



Submission by the
Commonwealth Ombudsman

**INQUIRY INTO THE SOCIAL SECURITY
LEGISLATION AMENDMENT (CASHLESS
DEBIT CARD EXPANSION) BILL 2018**

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Introduction and summary

The Commonwealth Ombudsman welcomes the opportunity to respond to the Senate Standing Committee on Community Affairs Inquiry into the Social Security Legislation Amendment (Cashless Debit Card Expansion) Bill 2018. As part of its broad oversight role of Commonwealth government administration, the Office of the Commonwealth Ombudsman (the Office) has oversight responsibility for the Department of Social Services (DSS) and the Department of Human Services.

The Office has been involved in the oversight of the Cashless Debit Card (the Card) trial since it was implemented in two communities in early 2016, the Office also made a submission to the Senate Community Affairs Legislation Committee in relation to amending legislation that established the Card Trial, the Social Security Legislation Amendment (Debit Card Trial) Bill 2015 (the 2015 Bill)¹. In addition to receiving and investigating complaints about the administration of the Card, own motion investigations conducted by the Office have also referenced issues associated with the Card and the Income Management scheme more broadly, such as our report into the *Accessibility and Use of Indigenous Interpreters 06/2016*².

The Office continues to monitor any issues that arise around the administration of the Card, particularly as part of our ongoing program of outreach to, and consultation with, regions and communities, including those areas where the trial is operating.

Background

The purpose of the Office of the Commonwealth Ombudsman is to:

- Provide assurance that the organisations we oversight act with integrity and treat people fairly
- Influence systemic improvement in public administration in Australia and the region.

We seek to achieve our purpose through:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action; and
- providing assurance that Commonwealth, State and Territory law enforcement, integrity and regulatory agencies are complying with statutory requirements and have sound administrative practices in relation to certain covert, intrusive and coercive powers.

The Commonwealth Ombudsman's unique position gives us an understanding of the individual experiences of members of the public who are dissatisfied with the way that government has dealt with their issue. Parliament has given the Ombudsman powers to investigate complaints by obtaining information and records that would not ordinarily be available to a person acting on

¹ Submission available at <https://www.aph.gov.au/DocumentStore.ashx?id=cd5dca5d-af0d-47b9-b84b-f68f7a396616&subId=402698>

² See http://www.ombudsman.gov.au/data/assets/pdf_file/0028/42598/December-2016-Investigation-into-Indigenous-Language-Interpreters.pdf

their own behalf. Over time, through investigating complaints about the actions of a particular Commonwealth department or agency, the Office is able to build up a detailed picture of an agency's operations, including information about new complaint trends and systemic issues.

Complaints provide an important opportunity to identify and correct mistakes, and can be an early warning system for systemic or deeper problems. An accessible complaints process is particularly important for vulnerable and/or disadvantaged groups. Fair and transparent government administration depends on the capacity to identify and address complaints from these groups.

In our experience, people in rural and remote regions, such as those where the Card trial is currently operating and particularly Indigenous peoples, are less likely to access existing review processes or complaints channels. Their awareness of programs, services and decisions affecting them is also often low.

Submission in relation to the Bill

The Social Security Legislation Amendment (Cashless Debit Card Expansion) Bill 2018 seeks to extend the locations in which the Card is in operation to include the Bundaberg and Hervey Bay region in Queensland to 30 June 2020. The Bill also:

- sets out the class of trial participants for the new region
- increases the total number of participants to 15,000
- introduces a new exception from Part IV of the *Competition and Consumer Act 2010* for merchants that put product level blocking in place, and
- introduces a limitation upon the restricted portion of a participant's payment in order to prevent it being used to obtain cash-like products.

Newstart Allowance, Youth Allowance (Jobseeker) and Parenting Payment recipients under the age of 36 and whose usual place of residence is within the trial area will be subject to the trial upon commencement of the amendments. Consistent with current arrangements in place for the other trial areas, recipients of these payments will be excluded from the trial where their circumstances make elements of the Card impractical. In contrast to the other trial sites, people who do not fall within the payment, age and residence criteria will not be able to participate in the Card trial on a voluntary basis.

As the Office noted in our submission to the 2015 Bill, the potential impact of this measure upon an affected person's individual autonomy is significant. It accordingly needs to be administered in a manner that is robust, well-considered, supported by clear guidelines, and informed by high-quality and accessible complaint, review and evaluation mechanisms.

The volume of complaints received by the Office specifically regarding the Card has been low, representing only a small proportion of overall complaints about the administration of income support payments. The Office continues to track complaints associated with the Card through a specific issue of interest system marker. At the time of writing this submission we are also aware of the publication of an Australian National Audit Office audit of the implementation and performance of the Cashless Debit Card trial³.

³ See <https://www.anao.gov.au/work/performance-audit/implementation-and-performance-cashless-debit-card-trial>

Based in part on our submission to the 2015 Bill and our subsequent monitoring of issues associated with the Card, there are three elements that the Office seeks to draw specific attention to as areas of administrative risk.

1. Communication

A common theme of complaints received by this Office relates to poor or inadequate communication of the arrangements that apply to a person when they become a participant in the trial. Recipient understanding of the key concepts and new processes needs to be tested prior to implementation in trial areas. The extension of the trial to the Bundaberg and Hervey Bay region needs to build on the implementation experience of the other trial areas and ensure that any communication issues that are specific to the proposed recipient group are identified, addressed and monitored.

For example, the Office has received complaints that suggest that trial participants are sometimes not aware that they remain subject to the Card arrangements even if they change residence away from a trial area. Messages about the trial from different bodies involved in the administration of the Card (primarily DSS and the card provider Indue Ltd) also need to be clear and consistent across the various communication channels being used.

Letters to recipients should also be informed by user testing and subject to continuous improvement. Letters that outline the reasons for a particular decision made about a recipient's participation in the trial (for example, refusing to exempt a recipient) must provide sufficient information for the person to understand the decision that has been made. Similarly, letters must clearly articulate the review and complaint options available to a participant and how these options may be accessed and used.

In turn, and as part of a strategy that promotes continuous improvement, complaints received about the Card should be used to improve communication and service delivery during the trial. This applies to materials such as factsheets, promotion through local media, and other products and sources for information like the "Frequently Asked Questions" page about the Card at Indue Ltd's website⁴.

2. Flexibility

Complaints received by the Office have also highlighted the concerns of participants about the constraints associated with the mandatory 80% initial payment restriction, whereby a person is only able to access 20% of their entitlement as cash unless varied by a delegate of the Secretary. As the Office noted in our submission to the 2015 Bill, this has the capacity to result in financial detriment and social exclusion. For example, it applies a restriction to the capacity of a participant to purchase second hand items, to take advantage of 'cash only' discounts, or to shop at markets (such as farmers' markets). It may also serve to limit a person's ability to participate in functions such as weddings or funerals where these are held at hotels or other restricted venues.

Information for participants about how they can seek to amend the restricted portion amount, and the criteria applied to this determination, may also be able to be improved. It is not, for example, readily apparent or available at either Indue Ltd's "Frequently Asked Questions" page

⁴ <https://indue.com.au/dct/cardholder/cardholder-faqs/>

or at the “Frequently Asked Questions” page about the Card at the DSS website⁵ that the restricted portion amount can be amended.

3. Exemptions

The broad application of the Card trial to recipients based solely on their income support payment status increases the risk that it is applied to people for whom it is not appropriate and could be detrimental. It is therefore of key importance and priority that the process of applying exemptions is clearly communicated, accessible and timely, particularly in those circumstances in which a participant is seeking an exemption due to a serious risk to their mental, physical or emotional wellbeing. The Office acknowledges that the Card excludes those participants for whom it would be inappropriate and impractical, such as recipients with a particular kind of payment nominee, those receiving their entitlement on a weekly basis, and those youth allowance recipients who have their payment made to their parent or guardian.

The Office also acknowledges that as part of implementation of the Card trial to the Bundaberg and Hervey Bay region that significant work and investment has been made in preparing support services and the community ahead of its commencement. We understand that this includes support in the area of budgeting and financial planning, as well as access to drug and alcohol services. This strategy has merit given it is an approach that seeks to mitigate and lessen the risks arising from the Card trial for vulnerable recipient groups.

Ongoing monitoring and consultation by the Office of the Commonwealth Ombudsman

As previously stated, the Office has an ongoing interest in the administration of the Cashless Debit Card trial, particularly given its potential impact on vulnerable recipient cohorts. We will continue to monitor and investigate, as appropriate, complaints that arise about the trial, ensuring that any identified systemic issues or deficiencies are considered and addressed in collaboration with DSS.

⁵ <https://www.dss.gov.au/families-and-children/programs-services/welfare-quarantining/cashless-debit-card/cashless-debit-card-frequently-asked-questions>