incursion on the personal freedoms and privacy of individuals by government employees is apparent. None is disclosed in the Explanatory Memorandum to the Bill.

The effect of this provision is to significantly increase the surveillance by government employees of individuals who receive a social security payment but are not on the CDC card. Given the criteria for a grant of a wellbeing exemption, these individuals are likely to be some of the most vulnerable members of their communities. People who have been granted an exemption will, at any time, be at risk of having that determination reversed, and then being re-entered. There is no evidence that the Secretary needs greater powers to re-enter individuals onto the card who have been previously exempted due to concerns that being subject to the scheme could be a risk to their wellbeing.

Exit from the CDC Scheme

Item 39 of the Bill introduces a new power of the Secretary to revoke previous exit determinations where the Secretary is no longer satisfied a person has the ability to manage their own affairs. While the current wording of this provision allows the Secretary to revoke a person’s exit from the scheme only if she or he receives a request from a health or community worker, new subsection 124PHB(9A) would allow the Secretary to independently revoke an exit approval, at any time and without any trigger.

NAAJA holds concerns about the existing operation of s 124PHB, which under the Bill would apply in the NT for the first time. As with the new power in 124PHA(3A) with respect to wellbeing exemptions as outlined above, s 124PHB(8) allows continued surveillance of individuals who receive a social security payment, but are not subject to the scheme, by a broad range of workers: in this case “health or community workers”. It is difficult to see how such an incursion into the privacy of individuals is either necessary or appropriate. It may also result in adverse and unintended consequences, such as discouraging help-seeking behavior with respect to healthcare or obtaining other basic services administered by community workers for fear that this will result in being reentered onto income management.

The proposed subsection 124PHB(9A) goes a step further, and allows the Secretary to engage in ongoing scrutiny of individuals who have previously been granted exit approval without any trigger. We are concerned that this provision allows the Secretary, and her or his delegates, to continuously review the personal circumstances of social security recipients who are not on the CDC Scheme.

Again, no sufficient basis for such invasive powers is provided in the Explanatory Memorandum to the Bill.

In addition, Item 37 of the Bill creates a new power of the Minister to issue legislative instruments setting out decision-making principles that the Secretary is required to follow when deciding whether to approve a person's application to exit compulsory income quarantining. As set out in NAAJA's October 2019 Submission, we have concerns that the current processes for making an exit application are onerous and will be inaccessible to many of our clients. NAAJA is concerned that the new power in Item 37 gives the Minister greater control over the exit application process, and leaves open the potential that the Minister could substantially raise the threshold for exit currently set out in legislation, or could create onerous evidence requirements that could represent significant barriers for individuals living in remote communities, in particular, to accessing exit approval.

The CDC Scheme applies in a blanket way to all social security recipients regardless of their personal circumstances, unless they are able to access an exit or exemption. We are concerned that these changes will act to keep people trapped within a system they have not asked for nor been consulted on, in a way that is insufficiently targeted and does not achieve the stated objectives of the scheme.

Disproportionate effect on Aboriginal and Torres Strait Islander people

Since NAAJA's October 2019 Submission, recent figures⁶ stemming from the CDC trials across Australia indicate a substantial proportion of applications to exit or be exempt from the CDC Scheme made by Aboriginal and Torres Strait Islander people are rejected.⁷

NAAJA shares the concerns set out in APO NT's Submission with respect to the low number of Aboriginal and Torres Strait Islander people being exited or exempted from the CDC Scheme. For example, as at October 2020, in the East Kimberley, 60% of Aboriginal trial participants were refused wellbeing exemptions. In Ceduna, 45% of Aboriginal participants were similarly not approved for a wellbeing exemption. In relation to exemptions under section 124PHB, figures from September 2020 show that 53% of Indigenous participants in the Ceduna region were not approved; 87% in the East Kimberley region; 41% in the Goldfields region in Western Australia and 13% in the Bundaberg and Hervey Bay region Queensland.

These figures highlight that Aboriginal and Torres Strait Islander people are disproportionately affected when it comes to exemptions and exits from the CDC Scheme.

⁶ Australian Government Cashless Debit Card Data website (<https://data.gov.au/data/dataset/australian-government-cashless-debit-card-program/resource/ae410c4a-f53b-4fed-9310-314d1aeda33d>) accessed 29 October 2020.

⁷ APO NT Submission to the Senate Community Affairs Legislation Committee on the *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020* dated 23 October 2020, [23]-[24].

NAAJA's experience is that when Aboriginal people are placed on compulsory income quarantining, they stay on it. The additional changes in the 2020 Bill will further entrench this pattern, creating an inescapable cycle of compulsory income quarantining and further marginalising Aboriginal and Torres Strait Islander people.

b) CDC Roll out during COVID-19

COVID has caused difficulties for service providers operating in remote communities. In the NT, the creation of Bio-Security areas and restrictions on travel imposed at a community level have meant limited opportunities for face to face service provision. Many communities have had less access to Services Australia staff since the pandemic began. This is particularly true of communities that do not have a Centrelink office, or where the Centrelink office is not staffed by community members (which is true of a number of remote communities).

It is difficult to see how Services Australia can roll out a scheme in remote communities that is a significant change to the way that people access their social security payments without either:

- a significant fly/in fly out presence and face to face contact (and thus an increased risk of COVID transmission), or otherwise:
- a roll out that focuses on providing information and assistance by distance (ie by telephone or mail). The latter is likely to be insufficient in light of the significant barriers for many individuals living in remote communities, including distance, intermittent access to telephone and internet services, unpredictable and delayed access to post, language barriers and difficulties with written English.

Without adequate assistance to understand the proposed changes to the operation of income quarantining in the NT, and assessable help when problems arise, we are concerned that individuals in remote Aboriginal communities will face additional difficulties resolving problems with using their card and accessing their money, and with accessing the exemption and exit procedures. The availability of support to assist with transitioning from the Basics Card to the CDC Scheme was identified as a matter of key concern by individuals who attended the Department's information sessions concerning the roll out, even prior to the outbreak of COVID-19.

If individuals experience problems with activating or using their news cards, this could have implications on their ability to access food, to buy power cards necessary to run power in their homes and to access other services essential for health and wellbeing such as transport and phone/internet services.

It is disappointing to see a permanent and significant change to income management made at a time where adequate engagement with affected communities is not possible and where the practical effects of the pandemic will further disadvantage the capacity of individuals living in remote communities to adapt to any roll out, potentially threatening their food security and access to essential services. There is no reason why any rollout of the CDC Scheme should occur now in the context of the ongoing COVID-19 pandemic.