

23 October 2020

Senator Wendy Askew
Chair
Legislation Committee
Senate Standing Committee on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

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

Dear Chair

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

People with Disability Australia (PWDA) welcomes the inquiry into the *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020*.

PWDA is leading disability rights, advocacy and representative organisation of and for all people with disability. We are the only national, cross-disability organisation and we represent the interest of people with all kinds of disability. We are a non-profit and non-government organisation.

PWDA has long raised concerns about the Cashless Debit Card with this Committee. In our submission to this Committee's inquiry into the *Social Services Legislation Amendment (Cashless Debit Card) Bill 2017*, we recommended that the Committee reject that Bill, and for the Committee to scrutinise compulsory income management against Australia's human rights obligations.¹

¹ Senate Community Affairs Legislation Committee, Social Services Legislation Amendment (Cashless Debit Card) Bill 2017, Submissions <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/CashlessDebitCard/Submissions>

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In our submission to this Committee's inquiry into the *Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018*, we reiterated our concerns that compulsory income management was not in line with Australia's human rights obligations, particularly under the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). We further outlined that we opposed compulsory income management because it:

- is based on inadequate research and evaluation
- is expensive to administer
- will not deliver the intended outcomes for people in receipt of social security payments, and
- will have specific negative impacts on people with disability, similar to those in the existing trial areas.²

We refer this Committee to our two submissions and reiterate the concerns above.

In particular, we note our concerns about the inadequacy of research and evaluation remain. As highlighted in our 2018 submission, ORIMA Research's evaluation of the trials in Ceduna and Kununurra has been contested by others, including the Centre for Aboriginal Economic Policy Research³ and the Australian Council of Social Services. The research and evaluation has also not been informed by disaggregated data on the experiences of people with disability. We also note that the evaluation of the Hinkler trial site has not been released by Government.

Additionally, noting that the *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020* currently before the Committee seeks to move those currently on income management in the Northern Territory onto the Cashless Debit Card, as well as capture a broader cohort of people than the current legislation provides, PWDA would like to reiterate our opposition to any form of compulsory income management.

² Senate Community Affairs Legislation Committee, *Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018*, Submissions <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/CDCTrialExpansion/Submissions>.

³ J Hunt, *The Cashless Debit Card Trial Evaluation: A Short Review*, Centre for Aboriginal Economic Policy Research (CAEPR, 2017) (Topic Issue 1/2017).



Income management needs to be opt-in

In our 2018 submission, we highlighted that income management must be implemented on an opt-in basis, in line with the 2017 Concluding Observations of the Committee on Economic, Social and Cultural Rights that the Australian Government should:

“Consider maintaining only an opt-in income management scheme with appropriate oversight of decision-making and monitoring, and review existing and envisaged conditionalities for eligibility to social assistance and unemployment benefits and penalties for non-compliance, and ensure that all beneficiaries receive adequate benefits, without discrimination”.⁴

How the Bill discriminates against people with disability

PWDA is concerned that a number of the features of the *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020* will discriminate against people with disability, contrary to Articles 3 and 5 of the *Convention on the Rights of Persons with Disabilities* (UNCRPD), which Australia has ratified.

Article 3 of the UNCRPD enshrines general principles of non-discrimination, full and effective participation and inclusion in society and equality of opportunity. Article 5, focused on ‘Equality and non-discrimination’ specifically obliges States Parties to ‘prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.’ This provision prohibits ‘de jure or de facto discrimination in any field regulated and protected by a public authority.’⁵ Importantly, the principles of equality and non-discrimination in the UNCRPD are also an interpretative tool for all the other rights in the Convention.⁶ This means that people with disability must enjoy all of the Convention rights on an equal basis with others, without discrimination.

The vast majority of people under compulsory income management receive a working-age payment such as Jobseeker or the Disability Support Pension (‘DSP’).⁷ We also note that

⁴ Committee on Economic, Social and Cultural Rights Concluding observations on the fifth periodic report of Australia E/C.12/AUS/CO/5 2017

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fAUS%2fCO%2f5&Lang=en>.

⁵ Committee on the Rights of Persons with Disabilities, *General Comment No 5 (2018) on Equality and Non-Discrimination*, 19th sess, UN Doc CRPD/C/GC/6 (26 April 2018) 3[13] (‘General Comment No 5’).

⁶ *Ibid* 3[12].

⁷ Australian National Audit Office, *Administration of New Income Management in the Northern Territory* (2013) 17.



40% of people on Jobseeker have a disability. Therefore, PWDA is concerned that compulsory income management will discriminate against people with disability because they will be disproportionately impacted. Discrimination encompasses 'indirect discrimination', meaning that 'laws, policies or practices appear neutral at face value but have a disproportionate negative impact on a person with disability.'⁸

We are concerned that the following features in the Bill, in particular, will discriminate against people with disability:

1. ***The Bill will collapse the 'long term welfare recipient' and 'disengaged youth' income management category and remove the limited safeguards that the current legislation provides:*** This will mean the length of time a person is on a form of income payment will no longer be a trigger for moving on to the Cashless Debit Card, rather it will depend on what type of income support payment they receive.
2. ***The existing 'vulnerable' income management category is particularly likely to impact people with disability:*** The principles for determining whether a person will be classed as a 'vulnerable welfare payment recipient' include criteria such as 'financial exploitation', 'failure to undertake reasonable self-care' and 'homelessness or risk of homelessness'.⁹ People with disability are overrepresented amongst homeless people and people on low incomes, a factor which may see them more easily judged as meeting the criteria for placement on this particularly restrictive category of income management. PWDA is also concerned that people with disability will be disproportionately subjected to this form of income management because of stigmatising and discriminatory attitudes permeating social services, presuming that people with disability are unable to manage their affairs.
3. ***The Bill's exemption and exit provisions may be inaccessible to people with disability:*** Noting the large proportion of people with disability receiving a working-age payment, we are concerned about how accessible seeking an exemption or applying to exit the program will be for people with disability and that people with disability will be disproportionately denied the benefit of these provisions.

⁸ General Comment No 5, 5[18].

⁹ *Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2013* (made under s 123UGA(2) of the *Social Security (Administration) Act 1999*, s 123GA(2)).



- 4. The Bill's 'medical or safety reasons' provisions do not support the capacity of people with disability to manage their own financial affairs autonomously:** The Bill allows for a health or community worker to request the Secretary to review an exemption or exit determination on medical or safety grounds. Additionally, the Secretary will have the power to revoke a previous exit or exemption determination without a referral from a health or community worker. We have concerns that these powers can be used to interfere with a person with disability's legal capacity to manage their own financial affairs, as discussed further below.

Impacts on people with disability

Noting our concerns with the above features of the *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020*, and considering the findings of evaluations of trial schemes, we envision the following specific impacts on people with disability:

Imposing de facto and informal financial guardianship measures

PWDA is opposed to all forms of substitute decision-making imposed upon people with disability because these arrangements contravene the right to exercise legal capacity in Article 12 of the UNCRPD. We are concerned that compulsory income management acts as a de facto form of substitute decision-making because of the manner in which it limits recipients' ability to make a range of financial decisions for themselves, effectively imposing 'best interests' decisions of third parties upon them.¹⁰ Considering the over-representation of people with disability amongst recipients of working age payments, the Bill is likely to involve indirect discrimination against people with disability in contravention of Article 12 of the UNCRPD.

Exiting income management will depend upon the recipient's ability to demonstrate reasonable and responsible management of their affairs, with relevant decision-making principles to be determined by the Minister. The Bill will also allow for decisions made in relation to wellbeing exemptions to be reviewed where health and community workers consider there are medical or safety reasons making it necessary for a person to be a program participant. These review determinations can only be revoked in very limited circumstances.

¹⁰ Shelley Bielefeld and Fleur Beaupert, 'Income Management and Intersectionality: Analysing Compulsory Income Management through the Lenses of Critical Race Theory and Disability Studies ('Discrit') (2019) 41(3) *Sydney Law Review* 328.



PWDA is deeply concerned that people with disability are more likely to be denied the benefit of exit and exemption provisions due to the difficult and complex social, health and financial situations many people with disability face. People with intellectual disability, cognitive disability and psychosocial disability, in particular, may be more likely to be judged as lacking the capacity to manage their finances and to be subjected to these processes. PWDA is concerned that this will result in people with disability being discriminatorily denied their right to exercise legal capacity enshrined in Article 12 of the UNCRPD. People with disability should be supported in their legal capacity to manage their financial affairs, rather than being subjected to ongoing compulsory income management.

The inaccessibility of processes to challenge decisions that wellbeing exemptions apply also means that health and community workers may use the exemption review process to circumvent the need to meet the more stringent standard for obtaining financial management orders under guardianship legislation, if they believe a person needs assistance to manage their finances. This runs counter to the requirement in Article 12(2) of the UNCRPD that people with disability must enjoy legal capacity on an equal basis with others.

Working-age people with disability are twice as likely as those without disability to be unemployed.¹¹ Structural barriers to education, training and accessible workplaces mean that many people with disability will have difficulty securing employment enabling them to escape the need for social security payments. The above factors combine to produce a scheme that will discriminate against people with disability in its operation, resulting in ongoing removal of their rights to manage their own finances.

Article 12(4) of the UNCRPD states:

“States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person’s circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person’s rights and interests.”

¹¹ Australian Institute of Health and Welfare, *People with disability in Australia* (2020) 278.



Currently, the proposed amendments do not meet the safeguarding requirements envisaged by Article 12(4), especially in terms of time limits on legal capacity related measures and review by an independent body.

Support to develop and/or exercise legal capacity to manage financial affairs

Article 12 of the UNCRPD requires that supported decision-making measures be implemented to assist people with disability to exercise their legal capacity on an equal basis with others, instead of subjecting them to substitute decision-making. There is no indication that supported decision-making will be a feature of the extended compulsory income management scheme. For people with disability who require support to manage their financial affairs this means they are likely to be locked permanently within the scheme, without the necessary resources and assistance to enable them to satisfy exit and exemption criteria.

Social and financial exclusion

The full and equal participation of people with disability in society is a central principle of the UNCRPD. Restricting people's ability to manage their finances limits their and inclusion in society, by removing options that would otherwise be available in terms of where and how they spend their money. Limitations on how the Cashless Debit Card can be used has created difficulties for people in areas such as securing appropriate rental accommodation,¹² and undertaking interstate and everyday travel.¹³ Not being able to withdraw cash places limitations on people's ability to shop freely and purchase essential goods and services.¹⁴ The Cashless Debit Card can only be used at businesses that accept eftpos. And there are limits on using the Cashless Debit Card to make purchases online; only approved online retailers accept the card. This creates particular barriers for people with physical disability who rely on online shopping to make purchases. People with disability who cannot leave home regularly because of inaccessibility of the physical environment may end up relying on others to make purchases for them by handing over their card, which opens up the risk of financial exploitation.

Considering the likely disproportionate impact of income management on people with disability, extending these arrangements will result in heightened social exclusion for people with disability because of restrictions on how the Cashless Debit Card can be used. PWDA is concerned that people with disability subjected to compulsory income

¹² J Rob Bray et al, *Evaluating New Income Management in the Northern Territory: The Final Report* (Report 25/2014, Social Policy Research Centre, UNSW, September 2014) 198.

¹³ Ibid, 137.

¹⁴ Ibid.



management will be further isolated and excluded from society, compounding the loss of dignity caused by reduced financial autonomy and negatively impacting mental health and emotional wellbeing.¹⁵

Recommendation – That the Legislation Committee of the Senate Standing Committees on Community Affairs do not recommend support for the *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020*.

Should you require any further information or require PWDA to provide evidence in a hearing to the Committee, please contact our Director of Policy and Advocacy, Romola Hollywood, by email on romolah@pwd.org.au or phone on 0431 998 273.

Kind regards

A handwritten signature in black ink that reads "Romola Hollywood".

Romola Hollywood

Director of Policy and Advocacy

Prepared by Senior Policy Officers: Giancarlo de Vera and Fleur Beaupert

¹⁵ Ibid, 199.