



TRUE JUSTICE FOR OUR PEOPLE

Submission to the Inquiry into the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020

2 November 2020

Table of Contents

Who we are	2
Summary of Recommendations	2
Introduction	3
There is no conclusive evidence to support compulsory income management	4
The Cashless Debit Card is discriminatory, breaches human rights & disproportionately impacts Aboriginal and Torres Strait Islander people	6
The Cashless Debit Card is inconsistent with Closing the Gap	7
The Cashless Debit Card pushes people into the justice system	8
Specific issues with the Bill	10
The Cashless Debit Card and COVID-19	10
Community-led solutions & holistic supports to address social issues	11
Conclusion	12

Who we are

The National Aboriginal and Torres Strait Islander Legal Services (**NATSILS**) is the peak national body for Aboriginal and Torres Strait Islander Legal Services (**ATSILS**) in Australia. NATSILS brings together over 40 years' experience in the provision of legal advice, assistance, representation, community legal education, advocacy, law reform activities and prisoner through-care to Aboriginal and Torres Strait Islander peoples in contact with the justice system. NATSILS are the experts on the delivery of effective and culturally responsive legal assistance services to Aboriginal and Torres Strait Islander peoples. This role also gives us a unique insight into access to justice issues affecting Aboriginal and Torres Strait Islander peoples. NATSILS represent the following ATSILS:

- Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (**ATSILS Qld**);
- Aboriginal Legal Rights Movement Inc. in South Australia (**ALRM**);
- Aboriginal Legal Service (NSW/ACT) Ltd (**ALS NSW/ACT**);
- Aboriginal Legal Service of Western Australia Ltd (**ALSWA**);
- North Australian Aboriginal Justice Agency (**NAAJA**);
- Tasmanian Aboriginal Legal Service (**TALS**); and
- Victorian Aboriginal Legal Service Co-operative Limited (**VALS**).

NATSILS was established as the peak body, in its current form, for ATSILS in 2007.

Summary of Recommendations

NATSILS makes the following recommendations to the Senate Community Affairs Legislation Committee, that:

1. The Committee rejects the *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020* (Cth) and recommends it does not pass.
2. The Australian Government abolishes the Cashless Debit Card and mandatory income management in all existing sites.
3. Income management is only introduced and maintained where communities have specifically given free, prior, informed consent to or requested this intervention; it is voluntary, opt-out, co-designed and independently evaluated.
4. All Government programs, including income management, are consistent with human rights standards and self-determination.
5. The Australian Government engages in genuine partnership and shared decision-making with Aboriginal and Torres Strait Islander community representatives, as set out in the new *National Agreement on Closing the Gap*.
6. The Australian Government urgently injects funds into the Aboriginal and Torres Strait Islander Legal Services, Family Violence Prevention Legal Services and legal assistance sector in accordance with recommendations from the Productivity Commission and Law Council of Australia.
7. In line with ACOSS's proposal, the Australian Government increases all income support payments to the level of the pension (plus pension supplement), currently at \$472 per week for a single person, and provide supplementary payments on top of this income floor that recognise additional costs of disability, renting privately and single parenthood.
8. Rather than income management, the Australian Government prioritises the provision of community-controlled, culturally safe social, health, welfare, and economic support for Aboriginal and Torres Strait Islander people and Aboriginal-led solutions that are strong on Indigenous culture and centred on Indigenous self-determination. This includes:
 - a. Aboriginal-run, culturally appropriate financial literacy programs;
 - b. significant investment in the Closing the Gap Agreement priorities.

Introduction

Income management currently withholds 50% of a person's income support payment which is available through Services Australia's Basics Card (**Basics Card**).¹ There are currently over 35,000 people subjected to income quarantining - either income management or cashless debit - around Australia.²

The Australian Council of Social Services notes:³

- The vast majority of people under income quarantining receive a working-age payment such as Newstart, Parenting Payment or the Disability Support Pension.
- At least an estimated \$1.5 billion has been spent on income quarantining in Australia.
- Some form of income quarantining exists in selected communities in all states and territories except the ACT and Tasmania.

The *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020 (Cth) (the Bill)* seeks to make permanent the trials of the Cashless Debit Card (**CDC**) as an ongoing scheme and to expand the CDC in the Northern Territory and the Cape York Region. The Bill also seeks to:

- remove a current exclusion to allow people in the Bundaberg and Hervey Bay program area to be able to voluntarily participate in the CDC program;
- allow a voluntary participant to continue to volunteer for the CDC even if they no longer reside in a program area;
- enable the Secretary to advise a community body when a person has exited the CDC program;
- allow the Minister to determine decision-making principles for the purposes of determining whether a person can demonstrate reasonable and responsible management of the person's affairs (including financial affairs);
- enable the Secretary to review a wellbeing exemption or exit determination in certain circumstances and revoke the determination as a result of such review;
- enable the Secretary to issue a notice informing the person that they are a CDC program participant. The Secretary may also issue a notice revoking that notice; and
- extends the sunset date for IM in Cape York, Queensland from 30 June 2020 to 31 December 2021.⁴

NATSILS is opposed to compulsory income management and to the passage of this Bill. This policy has consistently targeted and caused harm to Aboriginal and Torres Strait Islander people. We agree with the following statement of our member, NAAJA, in their submission to the prior Bill, the *Social Security (Administration) Amendment (Income Management to Cashless Debit Card (Transition) Bill 2019 (Cth)*:

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.⁵

¹ Services Australia, *Basics Card*, (Website, last accessed 26 May 2020)

<https://www.servicesaustralia.gov.au/individuals/services/centrelink/basicscard>

² Department of Social Services (2019) 'CASHLESS DEBIT CARD (CDC) AND INCOME MANAGEMENT SUMMARY' PDF 138KB

³ ACOSS, *Cashless debit cards & income management: a briefing note on the evidence* (2020), available at:

<https://www.acoss.org.au/wp-content/uploads/2020/10/Cashless-debit-cards-1.pdf> ('ACOSS Briefing Note').

⁴ Explanatory Memorandum, *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020 (Cth)*.

⁵ North Australian Aboriginal Justice Agency ('NAAJA 2019'), *Submission to Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 (Cth)* (21 October 2019), 4, <http://www.naaaja.org.au/wp->

Given that the Bill is substantially similar to the previous *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 (Cth)*, we attach our prior submission and reiterate those recommendations (**Attachment A**).

There is no conclusive evidence to support compulsory income management

The Basics Card is intended to be used to pay for essentials like food, rent and utilities. However, research has found that income management does not change problems like our people running out of food or of our people eating more nutritious food.⁶ Rather, evidence shows that the CDC program has further entrenched Aboriginal and Torres Strait Islander people's dependence on welfare.⁷

Evaluations also show that, on income management, Aboriginal and Torres Strait Islander people do not manage their income differently and that the evidence has not shown results of less drinking or higher school attendance, rather the opposite.⁸ Dr Shelley Bielefeld's research shows that social security recipients spend proportionately less on alcohol than other Australians, and described the Regulation Impact Statement "misleading" in relation to CDC's purported impact on alcohol consumption.⁹ In the NT, for example, ANU Research shows the impact of the BasicsCard "to the extent any trend is identifiable, it is towards an increase in risky levels of drinking" and "falling rates of school attendance".¹⁰ Aboriginal researchers at the Tangentyere Research Hub as well as people on the Basics Card report that the better way to create a better future for our communities is to instead provide better culturally safe social and support services to families who need it, like counselling, financial counselling, and other personal supports.¹¹ Researchers report that the program does provide some benefits to some people but is overall not effective at achieving its aims of having income support payments be used for the near exclusive purchase of food, utilities and the payment of rent, or addressing related social inequalities.¹²

Further, there is no evidence that the CDC assists with financial literacy.¹³

The Bill relies on conclusions drawn from an evaluation of the East Kimberly and Ceduna trials by ORIMA.¹⁴ As has been well-documented by academics and the Australian National Audit Office, ORIMA's evaluation is

[content/uploads/2019/11/NAAJA-Submission-to-Social-Security-Administration-Amendment-Income-Management-to-Cashless-Debit-Card-Transition-Bill-2019-Cth.pdf](https://www.dss.gov.au/sites/default/files/documents/12_2014/evaluation_of_new_income_management_in_the_northern_territory_full_repor.pdf).

⁶ Matthew Campbell, *Income management doesn't work, so let's look at what does*, The Conversation (2014)

<https://theconversation.com/income-management-doesnt-work-so-lets-look-at-what-does-34792>.

⁷ ACOSS Briefing Note, above at n 3, citing SPRC (2014) 'Evaluation of New Income Management in the Northern Territory', https://www.dss.gov.au/sites/default/files/documents/12_2014/evaluation_of_new_income_management_in_the_northern_territory_full_repor.pdf.

⁸ ACOSS Briefing Note, above at n3.

⁹ Dr Shelley Bielefeld, Griffith University, *Submission to the Inquiry into the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020 (Cth)* (2020), 26.

¹⁰ JR Bray, Centre for Aboriginal Economic Policy Research, ANU, *Measuring The Social Impact Of Income Management In The Northern Territory: An Updated Analysis* (2020), 1, 32, https://caepr.cass.anu.edu.au/sites/default/files/docs/2020/7/CAEPR_WP_no_136_2020_Bray_0.pdf.

¹¹ JR Bray, M Gray, K Hand and I Katz, UNSW and ANU, *Evaluating New Income Management in the Northern Territory: Final Evaluation Report* (2014).

https://www.dss.gov.au/sites/default/files/documents/12_2014/evaluation_of_new_income_management_in_the_northern_territory_full_repor.pdf.

¹² Ibid.

¹³ ACOSS Briefing Note, above at n3, 6.

¹⁴ Explanatory Memorandum, *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020 (Cth)*, 36.

seriously flawed and therefore unreliable.¹⁵ We further note concerns raised by academics about serious flaws in the recent baseline data report about the Goldfields trial.¹⁶

An independent review of a number of evaluations of income quarantining concluded that “although questions about perceptions of change are frequently, although not universally, answered in the positive, these findings are not supported in studies using objective, and repeated, measures of outcomes and change.”¹⁷ The review also found that political commitment to the program has “resulted in a process of rejection of evaluation findings when contrary to their belief in the program.”¹⁸

Change the Record’s submission notes:

A study of Compulsory Income Management in greater Shepparton and Playford published this year found “little change” in “the significant ongoing impact of drug and alcohol use in their communities” since the introduction of the Cashless Welfare Card. Participants were clear that the scheme was poorly targeted, and that “methods to circumvent the restrictions of the Basics Card were well known” to participants suffering from addictions or misusing alcohol or other substances.¹⁹

Far more robust and credible evaluations of income management, both place-based and NT-wide, support an end to compulsory forms of social security quarantining, including because of the lack of evidence of improved social outcomes and concerns that such measures actually create or deepen dependence on social security.²⁰ However these findings have been largely ignored by the Australian Government.

There is, however, evidence that a voluntary income management model is effective, from evaluations in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands.²¹ If and where communities have given their free, prior and informed consent to voluntary income management, this is in line with self-determination. We note support for voluntary and community-driven models from NAAJA, APO NT, Human Rights Law Centre and ACOSS, among others. This may not take the form of a cashless card, and should be place-based, co-designed, with the ability to opt-in and opt-out. For example, APO NT’s submission points to the Fair Work and Strong Communities Proposal in the Northern Territory which proposes to create 5,000 new jobs for communities.²²

Our position is that Aboriginal and Torres Strait Islander community driven, locally based solutions are longer lasting and address real issues (discussed later in the submission). These allow our people to utilise the

¹⁵ Australian National Audit Office, *The Implementation and Performance of the Cashless Debit Card Trial* (AuditorGeneral Report No 1 2018-19, 17 July 2018).

¹⁶ Matthew Gray and Rob Bray, *Submission No 7 to the Senate Community Affairs Legislation Committee, Inquiry into the Social Security (Administration) Amendment (Income Management and Cashless Welfare) Bill 2019* (2019).

¹⁷ Bray, R. J. (2016) ‘Seven years of evaluating income management – what have we learnt? Placing the findings of the New Income Management in the Northern Territory evaluation in context’, *Australian Journal of Social Issues* Vol.51 No.4, p. 464

¹⁸ *Ibid.*

¹⁹ Change the Record (‘Change the Record 2020’), *Submission to the Inquiry into the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020* (2020), citing Philip Mendes, Steven , Roche, Greg Marston, Michelle Peterie, Zoe Staines & Louise Humpage, *The Social Harms Outweigh the Benefits: A Study of Compulsory Income Management in Greater Shepparton and Playford* (2020) Australian Social Work, 11. <https://www.aph.gov.au/DocumentStore.ashx?id=c75bdd32-20cb-4334-8133-17cf67532c66&subId=695163>.

²⁰ See for eg. JR Bray, M Gray, K Hand and I Katz, UNSW and ANU, *Evaluating New Income Management in the Northern Territory: Final Evaluation Report* (2014). https://www.dss.gov.au/sites/default/files/documents/12_2014/evaluation_of_new_income_management_in_the_northern_territory_full_repor.pdf.

²¹ ACOSS Briefing Note, above at n3, 14, citing Katz, I., & Bates, S (2014). Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands (SPRC Report 23/2014), 2.

²² Aboriginal Peak Organisations Northern Territory, *Submission to the Senate Community Affairs Legislation Committee Inquiry on the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020* (Cth), 12.

strengths of our communities to take ownership of the challenges we face. The imposition of income quarantining does not achieve this. Unless they have volunteered to become part of the CDC program, communities and individuals should not be subject to a measure which has not proven to be reliable or effective.²³

Recommendations:

1. The Committee rejects the *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020* (Cth) and recommends it does not pass;
2. The Australian Government abolishes the Cashless Debit Card and mandatory income management in all existing sites.

The Cashless Debit Card is discriminatory, breaches human rights & disproportionately impacts Aboriginal and Torres Strait Islander people

NATSILS is extremely concerned about the discriminatory nature of CDC. Data shows that the trials target, and disproportionately impact upon, Aboriginal and Torres Strait Islander people and women:

- Around 75 per cent of people captured by the trial in Ceduna, and 80 per cent in East Kimberly identify as Aboriginal and Torres Strait Islander.
- 54 per cent of participants in Ceduna and 59 per cent in East Kimberly are female.
- In the Goldfields, nearly half of those captured by the trial are Aboriginal and Torres Strait Islander people, 59 per cent of whom are female.²⁴

The UN Committee on the Elimination of Racial Discrimination has expressed concern about the discrimination faced by Aboriginal and Torres Strait Islander people and recommended that Australia “maintain only opt-in” forms of social security quarantining. The Australian Human Rights Commission has also raised concerns about the compulsory CDC trials being inconsistent with the Racial Discrimination Act 1975 (Cth).²⁵ The move from the CDC program being a trial to a permanent program presents significant discrimination concerns for NATSILS, especially since the program is being extended to the entirety of the Northern Territory.

The Parliamentary Joint Committee on Human Rights (the Committee) has repeatedly raised concerns that both compulsory CDC and income management unjustifiably limit rights to social security, private and family life, equality and non-discrimination. The Committee has noted, in relation to income management, that there may be some benefits for those who choose to have payments quarantined, however the measure has “limited effectiveness” for most people compelled onto it.²⁶ The Aboriginal and Torres Strait Islander Social Justice Commissioner has previously opposed expansions of the CDC trials, noting that the Australian Human

²³ SPRC (2014) ‘Evaluation of New Income Management in the Northern Territory’ https://www.dss.gov.au/sites/default/files/documents/12_2014/evaluation_of_new_income_management_in_the_northern_territory_full_repor.pdf; Professor Gray, M., Dr Bray, R. (2019) ‘Senate Standing Committee on Community Affairs Legislation Committee Inquiry into the Income Management to Cashless Debit Card Transition Bill, Submission’ <https://www.aph.gov.au/DocumentStore.ashx?id=66f25a45-583d-4b4e-99de-41f28e5c2800&subId=671157>.

²⁴ HRLC and NATSILS, *Submission to the Inquiry into the Social Security (Administration) Amendment (Income Management and Cashless Welfare) Bill 2019* citing ORIMA Research, *Cashless Debit Card Trial Evaluation: Final Evaluation Report* (Australian Government Department of Social Services, August 2017) 37; K Mavromaras et al, *Cashless Debit Card Baseline Data Collection in the Goldfields Region: Qualitative Findings* (University of Adelaide, February 2019) 10.

²⁵ Australian Human Rights Commission, *Submission No 30 to the Senate Community Affairs Legislation Committee, Inquiry into Social Services Legislation Amendment (Cashless Debit Card) Bill 2017* (29 September 2017).

²⁶ Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Futures Measures* (16 March 2016) 52.

Rights Commission does not consider the CDC trials to be compatible with Australia’s international human rights obligations.²⁷

NATSILS is of the view that this Bill does not comply with human right standards, and should be rejected by the Committee. All Government programs should comply with Australia’s international human rights obligations.

Recommendations:

3. Income management is only introduced and maintained where communities have specifically given free, prior, informed consent to or requested this intervention, it is voluntary, opt-out and it must be co-designed and independently evaluated; and
4. All Government programs, including income management, are consistent with human rights standards and self-determination.

The Cashless Debit Card is inconsistent with Closing the Gap

On 30 July 2020, the new 10 year National Agreement on Closing the Gap was announced. This agreement has been developed in partnership with the Coalition of Aboriginal Peak Bodies. A key underlying principle of the new Closing the Gap agreement is that Aboriginal and Torres Strait Islander people “must play an integral part in the making of decisions that affect their lives.”

However, APO NT has noted in their submission the inadequacies with the consultations leading to this Bill, including the impact of COVID-19 resulting in the cessation of consultations, and their concerns that this is inconsistent with the Closing the Gap agreement.²⁸ This is similar to the prior Bill, where NAAJA noted that those most impacted were not consulted about the decision to introduce the CDC scheme to the NT, which “bears these hallmarks: it is a second intervention into the NT focussed on controlling and restricting social security payments.”²⁹ Similarly Commissioner June Oscar previously noted her concern with the “lack of community consultation in rural and remote areas”.³⁰

Further, NACCHO has noted the impact of CDC on targets in Closing the Gap:

“Involuntary participation in cashless income support programs has been found to have an adverse impact on Aboriginal and Torres Strait islander communities, including on birth outcomes, perpetuating intergenerational disadvantage. This contradicts the Closing the Gap targets the Australian Government has signed up to in the National Agreement.”³¹

Similarly, and as set out below, NATSILS is of the view that this Bill will have an adverse impact on the two incarceration targets in the Closing the Gap Agreement.

NATSILS agrees that the introduction of this Bill and its inadequate consultations are inconsistent with the Partnership Principles and the priorities of the Closing the Gap Agreement. True partnership requires Aboriginal-led decision making, self-determination and free, prior and informed consent.

Recommendation:

²⁷ Australian Human Rights Commission, *Submission No 30 to the Senate Community Affairs Legislation Committee, Inquiry into Social Services Legislation Amendment (Cashless Debit Card) Bill 2017* (29 September 2017).

²⁸ 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*, 5.

²⁹ NAAJA 2019, above in n5, 5.

³⁰ Commissioner June Oscar AO, Australian Human Rights Commission, *Submission to Senate inquiry into Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019* (2 October 2019), https://humanrights.gov.au/sites/default/files/19.10.02_ahrc_submission_re_cashless_debit_card_trial_expansion.pdf.

³¹ NACCHO, *Submission to the Inquiry into the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020* (Cth) (2020).

5. The Australian Government engages in genuine partnership and shared decision-making with Aboriginal and Torres Strait Islander community representatives, as set out in the new *National Agreement on Closing the Gap*.

The Cashless Debit Card pushes people into the justice system

NATSILS is concerned that in many ways, CDC further entrenches Aboriginal and Torres Strait Islander people into the justice system.

The Explanatory Memorandum of the Bill suggests that the CDC has a “positive effect on the prevalence and severity of crime”.³² However, the Government relies on the findings from a report by the University of Adelaide, which the Australian Human Rights Commission has pointed out, “does not use any quantitative data” to support findings related to reduced crime and family violence.³³

In contrast, studies from 2014 and 2019 show an increase in imprisonment and assault where the CDC was trialed.³⁴ Bray’s 2020 research notes that the rate of assaults are “largely flat” whereas the rates of imprisonment of Aboriginal and Torres Strait Islander people has continually risen across the period of income management.³⁵

Similarly, Change the Record’s submission notes:

Despite its purported aims, the Cashless Welfare Card has not seen a decrease in crime. Police data indicates its introduction correlates with an increase in family violence in some areas. Data obtained by Australian National University researcher Elise Klein showed that “family violence-related assaults and police attendances in the East Kimberley communities of Wyndham and Kununurra rose after the card was introduced in April 2016.” Klein explained the increase by virtue of the “added factor of stress and hardship in families which may then lead to violence”. Ceduna police data from earlier in the trial’s evaluation also showed an increase in robbery, fraud and related offences after the introduction of the Cashless Welfare Card. Similarly, domestic violence police call outs increased significantly after the introduction of the Cashless Welfare Card. Another independent study conducted by Monash University, Griffith University and Queensland University involved 114 in-depth interviews in four cashless welfare sites. Interviewees reported increased tensions and fighting within households due to the additional financial pressure that the Cashless Welfare Card placed on families, and increased risk to women fleeing family violence as a result of having less available cash at their disposal.³⁶

The compliance and penalty system of the flawed Community Development Program is linked to Centrelink payments. NAAJA has indicated that CDP disproportionately impacts Aboriginal people living in the Northern Territory, and 54% of non-compliance reports from JobActive were from CDP, despite CDP comprising 5% of the JobActive caseload. This has impacts on income management:

Clients often report to NAAJA that they have not been receiving their full Centrelink payments as a result of being penalised, their payments being suspended, or their payments being cancelled. Penalties are taken from a person’s overall payment, and the remaining amount is divided into the restricted and unrestricted portions, decreasing the money going into a person’s bank account for

³² Explanatory Memorandum, *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020* (Cth), 60.

³³ Australian Human Rights Commission, *Submission to the Inquiry into the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020* (Cth) (2020), 3.

³⁴ ACOSS Briefing Note, ‘Snapshot of evaluations and their findings’, citing the SPRC/ANU studies from 2014 & 2019.

³⁵ JR Bray, Centre for Aboriginal Economic Policy Research, ANU, *Measuring The Social Impact Of Income Management In The Northern Territory: An Updated Analysis* (2020), 1,

https://caep.cass.anu.edu.au/sites/default/files/docs/2020/7/CAEPR_WP_no_136_2020_Bray_0.pdf.

³⁶ Change the Record 2020, above in n20, 5.

them to freely spend, thereby exacerbating the restrictive impacts of compulsory welfare quarantining.³⁷

NATSILS is concerned that this current Bill could result in a reversal of exemptions to CDC, as a penalty under CDP could potentially be considered evidence that a person does not demonstrate “reasonable and responsible management” of their affairs.

Further, the ALRC’s *Pathways to Justice Inquiry* noted the impacts of the CDC in relation to sureties for bail, resulting in further imprisonment on remand:

Imposing sureties can be particularly difficult for Aboriginal and Torres Strait Islander people to meet, especially when living remotely without employment. For Aboriginal and Torres Strait Islander people on welfare or in receipt of the cashless debit card, bail sureties can present an ‘insurmountable obstacle’ to release.³⁸

NATSILS has previously noted concerns about the interactions between the *Alcohol Mandatory Treatment Act* (NT), protective custody and income management orders, which disproportionately targets Aboriginal and Torres Strait Islander people for public drunkenness.³⁹

Further, NAAJA has voiced concerns that the expansion of the CDC will result in increased demand for already under-resourced legal services, as well as unmet need for financial services, banking services, financial counsellors and administrative support.⁴⁰ This will require urgent additional resourcing.

While we welcome the security of five-year funding agreements under the National Legal Assistance Partnership for ATSILS, and additional \$63.3 million funding for COVID-19 and \$5.247 million in bushfire responses, the legal assistance sector remains drastically underfunded and unable to meet legal need. The additional funding required includes:

- An urgent injection of \$200 million as recommended by the Productivity Commission to begin meeting unmet *civil* legal need alone.⁴¹
- In 2018, the Law Council of Australia’s Justice Project recommended that Commonwealth, state and territory Governments should invest significant additional resources in the legal assistance sector to address critical need for civil and criminal legal assistance services, suggesting that at a minimum this should include \$390 million per annum.⁴²

NATSILS is of the view that passing this Bill will undermine the two incarceration targets in the Closing the Gap Agreement.

Recommendation:

6. The Australian Government urgently injects funds into the Aboriginal and Torres Strait Islander Legal Services, Family Violence Prevention Legal Services and legal assistance sector in accordance with recommendations from the Productivity Commission and Law Council of Australia.

³⁷ NAAJA 2019, above in n5, 11.

³⁸ Australian Law Reform Commission, *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples Final Report* (2018), 160, https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf.

³⁹ NATSILS, *Submission to the Australian Law Reform Commission’s Inquiry into the Incarceration Rates of Aboriginal and Torres Strait Islander peoples* (2017), http://www.natsils.org.au/portals/natsils/NATSILS%20-%20ALRC%20Submission_%20at%2022082017_newb99d.pdf?ver=2017-09-22-152515-350.

⁴⁰ NAAJA 2019, above in n5, 23.

⁴¹ Australian Productivity Commission, *Inquiry into Access to Justice Arrangements* (2014), 799, <<https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-volume2.pdf>>, 21.4.

⁴² Law Council of Australia, *Justice Project* (2018), rec 2.1.

Specific issues with the Bill

NATSILS agrees with the concerns raised by ACOSS and Human Rights Law Centre (HRLC)'s submissions on the proposed Bill, namely:

- The discretionary power of the Minister to increase the percentage of income restricted of cohorts and individuals in the Northern Territory, of up to 80% (new subsection 124PJ(2A)).
- Allows the Minister to determine decision-making principles for the purposes of determining whether a person can demonstrate "reasonable and responsible management" of the person's affairs (including financial affairs).
- The discretionary power of the Minister to place someone back on CDC after they have received an exemption, including a wellbeing exemption.

NAAJA has previously raised concerns about the difficulty with obtaining an exemption under the CDC trials, and its disproportionate impact on Aboriginal and Torres Strait Islander people: "Aboriginal people subject to both income management and the CDC scheme are less likely to apply for an exemption and much more likely to be rejected when they do apply".⁴³ ACOSS has noted concern "this power will see even fewer Aboriginal and Torres Strait Islander People permanently exiting CDC."⁴⁴ We agree with the HRLC that the Government has provided no evidence base for the justification of these additional powers, and if they are included must be subject to scrutiny, and "must be clearly confined and maintain some degree of procedural fairness."⁴⁵

NATSILS is concerned that these new discretionary provisions and powers will disproportionately impact and cause harm to Aboriginal and Torres Strait Islander people.

The Cashless Debit Card and COVID-19

While no new social security recipients have been forced onto CDC during COVID-19, people already enrolled in CDC have remained on it. There will likely be compounding impacts of the introduction of this CDC Scheme and COVID-19, as noted by Dr Bielefeld in her submission.⁴⁶ Dr Bielefeld has also pointed to the steep cost burdens created by the CDC experienced by participants, relating to late fees from failure to pay bills on time, direct debit dishonour fees, impaired rental ledger records, psychological costs and burden of time lost and phone call costs.⁴⁷ This includes issues with payment of rent.⁴⁸

Change the Record has noted its fear that "an already discriminatory scheme will have an even greater deleterious impact on Aboriginal and Torres Strait Islander peoples in the context of the global pandemic and Covid-19 restrictions."⁴⁹

Further, NATSILS has raised concern about the Federal cuts to COVID-19 supplements to social security payments and its impacts on Aboriginal and Torres Strait Islander people.⁵⁰ This will mean less money in the unrestricted component of a person's income. A strong social safety net will make us more resilient now and into the future Governments need to ensure that our communities have easy access to income support,

⁴³ NAAJA 2019, above in n5, 15.

⁴⁴ Australian Council of Social Service, *Submission to the Inquiry into the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020* (Cth) (2020).

⁴⁵ Human Rights Law Centre, *Submission to the Inquiry into the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020* (Cth) (2020).

⁴⁶ Dr Shelley Bielefeld, above at n9, 31.

⁴⁷ Ibid, 16.

⁴⁸ Ibid, 17.

⁴⁹ Change the Record 2020, above in n20, 3.

⁵⁰ NATSILS, *Submission to the Commonwealth Parliament's Senate Select Committee on COVID-19* (28 May 2020), <http://www.natsils.org.au/portals/natsils/submission/NATSILS%20Submission%20to%20the%20Senate%20Select%20Committee%20on%20COVID-19%2028%20May%202020%20F6c0e.pdf?ver=2020-05-28-113053-070>.

appropriate healthcare, as well as accessible and safe social and public housing now and into the future. These, among many others, are factors or conditions referred to by the World Health Organisation (WHO) as the social determinants of health. Poverty is also a key driver of incarceration.

We note ACOSS's post-COVID-19 proposal 'Next steps for income support' which calls for the Government to ensure that income support payments for working-age people do not return to below-poverty levels again.⁵¹

The passing of this Bill could have disastrous effects on Aboriginal and Torres Strait Islander people in the context of a global pandemic. This is a time to provide a stronger social safety net and public health responses, not restrictive and punitive approaches to social security.

Recommendation:

7. In line with ACOSS's proposal, the Australian Government increases all income support payments to the level of the pension (plus pension supplement), currently at \$472 per week for a single person, and provide supplementary payments on top of this income floor that recognise additional costs of disability, renting privately and single parenthood.

Community-led solutions & holistic supports to address social issues

Instead of income management, NATSILS believes we need community-led solutions and holistic, culturally safe wrap around services to deal with social issues. The Federal Government has not disclosed how much funds are being expended on CDC. Our position is that these funds would be better expended on community-led solutions and transition away from compulsory income management.

CDC does not address the root causes of the social inequalities that it purports to solve: access to education, employment and over-incarceration. These social inequalities are the ongoing legacy of colonisation, of the dispossession of land, and stealing of children and wages, and will not be remedied by the CDC. As explained by NAAJA:

There is a real lack of employment opportunities for Aboriginal people living in remote communities. The barriers experienced by many Aboriginal people living remotely in relation to accessing education and training means that the small number of jobs that do exist may require formal prerequisites that many community members find difficult to meet. Territory wide, 14.2% of Aboriginal people have completed year 12, compared with 58.7% of non-Aboriginal Territorians. 25% of Aboriginal Territorians are unemployed, compared with 2.3% of non-Aboriginal people living in the NT. This lack of opportunity contributes to Aboriginal people in remote communities receiving social security benefits for prolonged periods of time, therefore often automatically falling within the current criteria for income management to apply.⁵²

There are much needed solutions, as canvassed by the priorities in the new Closing the Gap Agreement. More public housing and job-creation is needed, especially in remote communities, as well as culturally safe and Aboriginal community-controlled, culturally safe legal, health, family violence, family and disability supports. A robust social safety net - without mandatory or punitive compliance conditions - is needed, to help communities trapped in poverty. Despite this - no further investment was made into Closing the Gap in this year's Federal Budget. The welcomed \$46.5 million investment into Closing the Gap over 4 years is simply not enough to ensure success across all of the Aboriginal community-controlled sectors.

⁵¹ ACOSS, 'Next steps for income support' (July 2020), acoss.org.au/wp-content/uploads/2020/09/Social-security-next-steps-JUL-UPDATED-2-9_.pdf.

⁵² NAAJA 2019, above in n5, 8.

Culturally appropriate financial literacy programs are needed and are effective. For example, Aboriginal Legal Rights Movement (ALRM) provides a Low Income Support Program by way of financial counselling and assistance through its Adelaide office and through its Port Augusta office, include including rural outreach from Port Augusta to the Coober Pedy, Nepabunna, and APY lands. ALRM also provides a limited financial assistance program on the West Coast of South Australia through its Ceduna office.

There are many examples of Aboriginal-led programs and solutions, set out by numerous inquiries and Royal Commissions, dating back to the Royal Commission on Aboriginal Deaths in Custody and most recently as the ALRC Pathways to Justice Inquiry. This includes Aboriginal-led Justice Reinvestment, as demonstrated in Bourke by an independent review by KPMG.⁵³

Recommendation:

8. Rather than income management, the Australian Government prioritises the provision of culturally safe social, health, welfare, and economic support for Aboriginal and Torres Strait Islander people and Aboriginal-led solutions that are strong on Indigenous culture and centred on Indigenous self-determination. This includes:
 - a. Aboriginal-run, culturally appropriate financial literacy programs;
 - b. significant investment in the Closing the Gap Agreement priorities.

Conclusion

The CDC trials have been largely unsuccessful and discriminatory, and despite a lack of evidence of effectiveness, the Government is persisting with making permanent and expanding CDC with this Bill. Yet there is ample evidence of the harmful nature of CDC and its discriminatory impact on Aboriginal and Torres Strait Islander people. The CDC breaches a number of human rights and is not consistent with the UN Declaration on the Rights of Indigenous people.

It is deeply concerning to NATSILS that the Government is seeking to extend the CDC trial to a permanent program and implement it in the entirety of the Northern Territory. This Bill will cause irreparable harm to Aboriginal and Torres Strait Islander people and communities, especially during a global pandemic. We urge the Committee to reject the Bill and recommend that it does not pass.

Instead, the Government should significantly invest in and prioritise Aboriginal community-controlled and led solutions, including those priorities identified in the Closing the Gap Agreement.

⁵³ KPMG, *Maranguka Justice Reinvestment Project Impact Assessment* (2018), <https://www.justreinvest.org.au/wp-content/uploads/2018/11/Maranguka-Justice-Reinvestment-Project-KPMG-Impact-Assessment-FINAL-REPORT.pdf>.