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

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Date introduced: 11 September 2019

House: House of Representatives

Portfolio: Social Services

Commencement: various dates as set out in this Digest.

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 Federal Register of Legislation website.

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Purpose of the Bill
The purpose of the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 (the Bill) is to amend the Social Security (Administration) Act 1999 (SSA Act) to:

• establish the Northern Territory (NT) and Cape York area as cashless debit card (CDC) trial areas and transition income management participants in these areas onto the cashless debit card trial in 2020
• extend the end date for existing CDC trial sites from 30 June 2020 to 30 June 2021 and establish an end date of 30 June 2021 the proposed NT CDC trial site
• establish an end date for the CDC trial in the Cape York area of 31 December 2021
• remove the current cap of 15,000 CDC trial participants
• enable people in the Bundaberg and Hervey Bay trial site to volunteer to participate in the trial
• enable the Secretary of the Department of Social Services to advise a community body when a person has exited the CDC trial and
• make changes to the CDC trial review and evaluation process.

Commencement
The Bill has one Schedule which is divided into three Parts:

• Sections 1 to 3 commence on Royal Assent.
• Part 1 of Schedule 1 commences on 1 January 2020 if it receives Royal Assent before then—otherwise it commences the day after Royal Assent.
• Part 2 of Schedule 1 commences on the later of:
   – 8 April 2020 and
   – the day after three months from Royal Assent.
• Part 3 of Schedule 1 commences the day after Royal Assent.

Background
Income management and the cashless debit card are both designed to prevent income support recipients from spending a significant portion of their payments on potentially harmful goods such as alcohol or illegal drugs. They do this by blocking access to cash withdrawals and by blocking transactions involving excluded goods or at merchants that sell excluded goods. While both schemes rely on cards provided by payment company Indue, they were developed separately and operate in different ways. Some of the differences in how the systems work are the result of policy decisions while others are the result of differences in technology. The Government operates income management and the cashless debit card in a number of locations around Australia. Of the 24,974 people on income management as at August 2019, 79 per cent were Indigenous.

1. Table items 1, 2, 3 and 4 in subclause 2(1) of the Bill.
The total number of participants currently on the cashless debit card is smaller. The largest site is the Bundaberg and Hervey Bay region with 5,756 card users followed by the Goldfields region with around 3,352.\(^5\)

One of the changes proposed in this Bill replaces income management with the cashless debit card in two locations—the Northern Territory and Cape York. This would leave income management operating at a handful of small-scale sites around Australia. These are the:

- place-based income management (PBIM) sites of Logan (Qld), Rockhampton (Qld), Bankstown (NSW), Greater Shepparton (Vic) and Playford (SA)
- child protection sites in Western Australia and South Australia, and
- the APY Lands (SA), Ngaanyatjarra (Ng) Lands (WA) and Kiwirrkurra Community (WA).\(^7\)

It is not clear whether the Government plans to eventually move these sites to the cashless debit card. However, the Government has announced plans to use income management in a number of the PBIM sites for its proposed drug testing trial.\(^8\)

**How income management and the cashless debit card work**

While the cashless debit card is a newer scheme, it is not necessarily more advanced. Its major advantage is that it places less of an administrative burden on Centrelink and the Department of Human Services.

**Income management and the BasicsCard**

Income management sets aside a proportion of a recipient’s 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).\(^9\)

Payment amounts subject to income management are to be paid into a person’s income management account. Each person’s income managed funds are held in an income management account within the Income Management Record.\(^10\) Amounts standing to the credit of the income management record may be kept in a single bank account.\(^11\) Individuals can transfer funds between their income management account and their BasicsCard.\(^12\)

The BasicsCard was developed specifically for income management. It is a PIN protected card that operates on the EFTPOS system. It replaced an earlier system that relied on vouchers and store

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5. Senate Community Affairs Committee, Additional information, Social Services Portfolio, Supplementary Budget Estimates 2019–20, *Cashless debit card and income management summary as at 30 August 2019*, Table 2.1, pp. 4–5.
6. Ibid, Table 1.1, p. 2.
10. DSS, ‘*11.1.3.20 Income Management Record*’, Social security guide, DSS website, last reviewed 11 November 2019.
11. SSA Act, section 123VC.
12. DHS, ‘*Centrelink online account help - Manage your Income Management account and BasicsCard money online*’, DHS website, last updated 8 April 2019.
cards. A merchant can only accept BasicsCard if they have signed an agreement and the Department of Human Services has approved them.

**Cashless debit card**

The cashless debit card is a Visa debit card issued by payments company Indue. Cardholders can use their card at any physical store that accepts Visa debit unless the store has been blocked. Cardholders can also use the card to make online purchases at approved online merchants.

Each person on the cashless debit card has a bank account known as a ‘welfare restricted bank account’. The restricted portion of the person’s income support payments is placed in this account and the person accesses this amount using the cashless debit card, direct debit, BPAY or other transfers.

The cashless debit card system works by using merchant category codes (MCCs) to block certain merchant categories. An MCC is a four digit code that identifies merchants by the kind of goods or services they sell. The system automatically blocks a number of MCCs including those covering drinking places, packaged liquor stores, gambling venues and ‘quasi cash’.

On its own MCC blocking is too blunt. MCCs are a longstanding feature of the financial services system and were not designed around the needs of income management.

One example of the difficulties of relying on MCC blocking is ‘mixed merchants’. Some MCCs that are not blocked may sell alcohol as well as other goods and services. These mixed merchants include restaurants, takeaway food shops, grocery stores and supermarkets. To deal with this problem, either Indue or the department has to make decisions about whether particular merchants should be blocked or approved. Merchants that sell excluded goods can be approved if they agree to have their staff identify customers who are using the cashless debit card and refuse to put through transactions that include excluded goods.

The Department of Social Services is currently trialling a more automated solution to this problem that involves changes at the merchant side of the transaction.

**What differences mean in practice**

Some important practical differences between the income management and cashless debit card schemes are:

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17. Transactions such as online purchases and transfers that do not involve the physical use of the card are more restricted than those where the card is used. Merchants are excluded unless they are approved. See DSS, *8.7.6.40 Welfare restricted bank accounts*, op. cit.
21. Ibid.
• **Who can accept the card.** The BasicsCard can only be used at merchants that the Department of Human Services has approved. The cashless debit card can be used at any merchant the Department has not blocked (provided it is able to accept Visa Debit)

• **Merchant responsibilities.** All merchants who accept BasicsCard must sign an agreement not to process transactions for excluded goods such as alcohol or tobacco. In contrast, most merchants who accept the cashless debit card have no agreement with either the Department or the card provider.²²

• **Face-to-face assistance with budgeting.** When a person is placed on income management they attend an interview where the person and a Centrelink officer decide how to allocate the person’s income managed funds. Centrelink can make payments on the person’s behalf for expenses such as rent with the balance of the person’s income managed funds being allocated to the BasicsCard.²³ People placed on the cashless debit card do not receive an interview and are responsible for setting up their own direct debits, transfers and BPAYs for rent and other bills.²⁴

Both cards prevent income support recipients from withdrawing cash. Income support recipients receive part of their payment on their card with the remainder transferred to their bank account in the normal way.²⁵

Because all BasicsCard merchants have to sign an agreement, it is relatively straightforward for policymakers to add or remove goods and services from the list of goods and services that are excluded and instruct merchants to manage BasicsCard transactions accordingly. This is not the case with the cashless debit card. With the cashless debit card, the major way of blocking transactions is by blocking entire merchant categories (for example, ‘package stores—beer, wine and liquor’). For merchants that sell a mixture of restricted and non-restricted goods (such as a supermarket that sells food and alcohol) policymakers must identify each merchant and have them sign an agreement. This means it is not feasible to block goods such as cigarettes that are sold across a wide range of merchant categories.

While the cashless debit card system is newer than the income management system, it is not necessarily a superior or more advanced system. When Andrew Forrest first proposed the cashless debit card in his 2014 review, he argued that income management was ‘unaffordable on a large scale’ and that the cashless debit card would be cheaper to maintain and easier for Government to administer.²⁶

Income management imposes a significant administrative burden on Centrelink, the Department of Human Services and on merchants. Centrelink must conduct interviews with clients, the Department of Human Services must approve merchants, and merchants must police transactions to ensure that the BasicsCard is not used to purchase excluded goods.

**How the schemes are structured and legislated**

Both income management and the cashless debit card are restricted to particular locations around Australia. Within these locations the schemes target particular groups of income support recipients. To administer each of the schemes, policymakers need to identify:

Policymakers have taken different approaches for legislating each scheme.

**Income management**

Income management is structured around ‘measures.’ Each measure applies to a particular group of income support recipients (for example, disengaged youth or long-term welfare payment recipients), operates in particular income management locations, and income manages a particular percentage of a person’s income support payments.

The measures identify recipients in two steps. First, a person must be receiving a ‘trigger payment’. Second, people receiving this trigger payment must also meet a set of criteria that are specific to the measure (for example, the length of time they have been on payment).

Different income management measures can have different trigger payments. The SSA Act groups payments into categories (E, H, I, O, Q, R and S). These categories are also used to identify the payments that are subject to income management. The categories are defined at section 123TC of the SSA Act.

Details for each measure are listed in Table 1 and Table 2 below.

**Table 1: existing income management measures**

<table>
<thead>
<tr>
<th>Income management measure (and relevant section of SSA Act)</th>
<th>Trigger payment</th>
<th>Additional eligibility criteria (and relevant section of SSA Act)</th>
<th>Payments subject to income management (Instalments)</th>
<th>Income managed % (Instalments) (and relevant section of SSA Act)</th>
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<td><strong>Child protection measure (section 123UC)</strong></td>
<td>Category H</td>
<td>Notice from state/territory child protection officer</td>
<td>Category I</td>
<td>100% (70%)&lt;sup&gt;a&lt;/sup&gt; (s123XI(3))</td>
</tr>
<tr>
<td><strong>Vulnerable (s123UCA)</strong></td>
<td>Category H</td>
<td>Determination by Secretary (s123UGA)</td>
<td>Category I</td>
<td>50% (s123XJA(4))</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Income management measure (and relevant section of SSA Act)</th>
<th>Trigger payment</th>
<th>Additional eligibility criteria (and relevant section of SSA Act)</th>
<th>Payments subject to income management (instalments) (and relevant section of SSA Act)</th>
<th>Income managed % (instalments)</th>
</tr>
</thead>
</table>
| **Disengaged youth measure** (s123UCB)                     | **Category E Person** | • Aged at least 15 and under 25 (s123UCB(1)(b))  
  • Has received a category E payment for at least 13 of the previous 26 weeks (s123UCB(1)(g))  
  • Is not an ‘exempt welfare payment recipient’ (s123UCB(1)(d)) | **Category I** | **50%** (s123XJC(4)) |
| **Long term welfare recipient measure** (s123UCC)          | **Category E Person** | • Aged at least 25 and pension age (123UCB(b))  
  • Has received a category E payment for at least 52 of the previous 104 weeks (s123UCB(g))  
  • Is not an ‘exempt welfare payment recipient’ (s123UCB(d)) | **Category I** | **50%** (s123XJC(4)) |
<p>| <strong>Queensland Commission (Cape York)</strong> (s123UF)           | <strong>Category P or R Person or their partner</strong> | Notice from the Queensland Commission (Family Responsibilities Commission) (s123UF(1)(b)) (s123UF(2)(c)) | <strong>Category Q or Category S</strong> | **60, 75, or 90%**b (s123XM(3)) (s123XO(3)) |</p>
<table>
<thead>
<tr>
<th>Income management measure (and relevant section of SSA Act)</th>
<th>Trigger payment</th>
<th>Additional eligibility criteria (and relevant section of SSA Act)</th>
<th>Payments subject to income management (instalments)</th>
<th>Income managed % (instalments) (and relevant section of SSA Act)</th>
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<td>Other State/Territory referrals (Supporting People at Risk) (s123UFAA)</td>
<td>Category H Person or their partner</td>
<td>Notice from a recognised state/territory authority (s123UFAA(1)(b))</td>
<td>Category I</td>
<td>70% (s123XPAA)</td>
</tr>
<tr>
<td>Voluntary income management (s123UFA)</td>
<td>Category H Person</td>
<td>Person enters into a voluntary income management agreement (s123UM)</td>
<td>Category I</td>
<td>50%&lt;sup&gt;d&lt;/sup&gt; (s123XPA(3))</td>
</tr>
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a. Rate in brackets is the rate set by legislative instrument—*Social Security (Administration) (Deductible portion — section 123XI) Specification 2019*.
b. This amount is determined by the Secretary (subsections 123XM(3) and 123XO(3)). The Act does not specify a default amount.
c. ‘Exempt welfare payment recipient’ is defined in sections 123UGB, 123UGC, and 123UGD. Section 123UGB allows the Minister to specify a class of welfare payment recipients as exempt from income management (see: *Social Security (Administration) (Classes of Exempt Welfare Payment Recipients) Specification 2010*). Sections 123UGC and 123UGD allow recipients to seek exemptions from income management under certain circumstances (see DSS, ‘11.1.14.10 Overview of exemptions from income management’, *Social Security Guide*, DSS website, last reviewed 11 November 2019).
d. This amount is set by a determination by the Minister: *Social Security (Administration) (Deductible portion — section 123XPA) Specification 2010*. 

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**Warning:** All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Table 2: locations where income management measures apply

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<th>Locations</th>
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<td>• Child protection sites(^b)</td>
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<td></td>
<td>• Place-based income management sites(^a)</td>
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<td></td>
<td>• APY Lands (SA), Ng Lands (WA), Kiwirrkurra Community (WA)</td>
</tr>
<tr>
<td><strong>Vulnerable</strong></td>
<td>• Northern Territory</td>
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<td></td>
<td>• Place-based income management sites(^a)</td>
</tr>
<tr>
<td></td>
<td>• APY Lands (SA), Ng Lands (WA), Kiwirrkurra Community (WA)</td>
</tr>
<tr>
<td><strong>Disengaged youth measure</strong></td>
<td>• Northern Territory</td>
</tr>
<tr>
<td><strong>Long term welfare recipient measure</strong></td>
<td>• Northern Territory</td>
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<tr>
<td><strong>Queensland Commission</strong></td>
<td>• Cape York</td>
</tr>
<tr>
<td><strong>Other state/territory referrals</strong></td>
<td>• Not currently in use</td>
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<tr>
<td>(Supporting People at Risk)</td>
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</tr>
<tr>
<td><strong>Voluntary income management</strong></td>
<td>• Northern Territory</td>
</tr>
<tr>
<td></td>
<td>• Child protection sites</td>
</tr>
<tr>
<td></td>
<td>• Place-based income management sites(^a)</td>
</tr>
<tr>
<td></td>
<td>• APY Lands (SA), Ng Lands (WA), Kiwirrkurra Community (WA)</td>
</tr>
</tbody>
</table>


\(^a\) Logan (Qld), Rockhampton (Qld), Bankstown (NSW), Greater Shepparton (Vic) and Playford (SA).
\(^b\) Perth metropolitan (WA), Peel and Kimberley regions (WA), Greater Adelaide (SA).

**Cashless debit card**

The administration of the cashless debit card is simpler than the administration of income management.

The individual cashless debit card trial areas are defined in section 124PD of the SSA Act. For all of the trial areas except the Bundaberg and Hervey Bay site, a person is a ‘trial participant’ if:

- they receive a ‘trigger payment’,\(^29\) that is a particular welfare payment that will automatically trigger participation in the CDC trial and
- their usual place of residence is, becomes or was within a particular trial area.\(^30\)

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\(^{28}\) DSS, *Income management locations*, op. cit.

\(^{29}\) DSS, ‘8.7.2.30 Trigger payment (Cashless Debit Card Trial)’, *Social Security Guide*, DSS website, last reviewed 11 November 2019.

\(^{30}\) DSS, ‘8.7.4.10 People automatically made participants in the Cashless Debit Card Trial’, *Social Security Guide*, DSS website, last reviewed 11 November 2019. ‘Trigger payment’ is defined in section 124PD of the SSA Act—this definition only applies to the administration of the cashless debit card.
In the Bundaberg and Hervey Bay area there is an additional condition—to be a trial participant a person must also be aged under 36 years at the date the area was declared a trial area.\(^{31}\)

Under the current cashless debit card scheme the default amount of a person’s payment that is placed on the card is the same for all participants—80 per cent.\(^{32}\) This amount is known as the ‘restricted portion’ of a person’s payment.

**History of income management in the Northern Territory**

**The Northern Territory Emergency Response**

Income management was first introduced by the Howard Government as part of the Northern Territory Emergency Response (NTER). The NTER was announced in June 2007 as a response to what the Government described as a crisis of child sexual abuse in Indigenous communities. In addition to income management, the NTER included alcohol restrictions, measures to enforce school attendance, bans on pornography and a number of other initiatives.\(^{33}\)

At the time, the Minister for Indigenous Affairs, Mal Brough, likened the NTER to the Australian Government’s response to the Indonesian tsunami. He spoke about returning communities to normality over a five year period through a three phase approach of stabilisation, normalisation and exit.\(^{34}\)

The Government’s response was triggered by the *Little Children are Sacred* report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse.\(^{35}\) While the Government’s response to the report’s revelations was swift, the problems it identified had already been brought to the Government’s attention. For example, in 2001 the report *Violence in Indigenous Communities* (Memmott Report), reported that some communities were struggling with problems such as ‘male-on-male and female-on-female fighting, child abuse, alcohol violence, male suicide, pack rape, infant rape, rape of grandmothers, self-mutilation, spouse assault and homicide.’ The report warned that these communities should ‘be viewed as in states of dire emergency.’\(^{36}\) One of the report’s authors, Paul Memmott, argued that the problem was getting worse with each generation. ‘It’s very despairing’ he said, ‘because it is like sitting on a time bomb’.\(^{37}\)

The Government received the Memmott Report in August 1999 and publicly released it in January 2001.\(^{38}\) In August 2003 then Prime Minister John Howard announced a number of measures aimed at reducing violence in Indigenous communities including Communities in Crisis, a

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31. Ibid.; SSA Act, section 124PGC.
32. This is the amount for instalments under subsection 124PJ(1) of the SSA Act. 100 per cent of lump sum payments are placed on the cashless debit card under subsection 124PJ(2) of the SSA Act.
small program aimed at ‘stabilising communities that are suffering from an intolerable incidence of alcohol abuse and violence.’

When the NTER was introduced in 2007 it applied to 73 prescribed communities, their associated outstations and the ten town camp regions of the Northern Territory. In 2008 over 70 per cent of the Northern Territory’s Indigenous people lived within the prescribed areas.

**Income management**

The idea of using a card to set aside money for essentials had been proposed well before planning for the NTER began. For example, in 2003 Acting Aboriginal and Torres Strait Islander Commission (ATSIC) Chairman Lionel Quartermaine suggested paying income support using a smart card that prevented recipients from buying alcohol and drugs. Indigenous leader Noel Pearson supported the proposal, arguing that it could help ensure that parents used income support money to feed, clothe and care for their children. Mr Quartermaine’s proposal was rejected by the then Minister for Indigenous Affairs, Amanda Vanstone.

At a local level, the Arnhem Land Progress Association (ALPA) developed a card system as part of a Shared Responsibility Agreement with the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). The community was concerned that families were running out of money for food at the end of each pay cycle. The ALPA FOODcard was designed as a budgeting tool that would help families set money aside for food and resist pressures for non-essential expenditure.

The card was voluntary and could only be used in community stores. It was able to block purchases at a product level. Because the FOODcard was part of health and nutrition initiative it was designed to block purchases of products such as tobacco, soft drinks and unhealthy takeaway food.

When planning to roll out income management as part of the NTER measures, policymakers improvised a solution using a combination of existing products and services. These included direct debit, store cards and the ALPA FOODcard.

In June 2007 then Prime Minister, John Howard, announced that the Government would be ‘quarantining ... 50 per cent of welfare payments to stem the flow of cash going towards alcohol and other substance abuse and to ensure that funds meant to be used for children’s welfare are

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45. Arnhem Land Progress Aboriginal Corporation (ALPA), *Submission* to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into community stores in remote Aboriginal and Torres Strait Islander communities*, [Submission no. 61], 2009.
46. A King, *Evidence* to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into community stores in remote Aboriginal and Torres Strait Islander communities*, 22 July 2009, p. 68.
actually used for that purpose’. He also said that the Cabinet would consider extending income management ‘in certain circumstances to the wider community where individuals are abusing their children or failing to fulfil their parental responsibilities.’

The roll-out of income management took place during the lead up to a Federal election. The Australian Labor Party (Labor) Opposition promised bipartisan support for the Northern Territory intervention while seeking some changes. One of these was the Government’s decision to legislate for an exemption to the Racial Discrimination Act 1975.

From income management to new income management

After winning office, Jenny Macklin, the new Minister for Indigenous Affairs, announced that the Government would immediately begin work on a compulsory income management scheme that did not require the suspension of the Racial Discrimination Act. This meant changes to income management.

The Government commissioned an independent review of the NTER. The review offered qualified support for income management while recommending that it only be applied on a case by case basis and to people who volunteered:

The benefits of income management are being increasingly experienced. Its compulsory, blanket imposition continues to be resisted, but the measure is capable of being reformed and improved. People who do not wish to participate should be free to leave the scheme. It should be available on a voluntary basis and imposed only as a precise part of child protection measures or where specified by statute, subject to independent review. In both cases it should be supported by services to improve financial literacy.

The review recommended that compulsory income management should only apply on the basis of child protection, school enrolment and attendance and other relevant behavioural triggers; however, the Government decided not to take up this recommendation.

The new Government also moved away from its predecessor’s three phase, stabilise-normalise-exit model, arguing that moving beyond stabilisation was complicated and would take time. The Government indicated that it would develop a new approach to income management that did not involve the suspension of the Racial Discrimination Act.

The new approach was announced in November 2009. In a policy statement titled Landmark Reform to the Welfare System, Reinstatement of the Racial Discrimination Act and Strengthening

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50. J Macklin (Minister for Families, Housing, Community Services and Indigenous Affairs), Compulsory income management to continue as key NTER measure, media release, 23 October 2008.
52. Ibid., p. 12; Macklin, Compulsory income management to continue as key NTER measure, op. cit.
53. J Macklin, Compulsory income management to continue as key NTER measure, op. cit., p. 4.
54. Ibid., p. 4.
of the Northern Territory Emergency Response, the Government announced plans for a national roll-out of income management to disadvantaged regions across Australia.\textsuperscript{55}

The new scheme extended income management across the Northern Territory to targeted groups of people the Government believed would particularly benefit from it. The categories were:

- \textit{disengaged youth}: people aged 15 to 24 who have been in receipt of Youth Allowance, Newstart Allowance, Special Benefit or Parenting Payment for more than 13 weeks in the last 26 weeks
- \textit{long term welfare recipients}: people aged 25 and above (and younger than age pension age) who have been in long-term receipt of specified payments, including Newstart Allowance and Parenting Payment
- \textit{vulnerable}: people assessed by a delegate of the Secretary (in practice, a Centrelink social worker) as requiring income management for reasons including vulnerability to financial crisis, domestic violence or economic abuse and
- \textit{child protection}: people referred for income management by child protection authorities.\textsuperscript{56}

These measures are currently in place in the Northern Territory. The major change is the expansion of the vulnerable measure to include young people who are automatically deemed to be vulnerable because they meet certain ‘youth triggers’. These are where the recipient is:

- granted the unreasonable to live at home rate of payment for Youth Allowance, Disability Support Pension, or ABSTUDY
- under the age of 16 and granted a Special Benefit or
- under the age of 25 and receives a Crisis Payment due to prison release.\textsuperscript{57}

\textbf{Income management in Cape York}

Income management was introduced in the Cape York Welfare Reform trial communities in July 2008, shortly after income management was introduced in the Northern Territory.\textsuperscript{58} However, it was developed independently and the two income management models differ significantly.

\textit{Bottom-up versus top-down}

The Cape York model was developed by the Cairns-based Cape York Institute for Policy and Leadership (Cape York Institute) with some assistance from outside experts including staff on secondment from the Treasury.\textsuperscript{59} Then Cape York Institute Director and Indigenous leader Noel Pearson drove the process. The Northern Territory model was developed by the Australian Government with limited consultation in the affected communities.\textsuperscript{60} According to Noel Pearson:

\begin{itemize}
\item\textsuperscript{55} Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), \textit{Policy statement: landmark reform to the welfare system, reinstatement of the Racial Discrimination Act and strengthening of the Northern Territory Emergency Response}, Australian Government, [Canberra], 2009, pp. 1–2.
\item\textsuperscript{56} Ibid., pp. 8–9.
\item\textsuperscript{57} DSS, \textit{Vulnerable Welfare Payment Recipient measure of Income Management}, fact sheet, DSS, [Canberra], June 2019.
\item\textsuperscript{58} J Macklin (Minister for Families, Housing, Community Services and Indigenous Affairs), \textit{Cape York welfare reform trial}, media release, 22 April 2008.
\item\textsuperscript{59} Cape York Institute for Policy and Leadership (Cape York Institute), \textit{From hand out to hand up: Cape York welfare reform project: Aurukun, Coen, Hope Vale, Mossman Gorge: design recommendations}, Cape York Institute, Cairns, May 2007, p. 1.
\item\textsuperscript{60} Bray, et al, \textit{Evaluating New Income Management in the Northern Territory}, op. cit., p. 8.
\end{itemize}
... in Cape York the reform agenda was the initiative of Aboriginal leaders, and the policy proposals came from the Cape York Institute—not from government. The Northern Territory policy was unilaterally decided by government.  

**Targeting**

In Cape York, conditional income management is used as a sanction for individuals who have breached their obligations. In the Northern Territory it is applied in a blanket way to entire categories of income support recipients. According to researchers from the Social Policy Research Centre:

> The [Cape York Welfare Reform] model of income management is far more targeted than that in the Northern Territory ... Clients on income management in the [Cape York Welfare Reform] trial communities are case managed to a much higher degree, and their progress is closely monitored by the [Family Responsibilities Commission] as well as the other case management arrangements. This approach appears to be successful, and has a number of advantages for the individuals concerned and for the communities more generally, as is evidenced by the results of the social change survey.  

According to Pearson, ‘the difference from the Territory is that the Cape York scheme encourages community members to take up their responsibilities. If people are being responsible, they are not affected by income management.’

**Cape York model uses income management as a tool to encourage responsible behaviour**

In the Cape York model income management is designed as ‘a catalyst for behavioural change’. In the long term, it attempts to reduce problems such as alcohol abuse by encouraging responsible behaviour. In contrast, the Northern Territory model applies income management in a much less targeted way in order to ‘reduce the amount of cash available in communities in which substance abuse, gambling and other anti-social behaviours are problems that can lead to child abuse and community dysfunction’.

One of the most disturbing findings from the evaluation of income management in the Northern Territory was that it seemed to encourage dependence on the welfare system. According to the researchers:

> ... rather than the program building people’s capacity and motivating them to take responsibility and become independent and self-reliant, for these people it has acted to make their lives more comfortable by relieving them of having to take responsibility for some aspects of their financial management. This in turn has made them more dependent and reliant upon welfare.

The Cape York model does not appear to have the same effect.

**2005–2007—development of the Cape York welfare reform trials**

In 2005, as Director of the Cape York Institute, Noel Pearson called for a welfare reform trial in Cape York Indigenous communities. Under the proposal, communities would opt-in to the trial and

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61. N Pearson, *There is nothing the government can do for you that you are unwilling to do for yourself*, Sir Robert Menzies lecture, Melbourne, 27 February 2011.
64. Cape York Institute, *From hand out to hand up*, op. cit., p. 68.
would set up a new welfare reform model that moved beyond the Government’s mainstream approach. A key part of the model would be to create mechanisms that ensured ‘monies received for family go to the wellbeing of the family’.  

With support from both the Australian and Queensland governments, and assistance from staff seconded from The Treasury, the Cape York Institute produced a plan for welfare reform trials in the Cape York communities of Aurukun, Coen, Hope Vale and Mossman Gorge. The 2007 report *From Hand Out to Hand Up*, set out an analysis of the problems in Cape York Indigenous communities along with detailed policy recommendations. According to the report, Cape York communities had experienced a collapse of social norms with widespread social dysfunction as a result. The report set out a strategy designed to rebuild norms and restore Indigenous authority. The aim was to reinforce norms and values that community members already endorsed rather than to impose norms from outside.

To reinforce social norms, the welfare reform trial would make income support payments conditional on a broader range of obligations. These would include the proper care of children, abiding by tenancy conditions in public housing and not committing drug, alcohol, gambling or family violence offences. To enforce these obligations a new statutory authority—the Family Responsibilities Commission (FRC)—would be established. Where an individual breaches their obligations, the FRC could issue a warning, direct the person to attend support services or place them on ‘conditional income management’.

According to the 2007 report, conditional income management ‘would be the ultimate tool available to the FRC to counter breaches of obligations and encourage individuals to take responsibility for themselves and others in their family and community’.

Conditional income management was designed to serve two purposes. It would act as a deterrent to encourage community members to abide by their obligations and:

... will effectively prevent the flow of welfare income to substance abuse and other behaviours that impact upon the welfare of children and dependents in the Welfare Reform communities. The conditional income management sanction will help to provide a family with a break from dysfunctional behaviour, supporting the success of other support services such as drug and alcohol counselling.

Conditional income management was designed to be targeted and temporary. As *From Hand Out to Hand Up* explained:

The conditional income management sanction is meant to be a catalyst for behavioural change. In the longer term an individual must take personal responsibility for meeting their obligations. The prospect of sanctions being in place for an indeterminate period would undermine this outcome. Individuals should also be provided with the opportunity to have a sanction lifted once they demonstrate that they can meet their obligations.

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69. Cape York Institute, *From hand out to hand up*, op. cit.
70. Ibid., p. 67.
71. Ibid., pp. 67–68.
72. Ibid., p. 68.
2007—legislation
In July 2007 then Minister for Families, Community Services and Indigenous Affairs, Mal Brough, announced that the Government had accepted the Cape York Institute’s proposal. The Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007 enabled conditional income management in the Cape York Welfare Reform trials and a separate model of income management that formed part of the NTER.

2014—trial extended to include Doomadgee
Doomadgee joined the Cape York Welfare Reform trial in August 2014.

Development of the cashless debit card
In 2013 the Abbott Coalition Government commissioned Andrew Forrest to chair a review of Indigenous training and employment programs. One of the review’s recommendations was to introduce a new cashless debit card for working age income support recipients. According to the review’s 2014 report—The Forrest Review: Creating Parity:

The current income management system, which operates via the government BasicsCard, is providing very valuable support to women, in particular making sure welfare stretches over the fortnight and that bills are paid and children are fed. However, it is not part of the mainstream banking system, it is very expensive for the government to administer and it has some stigma associated with it for the recipient.

Despite the benefit of the financial stability for individuals, expansion of this system is financially unsustainable, with the existing 23,000 income management recipients making over 46,000 calls a week to Centrelink to change their arrangements.

Mr Forrest referred to the proposed card as the ‘healthy welfare card’ and argued that it would overcome problems with the existing income management system.

One problem was the high cost of income management. In a 2013 report on income management in the Northern Territory, the Australian National Audit Office (ANAO) reported that the estimated cost per person per year could be as high as $7,900 for income support recipients in remote areas. According to the Forrest Review, the cost of income management made it ‘unsustainable and unsuitable for broader application’. The Review implied that the cashless debit card would be cheaper because it relied on the mainstream banking system.

75. G Elmes (Queensland Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs), Letter to Mr Trevor Ruthenberg, Queensland Government Department of Aboriginal and Torres Strait Islander and Multicultural Affairs, Brisbane, 17 September 2014.
76. T Abbott (Prime Minister), Review of Indigenous training and employment, media release, 8 October 2013.
78. Australian National Audit Office (ANAO), Administration of New Income Management in the Northern Territory: Department of Families, Housing, Community Services and Indigenous Affairs, Department of Human Services, Audit report, 19, 2012–13, ANAO, Barton, ACT, 2013, p. 94. According to the Department of Social Services, it is difficult to calculate estimates of the cost per person of administering income management in different locations because some costs are centralised and apply across all locations (for example, establishing a hotline) and others vary between locations. See L Hefren-Webb, Evidence to the Senate Community Affairs Legislation Committee, Official committee Hansard, 18 October 2012, p. 72.
79. Forrest, The Forrest review, op. cit., p. 27.
80. Ibid., pp. 104 and 106.
Another problem is that income support recipients can only use the BasicsCard at approved retailers. In contrast, the cashless debit card could be used anywhere that accepted mainstream debit cards (except retailers that are blocked because they sell alcohol or gambling products).\textsuperscript{81}

Stigma was also a problem according to Mr Forrest. He wrote that ‘the BasicsCard readily identifies its user as a welfare recipient, unnecessarily degrading someone who has fallen on hard times’ and argued that the healthy welfare card would be different because it would ‘look and work like any other debit card’.\textsuperscript{82}

Mr Forrest also argued that income management allowed income support recipients too much cash. This left recipients with enough cash to ‘fuel alcohol or drug dependency.’ He proposed that the healthy welfare card would allow little or no access to cash.\textsuperscript{83}

According to the Forrest Review, the ultimate aim of the cashless debit card is to help people move off income support and into work. The card is designed to provide ‘stability for families and individuals so they can concentrate on finding employment, providing adequately for their families, and sending their children to school.’\textsuperscript{84}

The cashless debit card scheme operates in a number of sites around Australia. These are the Ceduna region (South Australia), the East Kimberley and the Goldfields regions (Western Australia), and the Bundaberg and Hervey Bay region (Queensland). Under current legislation these trials can operate until 30 June 2020.\textsuperscript{85}

Committee consideration

\textbf{Senate Community Affairs Legislation Committee}

The Bill was referred to the Senate Community Affairs Legislation Committee for inquiry and report. Details of the inquiry are at the inquiry homepage. Submissions closed on 18 October 2019. The Committee received 110 submissions; public hearings were held in Darwin, Canberra and Alice Springs. The Committee delivered its report into the inquiry to the Senate on 7 November 2019.\textsuperscript{86}

The Committee tabled a majority report, a Dissenting Report by Labor Senators and a Dissenting Report by the Australian Greens.

\textbf{Majority report}

The Committee made two recommendations:

- recommendation 1—prior to the passage of the Bill the Department of Social Services clarify the changes to the Minister’s discretionary powers to determine the rates of quarantined income, and the process by which communities can request an increase in the rate of quarantined income and

\begin{thebibliography}{9}
\bibitem{81} A Forrest, ‘\textit{Healthy welfare card will protect the vulnerable},’ \textit{The Daily Telegraph}, 24 March 2015, p. 13.
\bibitem{82} Ibid.
\bibitem{83} Ibid.
\bibitem{84} Forrest, \textit{The Forrest review}, op. cit., p. 103.
\bibitem{85} Section 124PF of the SSA Act; DSS, ‘\textit{Cashless Debit Card – frequently asked questions},’ DSS website, last updated 4 September 2019.
\end{thebibliography}
• recommendation 2—that the Bill be passed.87

Recommendation 1 relates to an issue raised by a number of submitters to the inquiry. Currently the Minister can vary the proportion of a person’s payments that are subject to income management using a legislative instrument (for existing trial sites). 88 For NT trial participants **proposed subsections 124PJ(2A) and (2B)** (at **item 39** of **Schedule 1**) would enable the Minister to vary the proportion of a person’s payments that are restricted using a notifiable instrument. Since notifiable instruments are not subject to Parliamentary disallowance, this increases the Minister’s discretionary powers.

The Committee stated:

The committee agrees with submitters that there is a lack of clarity about the proposed increase in the minister’s discretionary powers in relation to the determination of rates of income quarantining for individuals and communities. Furthermore, the committee is of the view that clarifying the process by which communities can request an increase in the rate of quarantined income will alleviate the concerns raised by submitters.89

**Dissenting Report by Labor Senators**

Labor Senators recommended that the Senate does not pass the Bill in its current form.90 Their Dissenting Report is largely focused on transitioning Northern Territory income management participants to the cashless debit card.

Labor Senators do not believe the CDC trials should be extended or expanded unless:

• the card is made voluntary
• it is only applied in specific instances, with intensive case management and is time limited, e.g. child protection or
• a community genuinely gives their informed consent to trial the card, consistent with self-determination.91

**Dissenting Report by the Australian Greens**

The Australian Greens’ recommended that the Bill not be passed. The Australian Greens Senators expressed broad opposition to both income management and the cashless debit card, concluding:

Compulsory income management has been trialled in the Northern Territory for 12 long years, it has not reduced social harm, it has not reduced disadvantage, the evaluation of the approach showed it met none of its objectives. It has in fact caused harm and distress to many. The continuation of compulsory income management through the introduction of the Cashless Debit Card is not supported by the

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87. Ibid., p. ix.
88. This is specified separately for each income management measure: subsections 123Xi(3) (Child Protection), 123XJa(4) (Vulnerable), 123XJC(4) (Disengaged youth and long-term welfare payment recipients), 123XK(3), (School enrolment and attendance), 123XPAa(3) (Other State/Territory referrals), 123XPA(3) (Voluntary).
91. Ibid.
evidence, is not supported by the community and will cause further distress and potential harm. It is time that compulsory income management was abandoned.  

**Senate Standing Committee for the Scrutiny of Bills**

The Senate Standing Committee for the Scrutiny of Bills (Scrutiny Committee) raised concerns about:

- the proposed use of notifiable instruments to vary the restricted and unrestricted portion of a class of people’s social security payments in the Northern Territory and
- the lack of guidance in the Explanatory Memorandum on the types of information that will be collected and any safeguards in place.

**Use of notifiable instruments—lack of Parliamentary oversight**

*Restricted payment percentage determination*

The Government is seeking the power to vary the proportion of income support recipients’ payments that are restricted by notifiable instrument. As stated by the Scrutiny Committee, ‘notifiable instruments are not subject to the tabling, disallowance, and sunsetting requirements that apply to legislative instruments under the *Legislation Act 2003*.  

**Proposed subsection 124PJ(2A)** (at item 39 of Schedule 1) applies to participants who are currently under the disengaged youth and long-term welfare payment recipient measures and would allow the Minister to increase the proportion of payments that are placed on the card from 50 per cent to any amount up to 100 per cent. The Minister would be able to do this for particular participants in areas specified in the instrument.

**Proposed subsection 124PJ(2B)** applies to participants who are currently under the child protection and vulnerable measures of income management. It would allow the Minister to vary the proportion of payments that are placed on the card anywhere from zero to 100 per cent.

The Committee requested the Minister provide advice on:

- why it is considered necessary and appropriate to allow the Minister to use a notifiable instrument to determine the percentage of income that is restricted for a class of trial participants
- how the departmental Secretary’s powers in subsection 124PJ(3) of the SSA Act would be effective to ensure the Minister’s powers are exercised appropriately and
- whether (at least high-level) rules or guidance in relation to the exercise of powers under proposed subsections 124PJ(2A) and (2B) could be included in the Bill.

The Minister’s response argued that ‘[t]he Minister’s power to determine restricted portions is better exercised by notifiable instrument to ensure that trial participants have responsiveness,

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94. Ibid., p. 19.

95. Subsection 124PJ(3) of the SSA Act enables the Secretary to vary the restricted amount to zero per cent in limited cases—namely, where the person’s fund cannot be accessed because of technological fault or malfunction, a natural disaster or where the person is in severe financial hardship as a result of exceptional and unforeseen circumstances.

transparency and certainty about their financial arrangements’ and that ‘it is intended that the Minister would only respond to requests made by a community or an employee or officer of a relevant authority in appropriate circumstances’. 97

The Minister also argued that the Secretary’s power to vary a participant’s restricted portion acted as a safeguard to the Minister’s otherwise broad discretionary power because, it ‘allows the Secretary to revise a trial participant’s restricted portion as appropriate to the individual’s circumstances notwithstanding the Minister’s general determination under subsection 124PJ(2A) or 124PJ(2B)’. 98

While noting the Minister’s advice, the Scrutiny Committee remained concerned that the Bill ‘would confer on the Minister a broad power to determine the portion of a trial participant’s payments that are subject to income management’ and considered that it may be appropriate to amend the Bill to require such determinations to be made by disallowable legislative instrument. 99 This would ensure a higher level of parliamentary oversight.

### Trial area determinations

In responding to the Minister’s advice, the Scrutiny Committee also raised concern about proposed subsection 124PD(1A) (at item 14) and subsection 124PD(2) as amended by item 15 of Schedule 1 to the Bill, which would allow the Minister by way of notifiable instrument to:

- determine an area for the purposes of the definition of Cape York area and
- exclude areas of the Northern Territory from the CDC trial area. 100

The Scrutiny Committee reiterated its ‘longstanding view … that significant matters … should be included in primary legislation or at least in delegated legislation which is subject to parliamentary disallowance’—it recommended that may be appropriate to amend the Bill to require such determinations to be made by disallowable legislative instrument. 101

### Privacy concerns

The Scrutiny Committee was also concerned with the privacy implications of proposed sections 124POA, 124POB, 124POC and 124POD (at item 43) and item 46 of the Bill ‘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’. In particular, the Committee noted the lack of guidance in the explanatory materials on the type of information that may be shared and any safeguards in place to protect participants’ privacy. 102 The Committee requested the Minister’s advice as to:

- the type of information that would be collected
- the type of information that would be shared under the proposed sections and
- and any relevant safeguards in place to protect individuals’ privacy. 103

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98. Ibid.
99. Ibid., p. 86.
100. Ibid., p. 85.
101. Ibid., p. 86.
102. Senate Standing Committee for the Scrutiny of Bills, Scrutiny digest, 6, 2019, op. cit., p. 20.
103. Ibid., p. 21.
The Minister’s advice provided detailed information in response to Scrutiny Committee’s request—it has been replicated in the Committee’s *Scrutiny Digest*. The Scrutiny Committee requested that the information provided by the Minister be included in the Explanatory Memorandum, but was otherwise satisfied.

**Policy position of non-government parties/independents**

Labor and the Australian Greens oppose the Bill (see discussion above under the heading ‘Senate Community Affairs Legislation Committee’).

According to a report by Sarah Martin in *The Guardian (Australia)*, the Centre Alliance Senators and Senator Lambie have signalled that they will not make a decision on the Bill until next year, after they have consulted remote NT communities.

**Position of major interest groups**

The majority of submissions by interest groups oppose the measures in the Bill. Some groups such as the Australian Council of Social Service have a principled opposition to the cashless debit card.

Some submissions expressed support for the Bill. For example Jacinta Nampijinpa Price, a Councillor with the Alice Springs Town Council, argued that income management or the cashless debit card should be compulsory and that the cashless debit card is a better technology.

The Minderoo Foundation was also broadly supportive of the Bill.

Concerns raised by interest groups included:

- a lack of consultation with Indigenous people in the Northern Territory
- a lack of evidence that the cashless debit card is effective
- the extension of the cashless debit card to a broader group of participants than the current income management arrangements and

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105. Ibid., p. 90.
for voluntary participants, an increase in the proportion of payments that is restricted under the cashless debit card.\textsuperscript{114}

**Financial implications**

According to the Explanatory Memorandum, the Government will spend $17.8 million on support services to assist the transition in the Northern Territory and Cape York Area.\textsuperscript{115}

**Statement of Compatibility with Human Rights**

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.\textsuperscript{116}

**Parliamentary Joint Committee on Human Rights**

At the time of writing, the Parliamentary Joint Committee on Human Rights had not yet reported on the Bill.

**Key issues and provisions**

**Key issue: reducing the administrative load on Services Australia**

Income management imposes a significant administrative load on Services Australia (formally known as the Department of Human Services—DHS). According to a 2013 report by the ANAO:

> The service delivery approach required for New Income Management is resource-intensive, differs from the day-to-day processes used for the majority of services provided by DHS, and consequently is a relatively higher cost service. For a customer living in a remote area, the departments estimate that the cost of providing Income Management services is in the order of $6600 to $7900 per annum. The delivery approach adopted by DHS provides for the identification of eligible customers, the establishment of priority needs in consultation with the customer, and the payment of income managed funds to third party organisations.\textsuperscript{117}

As the ANAO report notes, income management places a number of demands on Services Australia staff. When a person is placed on income management they attend an interview where the person and a Centrelink officer decide how to allocate the person’s income managed funds. Centrelink is then responsible for setting up payments for expenses such as rent and utilities. Services Australia also manage call centre services to support the scheme.\textsuperscript{118}

Services Australia is also responsible for approving merchants who apply to accept the BasicsCard (merchants cannot accept the card unless Services Australia has approved them).\textsuperscript{119}

A submission by the Department of Social Services and Services Australia notes that ‘Services Australia has a limited service delivery role in the [cashless debit card], with the majority of service...”

\textsuperscript{114} Ibid., p. [4].


\textsuperscript{116} The Statement of Compatibility with Human Rights can be found at page 18 of the Explanatory Memorandum to the Bill.

\textsuperscript{117} ANAO, *Administration of New Income Management in the Northern Territory*, op. cit., pp. 16–17.

\textsuperscript{118} DSS, “What happens when a person starts income management?”, DSS website, last updated 14 November 2014.

\textsuperscript{119} DHS, “BasicsCard for businesses: applying”, op. cit.
delivery functions managed by the card provider (currently Indue Limited) and the Department of Social Services'. 120

While upfront costs for CDC were high due to initial one-off implementation elements, the ongoing costs, which include card provider and other components, are a fraction of these initial costs. The ongoing costs for the CDC across all four sites is below $2,000 per participant. This figure is at least $1,000 less than the per participant costs under the IM regime.121

It is likely that an anticipated reduction in administrative burden and cost is an important part of the rationale for the transition from income management to the cashless debit card in the Northern Territory and Cape York.

**Key issue: replacing the disengaged youth and long term welfare payment recipients measures with a broader measure**

Under the existing arrangements, the disengaged youth and long term welfare recipient measures in the Northern Territory exclude short-term recipients of Youth Allowance, Newstart Allowance, Special Benefit and Parenting Payment.122 The Explanatory Memorandum claims:

> ... subsection 124PGE(1) reproduces the long-term welfare recipients and disengaged youth measures established under IM but combines the criteria into one subsection for the purposes of the CDC trial.123

However, this new measure is broader than the two existing income management measures. Under the existing disengaged youth measure a person receiving a category E payment must have been receiving that payment for at least 13 weeks during the 26-week period.124

Similarly, under the long term welfare recipient measure a person must have been receiving a category E payment for at least 52 weeks during the 104-week period ending immediately before the test time.125

The Bill’s **proposed subsection 124PGE(1)**—which applies to NT CDC trial participants—does not include any restriction based on the time a person has been receiving a payment. As a result the new measure will include short-term as well as longer-term recipients of Youth Allowance, Newstart Allowance, Special Benefit, Parenting Payment (single) and Parenting Payment (partnered).

**Key issue: Ministerial discretion to change the amount of income quarantined**

**Proposed subsections 124PJ(2A) and 124PJ(2B)** (at item 39 of Schedule 1) would enable the Minister to vary the restricted percentage for NT trial participants from 50 per cent to any amount up to 100 per cent by notifiable instrument.

A number of submissions raised concerns about this issue. For example, the National Social Security Rights Network submission stated:

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120. DSS and Services Australia, Submission to the Senate Community Affairs Legislation Committee, Inquiry into the provisions of the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019, [Submission no. 3], 11 October 2019, p. 5.
121. Ibid., p. 3.
122. Paragraphs 123UCB(1)(g)
124. SSA Act, paragraph 123UCB(1)(g).
125. SSA Act, paragraph 123UCC(1)(g).
No legislative guidance or limitations are provided as to how this power is to be exercised, meaning the Minister will be able to quarantine 100% of a class of trial participants’ income without any proper justification.\textsuperscript{126}

The Committee’s report recommended ‘that prior to the passage of the bill the Department of Social Services clarify the changes to the minister’s discretionary powers to determine the rates of quarantined income, and the process by which communities can request an increase in the rate of quarantined income.’\textsuperscript{127}

This issue is also canvassed above under the heading ‘Senate Standing Committee for the Scrutiny of Bills’.

The Government has responded to concerns on this issue by introducing an amendment to the Bill that removes references to ‘100 per cent’ from the new subsections 124PJ(2A) and 124PJ(2B) and substitutes it with references to ‘80 per cent.’\textsuperscript{128}

**Key issue: voluntary income management**

The Bill allows for voluntary participation in the CDC trial areas; however, it does not reproduce the voluntary income management measure, which has a restricted payment percentage of 70 per cent.\textsuperscript{129} Under the CDC the restricted portion is 80 per cent unless the Secretary has made a determination under subsection 124PJ(3) that varies this amount.\textsuperscript{130}

While the Bill does not compel a voluntary income managed participant to leave this arrangement and transition to voluntary CDC, a Government amendment that has passed the House would insert proposed subsection 123UO(3A) into the SSA Act, enabling the Secretary to terminate voluntary income management agreements for people whose usual place of residence is within the Northern Territory.\textsuperscript{131}

A decision to terminate the voluntary income management agreement will not be reviewable by the Secretary (internal review) or the Administrative Appeals Tribunal.\textsuperscript{132}

**Key provision: expanding the CDC trial to the Cape York area**

**Cape York area CDC trial criteria**

Item 27 in Part 2 of Schedule 1 to the Bill inserts proposed section 124PGD into Subdivision A of Division 2 in Part 3D of the SSA Act—Subdivision A sets out the trial areas for the CDC and circumstances in which a person is subject to the CDC trial.

\begin{footnotesize}
\begin{enumerate}
\item SSA Act, subsection 123XPA(3).
\item SSA Act, subsection 124PJ(1).
\item SSA Act, proposed paragraphs 127(4)(aa) and proposed paragraphs 144(laa); Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019, amendment, sheet TK160, clause 10, House of Representatives, 19 November 2019.
\end{enumerate}
\end{footnotesize}
Proposed section 124PGD establishes the criteria under which a person will be a CDC trial participant in the Cape York area. A person will be a CDC trial participant in the Cape York area if:

- the person’s usual place of residence is, becomes or was within the Cape York area
- the person or the person’s partner receives a ‘category P’ welfare payment—that is:
  - a social security benefit
  - a social security pension
  - an ABSTUDY payment that includes a living allowance amount
- the FRC has notified the Secretary that the person be a trial participant and
- if the person has nominated a person as a payment nominee for the purposes of the Income Management (IM) rules, the nominated person is either a CDC trial participant or subject to IM.

If, after commencement, a person whose usual place of residence is within the Cape York area leaves the area, they will still remain subject to the CDC trial.

QLD FRC notification of trial participant

The income management rules in Part 3B of the SSA Act enable a body or agency to be established as the ’Queensland Commission’, for the purposes of, among other things, requiring Cape York residents to be subject to income management. The Queensland Commission is a body or agency established by a law of Queensland and specified as such by the federal Minister under a legislative instrument. The Minister has specified the Family Responsibilities Commission under the Family Responsibilities Commission Act 2008 (Qld) to be the Queensland Commission.

Cape York area

The Minister is given the power to determine the Cape York area by way of notifiable instrument. Under the Legislation Act 2003 (Cth), notifiable instruments are not generally disallowable. Under proposed subsection 124PD(3), inserted by item 16 of Schedule 1, the instrument specifying the Cape York area may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or.
other writing as in force or existing from time to time—according to the Explanatory Memorandum:

This approach is necessary to ensure that the CDC trial operates seamlessly for people who usually reside in the Cape York area. The process will also assist the FRC to perform its role effectively and according to Commonwealth and Queensland law. The department will make any incorporated material freely available to the public either by publication of the material on the department’s website and by allowing public inspection of any incorporated material at its National Office.¹⁴³

This would appear to allow the Cape York area to be varied from time to time based on material external to the notifiable instrument, and accordingly, expand or contract the size of the CDC trial.

The issue of whether it is appropriate for the Cape York area to be determined by way of notifiable instrument is discussed in greater detail above, under the heading ‘Senate Standing Committee for the Scrutiny of Bills’.

**Percentage of payments restricted to the CDC**

**Item 36** in **Part 2 of Schedule 1** to the Bill inserts **proposed subsection 124PJ(1A)** into the SSA Act. This sets out the portion of a ‘restrictable payment’ **paid by instalment** that must be quarantined for the purposes of the CDC trial in the Cape York area.

Restrictable payment¹⁴⁴ is currently defined under subsection 124PD(1); for the purposes of the CDC trial in the Cape York area, the types of payments that are restrictable payments are further expanded by **item 9 in Part 2 of Schedule 1** of the Bill.¹⁴⁵

For payments made to persons subject to the CDC trial in the Cape York area, the gross restricted portion is:

- the percentage specified by the FRC under the notice provided to the Secretary (that is, the notice requiring the person be subject to the CDC trial) or
- if there is no amount specified in the notice—50 per cent.

The remaining percentage of the gross amount is the ‘unrestricted portion’.¹⁴⁶

If a restrictable payment is payable to a CDC participant otherwise than by instalments, 100 per cent of the gross amount of the payment is restricted.¹⁴⁷

The Secretary may vary the restricted amount to zero per cent in cases where the person’s fund cannot be accessed because of technological fault or malfunction, a natural disaster or where the person is in severe financial hardship as a result of exceptional and unforeseen circumstances.¹⁴⁸

**Key provision: application of the Cape York CDC trial/transition of IM participants to the CDC**

The proposed CDC trial provisions for the Cape York area apply to persons whose usual place of residence is in the Cape York area on the day of commencement or any time after that day.¹⁴⁹

¹⁴⁵. SSA Act, proposed paragraph (aa) of the definition of ‘restrictable payment’ in subsection 124PD(1).
¹⁴⁶. SSA Act, proposed paragraph 124PJ(1A)(b).
¹⁴⁷. SSA Act, subsection 124PJ(2).
¹⁴⁸. SSA Act, subsections 124PJ(3) and (4) as amended by items 41 and 42 in **Part 2 of Schedule 1** of the Bill.
If, **before commencement**, the FRC notifies the Secretary that a person is subject to income management and the notice requires the person to be subject to income management, the notice has effect as if the person were subject to the CDC trial under **proposed section 124PGD** rather than income management.  

If, **on or after commencement**, the FRC notifies the Secretary that a person is subject to income management, the notice has effect as if the person were subject to the CDC trial under **proposed section 124PGD** rather than income management under Part 3B of the SSA Act—according to the Explanatory Memorandum, this ‘allows the FRC to continue referring people for welfare quarantining without amending the Families Responsibilities Commission Act 2008 (Qld) which would otherwise be required’.  

For existing income managed persons, they will cease to be subject to the income management regime the day before they become a CDC trial participant in the Cape York area. So long as the person satisfies the Cape York CDC trial criteria under **proposed section 124PGD**, upon commencement, they will be subject to the CDC regime—the Explanatory Memorandum states:  

> Approximately 150 IM participants within the Cape York area will transition to the CDC trial on a single day, being the later of 8 April 2020 or on the day after the end of the period of three months beginning on the day the Act receives the Royal Assent (the **start date**).  

The Secretary may, within 60 days of the person becoming a CDC trial participant, transfer the balance of a person’s income management account to their welfare restricted bank account. A decision by the Secretary to make a payment to a CDC bank account is not reviewable by the Secretary (internal review) or the Administrative Appeals Tribunal.  

**Key provision: expanding the CDC trial to the NT**

**Northern Territory CDC trial criteria**

**Item 27** in **Part 2** of **Schedule 1** to the Bill inserts **proposed section 124PGE** into Subdivision A of Division 2 in Part 3D of the SSA Act—as discussed above, Subdivision A sets out the trial areas for the CDC and circumstances in which a person is subject to the CDC trial.

**Proposed section 124PGE** sets out the criteria for a person to be subject to the CDC trial within the NT trial area. There are three different sets of criteria under which a person may be required to participate in the trial, namely:

- the person or their partner is receiving a category E welfare payment—**proposed subsection 124PGE(1)**
- the person or their partner is receiving a category P welfare payment and a child protection officer of the Northern Territory, or a recognised authority of the Northern Territory requires the person be a trial participant—**proposed subsection 124PGE(2)** or

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149. Subitem 47(1) in **Part 2** of **Schedule 1** to the Bill.  
150. Subitem 47(2) in **Part 2** of **Schedule 1** to the Bill.  
151. Subitem 47(4) in **Part 2** of **Schedule 1** to the Bill; **Explanatory Memorandum**, op. cit., p. 16.  
152. SSA Act, **proposed paragraph 123UF(4)(c)** (at **item 3** of **Schedule 1**).  
154. SSA Act, **proposed paragraph 123UF(4)(a)** (at **item 3** of **Schedule 1**).  
155. SSA Act, **proposed paragraphs 127(4)(aa)** (at **item 44**) and **proposed paragraphs 144(l)** (at **item 45**).
• the person is a vulnerable welfare recipient and receiving a category P welfare payment—
  proposed subsection 124PGE(3).

Category E welfare payment recipients: ‘disengaged youth and long-term welfare payment
recipients’

Under proposed subsection 124PGE(1) a person is subject to the CDC trial if:
• the person’s usual place of residence is, becomes or was within the Northern Territory
• the person receives a ‘category E welfare payment’, that is either:
  – Youth Allowance
  – Newstart Allowance
  – Special Benefit
  – pension Parenting Payment (single)
  – benefit Parenting Payment (partnered)\(^{156}\)
• the person has not reached the pension age\(^ {157}\)
• if the person has a payment nominee, the nominee is also a CDC trial participant or subject to
  income management
• the person is not undertaking full-time study
• the Secretary has notified the person they are a trial participant and
• the person has not been excluded by a wellbeing or exit determination.

So long as a person continues to satisfy the requirements of proposed subsections 124PGE(1), (2)
or (3), a person will be subject to the CDC trial notwithstanding that their usual place of residence
is no longer in the NT.\(^ {158}\)

Notice required to be provided

Proposed subparagraph 124PGE(1)(e) requires the Secretary to give the person a notice stating
that the person is a trial participant. The power for the Secretary to issue the notice is given under
proposed subsection 124PGE(5) and any such notice is not a legislative instrument.\(^ {159}\) According
to the Explanatory Memorandum, the notice issued by the Secretary ‘has been included to
facilitate the staggered rollout of the CDC trial across the NT’.\(^ {160}\) It appears that this requirement
will be used in conjunction with the Minister’s proposed power under subsection 124PD(2) (as
amended by item 15) to exclude any part of the NT from the CDC trial area to facilitate the roll-out
of the trial.\(^ {161}\)

The proposed changes made by items 44 and 45 in Part 2 of Schedule 1 to the Bill mean that the
Secretary’s decisions relating to trial participation, namely, a decision to give or revoke a trial
participation notice, will not be reviewable by the Secretary (internal review) or the Administrative
Appeals Tribunal. According to the Explanatory Memorandum to the Bill:

156. The proposed definition of ‘category E welfare payment’ (as inserted by item 7 in Part 2 of Schedule 1 to the Bill) has the
  same meaning as in Part 3B of the SSA Act—‘category E welfare payment’ is defined under section 123TC of that Act.
157. Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019, amendment,
sheet TK160, clauses 2, 3 and 4, House of Representatives, 19 November 2019. This Government amendment to the Bill was
  successful in the House and proposes to introduce proposed paragraphs 124PGE(1)(ba), 124PGE(2)(ba) and 124PGE(3)(ba).
158. SSA Act, proposed paragraphs 124PGE(1)(a), (2)(a) and (3)(a).
159. SSA Act, proposed paragraphs 124PGE(1)(a), (2)(a) and (3)(a).
The purpose of the notice [under proposed subsection 124PGE(5)] is to activate the transition to the CDC trial in the Cape York area or the NT through an administrative process. The precondition provides an evidentiary fact to commence trial participation and merely reflects other decisions made by other bodies such as the FRC, child protection officers of the NT or officers or employees of recognised State/Territory authority of the NT. Those decisions will themselves be subject to review under the laws of the relevant jurisdiction.

For persons in respect of whom a notice is revoked under new subsection 124PGE(6), they will be able to enter the CDC trial as a voluntary participant provided they are within the scope of Part 3D of the Social Security Administration Act. Otherwise, their participation in the CDC trial will not be appropriate. Accordingly, any review of these decisions would be unwarranted and at risk of frivolous review applications.162

By way of comparison, the CDC trial criteria for existing trial areas do not require a notice to be provided by the Secretary.

Full-time students excluded

The proposed changes do not apply to a person who is ‘undertaking full-time study’. In the existing CDC trial areas—that is, Ceduna, East Kimberley, Goldfields, Bundaberg and Hervey Bay areas—the CDC trial applies to full-time students unless they live outside their respective trial area while undertaking their study.163 This difference may reflect the fact that the NT is likely to eventually comprise the ‘trial area’.

Wellbeing and exit determinations

The proposed changes do not apply to a person who is covered by a determination under existing subsections 124PHA(1) or 124PHB(3) of the SSA Act.164

Under subsection 124PHA(1) of the SSA Act, the Secretary must determine that (but has no obligation to inquire whether) a person is not a trial participant if the Secretary is satisfied that being a trial participant would pose a serious risk to the person’s mental, physical or emotional wellbeing.

Under subsection 124PHB(3), the Secretary may also determine that a person is not a trial participant if the Secretary is satisfied that the person can demonstrate reasonable and responsible management of the person’s affairs (including financial affairs), taking into account a range of factors as well as any requirements made by the Minister set out in the relevant legislative instrument.165

Category P welfare payment recipients referred by a child protection officer or the NT Department of Health

The same CDC trial criteria that applies under proposed subsection 124PGE(1) also applies under proposed subsection 124PGE(2), except that:

• the person or the person’s partner must receive a category P welfare payment (rather than category E) and

162. Explanatory Memorandum, op. cit., p. 15.
163. SSA Act, subparagraph 124PG(1)(h) and subsection 124PG(3); subparagraph 124PGA(1)(h) and subsection 124PGA(3); subparagraph 124PGB(1)(h) and subsection 124PGB(3); subparagraph 124PGC(1)(g) and subsection 124PGC(3).
164. SSA Act, proposed paragraphs 124PGE(1)(f) and (g).
165. SSA Act, subsections 124PHB(3) and (6).
• a child protection officer of the Northern Territory, or a recognised authority of the Northern Territory must require the person be a trial participant.\textsuperscript{166}

Under proposed paragraph 124PGE(2)(c), the Secretary must receive a written notice from a ‘child protection officer’ of the NT, or an officer or employee of a ‘recognised State/Territory authority’ of the NT requiring the person be a trial participant. The notice must be given:

• under a law (whether written or unwritten) in force in the NT (other than a law of the Commonwealth) or
• in the exercise of the executive power of the NT.\textsuperscript{167}

In relation to the NT, a ‘child protection officer’ is an officer or employee of the NT who has functions, powers or duties in relation to the care, protection or welfare of children.\textsuperscript{168}

The Minister is empowered under the SSA Act to determine, by legislative instrument, that a department or part of it, or a body or agency of a State or Territory is a ‘recognised State/Territory authority’ if satisfied that officers or employees of that entity have functions, powers or duties in relation to the care, protection, welfare or safety of adults, children or families.\textsuperscript{169} Currently the recognised State/Territory authority for the purposes of the NT is the Northern Territory Department of Health.\textsuperscript{170}

**Vulnerable welfare recipients**

Proposed subsection 124PGE(3) applies to vulnerable welfare payment recipients. The same CDC trial criteria that applies under proposed subsection 124PGE(1) also applies under proposed subsection 124PGE(3), except that:

• the person must receive a category P welfare payment (rather than category E) and
• the person must be a ‘vulnerable welfare payment recipient’.

The Secretary is empowered under section 123UGA of the SSA Act to determine that a person is a vulnerable welfare payment recipient—the determination must comply with any decision making principles set out in a legislative instrument made by the Minister. However, it is not clear whether existing subsection 123UGA(1) allows the Secretary to rely on their power in Part 3B of the SSA Act to determine whether a person is a vulnerable welfare payment recipient for the purposes of proposed subsection 124PGE(3).\textsuperscript{171}

The principles the Secretary must comply with are set out in the Social Security (Administration) [Vulnerable Welfare Payment Recipient) Principles 2013 (Cth) (the Principles). It is not clear whether it is intended that this instrument will be relied on for the purposes of proposed

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\textsuperscript{166} SSA Act, proposed paragraphs 124PGE(2)(b), (c) and (d).
\textsuperscript{167} SSA Act, proposed paragraph 124PGE(2)(d).
\textsuperscript{168} The proposed definition of ‘child protection officer’ (as inserted by item 7 in Part 2 of Schedule 1 to the Bill) provides that the term has the same meaning as in Part 3B of the SSA Act—‘child protection officer’ is defined under section 123TC of that Act.
\textsuperscript{169} The proposed definition of ‘recognised State/Territory authority’ (as inserted by item 7 in Part 2 of Schedule 1 to the Bill) provides that the term has the same meaning as in Part 3B of the SSA Act—‘recognised State/Territory authority’ is defined under section 123TGAA of that Act.
\textsuperscript{170} Social Security (Administration) (Recognised State/Territory Authority - Northern Territory Department of Health) Determination 2017 (Cth), section 6.
\textsuperscript{171} The proposed definition of ‘vulnerable welfare payment recipient’ (as inserted by item 13 in Part 2 of Schedule 1 to the Bill) provides that the term has the same meaning as in Part 3B of the SSA Act—the income management provisions. Under Part 3B, vulnerable welfare payment recipient is given meaning by section 123UGA. Subsection 123UGA(1) of the SSA Act states that the Secretary can make such a determination for the purposes of ‘this Part’—that is Part 3B not Part 3D (the CDC trial provisions). Accordingly, it is not clear whether the Secretary’s power under section 123UGA of the SSA Act can be relied on for the purposes of allowing the Secretary to determine a vulnerable welfare recipient under Part 3D.
subsection 124PGE(3), given its focus and references to the income management provisions. In particular, clause 10 of the Principles expressly excludes participants in the trial of cashless welfare arrangements from being subject to a determination by the Secretary under subsection 123UGA(1). This means the Principles will likely need to be amended for the proposed provisions to operate as intended.

Notwithstanding the above discussion, it is intended that the Secretary can rely on an existing vulnerable welfare payment recipient determination made under section 123UGA, for the purposes of transitioning vulnerable welfare recipients from income management to the CDC trial.\(^\text{172}\)

**Percentage of payments restricted to the CDC**

Item 36 in Part 2 of Schedule 1 to the Bill inserts proposed subsections 124PJ(1B), (1C) and (1D) into the SSA Act. These provisions set out the portion of a ‘restrictable payment’ paid by instalment that must be quarantined for the purposes of NT CDC trial participants. Restrictable payment is defined under subsection 124PD(1); for the purposes the CDC trial in the NT, the types of payments that are restrictable payments, is further expanded by item 9 in Part 2 of Schedule 1 of the Bill.\(^\text{173}\) The default restricted and unrestricted component varies depending on the particular CDC trial criteria the participant satisfies:

- for payments made to persons subject to the CDC trial in the NT under either proposed subsections 124PGE(1) or (3), the restricted portion is 50 per cent of the gross amount of the payment. The remaining 50 per cent is the ‘unrestricted portion’ and\(^\text{174}\)

- for payments made to persons subject to the CDC trial in the NT under proposed subsection 124PGE(2) (welfare payment recipients referred by a child protection officer or the NT Department of Health), the restricted portion is 70 per cent of the gross amount of the payment. The remaining 30 per cent is the ‘unrestricted portion’.\(^\text{175}\)

Table 3 compares the default portion of a ‘restrictable payment’ paid by instalment that must be quarantined for the purposes of NT CDC trial participants. It also sets out the power of the Minister to vary the restricted and unrestricted amounts—this variation power is discussed further below.

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172. Subitem 48(6) in Part 2 of Schedule 1 to the Bill.
173. SSA Act, proposed paragraph (aa) of the definition of ‘restrictable payment’ in subsection 124PD(1).
174. SSA Act, proposed subsections 124PJ(1B) and (1D).
175. SSA Act, proposed subsections 124PJ(1C).
Table 3: default restricted and unrestricted portions for NT CDC trial participants

<table>
<thead>
<tr>
<th>NT CDC trial criteria provision</th>
<th>Restricted portion</th>
<th>Unrestricted portion</th>
<th>Variation power by Minister for NT CDC trial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disengaged youth and long-term welfare payment recipients (proposed Subsection 124PGE(1))</td>
<td>50%</td>
<td>50%</td>
<td>May vary the restricted amount up to 80% and vary unrestricted amount to an amount below 50% for particular areas of the NT</td>
</tr>
<tr>
<td>Recipients referred by a child protection officer or the NT Department of Health (proposed subsection 124PGE(2))</td>
<td>70%</td>
<td>30%</td>
<td>May vary restricted amount up to 80% or unrestricted amount up to 100%</td>
</tr>
<tr>
<td>Vulnerable welfare recipients (proposed subsection 124PGE(3))</td>
<td>50%</td>
<td>50%</td>
<td>May vary restricted amount up to 80% or unrestricted amount up to 100%</td>
</tr>
</tbody>
</table>

Source: proposed subsections 124PJ(1B), (1C), (1D), (2A) and (2B) of the SSA Act.

If a restrictable payment is payable to a trial participant otherwise than by instalments, 100 per cent of the gross amount of the payment is restricted.177

Minister’s power to vary restricted and unrestricted percentage

The proposed amendments would also enable the Minister to, by notifiable instrument, vary the restricted and unrestricted percentage for NT trial participants. The issue of whether it is appropriate to allow the Minister to change the percentages via a notifiable instrument is discussed under the heading ‘Senate Standing Committee for the Scrutiny of Bills’.

For trial participants under proposed subsection 124PGE(1) and whose usual place of residence is, becomes or was within an area specified in the instrument, the Minister may vary the restricted payment to a percentage up to 80 per cent and vary the unrestricted payment to a percentage that is below 50 per cent.178 According to the Explanatory Memorandum to the Bill ‘[t]his subsection will enable the Minister to increase the restricted portion for trial participants under 124PGE(1) for specific communities in the NT to reflect community requests’.179

For trial participants under proposed subsections 124PGE(2) or (3), the Minister may vary the restricted amount to a percentage not exceeding 80 per cent and the unrestricted amount up to 100 per cent.180 According to the Explanatory Memorandum:

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176 Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019, amendment, sheet TK160, clauses 5, 6 7 and 8, House of Representatives, 19 November 2019. This Government amendment to the Bill was successful in the House and proposes to amend the unrestricted and restricted limits in proposed subsections 124PJ(2A) and (2B) of the SSA Act.

177 SSA Act, subsection 124PJ(2).


This subsection will enable the Minister to either increase or decrease the restricted and unrestricted portions for the entire cohort of trial participants under subsection 124PGE(2) or (3), to reflect requests made by a recognised State/Territory authority in the NT or a child protection officer.\(^{181}\)

The Minister’s variation does not apply to a person who is subject to a variation made by the Secretary.\(^{182}\)

**Secretary’s power to vary restricted and unrestricted percentage**

The Secretary may, in the case of an NT trial participant (including a voluntary participant), vary the restricted amount to zero per cent where the person’s funds cannot be accessed because of technological fault or malfunction, a natural disaster or where the person is in severe financial hardship as a result of exceptional and unforeseen circumstances.\(^{183}\)

**Key provision: application of the NT CDC trial/transition of IM participants to the NT CDC**

The proposed NT CDC trial provisions apply to a person whose usual place of residence is in the NT on the day of commencement or any time after that day.\(^ {184}\)

If a child protection officer of the NT or a recognised State/Territory authority (the NT Department of Health) provides the Secretary with a notice requiring a person to be subject to income management under sections 123UC or 123UFAA of the **SSA Act** before commencement, the notice also has the effect of satisfying the CDC trial notice requirements under **proposed section 124PGE(2).**\(^ {185}\) If a notice is provided by the respective body on or after commencement, the notice also has the effect of satisfying the CDC trial notice requirements under **proposed section 124PGE(2).**\(^ {186}\)

Once a person becomes a CDC trial participant under **proposed subsection 124PGE**, they cease to be subject to the income management regime under Part 3B of the **SSA Act.**\(^ {187}\) **Items 1 and 2 in Part 1 of Schedule 1 of the Bill** prevent a person from being subject to the income management regime under the disengaged youth or long-term welfare payment recipient measures, unless they were subject to it before commencement. This means that there will be a gap in which new entrants will not be subject to income management and will instead be placed on the CDC trial as it is rolled-out.\(^ {188}\) According to the Explanatory Memorandum to the Bill:

\begin{quote}
In the NT, there will be a staggered rollout of the CDC trial commencing from the start date under which approximately 23,000 IM participants in the NT will transition to the CDC trial over a period of nine months.\(^ {189}\)
\end{quote}

The Secretary may transfer the balance of a person’s income management account to their welfare restricted bank account within sixty days of becoming a CDC trial participant.\(^ {190}\) A decision

\(^{181}\) Explanatory Memorandum, op. cit., p. 13.

\(^{182}\) **SSA Act**, proposed subsection 124PJ(2C).

\(^{183}\) **SSA Act**, subsections 124PJ(3) and (4) as amended by items 41 and 42 in **Part 2 of Schedule 1 of the Bill.**

\(^{184}\) **Subitem 48(1)** in **Part 2 of Schedule 1** to the Bill.

\(^{185}\) **Subitem 48(2)** in **Part 2 of Schedule 1** to the Bill.

\(^{186}\) **Subitem 48(4)** in **Part 2 of Schedule 1** to the Bill.

\(^{187}\) **SSA Act**, proposed subsection 123UP(1) and (4) (at item 3 of Schedule 1).

\(^{188}\) Explanatory Memorandum, op. cit., p. 4.

\(^{189}\) Explanatory Memorandum, op. cit., p. 4.

\(^{190}\) **SSA Act**, proposed subsection 123UP(2).
by the Secretary to make a payment to a CDC bank account is not reviewable by the Secretary (internal review) or the Administrative Appeals Tribunal.  

Key provision: extending the CDC trial period and removing the cap on the number of CDC trial participants

Under subsections 124PF(1) and (3) of the SSA Act, the CDC trial operates between 1 February 2016 and 30 June 2020; the CDC trial is also limited to 15,000 trial participants.

Subsection 124PF(1) is amended by item 17 in Part 2 of Schedule 1 to the Bill to extend the length of the trial for all trial areas except for the Cape York area to 30 June 2021. The proposed end date for the Cape York trial area is 31 December 2021.

Item 18 repeals subsection 124PF(3) which caps trial participants at no more than 15,000 participants. According to the Explanatory Memorandum to the Bill, the ‘amendment will ensure that all IM participants in the Cape York area and the NT are able to transition to the CDC trial.’

Key provision: enabling voluntary participation in the CDC trial

Item 28 of Part 2 of Schedule 1 to the Bill amends paragraph 124PH(1)(b) of the SSA Act—this will allow a person whose usual place of residence is within the Bundaberg or Hervey Bay areas to voluntarily participate in the CDC trial. This is consistent with voluntarily participation in the other existing trial areas.

Subject to the existing condition in section 124PH of the SSA Act, voluntary participation in the CDC trial is also extended to persons whose usual place of residence is within the Cape York area or the NT.

Key issue: payment restrictions for Cape York and NT voluntary participants

For persons who are voluntarily participating in the CDC trial, 80 per cent of the gross amount of a restrictable payment paid by instalment is the restricted amount—the remaining 20 per cent is unrestricted.

The restricted percentage is higher than that which applies to those persons mandatorily subject to the CDC trial in the Cape York area and the NT. In such a case, a community body will need to issue the Secretary with a direction to vary the percentage under section 124PK of the SSA Act, for a particular voluntary trial participant. The percentage amounts specified in the written direction may:

- for the restricted portion—be in the range of 50 per cent to 80 per cent and
- for the unrestricted portion—be in the range of 20 per cent to 50 per cent.

It will be necessary for the Minister to declare a community body (by way of legislative instrument) should voluntary participants in the Cape York area and NT trial areas seek to vary the default 80/20 payment split.

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191. SSA Act, proposed paragraphs 127(4)(aa) and proposed paragraphs 144(1), inserted by items 44 and 45, respectively.
193. SSA Act, paragraph 124PH(b) and definition of ‘trial area’ in subsection 124PD(1) as amended by item 10 in Part 2 of Schedule 1 to the Bill.
194. SSA Act, subsection 124PJ(1).
195. SSA Act, subsections 124PJ(1A) to (1D).
196. SSA Act, subsection 124PK(3).
**Key provision: removing CDC trial evaluation**

If the Minister or the Secretary causes a review of the CDC trial, the SSA Act requires the Minister to have the review evaluated.\(^{198}\) Subsection 124PS(2) currently provides that the evaluation must:

- be completed within six months from the time the Minister receives the review report and
- be conducted by an independent evaluation expert with significant expertise in the social and economic aspects of welfare policy.

Subsection 124PS(3) currently provides that the independent expert must consult trial participants and make recommendations about:

- whether cashless welfare arrangements are effective and
- whether such arrangements should be implemented outside of a trial area.

The Minister must cause a written report about the evaluation to be prepared and laid before each House of Parliament within 15 days after the completion of the report.\(^{199}\)

Section 124PS was inserted into Part 3D of the SSA Act by the *Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Act 2018*. The requirement for the evaluation was a result of former Senator Tim Storer’s successful amendment to the *Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018*.\(^{200}\) In his second reading speech on the Bill, Senator Storer stated:

> I will not support further trials or extensions of the cashless welfare card if these trials are shown to be detrimental to its objectives; however, I genuinely believe in giving initiatives a chance if they have the potential to help the vulnerable in society. I will always seek to conduct my politics based on reliable data and evaluation. Therefore I will be asking the Senate to support an independent evaluation of the government’s review of the card. If we can get reliable data out of this trial and have the review of that data independently evaluated and reported, we will significantly better understand what we should do in the future with regard to the cashless debit card.\(^{201}\)

**Item 51 in Part 3 of Schedule 1** to the Bill repeals subsections 124PS(2) and (3). While the Minister will still be required to cause an evaluation of a review (if a review is in fact undertaken), the proposed amendments mean that the Minister will not have to cause an evaluation within six months of the review conducted by an independent evaluation expert. Nor will the Minister be required to consult with trial participants and make recommendations as to the effectiveness and potential expansion of the CDC trial. The Explanatory Memorandum provides the following justification:

> The Social Security Administration Act presently requires that, where the Minister causes a review of CDC trial to be conducted, the Minister must cause the review to be evaluated. This requirement is potentially circular and, unless resolved, might generate ongoing evaluation under section 124PS. The

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197. *SSA Act*, subsection 124PK(1); subsection 124PD(1) (definition of *community body*); subsection 124PE.
proposed amendments address this issue and supports a desktop evaluation to lessen the ethical implications associated with avoidable repeat contact with vulnerable individuals. 202

**Key Provision: enabling disclosures of personal information**

Division 4 in Part 3D of the SSA Act currently allows for reciprocal disclosure of information between a financial institution and the Secretary, and a community body and the Secretary. 203

The purpose of proposed sections 124POA, 124POB, 124POC and 124POD (at item 43) is to enable certain bodies to disclose personal information about trial participants or potential trial participants to the Secretary for the purposes of the CDC trial; in turn the Secretary is enabled to disclose personal information to those entities.

**Exiting CDC participants**

**Proposed section 124POA** applies to all trial participants (including voluntary participants) who exit the CDC trial. If a person ceases to be a CDC trial participant, the Secretary will be permitted to disclose to a community body:

- the fact that a person has ceased to be a trial participant and the date of cessation and
- whether they ceased to be a trial participant on wellbeing grounds or because they can responsibly manage their affairs. 204

The Explanatory Memorandum provides the following justification for such a disclosure:

> This provision will support the functioning of community bodies in monitoring the effectiveness of the CDC trial. It will also advance the interests of those people whose participation in the trial would pose a serious risk to their mental, physical or emotional wellbeing. Under this provision, community bodies will know whether a person’s re-entry to the trial is unauthorised. This will help ensure that these bodies do not take inappropriate action that may undermine the person’s wellbeing. 205

**Cape York area participants**

**Proposed section 124POB** enables disclosures between the Queensland Commission (currently the FRC) and the Secretary for the purposes of participation in the CDC trial. **Proposed subsection 124POB(1)** enables the Queensland Commission to disclose to the Secretary, information about a person which is relevant to the operation of the CDC provisions if:

- the person is a trial participant under the proposed CDC Cape York area provisions or
- the Commission is considering whether to require the person to become a CDC Cape York area trial participant.

Once the above information about a person is disclosed to the Secretary, the Secretary is empowered to ‘disclose information about the person to the Queensland Commission for the purposes of the performance of the functions, or the exercise of the powers, of the Queensland Commission’. 206

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203. SSA Act, sections 124PN and 124PO.
204. Wellbeing and exit determinations are discussed in greater detail above under the heading ‘Wellbeing and exit determinations’.
206. SSA Act, *proposed subsection 124POB(2)*.
Under **proposed subsection 124POB(3)** the Secretary is required to notify the Queensland Commission in cases where that a person has ceased to be a trial participant because their or their partner’s category P welfare payment has been cancelled and the relevant notice requiring them to participate has not yet been withdrawn by the Queensland Commission.

**Certain Northern Territory participants**

**Proposed sections 124POC** and **12POD** enable the disclosure of personal information for the purposes of **proposed subsections 124PGE(2)**—category P welfare payment recipients referred by a child protection officer or the NT Department of Health.

**Proposed sections 124POC** and **12POD** authorise much the same the conduct, except that **proposed section 124POC** deals with disclosures between a child protection officer and the Secretary, and **proposed section 124POD** with disclosures between a recognised State/Territory authority (currently the NT Department of Health) and the Secretary.

**Proposed subsections 124POC(1)** and **12POD(1)** enable a child protection officer of the NT and a recognised State/Territory authority of the NT to disclose to the Secretary, information about a person which is relevant to the operation of the CDC provisions if:

- the person is a trial participant under the **proposed subsections 124PGE(2)** or
- the child protection officer or NT authority is considering whether to require a person to become a CDC participant.

Once the above information about a person is disclosed to the Secretary under **proposed subsection 124POC(1)** (by a child protection officer), ‘the Secretary may disclose information about the person to a child protection officer of the Northern Territory for the purposes of the performance of the functions and duties, or the exercise of the powers, of the child protection officer in relation to the care, protection or welfare of children’.

Similarly, once the above information is disclosed to the Secretary under **proposed subsection 124POD(1)**, ‘the Secretary may disclose information about the person to an officer or employee of the recognised State/Territory authority for the purposes of the performance of the functions and duties, or the exercise of the powers, of the officer or employee’. In either case, the Secretary is required to notify the child protection officer or relevant NT authority in cases where the relevant person has ceased to be a trial participant because their or their partner’s category P welfare payment has been cancelled and the relevant notice requiring them to participate has not yet been withdrawn by child protection officer or relevant NT authority.

**Key Provision: expanding the Secretary’s power to obtain information**

Under section 192 of the SSA Act, the Secretary may require a person to give information, or produce a document, if the Secretary considers that the information or document may be relevant to one or more specified matters. **Item 46** in **Part 2 of Schedule 1** to the Bill expands the information that a person may be required to give or produce to include information that may be relevant to the operation of Part 3D (the CDC trial provisions). According to the Explanatory Memorandum to the Bill, the

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207. SSA Act, proposed subsection 124POC(2).
208. SSA Act, proposed subsection 124POD(2).
209. SSA Act, proposed subsections 124POC(3) and 124POD(3).
... amendment is essential to allow the Secretary to determine whether a person should not participate in the CDC trial on the basis of their mental, physical or emotion wellbeing or where they can demonstrate reasonable or responsible management of their affairs (including their financial affairs).  

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