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Social Security Legislation Amendment (Debit Card Trial) Bill 2015

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Date introduced: 19 August 2015

House: House of Representatives

Portfolio: Social Services

Commencement: Sections 1–3 on Royal Assent; Schedule 1 on the day after Royal Assent.

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bill’s home page, or through the [Australian Parliament website](#).

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the [ComLaw website](#).

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The Bills Digest at a glance

The purpose of the Bill is to amend the *Social Security (Administration) Act 1999* to enable a trial of cashless welfare arrangements. Under the trial, recipients of certain income support payments will have a proportion of their payments credited to an account they can only access using a restricted debit card. The card will not allow cash withdrawals or purchases from certain merchant categories such as those selling alcoholic beverages or gambling services.

The Forrest Review of indigenous jobs and training programs proposed a new restricted debit card as an alternative to income management. The Forrest Review argued that the current income management system comes with a cost that renders it unsustainable and unsuitable for broader application. The proposed restricted debit card will be cheaper than the existing income management scheme because it relies more heavily on existing payment infrastructure.

The debit card trial is time limited. It will begin on 1 February 2016 and end on 30 June 2018. According to the Explanatory Memorandum, 'the trial will only take place for 12 months in each location'.¹ The Government will run the trial in up to three locations. The first will be Ceduna in South Australia. It is likely that the second will be in the East Kimberley in Western Australia.

Many of the details of the trial will be determined by legislative instrument and can vary between trial areas. The trial can potentially apply to all recipients of working age payments who reside in one of the trial areas and people on the Age Pension are able to volunteer to participate. However, the Minister is able to determine that only recipients of certain payments will be included in the trial or that only a 'class of person' receiving one of these payments is included.

The Bill provides that 80 per cent of a participant's income support payments will be restricted. However, there are two ways this percentage can be changed:

- *By legislative instrument.* The Minister can vary the percentages for a particular trial area, or for a particular class of person in a trial area and
- *Direction by a community body.* With the agreement of a compulsory participant or trial participant, a community body can vary the percentage of a person's payment that is restricted between 50 and 80 per cent. The community body can do this by giving the Secretary of the Department of Social Services a written direction.

While the proposed trial has support from groups such as the District Council of Ceduna, local Indigenous organisations and the East Kimberley Chamber of Commerce and Industry, there are a number of Aboriginal and Torres Strait Islander peak organisations and groups in the community welfare sector who have opposed the trial.

While the Government asserts that the Bill is compatible with human rights, the Parliamentary Joint Committee on Human Rights notes that the measures proposed in the Bill involve limitations on a number of human rights and that the Government has not shown how these limitations are rationally connected to the Bill's objective.

Other concerns about the Bill include the potential for indirect racial discrimination, the lack of an evaluation requirement in the Bill, inconvenience and loss of spending power for participants, and an increase in risky behaviours as some participants seek other ways to obtain cash, alcohol or drugs. The trial is only likely to be effective if the restricted debit card is combined with other measures such as access to alcohol and substance abuse treatment.

The Bill also contains provisions that seek to formalise the Centrepay bill payment scheme.

1. [Explanatory Memorandum](#), Social Security Legislation Amendment (Debit Card Trial) Bill 2015, p. 4.

Purpose of the Bill

The purpose of the Social Security Legislation Amendment (Debit Card Trial) Bill 2015 (the Bill) is to amend the *Social Security (Administration) Act 1999* to enable a trial of cashless welfare arrangements.² Under the trial, recipients of certain income support payments will have a proportion of their payments credited to an account they can only access using a restricted debit card. The card will not allow cash withdrawals or purchases from certain merchant categories such as those selling alcoholic beverages or gambling services.

The Bill also makes consequential amendments to *A New Tax System (Family Assistance) (Administration) Act 1999*,³ *Social Security Act 1991*,⁴ *Social Security (Administration) Act 1999* and *Stronger Futures in the Northern Territory Act 2012*.⁵

Structure of the Bill

The Bill contains one Schedule, which is divided into two parts. Part 1 contains the main amendments to the *Social Security (Administration) Act*. Part 2 contains consequential amendments to the *A New Tax System (Family Assistance) (Administration) Act*, the *Social Security Act*, the *Social Security (Administration) Act* and the *Stronger Futures in the Northern Territory Act*.

Background

Existing income management scheme

The Government already has a scheme designed to reduce the amount of discretionary income available for alcohol, drugs, gambling and other harmful goods. This is the income management scheme. Income management sets aside (or ‘quarantines’) a proportion of a recipient’s Australian Government income support payment to pay for necessities such as food, clothing, housing and utilities. Recipients can spend their income-managed funds using a PIN protected debit card, known as the BasicsCard, or by arranging for Centrelink to make payments on their behalf (for example, regular rent and utilities payments).⁶

First introduced in 2007 as part of the Howard Government’s Northern Territory Emergency Response, income management was designed to reduce the amount of cash available for alcohol, drugs and gambling and redirect spending towards priority goods such as food, clothing, utilities and housing.⁷ The scheme was particularly aimed at improving outcomes for children in dysfunctional families. As Mal Brough, then Minister for Indigenous Affairs, said in 2006:

It is cash in the form of welfare payments that provide choices for parents in these situations to choose to gamble before buying food, or purchase drugs rather than clothe their children. It is, in fact, the payments that are provided by society to uplift these families and, in particular the children, that provide the substances to fuel the violence and destruction. Society then picks up the pieces at the hospitals, prisons and morgues.⁸

Income management was first introduced into a number of Indigenous communities the Northern Territory by the Howard Government and extended to selected communities in Western Australia in 2008. In 2010 the Rudd Government expanded income management across the entire Northern Territory as well as making changes to the scheme so that it was compatible with the *Racial Discrimination Act 1975*.⁹ Income management was later extended to a number of other locations.¹⁰ In July 2014 it was introduced to the Ceduna region in South Australia after consultations with community members and stakeholders.¹¹

2. [Social Security \(Administration\) Act 1999](#), accessed 15 September 2015.

3. [A New Tax System \(Family Assistance\) \(Administration\) Act 1999](#), accessed 15 September 2015.

4. [Social Security Act 1991](#), accessed 15 September 2015.

5. [Stronger Futures in the Northern Territory Act 2012](#), accessed 15 September 2015.

6. D Arthur, [Income management: a quick guide](#), Research paper series, 2015–16, Parliamentary Library, Canberra, 2015, accessed 24 September 2015.

7. Ibid.

8. M Brough (Minister for Families, Community Services and Indigenous Affairs), [Social Innovations Dialogue, Hunter Valley, New South Wales](#), speech, 29 April 2006, accessed 24 September 2015.

9. [Racial Discrimination Act 1975](#), accessed 27 September 2015.

10. D Arthur, [Income management: a quick guide](#), op. cit.

11. Department of Social Services (DSS), [Income management in the Ceduna region](#), DSS website, last updated 5 December 2014, accessed 24 September 2015.

Income management is underpinned by Part 3B of the *Social Security (Administration) Act*. Part 3B was inserted by the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007*.¹²

BasicsCard

The BasicsCard allows people to spend income managed funds at shops and other businesses. It works in a similar way to bank issued debit cards but can only be used at approved merchants and does not allow the card holder to access cash.¹³

To accept payment by BasicsCard a merchant needs to apply to the Department of Human Services (DHS).¹⁴ To get approval their main business must be the sale of priority goods and services (for example, food, clothing, education, health). If a person wants to make a purchase from a business that does not accept BasicsCard they can arrange for Centrelink to pay the business directly.

A card holder can use their BasicsCard to buy any good or service available from an approved merchant except:

- alcoholic beverages (or home-brew kits or home-brew concentrate)
- tobacco products
- pornographic material
- gambling products or services or
- gift cards or vouchers.

It is the merchant's responsibility to block purchases of excluded goods such as alcohol. The system does not do this automatically.

Forrest Review

In November 2013, the Government appointed Andrew Forrest to head a review of indigenous jobs and training programs (the Forrest Review).¹⁵ The Government undertook two rounds of submissions in relation to the Forrest Review. The first was in November–December 2013 when over three hundred submissions were received.¹⁶ Following the release of the Forrest Review report, submissions were invited to provide feedback on the process of the Review itself.¹⁷

The final report of the Forrest Review was provided to the Prime Minister for consideration.¹⁸ It recommended, amongst other things, 'that the Commonwealth Government implement immediately a Healthy Welfare Card scheme in conjunction with major financial institutions and retailers to support welfare recipients [to] manage their income and expenses'.¹⁹ Mr Forrest suggested:

... the scheme be implemented so that an individual's welfare payments, other than age or veterans' pensions, would be paid into a savings account drawn on with a Healthy Welfare Card. This card directs spending to purchases that sustain and support a healthy lifestyle for the recipients and any children of those recipients (for example essential goods such as food, clothing, utilities, rent) and to savings for larger expenses.²⁰

The Forrest Review envisaged a completely cashless system that would be rolled out across Australia without a trial.²¹ The Bill responds to that recommendation.

12. For information about the originating Bill, Explanatory Memorandum and the relevant Bills Digest see Parliament of Australia, '[Social Security and Other Legislation Amendment \(Welfare Payment Reform\) Bill 2007 homepage](#)', Australian Parliament website, accessed 15 September 2015.

13. D Arthur, [Income management: a quick guide](#), op. cit.

14. Department of Human Services (DHS), [BasicsCard merchants](#), DHS website, accessed 24 September 2015.

15. Department of Prime Minister and Cabinet (PM&C), [Indigenous jobs and training review](#), PM&C website, accessed 16 September 2015.

16. PM&C, [Indigenous jobs and training review: public submissions – November/December 2013](#), PM&C website, accessed 16 September 2015.

17. PM&C, [Public Submissions providing feedback on the recommendations of Creating Parity – The Forrest Review – October 2014](#), PM&C website, accessed 16 September 2015.

18. A Forrest, [The Forrest Review: creating parity](#), report prepared for PM&C, PM&C, 2014, accessed 15 September 2015.

19. Ibid., 'Recommendation 5: healthy welfare card', p. 28.

20. Ibid.

21. Ibid., p. 103.

It should be noted, however, that the Bill does not create the cashless system that the Forrest Review recommended—rather, it proposes the introduction of a restricted debit card which will be subject to a trial in up to three areas. At the time of writing this Bills Digest one of those areas was identified as the district of Ceduna in South Australia. In addition, ‘advanced discussions with leaders in the East Kimberley region of Western Australia are progressing’.²²

Rationale for the Bill

A cheaper alternative to income management

The restricted debit card which is proposed by the Bill will be cheaper than the existing income management scheme because it relies more heavily on existing payment infrastructure. According to a 2012 report by Deloitte Access Economics:

A significant contributor to the cost of the Income Management Scheme is likely to be costs associated with administering the BasicsCard. It is currently not affiliated with any payments provider, which necessitates investment in purpose-built technology like kiosks and software to allow people to access their information online.²³

The Forrest Review argued that the current income management system ‘comes with a cost that renders it unsustainable and unsuitable for broader application’.²⁴

The annual per person cost of administering income management in the Northern Territory has been estimated at between \$2,400 and \$2,800 for recipients in urban areas, \$3,900 and \$4,900 in rural areas, and \$6,600 and \$7,900 for recipients in remote areas.²⁵ However, because a large share of this cost is in the centralised infrastructure needed to operate the scheme (for example, operating a 24 hour hotline for clients), the cost of adding additional income support recipients to the scheme is likely to fall as the scheme grows.²⁶

Tackling the problem of drug and alcohol abuse

The Forrest Review argued that paying income support in cash left many recipients vulnerable to drug and alcohol abuse. The Healthy Welfare Card which it recommended would block purchases at retailers that sell alcohol and block access to cash to tackle this problem.

While the Forrest Review did not cite statistics on the prevalence of the problem among income support recipients, it noted that the problem ‘is occurring in many Australian communities’ and is not restricted to Indigenous income support recipients.²⁷

Problems with the existing BasicsCard

While the Forrest Review accepted that the BasicsCard was effective, it argued that ‘expansion of this system is financially unsustainable’.²⁸ In addition, it argued that the BasicsCard exposed recipients to stigma because the card clearly identified them as income support recipients on income management. The debit card proposed by the Bill will avoid this problem because merchants will not be able to distinguish it from any other commercially issued debit card.

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22. I Goodenough, ‘[Second reading speech: Social Security Legislation Amendment \(Debit Card Trial\) Bill 2015](#)’, House of Representatives, *Debates*, (proof), 15 September 2015, p. 23, accessed 16 September 2015.
 23. Deloitte Access Economics, [Efficient and modern payments: benefits of government prepaid cards](#), report prepared for Visa AP (Australia) Pty Ltd, Deloitte, Barton, ACT, April 2012, p. 10, accessed 15 September 2015.
 24. A Forrest, [The Forrest review: creating parity](#), op. cit., p. 27.
 25. Australian National Audit Office (ANAO), [Administration of new income management in the Northern Territory](#), Audit report, 19, 2012–13, ANAO, Barton, ACT, 2013, accessed 15 September 2015.
 26. L Hefren-Webb (Branch Manager, Welfare Payments Reform, Department of Families, Housing, Community Services and Indigenous Affairs) Evidence to Senate Community Affairs Legislation Committee, [Official committee Hansard](#), 18 October 2012, p. 72, accessed 15 September 2015.
 27. A Forrest, [The Forrest review: creating parity](#), op. cit., p. 103.
 28. *Ibid.*, p. 102.

How restricted debit cards work

Assistant Minister for Social Services Alan Tudge has stated that ‘participants in the trial will receive an everyday mainstream debit card, which will be connected to the Visa, MasterCard or EFTPOS platform’.²⁹

Four party schemes

Visa, Mastercard and EFTPOS are what is known as ‘four party schemes’. These four parties are:

- *Issuers*, such as banks or credit unions that contract with a card scheme (for example Visa, Mastercard, EFTPOS) and issue cards to individuals and institutions
- *Cardholders*, who have a credit or savings account with a financial institution or have purchased a pre-paid card
- *Acquirers*, financial institutions that contract with merchants to allow them to accept payments through the card scheme and
- *Merchants*, who accept payment through the card scheme.³⁰

When a cardholder makes a purchase using their card, the merchant’s terminal sends information to the card processor. This information includes card information, the transaction amount, a code that identifies the merchant (card acceptor identification code), a code that identifies the merchant type (merchant category code), and the time and date of the transaction. The card processor then sends an authorisation request with this information to the issuing institution. The issuer then conducts a series of checks before granting or denying the transaction.³¹

What a restricted debit card can do

Because the card issuer receives the merchant’s Merchant Category Codes (MCC) with each authorising request, the issuer is able to block transactions from certain categories of merchant such as bottle shops.

The process for blocking purchases using MCCs on the proposed restricted debit card will be similar to that used for many commercial purchasing cards. These cards allow businesses to issue credit cards to employees that allow them to make purchases on behalf of the business. A business may want to restrict the goods and services employees can purchase with a card so financial institutions allow business customers to restrict use of purchasing cards by blocking certain merchant categories (for example gambling services, dating and escort services, package stores – beer, wine and liquor).³² It may also be possible to block individual merchants using their merchant card acceptor identification codes (CAID).

The restricted debit card proposed in the Bill will work in much the same way as these commercial purchasing cards. The major difference will be that the account will belong to the income support recipient. The recipient will be the primary cardholder.

What a restricted debit card cannot do

If a cardholder makes a purchase from a merchant whose MCC is not blocked, a restricted debit card cannot block them from buying particular goods and services. This is because the system does not send product level information from the merchant to the issuer.

This is why it is not possible to use a restricted debit card to block tobacco purchases. Preventing recipients from buying cigarettes with their cards would mean blocking the MCC of every merchant category where tobacco products are sold (categories such as news dealers and newsstands, grocery stores, and supermarkets).

Blocking purchases of particular products

A serious limitation of the proposed restricted debit card is the inability to block purchases at the product level. In a submission to the Forrest Review the Australian Bankers’ Association stated:

29. A Tudge (Parliamentary Secretary to the Prime Minister), ‘[Second reading speech: Social Security Legislation Amendment \(Debit Card Trial\) Bill 2015](#)’, House of Representatives, *Debates*, 19 August 2015, p. 8803, accessed 16 September 2015.

30. Reserve Bank of Australia (RBA), [Reform of credit card schemes in Australia](#), volume 1, RBA, 2001, p. 3, accessed 24 September 2015.

31. R DeGennaro, ‘[Merchant acquirers and payment card processors: a look inside the black box](#)’, *Economic Review*, 91(1), January 2006 pp. 27–42, ProQuest database, accessed 24 September 2015.

32. ANZ Bank, ‘[Commercial cards: merchant category code controls](#)’, ANZ website, accessed 24 September 2015.

... currently there is no technology that would enable a card to block transactions or payments at individual purchases or allow some purchases and not others from a particular MCC. This change would require a substantial overhaul of the existing EFTPOS system in use by all Australian retailers to identify goods individually and if necessary preclude their purchase prior to check-out. It would require new EFTPOS devices and new transaction instructions (electronic messages and codes) to be introduced, which would potentially disrupt the efficiency of the payments system and increase the cost of point of sale transactions for all users.³³

The inability to block purchases of particular goods would make it difficult to use restricted debit cards in locations where supermarkets and grocery stores sell alcohol. The Forrest Review's response to this problem was to suggest: 'We will need to explore if the retailers themselves who sell a mixed range of goods (like vegetables and alcohol) can also classify and prohibit certain purchases at point of sale.'³⁴

Manual product level blocking is possible with the BasicsCard because the card is clearly marked. Merchants must sign an agreement and be approved before they can accept the card. Merchants agree to abide by a set of terms and conditions that include training staff on the correct use of the card and keeping itemised receipts of each BasicsCard transaction for at least two years.³⁵ It is difficult to see how product level blocking would be feasible using an unmarked card sourced through a mainstream payments provider as is proposed by the Bill.

Preventing fraud and abuse

There is a risk that some merchants or their staff may be prepared to provide income support recipients with access to cash. For example, a retailer might ring up a purchase for \$100, give the customer \$60 in cash and keep \$40 for themselves.

The Forrest Review acknowledged the possibility that retailers might engage in fraud and suggested that Centrelink should have the power to apply on-the-spot penalties to both retailers and individuals.³⁶

Experience with income management

Debit cards compared to the BasicsCard

The restricted debit card proposed by the Bill is not a new version of the current income management scheme. Because the card can automatically be used at any merchant whose MCC is not blocked, it does not require participating merchants to agree to a specific set of terms and conditions. Unlike merchants who accept the BasicsCard, merchants who take the restricted debit card are not required to block the purchase of particular goods. As a result, the restricted debit card is likely to be less effective than the BasicsCard at blocking purchases of alcohol and preventing access to cash.

The table below outlines some of the major differences between the restricted debit card and the BasicsCard.

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33. Australian Bankers' Association, [Submission](#) to PM&C, *Indigenous jobs and training review*, 19 September 2014, p.5, accessed 15 September 2015.
 34. A Forrest, [The Forrest review: creating parity](#), op. cit., p. 106.
 35. DHS, [BasicsCard: merchant application](#), DHS website, accessed 15 September 2015.
 36. A Forrest, [The Forrest review: creating parity](#), op. cit., p. 107.

Table 1: Major differences between the restricted debit card and the BasicsCard

| | Restricted debit card | BasicsCard |
|--|--|---|
| How merchants are approved for the card | All merchants automatically approved unless blocked. | All merchants automatically blocked unless approved. Individual merchants must apply to the Department of Human Services for approval and agree to BasicsCard terms and conditions. ³⁷ |
| How the card blocks purchases | Card uses Merchant Category Codes to block particular categories of merchant (for example, bottle shops). | Merchants are responsible for blocking purchases of excluded goods and services at the point of sale. ³⁸ |
| Enforcement of merchant obligations | It is unclear what power the Department of Human Services has to enforce obligations on merchants who have not agreed to a specific set of terms and conditions. | Under the BasicsCard terms and conditions, the Department of Human Services can audit a merchant's transaction records, claim repayment for prohibited transactions and revoke a merchant's approval. ³⁹ |

Source: Parliamentary Library.

Income management and alcohol consumption

The BasicsCard is designed to reduce consumption of alcohol by blocking income support recipients' purchases of alcohol and access to cash. However evaluations in the Northern Territory and the place-based trial sites suggest that income management has had little impact on alcohol consumption by compulsory participants.⁴⁰

One explanation for the lack of impact on alcohol consumption may be the rate at which income management is applied. In the Northern Territory most income management participants have 50 per cent of their regular income support payments quarantined. In late 2014, Kevin Andrews (then Minister for Social Services) argued this left recipients with too much discretionary income and that a higher rate of quarantining might be needed to reduce the consumption of goods such as alcohol.⁴¹

However an evaluation of income management in the Northern Territory reported that 'to the extent some people are motivated to circumvent the limitations of obtaining alcohol and tobacco with their funds, it appears they can do so, although the proportion doing so is relatively low'.⁴²

The researchers found evidence that some people were swapping food or groceries for cash, alcohol or tobacco, swapping their card for cash, alcohol or tobacco or using their card to get cash from taxi drivers.⁴³

Committee consideration

Senate Community Affairs Legislation Committee

The Bill has been referred to the Senate Community Affairs Legislation Committee for inquiry and report by 12 October 2015.⁴⁴

37. Department of Human Services (DHS), '[Registering to become a BasicsCard merchant](#)', DHS website, accessed 7 October 2015.

38. Department of Human Services (DHS), '[BasicsCard Merchant Terms and Conditions](#)', DHS website, accessed 7 October 2015.

39. Ibid.

40. J R Bray, M Gray, K Hand and I Katz, '[Evaluating new income management in the Northern Territory: final evaluation report](#)', Social Policy Research Centre, University of New South Wales, Sydney, September 2014, p. 303; Deloitte Access Economics, '[Place based income management – process and short term outcomes evaluation](#)', report prepared for DSS, Deloitte, August 2014, p. 91, both accessed 16 September 2015.

41. K Andrews (Minister for Social Services), '[Putting welfare dollars to work](#)', *The Australian*, 18 December 2014, p. 12, accessed 15 September 2015.

42. J R Bray et al, '[Evaluating new income management in the Northern Territory: final evaluation report](#)', op. cit., p. 165.

43. Ibid., pp. 135–136.

Senate Standing Committee for the Scrutiny of Bills

The Senate Standing Committee for the Scrutiny of Bills has no comment on this Bill.⁴⁵

Policy position of non-government parties

Australian Labor Party

The Australian Labor Party (Labor) has given its support to the Bill. However, Labor members of the House of Representatives have also argued that additional support services should be provided in the trial areas.⁴⁶ Further, there is some concern that ‘the trial does not allow participants to seek an exemption’. According to Warren Snowdon:

... if a person falls within a category identified as a compulsory participant, they will have their payments restricted. This happened under income management when it was broadly applied. This would inevitably mean that, regardless of your status and regardless of your history of being an employer or an employee, paying taxes, raising children and being a responsible member of the community, you will be impacted by this. You will automatically have your income debited through the debit system and have 80 per cent of your income quarantined. That is effectively what is going to happen ... I think that is a failing.⁴⁷

Australian Greens

The Australian Greens (Greens) oppose the Bill.⁴⁸ Greens spokesperson on Community Services, Senator Rachel Siewert, has urged:

... the Labor party to be genuine opposition when it comes to voting on legislation that will seek to rollout the healthy welfare card trials. It is incomprehensible that a paternalistic thought bubble by a billionaire could materialise with the support of the Labor party, rolling out as early as next year.

80% of someone’s income support forcibly quarantined to a card will make life remarkably harder for this already struggling group.⁴⁹

Position of major interest groups

Arguments for the trial

District Council of Ceduna

The District Council of Ceduna (the District Council), with whom the Commonwealth has entered into a Memorandum of Understanding in relation to the trial, strongly supports it.⁵⁰ According to a 2014 submission to the House of Representatives Standing Committee on Indigenous Affairs, the District Council has been grappling with problems of alcohol misuse ‘by indigenous people who do not normally reside in the Ceduna area and do not have permanent or long term accommodation in Ceduna’.⁵¹ These people travel from outlying communities including Yalata, Oak Valley and Koonibba as well as more distant communities such as the Anangu Pitjantjarra

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44. Details of the terms of reference, submissions to the Senate Community Affairs Legislation Committee and the final report (when published) are on the [inquiry homepage](#), accessed 16 September 2015.
 45. Senate Standing Committee for the Scrutiny of Bills, *Alert digest*, 9, 2015, The Senate, 9 September 2015, p. 20, accessed 11 September 2015.
 46. S Neumann, ‘[Second reading speech: Social Security Legislation Amendment \(Debit Card Trial\) Bill 2015](#)’, House of Representatives, *Debates*, (proof), 15 September 2015, p. 22, accessed 16 September 2015.
 47. W Snowdon, ‘[Second reading speech: Social Security Legislation Amendment \(Debit Card Trial\) Bill 2015](#)’, House of Representatives, *Debates*, (proof), 15 September 2015, p. 58, accessed 16 September 2015.
 48. R Siewert, [Greens: Labor must be true opposition and reject healthy welfare card](#), media release, 19 August 2015, accessed 15 September 2015.
 49. Ibid.
 50. ‘[Memorandum of understanding](#) between the District Council of Ceduna and key representatives of Indigenous communities across the Far West Region of South Australia (the communities) and the Commonwealth of Australia (the Commonwealth)’, published by A Henderson, ‘[Cashless welfare card: SA community of Ceduna says new regime will save lives](#)’, ABC News (online edition), 5 August 2015, accessed 2 October 2015.
 51. District Council of Ceduna, [Submission](#) to the House of Representatives Standing Committee on Indigenous Affairs, *The harmful use of alcohol in Aboriginal and Torres Strait Islander communities*, 2 April 2014, p. 1, accessed 10 September 2015.

Lands. According to the Council's submission, because many of these people sleep rough they have few expenses and are able to spend much of their income support payments on alcohol.

Ceduna already has a number of measures designed to address the problem. These include dry zones and an ID-lect alcohol management system. The ID-lect system is installed in all Ceduna, Thevenard and Smokey Bay liquor outlets. It limits customers to one cask of wine or fortified wine of not more than two litre capacity per day and enforces licensee and police barring orders on people identified as at risk.⁵²

However, in its submission on the Bill, the District Council noted that 'over the past years we have learned that the target group of drinkers is extremely clever at devising ways to avoid the intent of various restrictions on the availability of alcohol'.⁵³ The submission argues that reducing access to cash with a restricted debit card will make it harder for problem drinkers to avoid restrictions on alcohol:

The best option not yet tried for restricting the availability of drugs, gambling funds and alcohol is clearly the restriction of cash for those who are on benefits. It is clear that many sufferers of alcoholism are on welfare benefits partly because of their illness. Coupled with the steps already implemented we believe that the trial together with the appropriate support measures will help immensely.

The increased emphasis on benefits being available to purchase food and other necessities of life rather than other substances will help families greatly. It will improve the quality of family life, reduce the incidence of family violence and help to end a situation where some children go hungry among other things.⁵⁴

Since July 2014 Ceduna has had income management using the BasicsCard. The District Council's submission noted that voluntary income management has been successful but that many people who could benefit from the scheme are unlikely to volunteer.⁵⁵ According to data from the Department of Social Services (for 27 March 2015), around a third of the 61 people on income management in Ceduna are compulsory participants. The majority of these participants have been placed on income management through the child protection measure.⁵⁶

South Australian Liquor and Gambling Commission

The South Australian Liquor and Gambling Commissioner supports the debit card trial and recommends that:

... a coordinated review of the success of the trial in Ceduna should take place, involving the local Council, police, health and service providers, as well as members of the local Aboriginal Communities; and

an analysis of alcohol sales data before, during and after the trial could be undertaken, to determine the impact of the trial on alcohol sales within Ceduna.⁵⁷

Cape York Institute

In a submission to the Forrest Review, the Cape York Institute supported the Forrest Review's restricted debit card proposal and warned that the idea 'is at risk of being prematurely dismissed'. The submission also argued that the card should be part of a larger package of reforms:

What is missing from the Forrest recommendations focused on a Healthy Welfare Card is critical components of 'opt-in' and 'opportunity'. Reforms to the welfare system must link people to increased opportunity. In this way we can far more effectively mobilise people to change their lives, and those of generations to follow, for the better.

52. Ibid., p. 4.

53. District Council of Ceduna, [Submission](#) to Senate Standing Committee on Community Affairs, *Inquiry into the Social Services Legislation Amendment (Debit Card Trial) Bill 2015*, 18 September 2015, p. 2, accessed 7 October 2015.

54. Ibid.

55. Ibid.

56. Australian Government, '[Income Management Summary – 27 March 2015](#)', dataset, data.gov.au website, 15 June 2015, accessed 10 September 2015.

57. South Australian Liquor and Gambling Commissioner, [Submission](#) to Senate Standing Committee on Community Affairs, *Inquiry into the Social Services Legislation Amendment (Debit Card Trial) Bill 2015*, 18 September 2015, p. 3, accessed 1 October 2015.

... Tightening the taps of welfare to incentivise people to change, must be accompanied by a new Opportunity Staircase as an alternative pathway for individuals and families to climb out of disadvantage and into the advantages enjoyed by their fellow Australians. We must provide people with a clear fork in the road, and motivate people so they will commit to the hard work of overcoming passive welfare.⁵⁸

Arguments against the trial

Community welfare sector and Aboriginal and Torres Strait Islander peak organisations

In December 2014, 37 community welfare sector and Aboriginal and Torres Strait Islander peak organisations issued a joint statement calling on the Commonwealth Government not to proceed with the Forrest Review's proposal for a restricted debit card.⁵⁹ These organisations are listed in the table at **Annexure 1** to this Bills Digest.

Australian Council of Social Service

In a submission to the Committee the Australian Council of Social Service (ACOSS) argues the proposed restricted debit card, like the existing income management scheme, is unlikely to solve drug and alcohol problems:

Imposing income management according to type of social security payment misunderstands the relationship between income support and drug and alcohol problems, and attempts a technological fix for what is a complex social issue.⁶⁰

ACOSS argues that a trial of the card should only proceed where there is 'strong and broad community support and where the policy is targeted narrowly and accompanied by other interventions and supports.'⁶¹

National Welfare Rights Network

The National Welfare Rights Network (NWRN) argues that the Bill should be rejected in its entirety. If the measure does go ahead NWRN has a number of concerns including:

- the low proportion of payments available as cash
- the lack of any provision for exemptions and
- the inability of income support recipients to seek a review of decisions by community bodies.⁶²

FamilyCare

A provider of child and family services based in Shepparton, FamilyCare has previously commissioned research on place-based income management.⁶³ FamilyCare argues that the proposed restricted debit card has some advantages over the BasicsCard but that it should be voluntary:

The Healthy Welfare Card proposal addresses at least one significant flaw in the current design of Income Management, by recommending a link to the existing EFT framework. This is an issue FamilyCare has raised on a number of occasions both before and since the Shepparton trial commenced. Building a parallel, but less effective system, has no doubt contributed to the extraordinary expense of Income Management. As already noted and referred to in the Review Report, participants report problems with the stigma associated with using a Basics Card.

58. Cape York Institute, [Response](#) to PM&C, *Indigenous jobs and training review (Forrest Review)*, September 2014, p. 7, accessed 16 September 2015.

59. ACOSS, '[Groups call for Government to reject Forrest Review Healthy Welfare Card; pursue decent welfare reform](#)', ACOSS media release, 12 December 2014, accessed 7 October 2015.

60. ACOSS, [Submission](#) to Senate Standing Committee on Community Affairs, *Inquiry into the Social Services Legislation Amendment (Debit Card Trial) Bill 2015*, 18 September 2015, p. 2, accessed 1 October 2015.

61. *Ibid.*, p. 3.

62. National Welfare Rights Network, [Submission](#) to Senate Standing Committee on Community Affairs, *Inquiry into the Social Services Legislation Amendment (Debit Card Trial) Bill 2015*, 25 September 2015, pp. 17–18, accessed 1 October 2015.

63. P Mendes, J Waugh and C Flynn, [The place-based income management trial in Shepparton: a best practice model for evaluation](#), Monash University, Melbourne, July 2013, accessed 1 October 2015.

FamilyCare rejects however the suggestion that a Healthy Welfare Card, or any other cashless welfare delivery system that seeks to reduce consumer choice and agency, should be mandatory.⁶⁴

Other community groups

A number of other community groups have raised concerns about the proposal to introduce a restricted debit card. These include Carers Australia and the Consumer Action Law Centre.

Carers Australia argued that there are many legitimate reasons income support recipients may need access to cash. These include buying cheap goods at markets, paying a local handyman and paying for school excursions.⁶⁵

Consumer Action warned of the risks of inappropriate merchant behaviour. This could include, for example, retailers selling goods to an income support recipient and then immediately buying the goods back for cash at a lower price.⁶⁶

Australian Bankers' Association

In the past the Australian Bankers' Association (ABA) has opposed the Forrest Review's proposal for a restricted debit card. The ABA has also argued that changes to the income support system should be made as part of a broader package of reforms. In its submission to the Forrest Review, the ABA stated:

The ABA does not support using the banking and payment system for the implementation of the Healthy Welfare Card or an extension of the income management policy as a mandatory approach for all recipients of social security payments and assistance. There are a number of technological and practical considerations associated with the Healthy Welfare Card, which undermines the implementation of a workable, efficient and effective scheme.

Furthermore, the ABA believes that any changes to the social welfare system should be conducted within an examination and context of the Review of Australia's Welfare System (known as the "McClure Review"). This would ensure that the policy objectives, processes and outcomes would be embedded in a comprehensive and integrated system and the interests of welfare recipients are protected.⁶⁷

The ABA highlighted a number of technical difficulties involved in using the payments system to block purchases of goods such as alcohol. Its submission explained that it was not feasible to create a debit card that blocked particular goods and services. Instead, the best the current system could do was block transactions at particular categories of merchant.⁶⁸

In a submission to the inquiry into the Bill, the ABA acknowledged that the Government had responded to its concerns, stating:

The banking industry is pleased the Federal Government has taken on board our concerns regarding the technical and practical feasibility of the Healthy Welfare Card as originally contemplated and has decided to conduct a 12 month pilot in a different and less complicated form.⁶⁹

Financial implications

The Government has not published information on the funding associated with this Bill because it has yet to complete negotiations with potential commercial providers.⁷⁰

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64. FamilyCare, [Submission](#) to PM&C, *Indigenous jobs and training review (Forrest Review)*, 19 September 2014, accessed 16 September 2015.
 65. Carers Australia, [Submission](#) to PM&C, *Indigenous jobs and training review (Forrest Review)*, September 2014, accessed 16 September 2015.
 66. Consumer Action Law Centre, [Submission](#) to PM&C, *Indigenous jobs and training review (Forrest Review)*, 18 September 2014, p. 2, accessed 16 September 2015.
 67. Australian Bankers' Association, [Submission](#) to PM&C, *Indigenous jobs and training review (Forrest Review)*, 19 September 2014, pp. 3–4, accessed 16 September 2015.
 68. *Ibid.*, pp. 4–5.
 69. Australian Bankers' Association, [Submission](#) to Senate Standing Committee on Community Affairs, *Inquiry into the Social Services Legislation Amendment (Debit Card Trial) Bill 2015*, 22 September 2015, p. 1, accessed 1 October 2015.
 70. [Explanatory Memorandum](#), Social Security Legislation Amendment (Debit Card Trial) Bill 2015, p. 1.

Compatibility with Human Rights

Government statement of compatibility

As required under Part 3 of the [Human Rights \(Parliamentary Scrutiny\) Act 2011](#) (Cth), the Government has assessed the Bill's compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.⁷¹

The Government's Statement of Compatibility with Human Rights addressed the right to social security, the right to an adequate standard of living, the right to self-determination, the rights of equality and non-discrimination and the rights of children. It did not address the right to a private life and rights to privacy.

Parliamentary Joint Committee on Human Rights

While the Government asserts that the Bill is compatible with human rights, the Parliamentary Joint Committee on Human Rights (Human Rights Committee) noted that the measures proposed in the Bill involve limitations on a number of human rights and that the Government has not shown how these limitations are rationally connected to the Bill's objective.⁷²

Limitations on human rights

According to the Human Rights Committee, restrictions on income support payments engage and limit the right to a private life and rights to privacy. The Committee also raised questions about the measure's effect on the right to social security and the right to equality and non-discrimination.

Lack of evidence that the measure will be effective

The Human Rights Committee acknowledged that the objective of the Bill is likely to be legitimate for the purposes of human rights law but noted that the Government has not demonstrated that the measure is rationally connected to that objective. The Human Rights Committee stated:

As the committee has previously noted in relation to income management, the government has not clearly demonstrated that the measure has had the beneficial effects that were hoped for. Indeed, the most recent government-commissioned evaluation of income management in the Northern Territory has concluded that income management has been of mixed success. In particular, it found no evidence income management has achieved its intended outcomes. Rather than promoting independence and building skills and capabilities, it appears to have "encouraged increasing dependence upon the welfare system", and there is no evidence to indicate its effectiveness at the community level or that it facilitates long-term behaviour change.⁷³

An evaluation of place-based income management may provide more evidence on the effectiveness of income management. The Department of Social Services has commissioned an evaluation of Place-Based Income Management from Deloitte Access Economics. According to the Department's website a third report from the evaluation was due to the Department in January 2015 and a final report due in May 2015.⁷⁴ Neither report has been publicly released.

Given that one of the objectives of the Bill is to enable a trial to *determine* the effectiveness of reducing access to income support in the form of cash, it is unlikely that the Government would be able to provide convincing evidence that a restricted debit card will reduce harms related to alcohol, gambling and illegal drugs. There would be no need for the Government to conduct a trial if it was already able to show that the measure was effective.

Key provisions—Part 1

Part 1 of the Bill amends the *Social Security (Administration) Act* to insert **proposed part 3D—Trial of cashless welfare payments**.

71. The Statement of Compatibility with Human Rights can be found at page 11 of the [Explanatory Memorandum](#) to the Bill.

72. Parliamentary Joint Committee on Human Rights, [Twenty-seventh report of the 44th Parliament](#), 8 September 2015, pp. 20–29, accessed 9 September 2015.

73. *Ibid.*, p. 23.

74. DSS, '[Income Management Evaluations](#)', DSS website, accessed 9 September 2015.

Purpose of the trial

The Forrest Review recommended that the Australian Government roll out a restricted debit card across Australia.⁷⁵

The Bill, however, provides only for a trial of restricted debit cards at this stage. **Proposed section 124PC** of the *Social Security (Administration) Act* specifies that the object of the trial is to determine whether reducing the amount of income support that is available for spending on alcohol, gambling and illegal drugs will reduce violence and harm in trial areas and whether these measures are more effective when community bodies are involved. In addition, it aims to encourage socially responsible behaviour.⁷⁶

It is important to note that the Bill's object is to *determine* whether cashless welfare arrangements reduce violence and harm in trial areas rather than actually reducing violence and harm. One way the trial could achieve this object is by determining that the arrangements are not effective.

Use of legislative instruments

While the Bill sets out a basic framework for the trials, it provides that the Minister and Secretary will determine much of the detail by legislative instrument. These details are:

- trial area—the Bill limits the number of trial areas to three.⁷⁷ The Minister may specify an area is a **trial area** by legislative instrument⁷⁸
- who is subject to cashless welfare arrangements—the Minister may, by legislative instrument, determine whether a **trigger payment**⁷⁹ applies to a class of person in relation to a trial area. In the alternative the Minister may determine, by legislative instrument, whether a **trigger payment** applies in a particular trial area⁸⁰
- limits on voluntary participation—the Minister may, by legislative instrument, determine that a particular 'class of person' may not be a voluntary participant in the cashless welfare arrangements⁸¹
- amount of payments restricted—the Minister may, by legislative instrument, vary the percentage of participants' payments that are restricted. The legislative instrument may operate to apply different percentages to trial areas and to particular classes of people within a trial area.⁸² Eighty percent is the default percentage that will be restricted.⁸³
- community bodies—by legislative instrument, the Minister may authorise a body, whether incorporated or unincorporated as a **community body**.⁸⁴ The major role of a **community body** is to make case by case decisions about the percentage of person's payment that is restricted and, having done so, give the Secretary a written direction to vary the percentage amounts accordingly⁸⁵
- welfare restricted bank accounts—the Secretary may, by legislative instrument, determine the kind of bank account a trial participant or voluntary participant must have in order to receive the restricted part of their income support payments⁸⁶ and

75. A Forrest, *The Forrest Review: creating parity*, op. cit., p. 107.

76. *Social Security (Administration) Act 1999*, proposed paragraph 124PC(d).

77. *Social Security (Administration) Act*, proposed subsection 124PF(2).

78. *Social Security (Administration) Act*, proposed subsection 124PD(2).

79. The term trigger payment is defined in proposed section 124PD as (a) a social security benefit (other than a mature age allowance under Part 2.12B of the 1991 Act); or (b) a social security pension being a carer payment; a bereavement allowance, so long as the recipient has not yet reached pension age; a disability support pension; a pension PP (single); a widow B pension; a wife pension; or (c) a payment under the scheme known as the ABSTUDY scheme that includes an amount identified as living allowance. The exclusion of mature age allowance is unnecessary as this payment has ceased.

80. *Social Security (Administration) Act*, proposed subsection 124PG(1).

81. *Social Security (Administration) Act*, proposed section 124PI.

82. *Social Security (Administration) Act*, proposed subsections 124PJ(3) and (4).

83. *Explanatory Memorandum*, Social Security Legislation Amendment (Debit Card Trial) Bill 2015, p. 2.

84. *Social Security (Administration) Act*, proposed section 124PE.

85. *Social Security (Administration) Act*, proposed subsection 124PK(1).

86. *Social Security (Administration) Act*, proposed section 124PP.

- kinds of businesses blocked by the restricted debit card—the Secretary may, by legislative instrument, declare the types of businesses whose transactions using a restricted debit card may be blocked. The legislative instrument may do this by referring to merchant category codes or codes that identify particular businesses or point of sale terminals.⁸⁷

How the trial will work

The trial is time limited

The trial will begin on 1 February 2016 and end on 30 June 2018.⁸⁸ According to the Explanatory Memorandum, ‘the trial will only take place for 12 months in each location.’⁸⁹

Trial locations

The Government will run the trial in up to three locations.⁹⁰ As already stated, the Government has announced that first site will be Ceduna in South Australia.⁹¹

According to the Explanatory Memorandum, the Government will select locations where there is a high level of welfare dependence and where gambling, alcohol abuse and/or drug abuse are causing an unacceptable amount of harm within the community.⁹²

Compulsory participation

The Bill refers to compulsory participants as **trial participants**. For each **trial area** the Minister determines the category of **trial participant** by legislative instrument. The Bill allows the Minister a great deal of flexibility about who the measure applies to in each trial site.

For each **trial area** the Minister can determine the category of **trial participant** in two ways:

- By listing the **trigger payments** that apply in that **trial area**.⁹³ In this case everyone whose usual place of residence was, is, or becomes within the **trial area** will be included as a **trial participant** if they receive one of the **trigger payments**.
- By identifying a ‘class of person’ in addition to listing the **trigger payments**.⁹⁴ In this case the cashless welfare arrangements will *not* necessarily apply to everyone in a **trial area** who receives one of the listed **trigger payments**. The arrangements will only apply to a subset of people on each of the **trigger payments**.

It is not clear how the Government intends to limit the category of **trial participant** by using the flexibility to identify a ‘class of person’ in a legislative instrument.

In the existing income management scheme, some individuals are able to apply for an exemption. The Bill does not contain any provision for exemptions from participation. However, a **community body** may vary the percentage of a trial participant’s payment that is restricted.

If a **trial participant** leaves the trial area after the commencement of the trial, they will remain a **trial participant**—unless they cease to be a member of the relevant class of persons or cease to receive the trigger payment.⁹⁵

Voluntary participation

Individuals who are not compulsory participants can volunteer to participate in the trial.⁹⁶ They must be receiving a **restrictable payment** and their usual place of residence must be within a trial area.⁹⁷

87. *Social Security (Administration) Act*, proposed subsection 124PQ(2).

88. *Social Security (Administration) Act*, proposed subsection 124PF(1).

89. [Explanatory Memorandum](#), Social Security Legislation Amendment (Debit Card Trial) Bill 2015, p. 4.

90. *Social Security (Administration) Act*, proposed subsection 124PF(2).

91. DSS, ‘[Cashless debit card trial – Ceduna](#)’, DSS website, 31 August 2015, accessed 8 September 2015.

92. [Explanatory Memorandum](#), Social Security Legislation Amendment (Debit Card Trial) Bill 2015, p. 2.

93. *Social Security (Administration) Act*, proposed paragraph 124PG(2)(b).

94. *Social Security (Administration) Act*, proposed paragraph 124PG(2)(a).

95. [Explanatory Memorandum](#), Social Security Legislation Amendment (Debit Card Trial) Bill 2015, op. cit., p. 4.

96. *Social Security (Administration) Act*, proposed section 124PH(1).

97. *Social Security (Administration) Act*, proposed section 124PH.

As stated above, the Minister may exclude a class of people from voluntary participation by legislative instrument. In addition, the Secretary may determine that a particular voluntary participant is not to be subject to the cashless welfare arrangements which are set out in the Bill.⁹⁸

Which payments will be restricted?

The Bill introduces the term **restrictable payment**.⁹⁹ **Proposed section 124PD** contains an exhaustive list of payments to which the definition applies.

The list includes most Centrelink payments. The age pension is only restrictable for voluntary participants.¹⁰⁰ Crisis payment and remote area allowance are not listed as **restrictable payments**.

Proportion that will be restricted

Under the Bill 80 per cent of instalments of **restrictable payments** will be restricted. The remaining 20 per cent of the payment is referred to as the **unrestricted portion**.¹⁰¹ In addition, 100 per cent of payments that are not paid in instalments (for example, lump sums and advance payments) are restricted.¹⁰²

However, there are two ways these percentages can be changed:

- **firstly**, the Minister may, by legislative instrument, vary the percentages for a particular trial area, or for a particular class of person in a trial area or¹⁰³
- **secondly**, with the agreement of a compulsory participant or trial participant, a community body may give the Secretary of the Department of Social Services a written direction to vary the percentage of a person's payment that is restricted to between 50 and 80 per cent and the payment that is unrestricted to between 20 and 50 per cent.¹⁰⁴ In that case, the Secretary must comply with the direction.

Manner of restricting payments

Under the trial (with some exceptions as above) 80 percent of income support payments to a trial participant will be made into a welfare restricted bank account.¹⁰⁵ Recipients will be able to make purchases with these funds using a restricted debit card.

Under the income management scheme which is established by Part 3B of the *Social Security (Administration) Act*, merchants have to be approved to accept payments. Merchants who accept BasicsCard agree not to allow purchases of excluded goods such as tobacco and alcoholic drinks. The process usually requires retail staff to manually identify excluded goods at the point of sale.

Restricted debit cards such as commercial purchasing cards work in a different way. Merchants do not need to seek approval to accept the card and the restrictions are applied automatically by the system rather than manually by the merchant. The system declines all transactions at merchants with a blocked MCC and does not allow cash out at any ATM or point of sale terminal.

However, in response to concerns by merchants who want to accept the card but would be blocked because they sell alcohol or gambling products, the Department of Social Services is considering a more complex arrangement. In advice to merchants about the Ceduna trial the Department says:

If your business sells alcohol and/or gambling products as well as other goods, you may still be able to enter into a contract to accept the card. This will involve agreeing to ensure your customers can't use the card to buy alcohol or gambling products.¹⁰⁶

98. *Social Security (Administration) Act*, **proposed subsection 124PH(4)**.

99. **Subparagraph(a)(xv)** of the definition of 'restrictable payment' at **proposed subsection 124PD(1)** of the *Social Security (Administration) Act* provides that mature age allowance under Part 2.12B of the [Social Security Act 1991](#) is not a **restrictable payment**. This would appear to be unnecessary as the payment has ceased.

100. *Social Security (Administration) Act*, **subparagraph (b)(ii)** of the definition of **restrictable payment** at **proposed subsection 124PD(1)**.

101. *Social Security (Administration) Act*, **proposed subsection 124PJ(1)**.

102. *Social Security (Administration) Act*, **proposed subsection 124PJ(2)**.

103. *Social Security (Administration) Act*, **proposed subsection 124PJ(3)**.

104. *Social Security (Administration) Act*, **proposed subsection 124PK(3)**.

105. *Social Security (Administration) Act*, **proposed subsection 124PL(2)**.

106. DSS, '[Cashless debit card trial – Ceduna merchant information](#)', factsheet, DSS, 2015, accessed 11 September 2015.

This arrangement would mean merchants would need to identify customers using a restricted debit card and, possibly, process their transactions at a separate terminal.

It is not possible for the payments system to automatically reject transactions for the purchase of particular categories of good or service. The system is only able to block particular categories of merchant or particular terminals.

Example

Under the trial, if you are on Newstart, single with three children and live in your own home, you will have over \$145 cash per week, with the remainder of your payment on the card. On a parenting payment, single with four children and living in a private rental, you will receive over \$220 cash per week, with the remainder of the payment on your card. On the DSP, the disability support pension, partnered with no children, you will receive over \$85 per week, with the remainder of your payment on the card. If someone is single and on Newstart, the payment in cash is \$60 per week, with the remainder of the payment on the card. What happens is that the card will work at every store except those store categories which have been switched off.

Source: S Henderson, '[Second reading speech: Social Security Legislation Amendment \(Debit Card Trial\) Bill 2015](#)', House of Representatives, *Debates*, (proof), 15 September 2015, p. 56, accessed 17 September 2015.

Including transient populations

Some communities have transient populations from surrounding communities that will need to be included in the legislative instrument's definition of the **trial area**. For example the District Council of Ceduna has stated that some of the income support recipients most likely to benefit from the restricted debit card travel to Ceduna from communities such as Yalata and Oak Valley. Yalata is around 200 kilometres from Ceduna and Oak Valley over 500 kilometres.

The role of community bodies

With the agreement of a trial participant (or voluntary participant) a community body can vary the percentage of that person's payment that is restricted by giving a direction to the Secretary. The body can vary the percentage between 50 to 80 per cent (**proposed section 124PK**).

The Minister is able to authorise a community body by legislative instrument. The Bill does not place any restrictions on how the Minister does this. According to the Explanatory Memorandum a community body 'must provide, or intend to provide, services relating to the care, protection, welfare or safety of adults, children or families.'¹⁰⁷

Key issues—Part 1

Racial discrimination

The Bill allows the Minister to identify a particular class of persons as **trial participants**, if they reside in the trial area and receive a trigger payment. In Ceduna most of the community's concern about alcohol abuse is focused on a small number of Indigenous people who come to town from outlying communities. It is possible that the class of person set out in the legislative instrument could be defined in a way that, in practice, targets Indigenous people.

The Human Rights Committee raised the issue of discrimination on the basis of race stating that it:

... appears likely that the measures may disproportionately impact on Indigenous persons, and as such may be indirectly discriminatory unless this disproportionate effect is demonstrated to be justifiable. This has not been explored in the statement of compatibility.¹⁰⁸

The Bill does not mandate an evaluation

Because the Bill's major purpose is to determine the effectiveness of a new approach to paying income support, its success depends on evaluation. However the Bill does not require the Minister to conduct an evaluation or to make the results of an evaluation available to the Parliament.

107. [Explanatory Memorandum](#), Social Security Legislation Amendment (Debit Card Trial) Bill 2015, p. 3.

108. Parliamentary Joint Committee on Human Rights, *op. cit.*, p. 27.

Speaking in relation to the Bill in the House of Representatives, Labor member, Clare O'Neil, noting that the Bill sets up a trial expressed concern that:

... [the] critical missing piece of the puzzle here is how this trial will be evaluated. Deputy Speaker, you and I both know that there are different techniques you can use to evaluate trials and, depending on what outcome you want to see, you can design a process around that. That is not what we want to see. This is a serious policy proposal and we want to understand exactly how it will be evaluated and how the process will fall out as the trial continues.¹⁰⁹

Loss of spending power and inconvenience

Paying recipients using a restricted debit card is likely to reduce their spending power. People on income support may maximise their spending power by taking advantage of informal arrangements that do not involve businesses. These arrangements may include buying second hand goods through the local classifieds or splitting housing expenses in a share house. These arrangements typically rely on cash. Cash allows people to easily borrow and pay back small amounts of money, give money to a friend or family member who can pick up groceries when they are out shopping and so on. While some financial institutions allow customers to set up person-to-person cashless payments, this facility is unlikely to be available on accounts linked to the restricted debit card.

Another problem is that some merchants impose minimum purchase amounts on card transactions. This will make it difficult for people to make regular small purchases of items such as a newspaper, loaf of bread or carton of milk once they have exhausted the cash portion of their income support payment.

Risks associated with limiting access to cash

For people with addictions, there are risks associated with limiting access to cash. In a discussion of money management interventions for people with substance abuse disorders US researcher Elizabeth Carpenter-Song writes:

It is ... possible that the absence of cash may, somewhat paradoxically, increase other risky behaviors as individuals seek out substances through informal networks of exchange. Individuals may render themselves vulnerable to assaults when drug dealers extend "credit" that goes unpaid. Some people may steal to gain access to resources. Women, in particular, may be at risk for negotiating sexual favors for drugs.¹¹⁰

Cutting off access to cash may increase the incentive for some income support recipients to become involved with networks of people who engage in criminal activities such as shoplifting and drug dealing.

Need for an integrated approach

Limiting access to cash and blocking transactions at businesses that sell alcohol, may not be enough to prevent people with alcohol and substance abuse problems from obtaining alcohol or drugs.

In Ceduna the Government has signed a Memorandum of Understanding (MOU) with the District of Ceduna and representatives of Indigenous Communities in the region. This MOU refers to a community support package and outlines some of the areas such a package may cover.¹¹¹

As well as additional services such as alcohol and substance abuse treatment, there may also be a need for enforcement measures to ensure that merchants do not help participants circumvent the restrictions on the card. The Forrest Review recommended:

introducing penalties for retailers that accept the welfare card for payment of prohibited goods or to issue cash—a penalty for on-the-spot fines of \$2,000 for every \$100 of value for business dealings prohibited by the card.¹¹²

Other than blocking them from accepting payments in future, it is not clear what powers the Commonwealth currently has to take action against merchants.

109. C O'Neil, '[Second reading speech: Social Security Legislation Amendment \(Debit Card Trial\) Bill 2015](#)', House of Representatives, *Debates*, (proof), 15 September 2015, p. 64, accessed 17 September 2015.

110. E Carpenter-Song, '[Anthropological perspectives on money management: considerations for the design and implementation of interventions for substance abuse](#)', *The American Journal of Drug and Alcohol Abuse*, 38(1), 2012, p. 53, EBSCOhost database, accessed 15 September 2015.

111. [Memorandum of understanding](#), op. cit.

112. A Forrest, [The Forrest Review: creating parity](#), op. cit., p. 108.

Privacy concerns

Under **proposed section 124PN** of the *Social Security (Administration) Act*, the Secretary may obtain information about trial participants from the financial institution that operates welfare restricted accounts and once it has been received, give information about the trial participant to an officer or employee of the financial institution for the purposes of the performance of the person's duties and the exercise of the person's powers.

The Secretary may also provide information about trial participants to members, officers or employees of a community body.

Key issues and provisions—Part 2

The amendments in **items 2 and 4–10** in Part 2 of Schedule 1 to the Bill are consequential amendments to the *New Tax System (Family Assistance) (Administration) Act* and the *Social Security Act*.

Formalising Centrepay arrangements

Operation of the Social Security (Administration) Act

Currently, **Division 4 of Part 3** of the *Social Security (Administration) Act* sets out the rules for the payment of a social security payment. The rules operate as follows:

- a social security periodic payment is to be paid in arrears and by instalments relating to such periods (not exceeding 14 days) as the Secretary determines¹¹³
- the amount that is to be paid to a person in relation to a period is the total of the amounts of the social security periodic payment (calculated by reference to the daily rate of payment applicable to each day) payable to the person for days in that period on which the social security periodic payment was payable to the person¹¹⁴
- instalments of a person's social security periodic payment are to be paid **to that person**¹¹⁵ and
- an amount that is to be paid to a person is to be paid to the credit of a bank account nominated and **maintained by the person**.¹¹⁶

Division 5 of Part 3 of the *Social Security (Administration) Act* provides explicit protections for social security payments by specifying that a social security payment is **absolutely inalienable**, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise¹¹⁷—subject to:

- sections 61¹¹⁸ and 238¹¹⁹ of the *Social Security (Administration) Act*
- Part 3B of the *Social Security (Administration) Act*¹²⁰ and
- sections 1231¹²¹ and 1234A of the *Social Security Act 1991*.¹²²

Under the principle of inalienability which is set out in section 60 of the *Social Security (Administration) Act* a person who has qualified for a social security payment and is eligible to receive that payment during an instalment period has a legal right to the payment and it cannot be transferred to another person.

113. *Social Security (Administration) Act*, subsection 43(1).

114. *Social Security (Administration) Act*, subsection 43(3).

115. *Social Security (Administration) Act*, subsection 44(1). The requirement that payments are paid to a person is subject to Part 3A of the Act, which sets out the rules for paying to a nominee. See DHS, '[Someone to deal with us on your behalf](#)', DHS website, accessed 9 September 2015.

116. *Social Security (Administration) Act*, subsections 55(1) and (2). Note that subsection 55(4) authorises the Secretary to direct that the whole or a part of the amount is paid to a person in a different way. If the Secretary gives a direction, the amount is paid in accordance with the direction.

117. *Social Security (Administration) Act*, section 60.

118. About deducting amounts and paying them to the Commissioner of Taxation.

119. About deducting amounts and paying them to the Child Support Registrar.

120. About the income management regime.

121. About the recovery of social security debts by deduction from a person's pension, benefit or allowance.

122. About deductions by consent from the social security payment of a person who is not a debtor.

An exception to the rule on inalienability lies in **Part 3A** of the *Social Security (Administration) Act*, which provides for payment of instalments of social security periodic payments to a nominee.¹²³ The rationale for the introduction of Part 3A in 2002 has been explained as follows:

In certain situations Social Security payments are paid to someone else on behalf of the person entitled to the payment. This occurs in cases where:

- the entitled person is incapable of managing their own financial affairs
- another person has a power of attorney for them
- they are employed by a Supported Employment Agency (formerly called a sheltered workshop), or
- they are entitled to Youth Allowance as an under 18 year old dependent ...

Often nominees are family members acting for elderly, disabled or dependent relatives. In other cases they are corporate bodies such as Supported Employment Agencies, Nursing Homes or drug and alcohol rehabilitation facilities. Sometimes they are people with less direct connection to the entitled person such as a manager of a boarding house. In all cases where incapacity to manage their own affairs is the reason for appointing a nominee, sufficient evidence of the need for a nominee is required. A formal guardianship arrangement may be in place or medical or social worker reports are available.

At present nominee arrangements where payment is made to a nominee are covered by the legislation, but correspondence nominees are not. [Part 3A] ... would provide a more comprehensive set of provisions that distinguish between payment and correspondence nominees set out the duties of nominees and include present administrative practices.¹²⁴

About Centrepay

Announcing the Centrepay scheme in May 1999, Minister for Community Services, Warren Truss, stated:

Centrepay has been developed to give Centrelink customers an extended service that allows them to request deductions for ongoing expenses such as rent and electricity. Customers can have money deducted from their Social Security payments and forwarded direct to their landlord or utility company.

This new service will benefit customers and companies registered with the program. It will give Centrelink customers greater choice to help them manage their finances and avoid debt situations.¹²⁵

Whilst Centrepay was originally directed towards the payment of rent and electricity, other payments were added over time, such as payment of fines in order to prevent costly defaults,¹²⁶ phone bills,¹²⁷ air fares,¹²⁸ funeral funds¹²⁹ and house insurance premiums.¹³⁰

How Centrepay works

Centrepay is a direct deduction facility which is only available to people who receive a regular Centrelink payment. It is provided 'fee free' to its customers. Service providers are charged a service fee which should not be passed on to the customer. Service providers must sign a comprehensive contract to mitigate the risks to the Department. The types of deductions are restricted to approved service reasons which are a mix of essential services and regular, ongoing, household living expenses.

123. *Social Security (Administration) Act*, section 123F.

124. D Daniels, [Family and Community Services Legislation Amendment \(Budget Initiatives and Other Measures\) Bill 2002](#), Bills Digest 47, 2002–03, Parliamentary Library, Canberra, 2002, pp. 1–2, accessed 8 October 2015.

125. W Truss (Minister for Community Services), [Centrepay—easy bill paying for Centrelink customers](#), media release, 7 May 1999, accessed 8 September 2015.

126. L Anthony (Minister for Community Services), [Centrelink option for fine defaulters](#), media release, 27 February 2001, accessed 8 September 2015.

127. S Kearney, [Phone bill payment scheme for pensioners](#), *Sunday Telegraph*, 21 September 2003, p. 29, accessed 8 September 2015.

128. C Smith, [One way air ticket home](#), *Northern Territory News*, 21 April 2003, p. 1, accessed 8 September 2015.

129. J Gibson, [Funeral fund push signs up aborigines](#), *Sydney Morning Herald*, 6 October 2007, p. 3, accessed 8 September 2015.

130. N Bitá and J Owens, [Insurers on notice over flood definitions](#), *The Australian*, 6 April 2011, p. 7, accessed 8 September 2015.

According to the Centrepay Policy and Terms, ‘through Centrepay, a Customer can authorise the department to deduct regular amounts from their welfare payments to pay their bills to a Business’.¹³¹

Unfortunately, the Centrepay Policy and Terms is devoid of any reference to the legal basis on which that occurs. It may be—though this is not explicit—that Centrepay relies on the terms of Part 3A of the *Social Security (Administration) Act*.

Centrepay and inalienability

The Guide to Social Security Law states that:

The SS(Admin)Act states that, subject to express legislative exemptions, social security payments are absolutely inalienable. This means that they cannot be sold, transferred to a third party, legally charged or be subject to bankruptcy proceedings. This gives legal force to the intention that payments are designed to provide income support. A recipient's right to receive a payment or benefit CANNOT be transferred to another person either by a voluntary act or by the operation of the law.

Although, under the Act, the Secretary may direct that a payment be made to another party, this would normally only occur with the consent of the recipient. This does not operate as alienation since the third party payment is made on behalf of the recipient. If the recipient does not have the capacity to consent, the Secretary may direct payment to a third party in the best interests of the recipient.¹³²

It is difficult to reconcile the terms of Part 3 of the *Social Security (Administration) Act* and the stated intention of the nominee provisions in Part 3A of that Act, with the operations of Centrepay. On the one hand the payments to third parties by Centrepay are transfers of the payment or benefit of one person to another person by voluntary act. This is one of the things that the Guide to Social Security Law states emphatically cannot be done. On the other hand, the Guide to Social Security law indicates that a payment to a third party which is made at the request of the recipient ‘does not operate as alienation’.

Of concern is the Centrepay Policy and Terms which states that ‘where the full expected amount is not available, a Deduction of the available amount will be made’. Presumably, if a social security recipient has a number of deduction authorities in place it is possible that they will amount to the total of the instalment in any instalment period. This would seem to be the very reason for the protection which is provided by inalienability.

Relevant amendment

Item 12 of Part 2 of the Bill inserts **proposed section 61A** into the *Social Security (Administration) Act* to authorise the Secretary to make deductions from a social security payment and to pay the relevant amounts to a business or organisation nominated by the person. This will provide a stronger legal basis for Centrepay’s activities than reliance on Part 3A may have.

Other amendments

Item 13 of Part 2 of the Bill inserts **proposed section 70B** into the *Social Security (Administration) Act* to empower the Secretary to give a notice to a trial participant or a voluntary participant of the debit card trial requiring the person to inform the Department if a specified event or change of circumstances occurs or is likely to occur; and/or to provide a statement about a matter that might affect the operation of the debit card trial in relation to the person.

131. Centrepay Policy and Terms, p. 6, contained in DHS, [Centrepay: resources](#), DHS website, accessed 8 September 2015.

132. DSS, [8.4.3 Protection of payment](#), *Guide to social security law*, version 1.215, released 21 September 2015, DSS website, last updated 5 March 2007, accessed 8 October 2015.

Annexure 1

Signatories to joint statement calling on Government to reject Forrester Review Healthy Welfare Card

| | |
|---|--|
| Australian Council of Social Service (ACOSS) | National Aboriginal Community Controlled Health Organisation |
| ACT Council of Social Service | National Association of Community Legal Centres |
| Adult Learning Australia | National Congress of Australia's First Peoples |
| Anwernekenhe National HIV Alliance | National Council of Single Mothers and Their Children |
| Australian Association of Social Workers | National Welfare Rights Network |
| Australian Catholic Social Justice Council | Northern Territory Council of Social Service |
| Australian Community Children's Services | Public Health Association Australia |
| Australian Federation of AIDS Organisations | Queensland Council of Social Service |
| Baptist Care Australia | Relationships Australia |
| Brotherhood of St Laurence | Secretariat of National Aboriginal and Islander Child Care |
| Children with Disability Australia | Social Determinants of Health Alliance |
| Consumer Health Forum of Australia | South Australian Council of Social Service |
| Council of Social Service of New South Wales | St Vincent de Paul Society National Council of Australia |
| Family and Relationship Services Australia | Tasmanian Council of Social Service |
| Financial Counselling Australia | The Benevolent Society |
| Homelessness Australia | Victorian Council of Social Service |
| Jobs Australia | Vision Australia |
| Mission Australia | Western Australian Council of Social Service |
| National Aboriginal and Torres Strait Islander Legal Services | |

Source: Joint statement, [‘Groups call for Government to reject Forrester Review Healthy Welfare Card; pursue decent welfare reform’](#), ACOSS media release, 12 December 2014.

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