



27 September 2017

By email: community.affairs.sen@aph.gov.au

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

Inquiry into the Social Services Legislation Amendment (Cashless Debit Card) Bill 2017

Thank you for the opportunity to provide a submission to the Senate Standing Committee on Community Affairs' Inquiry into Social Services Legislation Amendment (Cashless Debit Card) Bill 2017 (the **Bill**).

This submission provides comment in relation to the consumer policy implications of the Cashless Debit Card Trial (**CDCT**) which have not been considered sufficiently in the design and implementation of this policy.

The decision to confine our comments is not an indication that this is the extent of our concerns. We are opposed to the Cashless Welfare Card for a wide variety of reasons, not the least of which is that there is no credible evidence it works. We are aware of a number of other submissions that will take a broader view and in particular endorse the commentary of the Australian Council of Social Services.

About us

Consumer Action Law Centre is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

FamilyCare is the main provider of child and family services in the Goulburn Valley region of Victoria, with its headquarters in Shepparton. FamilyCare also provides disability and carer support services and undertakes a variety of community development activities. Shepparton was selected as one of ten place-based welfare reform trial sites around Australia in May 2011. It is the only Local Government Area in Victoria subject to Income Management.

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Consumer implications of CDCT

The consumer implications of the CDCT have not been adequately considered in the development of the policy. In short, we believe there is a grave and increasing risk that expanding the use of the cashless welfare card will create a structural, banking underclass, because of the flaws in program design. These problems have been raised consistently since the first trials were announced, for example in an Opinion Piece published by Pro Bono Australia in October 2015 (Attachment A).

There are similarities between these issues and long-held concerns about compulsory Income Management. They are however distinguishable because the CDCT model relies on an intermediary financial services provider, which facilitates the conduct of an account in the benefit recipient's name and the issue of a card to access the funds in that account. Government contends that the CDCT process operates like a normal bank account. It does not. CDCT participants are not customers, they are conscripts. They do not have access to the same rights and protections as normal consumers of savings accounts.

In early 2017, Consumer Action was invited to meet with representatives of the Department of Social Services about the potential expansion of the card. After the meeting, we provided a short briefing paper (Attachment B) which outlined a range of consumer issues, including as they relate to consumer choice, regulatory protections and the disruption the card may cause on the financial lives of trial participants. To date, we have not received a response to the concerns raised beyond an acknowledgment of receipt.

One of the concerns raised was the appropriateness of the card provider, Indue Ltd. We noted that Indue does not have any experience in retail banking and engaging with consumer organisations.

In June 2016, Consumer Action wrote to the CEO of Indue seeking a dialogue about certain concerns. That letter attached correspondence sent to the Australian Bankers Association and the Customer Owned Banking Association (members of the latter are also the owners of Indue Ltd, i.e. certain credit unions and mutual banks). A response was received effectively dismissing any concerns and referring us to the Department of Social Services. These letters are attached as Attachments C, D and E.

It is apparent that Indue is not concerned to engage with organisations that represent consumer interests, and thus we question the appropriateness of its involvement with the CDCT.

Should you have any questions about this submission, please contact us.

Yours sincerely

Gerard Brody
CEO, Consumer Action Law Centre

David Tennant
CEO, FamilyCare

Attachment A

Is the cashless welfare card the forerunner to a banking underclass?¹

David Tennant – CEO, FamilyCare Shepparton

Amendments to the Social Security Act establishing the trial of a cashless welfare card in Ceduna have passed both Houses of Parliament. The trial will commence in 2016.

The Commonwealth has listened to some of the criticism associated with the surprise roll-out of Income Management to earlier trial sites by talking to potential target communities in advance. There is argument about whether the consultation was accessible to everyone but it would be hard to say the people of Ceduna did not know their community was being considered and at least in broad terms what the trial would involve.

It is also hard to argue with a number of Ceduna community leaders who have spoken about the importance of tackling alcohol fuelled violence and abuse. Whether the cashless welfare card will do anything meaningful to address these problems has generated significant disagreement. At great expense, the cumulative weight of evidence about the much larger trials of Income Management has so far not shown anything consistent.

For me, the key difference between the Ceduna trial and what has gone before is not the proportion of benefit incomes that will be managed or what the card will look like. It is the fact that the account will be offered by an Authorised Deposit Taking Institution, which for most of us makes more sense if you call it a bank...except it is not yet clear whether it will be a bank, or a credit union, building society or some other institution authorised to offer savings accounts.

Why is that a big deal? Because the Commonwealth will require trial participants to open a savings account with a provider selected by Government on Terms and Conditions mandated by Government. Those Terms and Conditions will include requirements for the account provider to give the Commonwealth certain information without the account holder's permission. Exactly what information and when is not clear because similar to the identity of the provider, the Terms and Conditions have not been released.

The significance of the change should not be underestimated. The requirement to hold a bank account into which benefit incomes can be paid is not new, or particularly problematic. Prescribing the type of account is another step again. It is a direct interference with the right to private contract, a step normally associated with people who require protection, or lack capacity because they are children or are in some way impaired.

The action would be easier to understand if the intervention was for the benefit of the account holder. But it is not. It may in fact expose them to increased costs and most certainly will involve greater inconvenience. Because the benefits paid into the prescribed account cannot be taken as cash, they may be subject to other rules, for example minimum purchase rules or merchant fees. Unlike the construction of the account itself, the Commonwealth's approach to these issues appears less direct, for example asking merchants who do charge fees to make sure the fees are fair.

There were a number of submissions raising similar issues to the Senate Inquiry that preceded the changes to the Social Security Act which facilitates the trial. They have not received much attention, given the potential impact of the trial on normal consumer rights. In contrast, a short submission from the Australian Bankers' Association did little more than express interest in the trial outcomes. The brevity was odd. You would think banks may have a view about Government telling customers which account they must have and on what terms.

The history of banking in Australia has not been driven by the milk of human kindness. For many years banks argued against the concept that they carried any broader social responsibilities, beyond making as much money as possible. That changed during the Martin Inquiry in the early 1990s. Since that time many Australian banks have become active in the corporate responsibility space, making important contributions to issues like building financial literacy, providing better access to banking services in seriously remote communities and establishing Microfinance programs to help low income people access credit for essential items on fair terms.

Nowhere have these contributions been more important than in the development of basic bank account products, to assist low income people access the banking system without having their modest incomes eroded by myriad fees and charges. Even with these positive developments, the reality remains that the most likely to be excluded from safe, fair access to financial services are low income people, particularly those receiving benefit incomes.

The Ceduna cashless welfare trial might be small but it establishes a dangerous precedent. The trial will require most people receiving benefits in Ceduna to take the account Government tells them, regardless of whether doing so will cost more or create additional difficulties. Initial participants are likely to total less than 1000 but we should hope they are not the first casualties in the creation of a new banking underclass.

¹ Published as an Opinion Piece by Pro Bono Australia on 29 October 2015, available at <http://www.probonoaustralia.com.au/news/2015/10/cashless-welfare-card-forerunner-banking-underclass>



Attachment B

Consumer issues with respect to cashless welfare card

General issues

- Choice – The Debit Card Trial substantially reduces choice when it comes to a person’s banking relationships. This is because the recipient does not have a say about which account 80% of their benefits were directed, but are required to accept a particular bank product. The consumer can take the predetermined product or go without 80% of their income. Reduction in choice is likely to reduce the responsiveness of providers, removing the dynamics of the competitive market.
- Affordable banking – Much work has been done by the banking industry with the community sector to improve affordable banking, including basic bank accounts.¹ It’s unclear whether the Debit Card Trial has engaged with this effort. While the account terms and conditions state “As at the date of these Conditions of Use, there are no account fees or fees for depositing or making a payment from your Account charged by us”, it also states “You will not earn any interest on the money that is deposited and held in your Account”.²
- Visa system – The Indue cashless welfare card account uses the Visa system for payments. It is not possible to set up transfers using BSB and account number – rather the Visa card numbers should be used. This can cause issues including:
 - Unlike direct debits set up using BSB/account numbers, banks are under no obligation to cancel a recurring payment set up using Visa/Mastercard systems. Rather, consumers are directed to merchants who might not act on an instruction to cancel.
 - The Visa/Mastercard systems are far more expensive systems than direct transfers – this cost is borne by merchants who pass the cost on to consumers through general prices (note surcharges can be imposed to reflect cost of payment system).
- Limitations in payments – transfers between accounts. The Indue account significantly restricts external transfers to other accounts.³ Approval must be provided by DSS for making transfers for rental and mortgage payments. This is likely to become very cumbersome and administratively burdensome once expanded beyond the trial.
- Limitations in payments – declinable transactions. The Indue account declines many transaction types, sorted by merchant code.⁴ It is not uncommon for merchants to be mis-categorised under this system. During the trial in Ceduna, there were complaints that transactions to pay for parking, water bills, and tafe costs were declined. It has also been reported that some outlets outside the region allow purchase of alcohol through the cards – this is likely due to incorrect merchant codes. This is likely to be a significant problem if the trial is expanded.

¹ <http://www.affordablebanking.info/>

² See clause 8, <https://indue.com.au/wp-content/uploads/Conditions-of-Use.pdf>

³ See clause 6, schedule 1: <https://www.legislation.gov.au/Details/F2016L00311>

⁴ See here; <https://www.legislation.gov.au/Details/F2016C00848>

- Exemption from financial services laws – Indue has been effectively exempted from certain consumer protections by ASIC (via a ‘no action’ letter). These include the anti-hawking provisions under the *Corporations Act 2001* (Cth) and the prohibition on unsolicited sending of debit cards under the *Australian Securities & Investments Commission Act 2001* (Cth).
- One name only – account can only be opened in one name, joint accounts are not allowed. This may severely disrupt the financial lives of some welfare recipients.
- Privacy – a card holder’s privacy is breached if they are part of the trial. The legislation and terms of the Indue contract permits disclosure of personal information between Indue and DSS and the Community Panel and DSS. These permitted disclosures are consistent with privacy rights under international law.

Problems with Indue

- ePayments code – Indue is not a signatory to the ePayments code. This code regulates consumer electronic payments, including ATM, EFTPOS and credit card transactions, online payments, internet and mobile banking, and BPAY. Among other things, the ePayments Code:
 - requires subscribers to give consumers clear and unambiguous terms and conditions,
 - stipulates how terms and conditions changes (such as fee increases), receipts and statement need to be made
 - sets out the rules for determining who pays for unauthorised transactions, and
 - establishes a regime for recovering mistaken internet payments.

However, Indue states that it will comply with this code in the terms and conditions of the account. This means that, unlike with actual subscribers, ASIC does not monitor Indue’s compliance with these provisions.

- Indue Ltd is not a subscriber to the Centrelink Code of Operation, however it agrees to comply with this code in the terms and conditions of the account. This means that Indue Ltd will not deduct more than 10% of the fortnightly social security payment made to the participant in satisfaction of any debts owed to Indue Ltd.
- Indue is not a subscriber to any industry code of conduct, like the Code of Banking Practice or the Customer-owned Banking Code of Practice. These codes include a range of important commitments, and incorporate an independent compliance and monitoring function.
- Indue does not have any experience in retail banking and engaging with consumer organisations. When Consumer Action wrote to Indue to inquire about certain issues relating to the card, we received a one-line response from its CEO referring us to DSS.

Other problems

- General cost of administration – as noted above, administration and individual ‘work arounds’ by DSS/Indue are a necessary part of ensuring recipients are treated fairly. This has been manageable with the trial where customer numbers are low. We question the ability of DSS and providers to manage this should the card be expanded.
- Avoidance – it is likely that those with a strong desire to obtain cash will be able to avoid the restrictions of the card to do so. Some merchants may, for example, sell goods to card holders then buy back the goods immediately for cash (often for less than that had just been paid). While inappropriate, this will be difficult to police and will reduce the financial resources of already low-income welfare recipients.

- Predatory practices – exploitative trade practices by particular businesses may gain “approval” through being a merchant that can use the card. This may operate in a similar way to the Centrepay system where very high-cost and irresponsible consumer leases are available through that system.
- Not using funds / not signing up – there is a risk that some recipients will not activate their cards, thus will be denied access to 80% of their welfare benefits. Even if the account is not activated, the funds in the account is likely to be the property of the recipient – this is an area for further exploration of potential legal remedies.
- Power outages – Ceduna has reported a number of power outages for long periods of time, leaving recipients unable to access essential goods and services.
- Evaluation – the evaluation does not consider the impact on a recipient’s financial capability or broader social outcomes. It appears to be limited to whether the card restrictions reduces use of alcohol and gambling etc.

February 2017

ⁱ Published as an Opinion Piece by Pro Bono Australia on 29 October 2015, available at <http://www.probonoaustralia.com.au/news/2015/10/cashless-welfare-card-forerunner-banking-underclass>