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Ending income control in the Northern Territory

Submission on the Social Security (Administration) Amendment  
(Income Management to Cashless Debit Card Transition) Bill 2019

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22 October 2019

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## About the Human Rights Law Centre

The Human Rights Law Centre uses a strategic combination of legal action, advocacy, research, education and UN engagement to protect and promote human rights in Australia and in Australian activities overseas. It is an independent and not-for-profit organisation and donations are tax-deductible.

The Human Rights Law Centre acknowledges the people of the Kulin and Eora Nations, the traditional owners of the unceded land on which our offices sit, and the ongoing work of Aboriginal and Torres Strait Islander peoples, communities and organisations to challenge the ongoing injustices imposed on First Nations people since colonisation.

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## 1. Scope and terminology

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1. On 11 September 2019, the *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019* (the **Bill**) was introduced into the House of Representatives. It was subsequently referred to the Senate Community Affairs Legislation Committee (the **Committee**).
2. The Human Rights Law Centre (**HRLC**) previously made a submission with the National Aboriginal and Torres Strait Islander Legal Services opposing the expansion of Cashless Debit Card trials in March 2019. The HRLC opposes this Bill for the reasons outlined below.
3. The HRLC is a national human rights organisation whose mandate includes the protection and promotion of Aboriginal and Torres Strait Islander peoples' rights. Our work with Aboriginal and Torres Strait Islander organisations is guided by partnership principles and we have worked closely with the Aboriginal Peak Organisations Northern Territory (**APO NT**), North Australian Aboriginal Justice Agency (**NAAJA**) and Arnhem Land Progress Association (**ALPA**) in responding to this Bill and making this submission. Our submission is therefore focused on the application of the Bill to the Northern Territory.
4. The Federal Government has implemented a range of different forms of compulsory income quarantining across Australia. The Cashless Debit Card is one form. Income Management – typically involving the use of the BasicsCard – is another form. When referred to as separate forms of income quarantining, the terms Cashless Debit Card and Income Management will be used. Collectively, these will be referred to in this submission as “income quarantining”. Both forms are underpinned by the same key principles – the quarantining of social security payments and restrictions on how and where quarantined money can be spent.

## 2. Executive Summary

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“I’m not a drinker, I’m not a smoker. I’m a carer. I’ve worked all my life. I stopped work to care for my father. Now I’m carer for my mother, and in between time my husband’s health has started to fail, but this card has done more damage mentally than all of that.”<sup>1</sup>

5. Compulsory income quarantining, whether through Income Management or the Cashless Debit Card, is “an intrusive measure that robs individuals of their autonomy and dignity and

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<sup>1</sup> Raylene Peel, as quoted in Lorena Allam, ‘Exiting the cashless welfare card trial is almost impossible, critics say’, *The Guardian*, 17 September 2019.

involves a significant interference into a person's private and family life".<sup>2</sup> It is about restricting the freedoms of people just because they are financially poor and need income support.

6. The Bill being considered by the Committee would turn the entirety of the Northern Territory into a Cashless Debit Card trial site. It would then compel at least 22,000 people to "transition" onto the Cashless Debit Card, which is linked to an account with private for-profit company, Indue Ltd. As outlined in this submission, the Bill and the assumptions underlying compulsory income quarantining are fundamentally flawed and harmful. The Committee should recommend that the Bill be rejected.
7. Compulsory income quarantining has overtly racist foundations, starting as Income Management in 2007 and as a measure targeting Aboriginal communities in the Northern Territory through Federal Government's Intervention. It has since been increasingly used by successive federal governments to micro-manage where and how people living in poverty spend their money. It involves limiting the amount of social security a person receives as cash in their chosen bank account. Instead, a portion of an already small social payment (generally between 50 and 80 per cent) is quarantined, with restrictions imposed on where and how that money can be spent.
8. The Bill will force people not currently income managed to participate in the trial through the expanded eligibility criteria in proposed section 124PGE(1). The Bill gives the Social Services Minister unacceptably broad power to increase the amount of money restricted, from 50 per cent to 100 per cent, with minimal Parliamentary oversight. The Bill also gives government officials far-reaching powers collect and share information about people forced to participate in the trial. Further, the Bill would deny an important avenue for people to seek review, while removing a requirement for independent evaluation of the trial.
9. It will be very difficult to escape from the trial – the onus is placed on individuals forced to participate in a large-scale social policy experiment to navigate highly paternalistic laws, which require them to expose their personal lives to intrusive government scrutiny, simply to leave the trial. Already, very few people have been allowed to leave existing trial sites, while in the Northern Territory, the proportion of Aboriginal people to receive exemptions from Income Management has been low.
10. 83 per cent of those on Income Management, and who will be disproportionately impacted by the Bill, are Aboriginal and Torres Strait Islander people. As John Paterson, CEO of the Aboriginal Medical Services Alliance of the Northern Territory, has observed in response to the Bill:

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<sup>2</sup> Parliamentary Joint Committee on Human Rights, Parliament of Australia, *2016 Review of Stronger Futures Measures* (16 March 2016) [4.100].

“The unwarranted haste of imposing the cashless welfare card on our communities recalls for us the disastrous and ill-advised imposition of the Intervention on our communities without consultation and without our consent. The injustice and trauma of the Intervention still burns with us. Once again, we are stigmatised and targeted as not being capable or worthy of managing our own affairs.”<sup>3</sup>

11. Aboriginal and Torres Strait Islander people in remote areas continue to be punished for the ongoing consequences of colonisation and by Federal Government’s own economic policy failings. The undervaluing of cultural and care work and failure to adequately address the lack of decent paid work opportunities in remote areas forces people to rely on social security. This in turn sees people living in remote communities caught in a web of stigmatising and discriminatory social policy trials, such as the Government’s disastrous remote work-for-the-dole program and Income Management.
12. Like the current Income Management regime in the Northern Territory, the Bill will involve the restriction of fundamental rights and freedoms, including to non-discrimination, equality, social security and privacy, without there being sufficient evidence to justify the restriction of rights. The Parliament’s own Joint Committee on Human Rights has repeatedly raised such concerns, noting that an approach that provides for voluntary participation would be less-rights restrictive, as well as being more likely to be effective.
13. While the paternalistic core of Income Management laws are replicated in Cashless Debit Card laws, a critical difference between these two policies of social control is the more sophisticated technology behind the Cashless Debit Card. This allows the Federal Government to hide behind technological developments and the language of efficiency and user experience to pursue a discriminatory policy. The UN Special Rapporteur on extreme poverty has expressed deep concern about the growing use of such technologies to facilitate intrusive government surveillance, and the role of private profit-making companies.
14. Compulsory income quarantining has been a policy failure in the Northern Territory, with Aboriginal people overwhelming bearing the costs. A good government would acknowledge this and work with communities in the Northern Territory to develop alternative approaches to creating decent paid work opportunities and equitable access to a fair social safety net, rather than trying to rush a new form of compulsory income control onto Aboriginal communities.
15. The Committee should recommend that the Bill be rejected. It should carefully listen to the experiences of Aboriginal and Torres Strait Islander peoples in the Northern Territory, who are demanding an end to 12 years of compulsory income quarantining.

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<sup>3</sup> Evidence to Senate Community Affairs Legislation Committee, Parliament of Australia, Darwin, 23 September 2019 (John Paterson)

## Recommendations

**Recommendation 1:** the Committee recommend that the Bill not be passed by Parliament.

**Recommendation 2:** that the Federal Government work in genuine partnership with Aboriginal and Torres Strait Islander organisations and communities in the Northern Territory to manage a transition away from blanket compulsory income quarantining to voluntary and community-driven models consistent with the UN *Declaration on the Rights of Indigenous Peoples*.

## 3. Compulsory income quarantining has been a policy failure in the NT

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### The discriminatory foundations of Income Management

16. Income Management through the BasicsCard has its origins in the Northern Territory Emergency Response in 2007 (**the Intervention**). The Federal Government suspended the *Racial Discrimination Act 1975* (Cth) to impose Income Management on Aboriginal and Torres Strait Islander people. The Intervention was viewed by many as an attempt “to replicate the paternal, racist and violent role of the colonial state.”<sup>4</sup>
17. Income Management was broadened and renamed ‘New Income Management’ in 2010 and the *Racial Discrimination Act* reinstated. It remains the case, however, that Aboriginal and Torres Strait Islander people in the Northern Territory are overwhelmingly captured by Income Management laws.
18. As at 30 November 2018, 83 per cent of the 21,718 people on Income Management in the Northern Territory identified as Indigenous. Only 12 per cent of all people on Income Management in the Northern Territory were voluntary participants.<sup>5</sup>
19. In addition, women have been disproportionately affected by Income Management in the Northern Territory, making up 58 per cent of all people on both compulsory and voluntary Income Management.<sup>6</sup>

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<sup>4</sup> Patrick Dodson & Darryl Cronin, *An Australian Dialogue: Decolonising the Country*, in *Unsettling the Settler State: Creativity and Resistance in Indigenous Settler-State Governance*, 189, 205 (Sarah Maddison & Morgan Brigg, eds., 2011).

<sup>5</sup> This data is the most recent that was publicly accessible: Australian Government, *Income Management Summary* (30 November 2018), available at <https://data.gov.au/data/dataset/income-management-summary-by-measure-inc-basicscard/resource/b94b932c-79f8-4dd5-9105-54400e4522ca>

<sup>6</sup> *Ibid.*

## Remote communities punished because of a lack of paid work opportunities

20. Most people in the Northern Territory are on Income Management because of the period of time in which they have received social security, rather than there being any independent assessment of financial vulnerability or need. Of the 19,025 people compelled to participate as at November 2018, 97.5 per cent were in either in the “long term welfare recipient” category or the “disengaged youth” category. The key trigger for landing in these two categories is the length of time a person receives social security.<sup>7</sup>
21. These two categories are only used in the Northern Territory – a jurisdiction in which around 40 per cent of the population lives in remote or very remote locations, including 80 per cent of the Territory’s First Nations population.<sup>8</sup> There are very few *paid* job opportunities in remote communities – a reality that failed and discriminatory government policies have contributed to. There are of course many people working in *unpaid* roles, caring for country and culture, caring for children, caring for older family members, caring for sick people and helping fly-in fly-out workers navigate their jobs in remote communities. This labour goes largely unrecognised by the Federal Government’s economic policies.
22. Without paid work opportunities, the only source of money for food, housing and clothing is to apply for social security payments. This means, however, that people get caught in the web of paternalistic and discriminatory Federal Government policies, like Income Management and the remote work-for-the-dole program (called the Community Development Program, or **CDP**).<sup>9</sup>
23. As NAAJA has noted in its submission to this Committee, many Aboriginal people in remote communities who are subject to Income Management have suffered under the Government’s remote work-for-the-dole program – a program that requires people without paid work to do work or other tasks for up to 20 hours per week (25 hours per week until recently) in order to receive a woefully inadequate social security payment. In particular, the excessive use of no-payment penalties under the CDP, have left people destitute and without any income for months at a time in some cases. Independent evaluations of CDP found that one in ten people had lost 20 per cent of their quarterly payments in the first two years.<sup>10</sup> Further, that the implementation of this oppressive work-for-the-dole program corresponded with increases in hunger, mental health problems and financial coercion and family fighting in remote

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<sup>7</sup> 13 out of 26 weeks for people aged under 25 years, and 52 out of 104 weeks for people over 25 years of age. See Australian Government, *Social Security Guide* (Version 1.258, released 20 September 2019), chapter 11.

<sup>8</sup> Northern Territory Government, ‘Population’ (Department of Treasury and Finance, 2019), available at <https://nteconomy.nt.gov.au/population>.

<sup>9</sup> For a human rights analysis of CDP, see Human Rights Law Centre, *Submission: a fair and community-led approach to remote community and economic development* (Submission to Inquiry to the Senate Standing Committees on Finance and Public Administration, 23 June 2017).

<sup>10</sup> Commonwealth of Australia, *An evaluation of the first two years of the Community Development Programme: summary* (2018).

communities.<sup>11</sup> The Government's remote work-for-the-dole scheme has directly undermined its stated goals for Income Management.

### The discriminatory application of exemption provisions

24. The limited avenues for a 12 month exemption from Income Management, which are available to some people if they satisfy a range of parenting or activity tasks, have also been discriminatory in effect.
25. A comprehensive evaluation of Income Management over four years found significant discrepancies in terms of the gender and Indigenous status of people receiving exemptions. For example, as at 31 December 2013, the exemption rate for non-Indigenous women was 51.4 per cent compared to only 7.6 per cent for Aboriginal and Torres Strait Islander women. For Aboriginal and Torres Strait Islander men it was 0.4 per cent, compared to an exemption rate of 7.8 per cent for non-Indigenous men.<sup>12</sup>

### Insufficient evidence to support such a rights-restrictive policy

26. In terms of assessing the potential impact of social and economic policies in the Northern Territory, it is critical that priority be given to evaluations and research that focus on the Northern Territory, rather than evaluations of small trial sites in other states. The Northern Territory is a unique jurisdiction, particularly in relation to the high proportion of Aboriginal and Torres Strait Islander residents who live in remote and very remote areas.

### ***Independent evaluation of Income Management***

27. A comprehensive and independent evaluation of Income Management was conducted in the Northern Territory from 2010 to 2014. Broadly, it identified the Government's key objectives for Income Management as being to reduce hardship and improve wellbeing by:
  - (a) ensuring that people spend their money on priority needs, including for their children;
  - (b) reducing the amount of money available to spend on alcohol, tobacco, gambling and pornography;
  - (c) reducing the likelihood of people being financially harassed or coerced in relation to their social security payments;
  - (d) reducing reliance on social security; and
  - (e) encouraging socially responsible behaviour.<sup>13</sup>

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<sup>11</sup> Commonwealth of Australia, *The many pathways of the Community Development Programme – Summary report of community voices and stakeholder perspectives from eight communities* (2018).

<sup>12</sup> Rob Bray et al, *Evaluating New Income Management in the Northern Territory: Final Evaluation Report* (Australian National University, September 2014), 98.

<sup>13</sup> *Ibid*, 19-20.

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28. As noted above, despite these objectives, Income Management has applied to thousands of people in the Northern Territory simply because of how long they have needed social security, and in doing so, has stigmatised those who were meeting the needs of their children and themselves.
29. The final report found that there was no substantive evidence “of the program achieving significant change relative to its key policy objectives.”<sup>14</sup> It concluded that Income Management was being imposed on a large group of people “for whom income management does not assist”, with “costs upon those subject to income management and to the government.”<sup>15</sup>
30. The report further found that there was no evidence:
- (a) “of changes in aggregate outcomes” in child health, school attendance, alcohol and tobacco use, alcohol-related harm, and imprisonment that could be “plausibly be linked to income management”<sup>16</sup>; or
  - (b) to “indicate that income management has any effects at the community level, nor that income management, in itself, facilitates long-term behavioural change.”<sup>17</sup> In fact, for many people on *compulsory* Income Management, it made them more dependent on the government rather than building capacity and independence.<sup>18</sup>
31. Among Indigenous people on *compulsory* Income Management, 41 per cent wanted to exit and 45 per cent wanted to stay on it, with the Basicscard providing a “cheap banking service” that was otherwise difficult for some people in remote communities to access.<sup>19</sup> For non-Indigenous people, 56 per cent wanted to exit and 31 per cent wanted to remain.
32. 80% of those on *voluntary* Income Management wished to stay on. While those voluntarily on the program perceived it as making their lives easier and providing fee free transactions, the reported noted “it has relatively little impact on outcomes”.<sup>20</sup>
33. Where Income Management was applied on the basis of an assessment of vulnerability, there was some limited evidence of it playing a “harm minimisation” role, but without addressing the underlying causes of that vulnerability.<sup>21</sup>
34. Taken as a whole, at most, the evaluation provides some qualified support for income quarantining to be considered on a *voluntary* basis, or on a “tightly targeted” basis following

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<sup>14</sup> Ibid, xxi.

<sup>15</sup> Ibid, 319.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid, 320.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid, 306. Previously, people in remote communities being forced to pay up to 20% of their income on ATM transaction fees or \$10 per transaction (Financial Counselling Australia, 2012). Fee free banking is now in place.

<sup>20</sup> Ibid, 311.

<sup>21</sup> Ibid, 308.

careful assessment of an individual's vulnerability and as part of holistic and supportive response.<sup>22</sup> The evidence in the evaluation cannot, in any light, be seen to support blanket approaches to compulsory income quarantining, such as that proposed in the Bill.

35. Despite this damning evaluation, compulsory income quarantining has remained a feature of life for thousands of people in the Northern Territory.

#### **Evidence of harm – impact on birth weights**

36. An alarming and unintended consequence of Income Management in the Northern Territory has been the impact on birth weights. This is significant because babies born with a low birth weight "are at greater risk of poor health, disability and death than other babies".<sup>23</sup>
37. Research by the Life Course Centre found that the implementation of "income management may have had a negative impact on newborn health – lower average birthweights and a higher probability of low birthweight (defined as less than 2500g), over and above what would be expected if a baby was premature".<sup>24</sup> We understand that this change is comparable to what has been reported from other international studies for births to women exposed to famines and severe weather events.

#### **Growing poverty in remote communities**

38. Income Management has failed to alleviate poverty in remote communities. Data collected through the census in 2016 demonstrates an appalling increase in poverty rates in remote communities since 2011.<sup>25</sup>
39. Between 2011 and 2016, there was a real *decline* in disposable incomes of low income households in very remote areas<sup>26</sup> at the same time as costs of living in remote parts of the Northern Territory rose.<sup>27</sup> For the first time:

more than half of the Indigenous population in very remote Australia was in income poverty, with rates in most very remote regions well above 50% in 2016. Indigenous incomes in very remote areas fell further behind non-Indigenous incomes, with the median Indigenous income in these areas averaging just 44% of the median non-Indigenous income.<sup>28</sup>

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<sup>22</sup> Ibid. See eg pp 307, 311. See also recommendation 2 from the submission of the Aboriginal Peak Organisations Northern Territory to this Committee.

<sup>23</sup> Australian Institute of Health and Welfare, *Children's Headline Indicators* (Australian Government, 18 September 2018) available at <https://www.aihw.gov.au/reports/children-youth/childrens-headline-indicators/contents/3-low-birthweight>.

<sup>24</sup> Mary-Alice Doyle et al, *Do Welfare Restrictions Improve Child Health? Estimating the Causal Impact on Income Management in the Northern Territory* (Life Course Centre Working Paper No 2017-23, Dec 2017), available at <https://www.lifecoursecentre.org.au/research/journal-articles/working-paper-series/do-welfare-restrictions-improve-child-health-estimating-the-causal-impact-of-income-management-in-the-northern-territory/>.

<sup>25</sup> Francis Markham and Nicholas Biddle, *Income, poverty and inequality* (CAEPR 2016 Census Paper No 2, Centre for Aboriginal Economic Policy Research, Australian National University, 2018).

<sup>26</sup> Ibid. Most of those in the lowest income quintile were on Newstart, Youth Allowances, or related payments.

<sup>27</sup> See e.g. NTCOSS, *Cost of Living Report: Food Costs in the Northern Territory* (Issue 24; July 2019).

<sup>28</sup> Francis Markham and Nicholas Biddle, *Income, poverty and inequality* (CAEPR 2016 Census Paper No 2, Centre for Aboriginal Economic Policy Research, Australian National University, 2018).

## 4. The Cashless Debit Card – new card, same policy of control

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### A more “streamlined” approach to a discriminatory and coercive policy

40. The Cashless Debit Card is being sold by the Federal Government as a “more streamlined approach to welfare quarantining and benefits to taxpayers”.<sup>29</sup> The core features of its failed Income Management experiment in the NT – the blanket application of a coercive policy; the forced quarantining of a person’s social security payments; the interference in private life and the loss of control over where and how money is managed – also underpin the Cashless Debit Card trials and the Bill.
41. The objectives of the Bill largely replicate the objectives of Income Management.<sup>30</sup> There are some practical differences between the useability of the Basicscard and Cashless Debit Card, driven by technological developments. Under the Cashless Debit Card, people will have to have an Indue bank account, for which a Visa debit card is issued. That card can be used more flexibly and in more locations than the BasicsCard. There are still limitations on what can and cannot be purchased, and the means by which people can purchase goods. The Cashless Debit Card cannot be used to purchase items using online platforms like eBay and PayPal.<sup>31</sup> In addition, forcing people to use a card to make the majority of their purchases:
- (a) restricts the ability for people to engage in cash-based transactions, such as buying affordable second-hand goods or shopping at markets;
  - (b) restricts the pooling of resources to collectively purchase expensive items, like cars;
  - (c) prevents people from being able to provide money to family and children; and
  - (d) prevents people from making small purchases in cash-based settings, like paying admission to the local swimming pool.<sup>32</sup>
42. The Federal Government is hiding behind technological developments and the language of efficiency and useability to continue its pursuit of a discriminatory and coercive policy. As John Paterson, CEO of the Aboriginal Medical Services Alliance NT has observed:

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<sup>29</sup> Former Minister for Social Services, Paul Fletcher, as quoted in ‘Coalition Punts \$129m on Cashless Welfare Card Boost’, *The Australian* (25 March 2019).

<sup>30</sup> Explanatory Memorandum, Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 (Cth).

<sup>31</sup> Department of Social Services, Cashless Debit Card – Frequently Asked Questions (4 September 2019) <[www.dss.gov.au/families-and-children-programs-services-welfare-quarantining-cashless-debit-card/cashless-debit-card-frequently-asked-questions#where-can](http://www.dss.gov.au/families-and-children-programs-services-welfare-quarantining-cashless-debit-card/cashless-debit-card-frequently-asked-questions#where-can)>.

<sup>32</sup> ORIMA, *Cashless Debit Card Trial Evaluation* (Final Evaluation Report, August 2017) 89.

For those who claim that the new card is better than the old one because it provides superior banking services: why should our community face compulsory restrictions on our lives in order to access decent banking services? That some of our people might be thankful for the scraps of improved services thrown their way in the form of the BasicsCard is an illustration of the unacceptable lack of basic services in remote communities. It is more a statement about you than us. This is the smug face of institutional racism that we have seen all too often.<sup>33</sup>

43. Notably, the Minderoo Foundation, co-founded by Andrew Forrest, who's *Creating Parity* report in 2014 recommended the development of a 'Healthy Welfare Card'<sup>34</sup>, has directed considerable resources into technological developments to "improve the efficacy" of the Card.<sup>35</sup> The human rights implications and privacy concerns in relation to the use of technology to monitor and control how people spend social security are explored further below.

### A lack of evidence

44. It is inappropriate for the Federal Government to expand such a blanket, rights-limiting and discriminatory measure across the Northern Territory in the absence of any reliable evidence to justify the significant limitation of rights, or evidence of free, prior and informed consent of the Aboriginal and Torres Strait Islander communities who will be disproportionately affected.
45. The Cashless Debit Card was originally trialled in two sites – East Kimberley in Western Australia and Ceduna in South Australia. The Federal Government relies on conclusions drawn from an evaluation of those first two trial sites by ORIMA.
46. As has been well-documented by academics and the Australian National Audit Office, ORIMA's evaluation was flawed and is therefore an unreliable base from which to justify the implementation of such a far-reaching social policy measure in the Northern Territory.<sup>36</sup>
47. We further note concerns raised by academics about serious flaws in the recent baseline data report about the third trial site in the Goldfields region of Western Australia.<sup>37</sup> The authors of the Goldfields baseline data report also note that their findings are limited in terms of their applicability to broader groups.<sup>38</sup>

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<sup>33</sup> Evidence to Senate Community Affairs Legislation Committee, Parliament of Australia, Darwin, 23 September 2019 (John Paterson).

<sup>34</sup> Andrew Forrest, *Creating Parity: The Forrest Review* (Commonwealth of Australia, 2014) ch 2.

<sup>35</sup> Minderoo Foundation, *Annual Report 2018* (2018) 25.

<sup>36</sup> Australian National Audit Office, *The Implementation and Performance of the Cashless Debit Card Trial* (Auditor-General Report No 1 2018-19, 17 July 2018).

<sup>37</sup> Matthew Gray and Rob Bray, Submission No 7 to the Senate Community Affairs Legislation Committee, *Inquiry into the Social Security (Administration) Amendment (Income Management and Cashless Welfare) Bill 2019*, undated.

<sup>38</sup> Kostas Mavromaras et al, *Cashless Debit Card Baseline Data Collection in the Goldfields Region: Qualitative Findings* (University of Adelaide, 2019) 5.

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48. It is also important to note that the existing Cashless Debit Card evaluations are of very small trial sites – both in terms of geography and participant numbers – compared to what is being proposed for the Northern Territory. Currently, there are only approximately 800 participants in Ceduna and 1,300 participants in the East Kimberley trial sites,<sup>39</sup> while the Bill would see the whole of the Northern Territory and at least 22,000 people in urban, region, remote and very remote areas captured.
49. In this context, the HRLC is deeply concerned that the Bill also seeks to remove an existing safeguard in the *Social Security (Administration) Act 1999* (Cth) for independent evaluation and recommendations.<sup>40</sup>
50. The fourth trial site, the Hinkler electorate in Queensland, has not been evaluated as far as the HRLC is aware. However 82 per cent of respondents to a recent survey by the Queensland Council of Social Services, who were either personally in the Hinkler trial or who had family in the trial, said they had not experienced any benefits. People reported adverse consequences for their health, payment of rent, perceptions of stigma or discrimination, and finances.<sup>41</sup>
51. Broadly, the reported experiences of people in the trials echo those of people subjected to Income Management in the Northern Territory. While there are some people who are willing to participate and perceive some positive benefits, there are many others who have either experienced adverse impacts, or who feel that they were adequately or better managing their lives before they were forced into a trial.
52. For example, one woman described feeling “humiliated” and “mentally damaged”.<sup>42</sup> Others have described their experience of the Cashless Debit Card as like the “ration days when white people managed our lives and everything else and treated us like children.”<sup>43</sup>

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<sup>39</sup> Department of Social Services, ‘Cashless Debit Card – Ceduna Region’ (Australian Government); Department of Social Services, ‘Cashless Debit Card – East Kimberley Region’ (Australian Government). Both available at <https://www.dss.gov.au/families-and-children/programmes-services/welfare-conditional/cashless-debit-card-overview>.

<sup>40</sup> See Item 51 of the *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019* (Cth), which would repeal subsections 124PS(2) and (3) of the Act.

<sup>41</sup> Queensland Council of Social Services, *Cashless Debit Card Trial (CDCT) Follow-up Hinkler Survey Results* (October 2019) 13.

<sup>42</sup> Lorena Allam, ‘Exiting the cashless welfare card trial is almost impossible, critics say’ (*The Guardian*, 17 September 2019).

<sup>43</sup> Uniting Communities, Submission to the Senate Community Affairs Legislation Committee, *Inquiry into Social Services Legislation Amendment (Cashless Debit Card) Bill 2017* (September 2017). See also Paddy Gibson, Return to the Ration Days: The Northern Territory Intervention: grass-roots experience and resistance (Discussion Paper, June 2009) 12; Melissa Davey, ‘Ration days again’: cashless welfare card ignites shame’ (*The Guardian*, 9 January 2017).

## 5. Compulsory income quarantining inconsistent with human rights

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53. Social security should be about sharing our national prosperity fairly to make sure that no one gets left behind and trapped in poverty. Article 9 of the International Covenant on Economic, Social and Cultural Rights protects our right to social security.
54. The compulsory quarantining of social security payments limits a range of rights – equality and non-discrimination, social security and non-interference with privacy and family. As demonstrated above, there is a dearth of reliable evidence to support it as a reasonable and proportionate restriction of rights. As the Parliamentary Joint Committee on Human Rights (**Human Rights Committee**) has said:
- The imposition of significant conditions on the provision of income support payments, including what goods or services may be purchased and where, is an intrusive measure that robs individuals of their autonomy and dignity and involves a significant interference into a person's private and family life.<sup>44</sup>
55. The Human Rights Committee has emphasised, in relation to Income Management and the Cashless Debit Card, its concern with the blanket application of inflexible rules and the indirectly discriminatory impact on First Nations peoples, pointing to the availability of less rights-restrictive options, such as a voluntary approach.<sup>45</sup>
56. In a detailed report on the *Stronger Futures* reforms in the Northern Territory, the Human Rights Committee observed, after reviewing three evaluations of different Income Management approaches in different parts of Australia, that while there may be some benefits for those who *choose* to have payments quarantined, evaluations have demonstrated that the measure has “limited effectiveness” for most people compelled onto it.<sup>46</sup> It concluded that:
- a human rights compliant approach requires that any measures must be effective, subject to monitoring and review and genuinely tailored to the needs and wishes of the local community. The current approach to income management falls short of this standard.<sup>47</sup>
57. The Human Rights Committee’s recommendations indicate that only voluntary, or community-requested and community-led forms of income quarantining should be considered by

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<sup>44</sup> Parliamentary Joint Committee on Human Rights, Parliament of Australia, *2016 Review of Stronger Futures Measures* (16 March 2016) [4.100].

<sup>45</sup> Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Human Rights Scrutiny Report* (Report 2 of 2019, 2 April 2019) [1.507].

<sup>46</sup> Parliamentary Joint Committee on Human Rights, Parliament of Australia, *2016 Review of Stronger Futures Measures* (16 March 2016) [4.63].

<sup>47</sup> *Ibid* [4.105].

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- governments, and that compulsory forms of Income Management should only occur where an individual assessment finds the person isn't capable of managing their social security payments through a procedurally fair process.<sup>48</sup>
58. The HRLC is not aware of these recommendations ever being meaningfully followed up by the Federal Government with communities in the Northern Territory.
59. The Australian Human Rights Commission has also raised concerns about the compulsory Cashless Debit Card trials being inconsistent with the *Racial Discrimination Act 1975 (Cth)*.<sup>49</sup> The Commission does not consider the Cashless Debit Card to be human rights compatible, particularly because it is imposed on people without an assessment of suitability.<sup>50</sup>
60. Compulsory income quarantining has also caught the attention of expert human rights bodies internationally. For example, the United Nations Committee on the Elimination of Racial Discrimination has expressed concern about the discrimination faced by Aboriginal and Torres Strait Islander people under compulsory income quarantining policies and recommended that Australia "maintain only opt-in" forms.<sup>51</sup>
61. Most recently, in October 2019, the UN Special Rapporteur on extreme poverty has expressed concern about the role of electronic cards in collecting the personal data of social security recipients and enabling the "monitoring and surveillance of behavioural data by welfare authorities and private actors", as well as perpetuating stereotypes of people in need of social security.<sup>52</sup>
62. The Australian Government pledged that it would uphold and implement the *Declaration on the Rights of Indigenous Peoples* in "word and deed" as part of its campaign to secure a seat on the United Nations Human Rights Council.<sup>53</sup> The Declaration provides that the Federal Government should adopt an approach to social security that respects Aboriginal and Torres Strait Islander people's right to self-determination and to freely pursue their economic, social and cultural development.<sup>54</sup> Disappointingly, this Bill demonstrates that the Federal Government has little interest in working in genuine partnership with Aboriginal and Torres Strait Islander people.

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<sup>48</sup> Ibid, recommendations 4 and 5.

<sup>49</sup> Australian Human Rights Commission, Submission No 30 to the Senate Community Affairs Legislation Committee, *Inquiry into Social Services Legislation Amendment (Cashless Debit Card) Bill 2017* (29 September 2017).

<sup>50</sup> Australian Human Rights Commission, Submission to the Senate Community Affairs Legislation Committee, *Inquiry into Social Services Legislation Amendment (Cashless Debit Card) Bill 2017* (29 September 2017); Parliamentary Joint Committee on Human Rights, Human rights scrutiny report (Report 9 of 2017, September 2017) 38.

<sup>51</sup> United Nations Committee on the Elimination of Racial Discrimination, *Concluding Observations on the eighteenth to twentieth periodic reports of Australia*, (UN doc CERD/C/AUS/CO/18-20, 8 December 2017) [23].

<sup>52</sup> Philip Alston, *Report of the Special Rapporteur on Extreme Poverty and Human Rights* (UN doc A/74/48037; 11 October 2019) [24]-[25].

<sup>53</sup> United Nations General Assembly, 'Note verbale dated 14 July 2017 from the Permanent Mission of Australia to the United Nations addressed to the President of the General Assembly' (UN doc A/72/212, 24 July 2017) [18].

<sup>54</sup> UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, (UN doc A/RES/61/295, 2 October 2007). See Article 21, which provides for the right, without discrimination, to the improvement of economic and social conditions, including via social security.

## 6. Concerns with the key aspects of the Bill

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63. The HRLC opposes the ongoing imposition of compulsory income quarantining in the Northern Territory, whether through Income Management or the Cashless Debit Card. Accordingly, we oppose the Bill in its entirety, while outlining a number of particularly alarming aspects of the Bill below.
64. Significantly, the HRLC is deeply troubled by the Government's decision not to engage with communities or organisations in the Northern Territory before announcing its intention to turn the Territory into a new Cashless Debit Card trial site. Many have described the Bill as a new Intervention. The Government should be working with Aboriginal communities in the Northern Territory to determine a path forward after 12 years of a failed compulsory quarantining policy, not trying to rush the Bill through Parliament.

### Broader application than Income Management

65. The Bill would see broad new inflexible laws applied across the Northern Territory, making the whole jurisdiction a Cashless Debit Card trial site. The Bill states that the trial will end on 30 June 2021. We note however, that the original trials in Ceduna and East Kimberley have already been extended three times since they were introduced in 2016.
66. The Bill is far more than the "transition" from Income Management to the Cashless Debit Card that the Government has claimed.<sup>55</sup>
67. As noted above, 97.5 per cent of people on Income Management in the Northern Territory are on either the "long term recipient" or "disengaged youth" measure. For these people, payment type and length of time receiving the payment are key triggers.
68. Under proposed section 124PGE(1) of the Bill<sup>56</sup>, the long term recipient and disengaged youth categories are collapsed into one and the net widened through the removal of criteria relating to the length of time a person receives social security. As a result, at least 97.5 per cent of people on Income Management will be captured by 124PGE(1), with more likely, given the criteria for forced participation under the Bill is broader than the Income Management criteria.
69. In effect, anyone living in the Northern Territory who receives Youth Allowance, Newstart, the Parenting Payment or special benefit, and who is not studying fulltime, could be placed into the trial regardless of their circumstances.<sup>57</sup>

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<sup>55</sup> The Explanatory Memorandum (page 10) suggests that the categories are "largely" the same. Given one of the key trigger criteria under which most people are on Income Management in the Northern Territory is being removed, which will lead to broader application of the Cashless Debit Card trial than current Income Management laws, this statement risks misleading people.

<sup>56</sup> Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019, item 27.

<sup>57</sup> A small number of people, around 2%, are on Income Management through more targeted measures - child protection and vulnerable recipient measures. These people would also transition to the Cashless Debit Card trial under proposed sections 124PGE(2) and (3) of the Bill.

## Limited avenues to escape the trial

70. Once placed into a trial, it will be very difficult for a person to get out. There are currently two ways under the *Social Security (Administration) Act* through which the Secretary can approve someone leaving the Cashless Debit Card trial:
- (a) If the Secretary determines that being a trial participant is a serious threat to the person's mental, physical or emotional wellbeing.<sup>58</sup> However, the Secretary is explicitly not required to investigate this before placing someone in the trial; or
  - (b) If a person can “demonstrate reasonable and responsible management” of their “affairs (including financial affairs)”.<sup>59</sup> This is a new provision, amended on 1 August 2019. It requires the person subject to the Cashless Debit Card trial to apply to the Secretary of the Department of Human Services. The Secretary then assesses the application against an exceptionally broad and paternalistic list of criteria, including: the interests of children; criminal offending; risks of homelessness; the person's health, safety, responsibilities and circumstances; efforts to work or participate in the community; the health and safety of the community and any other requirements that the Minister may determine by legislative instrument.<sup>60</sup>
71. In both cases, the onus unfairly falls on the person compelled to participate in the trial to alert the Secretary to their need for an exemption or to prove that they should be allowed to exit, rather than the Secretary being required to justify forced participation in a social policy experiment.
72. These exemption and exiting provisions, and particularly the criteria listed in proposed subsection 124PHB(3)(a), require a person forced to participate in a trial to subject their personal lives to intense scrutiny in order to leave the trial. This is a deeply concerning invasion of privacy, particularly in light of the sophisticated technology involved in the card and the information collection and sharing powers given to state authorities (see further paragraphs 90-96 below).
73. Both avenues are likely to be difficult for Aboriginal and Torres Strait Islander people living in remote communities, for the reasons outlined in NAAJA's submission to the Committee. Further, as noted above at paragraph 26 above, exemptions have rarely been granted to Aboriginal and Torres Strait Islander people in remote communities under similar exemption provisions under Income Management laws.<sup>61</sup>

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<sup>58</sup> *Social Security (Administration) Act 1999* (Cth) s 124PHA.

<sup>59</sup> *Social Security (Administration) Act 1999* (Cth) s 124PHB. This provision only commenced on 1 July 2019 and was amended on 1 August 2019.

<sup>60</sup> *Social Security (Administration) Act 1999* (Cth) s 124PHB(3).

<sup>61</sup> Exemptions are broadly available under Income Management where a person can demonstrate that are meeting the broad objectives of Income Management by providing documentation relating to “responsible parenting or participation in employment

74. It has been reported that more than 5,000 people have applied to get out of the existing Cashless Debit Card trials, but only 50 have succeeded.<sup>62</sup>

### Excessive powers in the Minister's hands

75. Currently, most people on Income Management in the Northern Territory have 50 per cent of their payment restricted (70 per cent under the child protection measure). These percentages are retained as the starting point in the Bill.
76. The Bill, however, gives the Minister an unacceptably broad power to increase the amount that is quarantined up to 100 per cent with very limited parliamentary oversight.
77. The proposed new subsections 124PJ(2A) and (2B) authorise the Minister to determine, by *notifiable* instrument, the amount to be quarantined (or 'restricted'), as follows:
- (a) For most people in the Northern Territory trial (who would be captured by proposed new subsection 124PGE(1)), the Minister could increase the amount restricted from 50 per cent to up to 100 per cent.
  - (b) For those subject to the child protection or vulnerable recipient measures (proposed new subsections 124PGE(2) and (3)), the Minister could increase or decrease the restricted amount from 0 to 100 per cent.<sup>63</sup>
78. For those covered by 124PJ(2A), the class of persons to whom the determination could be made will depend on the area specified in the notifiable instrument, which is determined by the Minister. There is no guidance or apparent limitation on the size of that area except that it can only apply to trial participants under subsection 124PGE(1),<sup>64</sup> which in turn sets out broad criteria for mandatory participation in the trial throughout the Northern Territory. Accordingly, the Minister could specify the whole of the Northern Territory, or a specific community or local government area, in the notifiable instrument, and the determination would apply to everyone who is or was living in that area and who is a trial participant under subsection 124PGE(1).
79. Sections 124PJ(3) and 124PJ(4) of the *Social Security (Administration) Act* already give the Secretary a power to vary a person's quarantined amount to deal with exceptional circumstances, like a natural disaster.
80. If passed, subsections 124PJ(2A) and (2B) would place a dangerous amount of power in the hands of a Minister. It is a power that could be used to make a determination affecting 20,000

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or study". See Rob Bray et al, *Evaluating New Income Management in the Northern Territory: Final Evaluation Report* (Report 25/2014, Social Policy Research Centre, UNSW, 2014).

<sup>62</sup> Lorena Allam, 'Exiting the cashless welfare card trial is almost impossible, critics say' (*The Guardian*, 17 September 2019).

<sup>63</sup> Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 (Cth), item 39.

<sup>64</sup> There equivalent power, in proposed subsection 124PJ(2B), would apply to all trial participants covered by proposed subsections 124PGE(2) and (3).

people, with far-reaching implications for how they manage their private and family lives. It is a power to further control the lives of people with no choice but to participate in the trial and to restrict their personal freedom.

81. Notably, the Standing Committee for the Scrutiny of Bills (**Scrutiny Committee**) has raised concern about the Bill giving the Minister such power. The Scrutiny Committee noted that there is “little to no guidance on the face of the bill as to how this power is to be exercised” and that:

notifiable instruments are not subject to the tabling, disallowance, and sunseting requirements that apply to legislative instruments under the *Legislation Act 2003*. Parliamentary scrutiny of the determinations would therefore be limited.<sup>65</sup>

82. The non-binding obligation on rule-makers to consult under the *Legislation Act 2003* (Cth) relates to *legislative* instruments, *not notifiable* instruments.<sup>66</sup> Thus, there would be no obligation on the Minister to consult affected communities.
83. There is a reference in the Explanatory Memorandum to this power enabling the Minister to respond to “community requests”.<sup>67</sup> Given the power imbalance between the Federal Government and Aboriginal and Torres Strait Islander people in the Northern Territory, along with the history of Income Management and other discriminatory measures being imposed on communities without their consent or request, a reference to “community requests” in the Explanatory Memorandum (and not even in the Bill itself) cannot be considered a safeguard.
84. If the Government wants to restrict human rights in such a way, it should, at a minimum, be required to bring a bill before Parliament for robust scrutiny and debate, accompanied by a statement of compatibility with human rights.

### Removal of a right to review

85. The Bill removes the right of individuals to apply for an internal review or review by the Administrative Appeals Tribunal of a notice advising a person that they are being placed into the trial.<sup>68</sup> In effect, this appears to mean that a person placed into the trial in the Northern Territory in error will need to rely on the problematic exemption and exiting provisions under sections 124PHA and 124PHB of the *Social Security (Administration) Act* if they want to leave the trial (see further paragraphs 70-74 in relation to the exiting and exemption provisions).

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<sup>65</sup> Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia (Scrutiny Digest 6 of 2019, 18 September 2019) [1.54]-[1.55].

<sup>66</sup> *Legislation Act 2003* (Cth) ss 17. Note that for *legislative* instruments, the rule-maker decides what consultation is appropriate and a failure to consult “does not affect the validity or enforceability of a legislative instrument”.

<sup>67</sup> Explanatory Memorandum, *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019* (Cth) 13.

<sup>68</sup> *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019* (Cth), items 44 and 45.

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86. The receipt of a notice is an essential pre-requisite to placement in the Cashless Debit Card trial in the Northern Territory.<sup>69</sup> The Bill provides that “the Secretary *may* give a person a written notice stating that the person is a trial participant”. It is a discretionary power, which if not exercised, means that a person is not a trial participant, even if they satisfy all other criteria in proposed sections 124PGE(1), (2) and (3).
87. The Explanatory Memorandum describes the notice as an “administrative process” that “merely reflects other decisions made by other bodies such as... child protection officers of the NT or officers or employees of recognised State/Territory authority [sic] of the NT. Those decisions will themselves be subject to review under the laws of the relevant jurisdiction.”<sup>70</sup>
88. Given at least 97.5 per cent of people affected by the Bill (or 18,549 people) in the Northern Territory would be captured by the criteria in proposed section 124PGE(1), which does not require a decision to be made by another state body, it is inaccurate to suggest that a notice requiring a person to participate in the trial “merely reflects other decisions made by other bodies”. The notice is a determinative factor for forced participation.
89. Ordinarily under social security laws, a notice substantively impacting on a person’s social security entitlements is reviewable under Part 4 and Part 4A of the *Social Security (Administration) Act*. This is an important procedural safeguard to ensure accuracy, transparency and accountability in government decision making and should apply to decisions to include a person in a Cashless Debit Card trial. The Government’s attempt to justify the removal of review rights based on “inefficiencies” is alarming and a wholly inadequate justification.<sup>71</sup>

### Information privacy concerns

90. The Bill gives the Secretary the power to obtain information or documents that they consider “may be relevant” to “the operation of Part 3D (i.e. the Cashless Debit Card scheme)”.
91. This is a broad and intrusive power. It allows the Secretary to compel a person to provide a range of information or documents, including information about individuals’ personal circumstances and also information about how the Indue card is being used. The Explanatory Memorandum states that this amendment is “essential” to allow the Secretary to determine whether a person is eligible for exemption or exit from the scheme.<sup>72</sup>

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<sup>69</sup> Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 (Cth), item 27 (proposed subsections 124PGE(1)(e), (2)(g), (3)(f) and (5)).

<sup>70</sup> Explanatory Memorandum, Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 (Cth) 14.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid 15.

92. The Scrutiny Committee has raised concerns with the proposed information sharing provisions in the Bill.<sup>73</sup> The Committee was concerned that allowing the sharing of information about trial participants, and extending the Secretary's power to require information and documents, may trespass unduly on individuals' privacy.
93. In this respect, the Scrutiny Committee noted that neither the Explanatory Memorandum nor the Statement of Compatibility provide detail as to the type of information that may be shared under proposed sections 124POB, 124POC and 124POD, or the type of information or documents that may be required under paragraph 192(db). The Scrutiny Committee also raised concern about the lack of safeguards that would apply to the proposed provisions, including the uncertain application of the *Privacy Act 1988* (Cth).<sup>74</sup>
94. The HRLC shares the concerns identified in NAAJA's submission in relation to the nature and extent of the information collection and sharing powers in the Bill, particularly given:
- (a) the blanket approach to the introduction of the Cashless Debit Card trial in the Bill (see further paragraphs 65-69);
  - (b) the incredibly broad range of personal and community-level factors that the Secretary can consider as part of determining whether to allow a person to exit the trial (see further paragraphs 70-74);
  - (c) the dominant role of a private for-profit company, Indue Ltd, in the operation of the Cashless Debit Card and the uncertainty in relation to safeguards to protect private information obtained as part of its role; and
  - (d) the more sophisticated technology behind the Cashless Debit Card, when compared to the BasicsCard, which allows for the capture of greater fields of information.
95. The increasingly sophisticated technology behind the Cashless Debit Card allows for the collection of ever larger, more complex and valuable datasets about the personal life and spending habits of those receiving social security. As the Special Rapporteur on extreme poverty highlighted in his recent report on social security and digital technologies, the HRLC is concerned that the use of electronic cards to administer social security facilitates more efficient monitoring and surveillance of people experiencing poverty by governments and private companies, without adequate safeguards being put in place to protect people from discrimination or arbitrary invasions of privacy.<sup>75</sup>

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<sup>73</sup> Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia (Scrutiny Digest 6 of 2019, 18 September 2019) [1.57]-[1.61].

<sup>74</sup> *Ibid.*

<sup>75</sup> Philip Alston, *Report of the Special Rapporteur on Extreme Poverty and Human Rights* (UN doc A/74/48037; 11 October 2019).

96. More broadly, the role of private actors, such as Indue Ltd and the Minderoo Foundation, in proposing, developing and operating digital technologies for social security systems around the world is “deeply problematic”<sup>76</sup> in terms of citizens being able to hold those with power to account and requires independent review.

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<sup>76</sup> Ibid.