THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SERVICES LEGISLATION AMENDMENT
(CASHLESS DEBIT CARD) BILL 2017

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Human Services, the Hon Alan Tudge MP)
OUTLINE

This Bill removes section 124PF of the Social Security (Administration) Act 1999, which specifies that the cashless debit card trial will occur in up to three discrete locations, include no more than 10,000 people, and will end on 30 June 2018. Removing this section will support the extension of arrangements in current sites, and enable the expansion of the cashless debit card to further sites. Individual sites, once identified, will be determined by disallowable legislative instruments.

Schedule 1 – Amendments

In the 2017-18 Budget, it was announced that cashless debit card arrangements would be extended in the current sites of Ceduna, in South Australia, and the East Kimberley, in Western Australia; and that the program would be expanded to new locations (to be determined).

Currently, the cashless debit card trial is limited by section 124PF of the Social Security (Administration) Act 1999 which specifies that the trial is to end on 30 June 2018, occur in up to three discrete trial areas and include no more than 10,000 trial participants. This Bill repeals this provision, removing these limitations and providing more flexibility for expansion.

This amendment does not remove the legislative safeguards protecting how, when and where the cashless debit card can operate. The legislation continues to ensure that the program can only be implemented in a location with the introduction of a disallowable instrument. These instruments can also specify other parameters, including sunset dates and participant criteria. This provides the opportunity for the Government to co-design these parameters with interested communities, and tailor the program to meet community needs. It also allows those communities to make decisions about these arrangements in their own time.

These safeguards ensure that Parliament retains the right to consider each proposed application of the cashless debit card. Instead of passing legislative amendments, for hypothetical communities and participants, Parliament can accept or reject new sites by considering the impacts and level of community support for the measure on a case by case basis.

Financial impact statement

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STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The statement of compatibility with human rights appears at the end of this explanatory memorandum.
NOTES ON CLAUSES

Clause 1 sets out how the new Act is to be cited – that is, as the Social Services Legislation Amendment (Cashless Debit Card) Act 2017.

Clause 2 provides a table setting out the commencement dates of the various sections in, and Schedules to, the new Act.

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.
Schedule 1 – Amendments

Summary

This Schedule removes section 124PF of the Social Security (Administration) Act 1999, which specifies that the cashless debit card trial will occur in up to three discrete locations, include no more than 10,000 people, and will end on 30 June 2018. Removing this section will support the extension of arrangements in current sites, and enable the expansion of the cashless debit card to further sites. Individual sites, once identified, will be determined by disallowable legislative instruments.

The measure will commence the day after the Act receives Royal Assent.

Explanation of the changes

Social Security (Administration) Act 1999

Item 2 repeals current section 124PF. Item 1 makes a consequential amendment to the heading of Subdivision A of Division 2 of part 3D, substituting a heading referring to ‘Trial participants’. The only remaining section in that Subdivision is section 124PG, which sets out who are trial participants.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

SOCIAL SERVICES LEGISLATION AMENDMENT (CASHLESS DEBIT CARD) BILL 2017

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

In the 2017-18 Budget, it was announced that Cashless Debit Card arrangements would be extended for a further year in the current sites of Ceduna, in South Australia, and the East Kimberley, in Western Australia; and that the program would be expanded to new locations (to be determined).

Currently, the trial is limited by section 124PF of the Social Security (Administration) Act 1999, which specifies that the trial is to end on 30 June 2018, occur in up to three discrete trial areas and include no more than 10,000 trial participants. This Bill repeals this provision, removing these limitations and providing more flexibility for expansion.

This amendment does not remove the legislative safeguards protecting how, when and where the cashless debit card can operate. The legislation continues to ensure that the program cannot be implemented in any location without the introduction of a disallowable instrument. These instruments can also specify other parameters, including sunset dates and participant criteria. This provides the opportunity for the Government to co-design these parameters with interested communities, and tailor the program to meet community needs. It also allows those communities to make decisions about these arrangements in their own time.

These safeguards ensure that Parliament retains the right to consider each proposed application of the cashless debit card. Instead of passing legislative amendments, for hypothetical communities and participants, Parliament can accept or reject new sites by considering the impacts and level of community support for the measure on a case by case basis.

Human rights implications

The Parliamentary Joint Committee on Human Rights conducted a review of the Social Security Legislation Amendment (Debit Card Trial) Bill 2015, which notes that the Cashless Debit Card engages and limits three human rights: the right to social security, the right to a private life and the right to equality and non-discrimination.

These rights, and a number of other specific human rights, are addressed in turn below.
**Objectives**

The objectives of the Cashless Debit Card, set out in Part 3D of the Act, are to:

(a) reduce the amount of certain restrictable payments available to be spent on alcoholic beverages, gambling and illegal drugs; and
(b) determine whether such a reduction decreases violence or harm in the Region; and
(c) determine whether such arrangements are more effective when community bodies are involved; and
(d) encourage socially responsible behavior.

In other words, the Cashless Debit Card has the objective of reducing immediate hardship and deprivation, reducing violence and harm, encouraging socially responsible behaviour, and reducing the likelihood that welfare payment recipients will be subject to harassment and abuse in relation to their welfare payments.

In both Ceduna and the Surrounding Region, and the East Kimberley, there is clear evidence of the harm caused by alcohol in the community.

In Ceduna and the Surrounding Region the deaths of six Aboriginal people related to alcohol abuse and sleeping rough were the subject of a coronial inquest in 2011. In March 2013, the Ceduna Sobering Up Unit had 89.7 per cent occupancy, and breath testing figures that recorded the maximum measurable amount.\(^i\)

In a submission to the Senate Standing Committee on Community Affairs, the Mayor of Ceduna, Mr Alan Suter, provided an unsigned affidavit stating that in his role, he has participated in various initiatives to assist with the problems caused by alcohol abuse in Ceduna. Mr Suter stated that the most effective attempt ‘was a restriction of sales …. [which] reduced the availability of take away alcohol and helped considerably until it was withdrawn by the licensees.’\(^ii\)

As well as alcohol, illegal drug abuse and gambling are also causing unacceptable levels of harm in Ceduna and the Surrounding Region.

Ceduna and the Surrounding Region has a high level of welfare dependence, and, importantly, there is an openness to participate in the Cashless Debit Card trial from within the community.

In a submission to the Senate Standing Committee on Community Affairs, the Executive Chairman of the Wunan Foundation, Mr Ian Trust stated that ‘the East Kimberley experiences…high levels of social dysfunction, including widespread alcohol and drug abuse…Chronic substance abuse in the region has led to a raft of catastrophic social outcomes’.\(^iii\) The Committee heard high levels of social dysfunction in the East Kimberley, including widespread drug and alcohol abuse, has resulted in:
• high rates of family violence (in 2012-13, there were 100 reported incidents of family violence per 1000 people in the East Kimberley, compared to the next highest figure of 43 incidents per 1000 people in the south-eastern region of WA);
• high rates of child abuse and neglect:
• large numbers of children spending their nights on the street rather than returning to unsafe homes;
• increasing rates of Foetal Alcohol Spectrum Disorder;
• high rates of suicide (the rate of suicide in the Kimberley is 70 per 100,000 people, compared to the national rate of 11 per 100,000 people); and
• high rates of alcohol-fuelled violence (the hospitalisation rate for assault in Kununurra is significantly higher than the national average due to alcohol-fuelled violence). iv

In the East Kimberley, according to WA Police data, in 2013-14 in Western Australia there were 1,456 offences against the person for every 100,000 people. The Kimberley region had offence rates against the person 4.5 times that of Western Australia overall.v

In March 2017, ORIMA Research released the Wave 1 Interim Evaluation Report on the Cashless Debit Card Trial (the Report).vi The Report provided quantitative and qualitative analysis measured against predetermined key performance indicators and objectives of the trial. The Report indicates the trial is having positive early impacts in relation to alcohol consumption, illegal drug use, and gambling in the trial regions.

The evaluation has found that on average:
• Of trial participants surveyed who reported that they do drink alcohol, 25 per cent of participants and 13 per cent of family members reported drinking alcohol less frequently, while 25 per cent of participants reported engaging in binge drinking less frequently.
• Of trial participants surveyed who reported they do gamble, 32 per cent of participants and 15 per cent of family members reported gambling less.
• Of trial participants surveyed who reported using illegal drugs before the trial commenced, 24 per cent reported using illegal drugs less often.
• Of the trial participants surveyed, 31 per cent said they were better able to look after their children.

While the Final Wave 2 report is yet to be finalised by ORIMA Research, early indications are that the next stage of the report will continue to demonstrate positive results in both Ceduna and the East Kimberley.

The expansion of the Cashless Debit Card to two new sites will build on these positive findings, and offer an opportunity to continue to test the card’s effectiveness in different settings and on a larger scale.
The two new locations for the Cashless Debit Card will be selected based on several factors, including community readiness and willingness, high levels of disadvantage and welfare dependence, and high levels of social harm driven by alcohol, drugs and gambling. Priority will be given to including communities with lower Indigenous populations than the existing sites.

**General safeguards**

A number of general safeguards that help to protect human rights have been incorporated into the operation of the Cashless Debit Card. First, the roll out of the Cashless Debit Card in existing locations was subject to an extensive community consultation process. Details of this process in Ceduna and the East Kimberley are provided in the Explanatory Statements accompanying each Trial Area Determination. Similar consultation will be conducted in new sites, and detailed in the relevant instruments.

Secondly, the initial 12 month trial of the Cashless Debit Card in Ceduna and the East Kimberley has been subject to an independent, comprehensive evaluation considering the impacts of limiting the amount of welfare funds that may contribute to community level harm. The extension of current arrangements, and expansion to new sites will also be monitored and continue to build on the evidence base established through the formal evaluation.

Finally, although the legislated limitations on trial parameters are removed by this Bill, site selection, participant criteria and duration will continue to be subject to the tabling of disallowable instruments. This allows for parliamentary scrutiny of how the Cashless Debit Card will be applied and impact each proposed community.

**The right to social security**

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) recognises ‘the right of everyone to social security, including social insurance’. The United Nations Committee of Economic, Social and Cultural Rights (the UN Committee) has stated that implementing this right requires a country, within its maximum available resources, to provide ‘a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic form of education’.

The Cashless Debit Card, which restricts what participants can spend their social security payments on, does not detract from the eligibility of a person to receive welfare, nor reduce the amount of a person’s social security entitlement. Rather, these arrangements place a limitation on how payments can be spent and provides a mechanism to ensure that certain recipients of social security entitlements are restricted from spending money on alcohol, gambling and illegal drugs.

Under the Cashless Debit Card, a portion of social security payments received by a participant is placed into a restricted bank account. Funds held in this bank account cannot be withdrawn as cash, or spent at businesses which sell alcohol and gambling products. This limitation is necessary to ensure that these products cannot...
be purchased with the restrictable portion of a participant’s social security payment. Without the diversion of social security payments into a restricted bank account, welfare quarantining would not be possible and the objectives of the Cashless Debit Card, outlined above, could not be met.

To the extent possible, the restricted bank account functions like a standard, mainstream bank account. This serves to minimise restrictions on the way social security is received. The Cashless Debit Card itself is a standard Visa debit card that can be used at the majority of merchants that accept EFTPOS. The account allows a range of flexible payment options including online transfers, BPAY, some online shopping and recurring deductions. As well as accessing these services online, a mobile application has been developed for use on smartphones. To further support participants, there are Local Partners in the current sites who assist with things such as a replacement cards and account balance checking. There are also two hotline services operated by the card provider and the Department of Social Services. Given the objectives of the Cashless Debit Card and the prevalence of social harm in chosen locations, any limitation on the right to social security is reasonable and proportionate.

**The right to a private life**

Article 17 of the *International Covenant on Civil and Political Rights* sets out the right to a private life. It prohibits arbitrary or unlawful interferences with an individual’s privacy, family, correspondence or home.

The Cashless Debit Card program seeks to achieve the legitimate objective of reducing immediate hardship and deprivation, reducing violence and harm, encouraging socially responsible behaviour, and reducing the likelihood that welfare payment recipients will be subject to harassment and abuse in relation to their welfare payments.

By reducing a person’s choice in how and where they access and spend their social security payments, the Cashless Debit Card program limits the right to a private life. The program is targeted to communities where high levels of welfare dependence exist alongside high levels of social harm. This limitation on the right to a private life is directly related to the objectives of reducing such harm. This is because the limitations put in place restrict transactions at businesses selling goods that contribute to such harm.

In designing the Cashless Debit Card, the Government worked closely with communities to reduce any stigma associated with use of the card. The card looks and operates like a normal bank card. Additionally, the card applies to participants across the communities, in order to impact on the availability of discretionary cash. It does not apply punitively to individuals experiencing harmful addictions, financial instability or other forms of hardship. Furthermore, the Wave 1 Interim Evaluation Report identified that only six per cent of participants surveyed raised stigma or shame with the card as an issue.

There is a clear, rational connection between the program’s objectives, detailed above, and the restrictions on the right to a private life. The trial could not prevent
participants from purchasing these products if the program did not restrict how, and at what businesses, participants spend their welfare payment. In turn, these restrictions on the purchase of alcohol, illegal drugs and gambling products are designed to reduce violence and harm, and to encourage socially responsible behaviour. Given the objectives of the program and the prevalence of social harm in targeted communities, any limitation on the right to a private life is reasonable and proportionate.

The right to privacy

The Cashless Debit Card also engages the right to privacy. Section 124PN allows the disclosure of information to the Secretary by a financial institution. Section 124PN does not provide a blanket exemption from privacy laws. It merely allows the sharing of information necessary for the operation and evaluation of the program. As a result, there are still safeguards in place to protect individual privacy. Both Government and the card provider are required to act in accordance with privacy laws, more generally, and the Australian Privacy Principles (APPs). The APPs set out strict rules around how personal information can be used. For example, they prohibit the disclosure of personal information for direct marketing. Notably, under the Cashless Debit Card Government cannot see what people are purchasing.

The section seeks to enable the program to achieve a legitimate objective and are necessary for the Cashless Debit Card to operate effectively and to be evaluated. In order to establish bank accounts for participants, the Department of Human Services (DHS) must transfer customer information to the card provider. The card provider in turn provides new account details back to DHS. While the Cashless Debit Card is operating, the card provider must also transfer information about participants to the Department of Social Services (DSS). DSS uses this information to run and evaluate the program. Without this sharing of information, new accounts cannot be set up and so the Cashless Debit Card could not proceed.

Any limitation on a person’s right to privacy is reasonable and proportionate given the extensive social harm discussed above under the section titled ‘Objectives’. There are also effective community safeguards over the extent of the restrictions imposed.

The rights of equality and non-discrimination

The rights of equality and non-discrimination are provided for in a number of the seven core international human rights treaties to which Australia is a party, most relevantly the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Racial Discrimination (the CERD). In particular, article 5 of the CERD requires parties ‘to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour or national or ethnic origin, to equality before the law’, notably in the enjoyment of ‘the right to…social security and social services’ (article 5(e)(iv)).
Discrimination is impermissible differential treatment among persons or groups that results in a person or a group being treated less favourably than others, based on a prohibited ground for discrimination, such as race. However, the UN Human Rights Committee has recognised that ‘not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective, and if the aim is to achieve a purpose which is legitimate under the Covenant’.

The rights to equality and non-discrimination are not directly limited by the Cashless Debit Card. The program is not applied on the basis of race or cultural factors. New locations for the program will be chosen based on objective criteria, similar to the criteria used to choose the existing sites. This includes high levels of welfare dependence and community harm, as well as the outcomes of comprehensive community consultation.

Anyone residing in locations where the Cashless Debit Card operates, and receiving a payment specified by instrument, will become a participant. The program is therefore not targeted at people of a particular race, but to welfare recipients who meet particular criteria. People will also be able to volunteer for the program.

While the Cashless Debit Card does not directly limit the rights to equality and non-discrimination, it may indirectly limit these rights. For example, before the Cashless Debit Card commenced in the East Kimberley, Aboriginal and Torres Strait Islander people made up around 83 per cent of the total income support payment population that would become trial participants. Women comprised around 57 per cent of projected participants and Disability Support Pension recipients were likely to comprise around 26 per cent of participants.

However, locations have been chosen based on objective criteria, outlined above. These criteria clearly relate to the legitimate objectives of the program. Given these objectives and the scale of unacceptable harm in Ceduna and the East Kimberley, as discussed above in the section titled ‘Objectives’, any limitation on the right to equality and non-discrimination is reasonable and proportionate.

Noting the indirect impact the Cashless Debit Card currently has on Aboriginal and Torres Strait Islander people, in identifying new sites, priority will be given to including communities with lower Aboriginal and Torres Strait Islander populations. Where communities do have high Aboriginal and Torres Strait Islander populations, the support of key Aboriginal and Torres Strait Islander leaders will be critical to ensure the Government upholds its commitment to ‘work with’ First Australians.

The right to self-determination

Article 1 of the ICESCR states that ‘all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development’.

The extension and expansion of the Cashless Debit Card will not impact on or interfere with a person’s right to pursue freely their economic, social or cultural development.
Under the Cashless Debit Card, people are able to spend their restricted funds on any goods or services except alcohol, gambling and illegal drugs as a result of having less access to discretionary cash. This limitation ensures that vulnerable people are protected from abuse of these substances, and any associated harm and violence. Comprehensive community consultation will be conducted before the Cashless Debit Card commences in new communities to gauge community interest and support in the arrangements, including from local community leaders.

**The right to an adequate standard of living**

Article 11(1) of the ICESCR states that everyone has the right to ‘an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions’ and that ‘appropriate steps’ be taken to ‘ensure realisation of this right’. Further to this, article 11(2) of the ICESCR states that ‘measures, including specific programmes,’ should be taken in ‘recognising the fundamental right of everyone to be free from hunger’.

The Cashless Debit Card does not limit the right to an adequate standard of living for affected people. Under the Cashless Debit Card people are able to use restricted funds to access any goods and services with the exception of alcohol and gambling products, with the aim of reducing abuse of these goods and services and associated harm and violence. It would not restrict access to the essential goods and services required to maintain an adequate standard of living. Access to some discretionary cash is available to ensure that people can still participate in cash economies to purchase items which contribute to an adequate standard of living.

**The rights of children**

By ensuring that a portion of welfare payments is available to cover essential goods and services, welfare quarantining can improve living conditions for the children of welfare recipients. Such measures thereby advance the right of children to the highest attainable standard of health and the right of children to adequate standards of living (articles 24, 26 and 27 of the Convention on the Rights of the Child, respectively).

**Conclusion**

The amendments are compatible with human rights. The continuation of and expansion of the Cashless Debit Card will advance the protection of human rights by ensuring that income support payments are spent in the best interests of welfare payment recipients and their dependents.

To the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate to achieving the objectives of the welfare quarantining measures. The Cashless Debit Card will assist to reduce immediate hardship and deprivation, reduce violence and harm, encourage socially responsible behaviour, and reduce the likelihood that welfare payment recipients will be subject to harassment and abuse in relation to their welfare payments.
Statement of compatibility with human rights

[Circulated by the authority of the Minister for Human Services, the Hon Alan Tudge MP]

1 Submission to the Senate Standing Committee on Community Affairs inquiry to the Social Services Legislation Amendment (Debit Card Trial) Bill 2015, District Council of Ceduna, Annexure 1, p. 3.

2 Submission to the Senate Standing Committee on Community Affairs inquiry to the Social Services Legislation Amendment (Debit Card Trial) Bill 2015, District Council of Ceduna, Annexure 3, p. 2.

3 Submission 10 to the Senate Standing Committee on Community Affairs inquiry to the Social Services Legislation Amendment (Debit Card Trial) Bill 2015, Wunan Foundation, p. 1.

4 Submission 10 to the Senate Standing Committee on Community Affairs inquiry to the Social Services Legislation Amendment (Debit Card Trial) Bill 2015, Wunan Foundation.

