THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SERVICES LEGISLATION AMENDMENT (CASHLESS DEBIT CARD TRIAL EXPANSION) BILL 2018

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Social Services, the Hon Dan Tehan MP)
OUTLINE

This Bill expands the cashless debit card arrangements to a further trial site, the Bundaberg and Hervey Bay area to run until 30 June 2020, specifies the class of trial participants for the area and increases the total number of trial participants overall to 15,000.

The Bill also introduces an exception from Part IV of the *Competition and Consumer Act 2010* for merchants that implement product level blocking will be introduced, where systems would automatically identify that a cashless debit card is being used for payment and, if any restricted products are being purchased, decline the transaction. Lastly, the Bill introduces a limitation upon the use of the restricted portion of a payment to a participant, to prevent the portion being used to obtain cash-like products which could be used to obtain alcohol or gambling.

Financial impact statement

The financial impact of these amendments is not for publication as negotiations with potential commercial providers are yet to be finalised.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Abbreviations used in this explanatory memorandum

- Social Security Act means the Social Security Act 1991; and

Clause 1 sets out how the new Act is to be cited – that is, as the Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Act 2018.

Clause 2 provides a table setting out the commencement date of the various sections in, and Schedule 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Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.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 expands on the three locations in which the cashless welfare arrangements are currently being, or will be, conducted by rolling out the cashless debit card in the Bundaberg and Hervey Bay area in Queensland, to run until 30 June 2020. The Schedule also sets out the class of trial participants for the new area and increases the total number of trial participants to 15,000.

The Bill also introduces an exception from Part IV of the Competition and Consumer Act 2010 for merchants that implement product level blocking, where systems would automatically identify that a cashless debit card is being used for payment and, if any restricted products are being purchased, decline the transaction. Lastly, the Bill introduces a limitation upon the use of the restricted portion of a payment to a participant, to prevent the portion being used to obtain cash-like products which could be used to obtain alcohol or gambling.

Background

In September 2017, the Australian Government announced a further discrete site in which the cashless debit card will be rolled out, the Bundaberg and Hervey Bay area. This area is defined by the Federal electorate boundaries of Hinkler and is the fourth area rolled out under the cashless welfare arrangements.

The Bundaberg and Hervey Bay area has been chosen to help in addressing key social problems that were identified during extensive consultations conducted with community stakeholders. These include the high youth unemployment and intergenerational welfare dependence as well as the high use of alcohol, drugs and gambling. Consultations also revealed significant problems with alcohol, drugs and gambling among young families.

The 2017 final evaluation report of the cashless debit card trial has shown that the card has had “a significant positive impact” and “has been effective in reducing alcohol consumption and gambling in both trial sites and [is] suggestive of a reduction in the use of illegal drugs” for the first two trial areas of Ceduna, South Australia and the East Kimberley, Western Australia. Rolling out the debit card in the Bundaberg and Hervey Bay area will stabilise the lives of young people in the area by limiting spending on alcohol, drugs and gambling, thus improving their chances of finding employment or successfully completing education or training. It will also assist young families to meet the needs of their children.

To accommodate the roll out in this area, the total number of cashless debit card trial participants will increase from 10,000 to 15,000 participants over the period to 30 June 2019, with the Bundaberg and Hervey Bay area continuing as a trial site until 30 June 2020.

Recipients of Newstart, Youth Allowance (Jobseeker) and Parenting Payment will be subject to the trial if their usual place of residence was, is or becomes within the
Bundaberg and Hervey Bay area on commencement of this Bill. These payment types were chosen based on feedback from community stakeholders.

Other conditions, such as being under 36 years of age will also apply to determine the class of trial participants, as well as some exceptions.

Similar to any other bank card, the debit card currently enables trial participants to access existing terminals and shops (except excluded businesses such as those exclusively selling restricted products and, where possible, online purchases). However, the debit card does not allow the purchase of alcohol and gambling products or cash withdrawals.

The measure will commence the day after the end of the period of three months beginning on the day this Act receives Royal Assent.

**Explanation of the changes**

**Schedule 1 – Amendments**

**Part 1 – Main amendments**

*Social Security (Administration) Act 1999*

**Item 1** inserts the definition of *Bundaberg and Hervey Bay area* into subsection 124PD(1). *Bundaberg and Hervey Bay area* means the area within the boundaries of the Division of Hinkler (within the meaning of the Commonwealth Electoral Act 1918) as those boundaries are in force on 31 May 2018.

**Item 2** inserts new paragraph (d) in the definition of *trial area* under subsection 124PD(1) so that the definition of trial area also includes the Bundaberg and Hervey Bay area.

**Item 3** amends the definition of *trial participant* in subsection 124PD(1) to refer the reader to section 124PG and a new provision, section 124PGA, for the definition.

**Item 4** is consequential to item 5, and introduces subsections to the structure of section 124PE.

**Item 5** adds to the existing words of section 124PE which set up power for the Minister to make a legislative instrument to authorise a body as a community body, to make it clear that the new subsection 124PE(1) does not apply in relation to the Bundaberg and Hervey Bay area.

**Item 6** inserts new subsection 124PE(2). New subsection 124PE(2) empowers the Minister, by notifiable instrument, to authorise a body whether incorporated or unincorporated, as a community body, in relation to the Bundaberg and Hervey Bay area, if the body provides, or intends to provide, services relating to the care, protection, welfare or safety of adults, children or families residing in that area.
Using a notifiable instrument to authorise a community body is appropriate because the authorisation does not, of itself, determine the law or alter the content of the law. A community body, once authorised, has statutory powers to direct the Secretary to vary the percentage amounts applying to an individual’s restrictable payment, by agreement between the community body and the trial participant (section 124PK). However, the authorisation of the body is an administrative action, which then enables a body to exercise these powers. The notifiable instrument empowered by new subsection 124PE(2) will not be disallowable by Parliament, and this is appropriate, as any such instrument will not immediately affect the rights of any individual, other than persons who choose to approach the community body to agree a different percentage.

Item 7 repeals and substitutes paragraph 124PF(1)(b) to end the trial duration in areas other than Bundaberg and Hervey Bay by 30 June 2019, but end the Bundaberg and Hervey Bay trial area by 30 June 2020. This allows time to implement the trial, and for it to operate for at least 12 months.

Item 8 amends subsection 124PF by replacing the reference to 10,000 trial participants with 15,000 trial participants.

Item 9 repeals and substitutes the heading to section 124PG. The new heading reflects that section 124PG provides for the Minister to make a legislative instrument for the purposes of determining trial participants for a particular trial area.

Item 10 inserts new section 124PGA at the end of Subdivision A of Division 2 of Part 3D. New section 124PGA sets out the conditions under which a person, in the Bundaberg and Hervey Bay area, is a trial participant.

New subsection 124PGA(1) provides that a person is a trial participant if:

(a) the person’s usual place of residence is, becomes or was within the Bundaberg and Hervey Bay area; and

(b) the person is receiving Newstart Allowance, Youth Allowance (except a Youth Allowance recipient who is a Youth Allowance new apprentice (section 540AA of the Social Security Act) or is a full-time student (paragraph 541(1)(a) of the Social Security Act) or Parenting Payment; and

(c) the person is under 35 years of age on the day this section commences and the person has not turned 36 years of age; and

(d) the person does not have a Part 3B payment nominee (within the meaning of Part 3B); and

(e) the person is not covered by a determination under subsection 43(3A) (as the result of which a person’s social security periodic fortnightly payment may be paid in two payments); and

(f) the person is not subject to the income management regime under sections 123UC (child protection income management measure), 123UCB
(disengaged youth income management measure), 123UCC (long-term welfare payment recipient income management measure) or 123UF (Queensland Family Responsibilities Commission income management measure); and

(g) subsection 124PGA(3) does not apply to the person; and

(h) the person is not covered by a determination under subsection 123PGA(4).

In general, a person residing in the trial area who is aged under 36 and in receipt of either Newstart, Youth Allowance (except a Youth Allowance recipient who is a full-time student or new apprentice) or Parenting Payment will be subject to the trial. The age requirement in new paragraph 124PGA(1)(c) means that a person aged 35 on commencement of new paragraph 124PGA(1)(c) will not be subject to the cashless debit card trial. This is to ensure that a person would not be on the trial for a short period until their 36th birthday.

Recipients will also be excluded where the cashless debit card would not be appropriate, because their particular circumstances may make certain aspects of the cashless debit card impractical. These are the circumstances prescribed at paragraphs 124PGA(1)(d) and (e).

The class of trial participants will not include persons whose welfare payment is paid on a weekly basis or paid to particular kinds of payment nominee, including persons with a social security or family assistance payment nominee, or a person whose youth allowance payments are paid to their parent or guardian.

Some welfare recipients are subject to income management under Part 3B. A person who relocates to the Bundaberg or Hervey Bay area may continue to be subject to income management for a certain period under the child protection measure (section 123UC), the disengaged youth or long-term welfare payment recipient measures (under section 123UCB or 123UCC) or the Queensland Family Responsibilities Commission measure (section 123UF). Where this occurs, the person would not become a cashless debit card trial participant while they remain subject to income management.

**New subsection 124PGA(2)** provides that, to avoid doubt, if a person’s usual place of residence becomes within the Bundaberg or Hervey Bay area and subsection (1) applies to the person, the person is a **trial participant** on or after the day that the person’s usual place of residence becomes within that area.

**New subsection 124PGA(3)** applies to a person if the person is undertaking full-time study (as defined by section 541B of the Social Security Act) and while undertaking that study, the person is living outside the Bundaberg and Hervey Bay area. Persons who live outside the trial area during term time for the purposes of completing their course of study may find it impractical to use a cashless debit card outside the trial area. For example, they will not have access to the same support services as trial participants who live within the trial area. Such students will not be within the class of trial participants.
New subsection 124PGA(4) provides that the Secretary must determine that a person is not a trial participant under section 124PGA if the Secretary is satisfied that being a trial participant under this section poses a serious risk to the person’s mental, physical or emotional wellbeing. The intent of this provision is to protect those persons who, based on documentary evidence, may seriously be at risk of adverse impacts on their mental, physical or emotional wellbeing as a result of being subject to the cashless debit card trial.

New subsection 124PGA(5) provides that the Secretary is not required to actively take steps to assess every trial participant to decide whether being subject to the cashless debit card trial would seriously risk that person’s mental, physical or emotional wellbeing. The Secretary will consider making this determination once he or she is made aware of facts which indicate that being a trial participant may seriously risk a person’s mental, physical or emotional wellbeing. Where the Secretary is satisfied that being a trial participant would seriously risk that person’s mental, physical or emotional wellbeing and makes a determination to this effect, the person will not be subject to the cashless debit card trial while that condition is met. If the serious risk to the person is only brought to the Secretary’s attention after they have become a trial participant and the Secretary is satisfied that being subject to the trial poses a serious risk to the person’s mental, physical or emotional wellbeing, a determination will be made, resulting in the person no longer being a trial participant while that condition is met.

Item 11 amends paragraph 124PH(1)(b) to confine the persons who may notify the Secretary that they wish to be voluntary participants to areas other than the Bundaberg and Hervey Bay area. This prevents persons in the Bundaberg and Hervey Bay area from becoming voluntary participants, if they are not otherwise a trial participant.

Item 12 inserts new subsections after subsection 124PJ(4). Section 124PJ currently empowers the making of a legislative instrument to allow the Minister to vary the percentages of restricted and unrestricted portions for particular persons in relation to particular trial areas.

New subsection 124PJ(4A) disapplies the legislative instrument making power for the Bundaberg and Hervey Bay Trial area.

New subsection 124PJ(4B) provides that for a person who is a trial participant in relation to the Bundaberg and Hervey Bay area, the Secretary may make a determination varying the percentages such that the entire payment is unrestricted. In such circumstances, a person may access their full payment in cash.
New subsection 124PJ(4C) prescribes the conditions in which the Secretary can make a determination under subsection 124PJ(4B) varying the percentages. The circumstances are that the Secretary is satisfied that the person is unable to use the person’s debit card attached to the person’s welfare restricted bank account, or is unable to access that account as a direct result of a technological fault or malfunction with that card or account, or because of a natural disaster. The Secretary can also make such a determination if satisfied that the person is being paid outside their usual payment schedule or in advance, because the person is in severe financial hardship as the result of exceptional and unforeseen circumstances, or is being paid in advance under subsection 51(1).

New subsection 124PJ(4D) makes it clear that a Secretary determination under subsection (4B) takes effect on the day specified in the determination (which must not be earlier than the day on which the determination is made).

Item 13 is consequential to item 12, making it clear that a direction given by a community body is subject to any determination by the Secretary under subsection 124PJ(4B).

Items 14 and 15 relate to the ability of merchants to block restricted products.

Item 14 inserts new subsection 124PQ(2A). The new subsection specifies and specifically authorises for the purposes of the Competition and Consumer Act 2010, the declining of a transaction by a supplier of goods or services if it involves money in a welfare restricted bank account and the obtaining of alcoholic beverages or gambling or a cash-like product that could be used to obtain alcohol beverages or gambling. This ensures that action by merchants to decline transactions involving these elements will not result in the merchants being in breach of the Competition and Consumer Act 2010.

Item 15 inserts new section 124PQA after section 124PQ. New section 124PQA defines a cash-like product (without otherwise limiting sections 124PM and 124PQ) as including: a gift card, store card, voucher or similar article (whether in a physical or electronic form); a money order, postal order or similar order (whether in a physical or electronic form); and digital currency.

Item 16 is an application provision. Subitem 16(1) provides that new section 124PGA applies in relation to a person whose usual place of residence:

(a) is, on the day this item commences, within the Bundaberg and Hervey Bay area; or

(b) becomes, on or after the day this item commences, within the Bundaberg and Hervey Bay area.

The note at the end of subitem 16(1) clarifies that section 124PGA may continue to apply to the person if the person’s usual place of residence after the commencement of this item ceases to be in the Bundaberg and Hervey Bay area.
New subitem 16(2) is a savings provision, and provides that an instrument in force under section 124PE of the Act immediately before the commencement of this item has effect on and after that commencement as if it were an instrument in force under subsection 124PE(1) of that Act. This will ensure that the instrument currently made under section 124PE determining community bodies for other trial sites is not affected by the amendments to section 124PE.

Part 2 – Contingent amendments

Division 1

Social Security (Administration) Act 1999

These contingent amendments to section 124PM limit the use a trial or voluntary participant may make of their restricted portion of their payment, on the assumption that amendments to section 124PM at item 7 of Schedule 1 to the Social Services Legislation Amendment (Housing Affordability) Act 2018 have not commenced at the time these amendments commence.

Item 17 repeals and replaces paragraph 124PM(a). The paragraph limits the use a person paid a restricted portion of their payment may make of that payment to obtaining goods or services other than alcoholic beverages, gambling or a cash-like product that could be used to obtain alcoholic beverages or gambling.

Item 18 adds a note to the end of section 124PM directing the reader to section 124PQA inserted by item 15 above for the definition of cash-like product.

Item 19 is an application provision, providing that the amendments of section 124PM made by item 14 apply in relation to the use, on or after the commencement of this item, of the restricted portion of a restrictable payment, whether the payment was made before, on or after that commencement. This will limit the prospective use of a person’s welfare restricted bank account containing restricted portions of restrictable payments to include limitations upon the purchase of cash-like products immediately. However, any such purchases which involved the use of restricted payments prior to commencement will not be affected.

Division 2 – Other amendments

These contingent amendments to section 124PM limit the use a trial or voluntary participant may make of their restricted portion of their payment, on the assumption that amendments to section 124PM at item 7 of Schedule 1 to the Social Services Legislation Amendment (Housing Affordability) Act 2018 have already commenced before these amendments commence.

Item 20 repeals and substitutes section 124PM as inserted by item 7 of Schedule 1 to the Social Services Legislation Amendment (Housing Affordability) Act 2018, to reinstate the preferred form of section 124PM as set out above at item 17.
**Item 21** is an application provision in identical terms to the proposed application provision in item 19 above.

**Part 3 – Other amendments**

**Item 22** is a consequential amendment resulting from Part 1 of Schedule 1 to the *Social Services Legislation Amendment (Welfare Reform) Act 2018*. The reference to ‘Newstart Allowance’ in paragraph 124PGA(1)(b) is to be substituted with ‘Jobseeker Payment’ when Schedule 1 commences in 2020.
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 TRIAL EXPANSION) BILL 2018

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

This Schedule expands on the three locations in which the cashless welfare arrangements are currently being, or will be, conducted by rolling out the cashless debit card in the Bundaberg and Hervey Bay area in Queensland, to run until 30 June 2020. The Schedule also sets out the class of trial participants for the new area and increases the total number of trial participants to 15,000.

The Bill also introduces an exception from Part IV of the Competition and Consumer Act 2010 for merchants that implement product level blocking, where systems would automatically identify that a cashless debit card is being used for payment and, if any restricted products are being purchased, decline the transaction. Lastly, the Bill introduces a limitation upon the use of the restricted portion of a payment to a participant, to prevent the portion being used to obtain cash-like products which could be used to obtain alcohol or gambling.

Human rights implications

The Parliamentary Joint Committee on Human Rights conducted a review of the Social Services Legislation Amendment (Cashless Debit Card) Bill 2017, 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 trial areas; and
(c) determine whether such arrangements are more effective when community bodies are involved; and
(d) encourage socially responsible behaviour.

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 remain on welfare and out of the workforce for extended periods of time.

The Bundaberg and Hervey Bay area, as defined by the boundaries of the Federal Division of Hinkler, has a much larger population than the three current sites and is not a remote location. It has been selected due to strong levels of support in the area. The community has significant issues regarding youth unemployment, intergenerational welfare dependency and families who require assistance in meeting the needs of their children. In response to the community's concerns, the Cashless Debit Card has been tailored to best target these issues, so that, in this area, the card will only be applied to people under 36 years of age and in receipt of Newstart Allowance, Youth Allowance (Jobseeker), Parenting Payment (Partnered) or Parenting Payment (Single).

In relation to youth unemployment, the Wide Bay region, in which the Hinkler electorate is located, has one of the highest rates of youth unemployment in Queensland. Data from March 2018 show youth unemployment in the region is around 28.7 per cent, which is an increase of 4 per cent since March 2017. The average for Queensland in March 2018 was 13.4 per cent.

The boundary for the site was selected as it encapsulates Bundaberg and Hervey Bay, which have the largest population, service and employment hubs in the region. This is especially important given the need to ensure employment opportunities are available, to complement the additional funding provided for support services.

Drug use, particularly ice and other methamphetamines, is considered a major problem in the region. Drug usage data from 2013 from the Australian Institute of Health and Welfare shows that both Bundaberg and the Fraser Coast (which includes the Hervey Bay area) have an estimated drug usage rate of 15.7 per cent, which is higher than the national average of 14.7 per cent. In addition, Queensland Health data for the Bundaberg and Fraser Coast local government areas indicated 1,547 episodes of care for alcohol and other drugs treatment in 2015/16. Of these, 41 per cent had cannabinoids as the principle drug of concern, while alcohol and amphetamines accounted for 26 per cent and 16 per cent respectively.

According to the 2013 National Drug Strategy Household Survey, people who are unemployed are 2.4 times more likely to use drugs such as ice and other amphetamines than those who were employed. Introducing the Cashless Debit Card into the area is expected to stabilise young people's lives through limiting spending on alcohol, drugs and gambling. With reduced exposure to risk factors, people may be better able to find employment or successfully complete their education and training.

Research by the Australian Research Council (ARC) indicates that risk factors such as attitudes to work and welfare, attitudes towards alcohol and drug consumption, and family influences contribute to intergenerational welfare dependency. The ARC
also found evidence that young people from welfare dependent families are more likely to smoke, drink alcohol or consume illegal drugs, thus highlighting the relationship that welfare dependence has on a young person’s outcomes in life.

In addition, targeting a younger cohort allows the Cashless Debit Card to influence positive behaviour change before welfare dependency becomes entrenched. Setting the age limit at 36 allows the Australian Government to target most young people and families with young children who are receiving welfare payments.

Parents are eligible for parenting payments only while their children are very young. A stable domestic environment with limited exposure to risk factors during these formative years is imperative for positive lifelong outcomes.

The final independent evaluation of the Cashless Debit Card Trial by ORIMA Research was released on 1 September 2017, and included results from the first two trial sites, Ceduna, South Australia, and the East Kimberley, Western Australia.

The evaluation found that the Cashless Debit Card has had a “considerable positive impact” in the communities where it has operated. The evaluation also concluded that the trial “has been effective in reducing alcohol consumption and gambling in both trial sites and [is] also suggestive of a reduction in the use of illegal drugs”, and “that there is some evidence that there has been a consequential reduction in violence and harm related to alcohol consumption, illegal drug use and gambling.”

In particular, the evaluation reported the following findings:

- Of people surveyed who drank alcohol before the trial started, 41 per cent reported drinking alcohol less frequently (up from 25 per cent in the Wave 1 survey, which was done approximately six months into the trial); 37 per cent of binge drinkers were doing this less frequently (up from 25 per cent at Wave 1).
- Of those who said they had participated in binge drinking (drunk six or more drinks in one sitting) before the trial started, 37 per cent reported they were binge drinking less often (up from 25 per cent at Wave 1).
- A noticeable reduction in the number of visible or public acts of aggression and violent behaviour. Nearly 40 per cent of non-participants perceived that violence in their community had decreased.
- People are now seeking medical treatment for conditions that were previously masked by alcohol effects.
- Forty-eight per cent of gamblers reported gambling less (up from 32 per cent at Wave 1).
- The card has had “a positive impact in lowering illegal drug use” across the two sites.
- Of those who reported drug use before the trial started, 48 per cent reported using illegal drugs less often (up from 24 per cent at Wave 1).
- Forty per cent of participants who had caring responsibility reported that they had been better able to care for their children (up from 31 per cent at Wave 1).
- Additionally, 39 per cent of participants with caring responsibilities reported that they had become more involved in their children’s homework and schooling, as compared to before the trial (up from 16 per cent at Wave 1).
Forty-five per cent of participants have been better able to save more money (up from 31 per cent at Wave 1).

Feedback that there has been a decrease in requests for emergency food relief and financial assistance in Ceduna.

Merchant reports of increased purchases of baby items, food, clothing, shoes, toys and other goods for children.

Considerable observable evidence being cited by many community leaders and stakeholders of a reduction in crime, violence and harmful behaviours over the duration of the trials.

Expanding the Cashless Debit Card to the Bundaberg and Hervey Bay area will build on these positive findings, and offer an opportunity to continue to test the card’s effectiveness under new parameters, in an area with a significantly lower proportion of Indigenous participants and on a larger scale when compared to current sites.

**General safeguards**

The Bill seeks to add an additional trial site, defined as the Bundaberg and Hervey Bay area in the legislation, as set out by the federal electorate boundaries of the Division of Hinkler, as at 31 May 2018.

A trial participant in the Bundaberg and Hervey Bay area has been defined in the Bill. This restricts the cohort of participants in this site, so that only a person receiving one of the identified trigger payments (Newstart Allowance, Youth Allowance (Jobseeker), Parenting Payment (Partnered) or Parenting Payment (Single)) and who are under 36 years of age would be a trial participant.

The Bill also identifies certain groups of people who would not be a trial participant so that for example, persons subject to the income management regime and those studying outside the area would not become a trial participant.

A number of general safeguards that help to protect human rights have been incorporated into the operation of the Cashless Debit Card. First, the rollout of the Cashless Debit Card in existing locations was subject to an extensive community consultation process, a practice that has continued for the Bundaberg and Hervey Bay area. From July 2017 to September 2017, the Department of Social Services conducted over 110 meetings in the Bundaberg and Hervey Bay area. After the announcement of the site on 21 September 2017, the Department continued to consult and engage with the community and has conducted a total of 188 meetings to December 2017.

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 expansion to a new site, to complement the existing sites, will also be monitored and continue to build on the evidence base established through a continuous data monitoring activity and ongoing engagement with the communities.
The Government has also announced a second evaluation of the Cashless Debit Card across all three current trial sites, to assess the ongoing effectiveness of the program. The second evaluation will use research methodologies developed independently by the University of Queensland, and draw on the baseline measurements of social conditions in the Goldfields, developed by the University of Adelaide. Findings from the second evaluation will be published in late 2019.

**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 expansion of the Cashless Debit Card in the Bundaberg and Hervey Bay area will apply to a specific cohort of income support recipients. That is, all persons aged under 36 years, who are in receipt of Newstart allowance, Youth Allowance (Jobseeker) or Parenting Payment (Partnered or Single) will be triggered onto the Cashless Debit Card. This applies to all persons meeting these criteria in the same way that it applies in current sites, such that the Cashless Debit Card is not intended to be a punitive measure.

Persons aged 36 years and over will not be trial participants within the Bundaberg and Hervey Bay area. Persons who turn 36 during the course of the trial in the Bundaberg and Hervey Bay area will cease to be trial participants.

It will not be appropriate for some persons to be trial participants, because their particular circumstances may make certain aspects of the Cashless Debit Card impractical. Persons who live outside the trial area during term time for the purposes of completing their course of study may find it impractical to use a Cashless Debit Card outside the trial area. For example, they will not have access to the same support services as trial participants who live within the trial area. Such students will not be within the class of trial participants.

The class of trial participants will not include persons whose welfare payment is paid on a weekly basis or paid to particular kinds of payment nominee, including persons with a social security or family assistance payment nominee, or a person whose youth allowance payments are paid to their parent or guardian.

Some welfare recipients are subject to income management under Part 3B of the Act. A person who relocates to the Bundaberg or Hervey Bay area may continue to be subject to income management for a certain period under the child protection measure (section 123UC of the Act), the disengaged youth or long-term welfare payment recipient measures (under section 123UCB or 123UCC of the Act) or Queensland Family Responsibilities Commission measure (section 123UF of the
Statement of compatibility with human rights

Act). Where this occurs, the person would not become a Cashless Debit Card trial participant while they remain subject to income management.

Lastly, for some persons, being a trial participant may seriously risk the person’s mental, physical or emotional wellbeing. Where an officer of the Department of Social Services (being a delegate of the Secretary) is satisfied that being a trial participant is seriously risking a person’s mental, physical or emotional wellbeing, the officer must make an administrative decision resulting in that person no longer falling within the class of persons who are trial participants.

The Bill also ensures the right to social security is not impacted by unforeseeable circumstances that would have significant impact on trial participants in the Bundaberg and Hervey Bay area. This includes wide-scale power outages, technological faults or malfunctions with cards or accounts, or natural disasters. The Bill allows a determination by the Secretary to be made, varying the participants’ payment such that participants would have access to their full payment as cash. This ensures participants and their families remain supported in the event of wide-scale emergencies.

The option to establish a community panel, or community body, in the Bundaberg and Hervey Bay area will also be provided. Consultations with community leaders and representatives in the area have indicated that independent community panels may be a useful tool in encouraging people to uphold social norms, and providing participants with an avenue to request access to a higher portion of unrestricted funds.

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 used to purchase alcohol, gambling products. Businesses which sell alcohol and gambling products are able to service participants, where they have systems in place that do not allow the sale of restricted products to holders of a Cashless Debit Card. These limitations are necessary to ensure that restricted 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 for 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. There are also two hotline services operated by the card provider and the Department of Social Services to provide technical and policy support for participants.

The Bill also includes amendments to enable purchases of restricted products to be blocked by a merchant, which is consistent with current processes but would reduce manual management of merchants who sell both restricted and un-restricted products. In doing so, the Bill also clarifies the restriction on ‘cash-like’ products, such as gift cards, vouchers, money orders, or digital currency, where these could be used to purchase alcohol and gambling products. A restriction on the purchase of these products is in line with existing restrictions on cash withdrawal in relation to the restricted bank account. Cash-like products that could not be used to obtain alcohol and gambling, such as a ‘closed loop’ gift card for a specific store, would not be restricted.

Given the objectives of the Cashless Debit Card and the prevalence of social harm in the Bundaberg and Hervey Bay trial area, any limitation on the right to social security is reasonable and proportionate.

**The right to a private life**

The impact of the trial on the right to a private life and privacy has previously been raised.

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 the prohibited 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 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 items or products 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. Locations for the program have been chosen based on objective criteria. 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 or legislation, will become a participant. The program is therefore not targeted at people of a particular race, but to welfare recipients who meet particular criteria.

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 the Bundaberg and Hervey Bay area as a fourth location, consideration was given to expanding to an urban population, with a significantly lower Aboriginal and Torres Strait Islander population. It is estimated that 14 per cent of participants in the Bundaberg and Hervey Bay area will be Aboriginal and Torres Strait Islander people. With the addition of the Goldfields areas, Western Australia, and the Bundaberg and Hervey Bay area, the proportion of Indigenous participants across the four sites will be approximately 33 per cent.

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. The Bill clarifies the restriction on ‘cash-like’ products, such as gift cards, vouchers, money orders or digital currency, where these could be used to purchase alcohol and gambling products, in line with the policy intent of the program. The limitation on these products and services ensures that vulnerable people are protected from abuse of these substances, and any associated harm and violence. Comprehensive community consultation was conducted in all locations to gauge community interest and support in the arrangements, including from local community leaders and stakeholders.

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, or ‘cash-like’ products that could be used to obtain alcoholic beverages or gambling, 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). Community consultation in the Bundaberg and Hervey Bay area showed that the welfare of children was a particular area of concern for many members of the community.
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 remain on welfare and out of the workforce for extended periods of time.

[Circulated by the authority of the Minister for Social Services, the Hon Dan Tehan MP]