

COMPULSORY INCOME MANAGEMENT FOR WELFARE RECIPIENTS

MIRELLA ATHERTON* AND OLIVIA FREUND†

Conditional welfare systems refer to a form of social welfare system which requires recipients to conform to behavioural changes (eg to move away from alcohol, gambling and drugs) in order to receive income assistance. Within conditional welfare systems, compulsory income management is a scheme that helps welfare recipients budget their welfare payments, prioritising the basic essentials (such as food and rent). Yet, it can be a form of financial control over welfare payments. This article argues that conditional welfare systems, in general, and compulsory income management programmes, in particular, can perpetuate forms of discrimination. For instance, compulsory income management of Indigenous welfare recipients allows the State to intervene in the lives of Indigenous Australians under the guise of protection, and the impact of this deprivation of choice disproportionately affects Indigenous women. Where such financial control on welfare payments takes the form of cashless debit card policies, this article argues that they are incompatible with the right of choice afforded to other consumers of financial products. This leaves recipients marginalised and more vulnerable because they are unable to spend on education or resources that could enhance their prospects of employment.

I. INTRODUCTION

The United Nations reports that social protection systems and government spending on key services help alleviate poverty.¹ While social security programmes are increasingly seen as a human right,² their wider ramifications are often ignored. In some cases, welfare recipients have been policed by conditional programs.³ Until recently, Australia had been developing policies on compulsory income management. The cashless debit card was intended to reduce access to cash, a limitation designed to prevent the purchase of services linked to alcohol, gambling and drugs using social welfare funds.⁴ As of October 2022, the card had been phased out of

* Lecturer, School of Law and Justice, University of Newcastle, Australia. Mirella.Atherton@newcastle.edu.au, ORCID: 0000-0002-2937-6736.

† Centre For Aboriginal Economic Policy, Research and Program Liaison Officer, Department of Infrastructure, Transport, Regional Development and Communications, Australia.

The authors acknowledge Jessica Heaney's careful and helpful research assistance in the development of this article.

¹ United Nations Department of Economic and Social Affairs, *The Sustainable Development Goals Report 2022* (Report, 7 July 2022), 3 <<https://unstats.un.org/sdgs/report/2022/The-Sustainable-Development-Goals-Report-2022.pdf>>.

² United Nations, 'The Sustainable Development Agenda', *Sustainable Development Goal 1, End Poverty in All its Forms Everywhere* (Web Page) <<https://sustainabledevelopment.un.org/sdg1>>.

³ Christine Morley, Phillip Ablett and Jenni Mays, 'A Universal Basic Income: What Difference Might it Make?' (2019) 38(2) *Social Alternatives* 11, 13.

⁴ Marina Nehme, 'Welfare Meeting Financial Services: The Cashless Debit Card Dichotomy' (2019) 44(2) *Alternative Law Journal* 121, 121.

use.⁵ Participants in locations where the card was implemented could either opt into the program or transition to self-managed payments, making cashless debit cards non-compulsory.

This article reviews compulsory management schemes and the cashless debit card policy as they were implemented in Australia. Despite their temporary suspension, examining the legal and social issues arising from these policies is critically important to understanding the relationship between the State, Indigenous communities,⁶ particularly Indigenous women, and other vulnerable groups. Compulsory income management is an example of a policy targeted at vulnerable groups without consideration of their capacity to self-manage. This form of paternalism has had a particular negative influence on the autonomy and independence of Indigenous people. For Indigenous women, such schemes further place them in a subjugated role. This article argues that there is a need for social welfare schemes to evolve into a ‘post-paternalism’ phase to promote Indigenous self-governance and the capacity of women to forge a pathway toward autonomous control over their own economic standing. Similar considerations apply to other vulnerable groups of welfare recipients, such as persons with disabilities.

Part II of this article evaluates compulsory income management from the perspectives of feminist legal theory. It will argue that the broad-scale legislative approach to compulsory income management is ‘paternalistic’ in the way the state problematises and proposes ‘solutions’ to perceived issues in communities. Often characterised as a purposeful institutional impediment on individuals’ or targeted groups’ autonomy to protect them from adverse impacts arising from poor personal decision-making,⁷ compulsory income management in practice constrains the cultural roles and freedoms of women in Indigenous communities. Through feminist legal theory, we identify unfairness and trauma for Indigenous women, as we examine various sources of legal conflict.

Part III examines the compulsory income management policy in Australia, which was implemented through a cashless debit card. The policy linked income support and banking services. However, the objectives of welfare and financial services are generally thought to be incompatible.⁸ The cashless debit card allows for non-cash payment and, under the *Corporations Act 2001* (Cth), is considered a financial product.⁹ It is provided by the licensee, Indue Ltd. However, there are neither disclosure requirements for the cashless debit card,¹⁰ nor the option for welfare recipients to refuse its usage. This stands in contrast to existing laws that prohibit organisations from issuing a debit or credit card without the customer’s consent.¹¹ The rationale behind cashless

⁵ The policy was abandoned following evaluations and independent studies on whether compulsory income management achieved the objectives that were set out to be achieved. The Australian Council of Social Services, The St Vincent de Paul Society and the Australian Law Reform Commission all called for a change to the policy response and voiced their concerns. The relevant legislative provisions have been repealed by the *Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Act 2022* (Cth). See Department of Social Services (Australia), *Cashless Debit Card Baseline Data Collection in The Goldfields Region: Qualitative Findings* (Report, February 2019); Michelle Peterie et al, ‘Compulsory Income Management: Combatting or Compounding the Underlying Causes of Homelessness?’ (2020) 55(1) *Australian Journal of Social Issues* 61.

⁶ Eve Vincent, Francis Markham and Elise Klein, “‘Moved On’? An Exploratory Study of the Cashless Debit Card and Indigenous Mobility” (2020) 55(1) *Australian Journal of Social Issues* 27, 32.

⁷ Bijan Fateh-Moghadam and Thomas Gutmann, ‘Governing [through] Autonomy: The Moral and Legal Limits of “Soft Paternalism”’ (2014) 17(3) *Ethical Theory and Moral Practice* 383, 385.

⁸ Nehme (n 4) 122.

⁹ *Corporations Act 2001* (Cth) s 763D, s 911A.

¹⁰ Nehme (n 4) 122.

¹¹ *Ibid*; *Australian Securities and Investments Commission Act 2001* (Cth) s 12DL.

debit cards is to enable the government to monitor spending through financial means.¹² It is well-known that financial institutions have the capability to collect large volumes of data and, in the case of cashless debit cards, there were no limits on the use of this data.¹³ Welfare recipients subjected to the scheme have no opportunity to consent or refuse such use. Thus, in addition to the spending restrictions imposed by the card, the absence of consent in the process of obtaining such a card contradicts the objectives of financial services laws which aim to promote consumer confidence and informed choice.¹⁴

Part IV interrogates the linkage between financial control and discrimination against welfare recipients affected by compulsory income management in Australia. In 2016, the cashless debit card was introduced in selected trial sites in Ceduna and the East Kimberley region, with the aim of reducing reliance on income support.¹⁵ Discretionary cash was reduced to 20 percent and '[t]he remaining 80 per cent of the welfare payment was then deposited in a restricted bank account designed to block people from accessing any services linked to alcohol and gambling¹⁶ and drugs. Nevertheless, not only did the cashless debit card undermine individual and community autonomy,¹⁷ it was also seen by some as entrenching poverty,¹⁸ as there were no strategies designed to enhance financial literacy or improve financial well-being. Part V concludes this article.

II. A FEMINIST ANALYSIS OF THE COMPULSORY MANAGEMENT SYSTEM

The impacts of legislation on the lives of Indigenous women are a critical consideration for feminist legal theory.¹⁹ Feminist legal theory disrupts the notion of the law being an inaccessible and mysterious entity that merely exists in the background of our day-to-day lives. It requires systemic factors which contribute to the subjugation of women to be investigated.

As demonstrated below, by restricting the way welfare recipients may spend their income, compulsory income management has several wide-reaching effects, particularly on Indigenous women. Firstly, the curtailment of individual autonomy has negative impacts on women's self-perception. Secondly, compulsory income management subverts the notions of care and parental protection that Indigenous women take seriously within motherhood (such as when they are unable to spend on their children's education). Thirdly, compulsory income management forces the abandonment of sociocultural norms and community connections that are considered precious in Indigenous kinship and which sustain community cohesion.²⁰ This occurs when

¹² Mike Dee, 'Welfare Surveillance, Income Management and New Paternalism in Australia' (2013) 11(3) *Surveillance & Society* 272, 275.

¹³ Andrew Lattas and Barry Morris called this the 'huge statistical web' constructed around remote Indigenous people in Australia in 2010. See Barry Morris and Andrew Lattas, 'Embedded Anthropology and the Intervention' (2010) 107 *Arena Magazine* 15; Dee (n 12) 277.

¹⁴ Commonwealth of Australia, *Financial System Inquiry* (Final Report, March 1997) 170; *Corporations Act 2001* (Cth) s 760A; Nehme (n 4) 122.

¹⁵ See the *Social Security (Administration) (Specified Trial Area: Ceduna and Surrounding Region) Determination 2015* (Cth) and the *Social Security (Administration) (Specified Trial Area: East Kimberley) Determination 2016* (Cth). These were in existence prior to the *Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Bill 2022* received royal assent on 30 September 2022; Department of Parliamentary Services (Cth); Bills Digest (Digest No 58 of 2017-18, 12 December 2017) 11-12.

¹⁶ Nehme (n 4) 121, citing *Social Security (Administration) Act 1999* (Cth) ss 124PJ, 124PC.

¹⁷ Nehme (n 4) 125.

¹⁸ Ibid 126.

¹⁹ Heather Douglas et al (eds), *Australian Feminist Judgments: Righting and Rewriting the Law* (Hart Publishing, 2015).

²⁰ Shelley Bielefeld, 'Compulsory Income Management and Indigenous Australians: Delivering Social Justice or Furthering Colonial Domination?' (2012) 35(2) *University of New South Wales Law Journal* 522.

Indigenous women who prefer to work to serve their kin rather than engage in ‘formal employment’ defined by the mainstream are penalised by being subjected to paternalistic income management schemes. Indigenous women who receive welfare payments were further exposed to racialised and gendered claims of various personal and familial failings as a result of ‘needing’ government assistance. When seen to have failed such ‘responsibilities’, they generate feelings of self-blame.²¹

Restriction of financial autonomy together with interference in cultural female roles of motherhood and community custodianship heavily represent Indigenous women and community as ‘inadequate’ and to some extent dysfunctional.²² Their perceptions of themselves and their capacity to exercise agency further influences their understanding of what is best for them, as well as their sense of security in the face of family violence.²³ The compulsory income management legislation instilling ‘socially-responsible behaviour’²⁴ is pejorative. It was inferred that Indigenous women were irresponsible, with their experiences of poverty and hardship framed as ‘a matter of behaviour’ and a product of their own life choices.²⁵

[o]ne 46-year-old female on the card illustrated that mismanagement is not an issue for her, only that she does not have enough money, “I am capable of managing my own money. I don’t need government to tell me how to spend...” Also, a 50-year-old female interviewee on a carer’s payment stated, “I don’t like it because it’s taking us back to the ration days, telling me how to manage my money as I don’t drink and smoke.”²⁶

Many women reported feelings of stigmatisation when using the card.²⁷ Beyond economic coercion, some women escaping domestic abuse avoided seeking a crisis payment for fear of being placed onto income management and ‘some people just never picked up their card and thus cut themselves off state payments to avoid being subjected to the (cashless debit card) trial’.²⁸ Given the intentions of compulsory income management to combat ‘key causes’ of family violence and community disengagement,²⁹ there was a lack of evidence showing that these measures positively impact communities. A 2017 evaluation utilised by the government to justify an extension of cashless welfare trials delivered inconclusive findings as to whether family violence had materially reduced in East Kimberley and Ceduna as a result of the trial measures.³⁰ This inconclusiveness is representative of how the measures were blanket-implemented on entire communities, despite there being a paucity of evidence that such measures are equipped or appropriate to decrease family

²¹ Ibid.

²² Alissa Macoun, ‘Aboriginality and the Northern Territory Intervention’ (2011) 46(3) *Australian Journal of Political Science* 519, 521, 524.

²³ Wen Wen and Hiroshi Imamizu, ‘The Sense of Agency in Perception, Behaviour and Human–Machine Interactions’ (2022) 1 *Nature Reviews Psychology* 211, 211–222.

²⁴ *Social Security Legislation Amendment (Debit Card Trial) Act 2015* (Cth) s 124PC.

²⁵ Elise Klein, ‘Settler Colonialism in Australia and the Cashless Debit Card’ (2020) 54(2) *Social Policy Administration* 265, 270.

²⁶ Ibid.

²⁷ Nicole Watson, ‘The Northern Territory Emergency Response – Has It Really Improved the Lives of Aboriginal Women and Children?’ (2011) 35(1) *Australian Feminist Law Journal* 147, 160.

²⁸ Klein (n 25) 270.

²⁹ Jillian Gardner, ‘The Northern Territory Emergency Response: A Case Study of the Ignoble Savagery of Whiteness’ (2019) 21(1) *Eras Journal* 25, 28; Shelley Bielefeld, ‘Compulsory Income Management and Indigenous Peoples: Exploring Counter Narratives Amidst Colonial Constructions of “Vulnerability”’ (2014) 36(4) *The Sydney Law Review* 695, 696.

³⁰ Klein (n 25) 272; Department of Social Services and Orima Research, *Cashless Debit Card Trial Evaluation* (Final Evaluation Report, August 2017) 64.

violence. The rationale of ‘protection’ of Indigenous women and standpoint taken by the government is not only dehumanising and humiliating to them but also to Indigenous men suggesting that they would force their own kin to act against their wishes concerning domestic financial decision-making.³¹ The ability of Indigenous women to exercise cultural roles and personal freedom is curtailed by the State.³²

The clear majority of responses in a study into Northern Territory women’s experiences of income management reported that the scheme did not improve their capacity to care for their children.³³ The same study suggested that income management has restricted women’s freedom as consumers: ‘whereas some women preferred to buy their children’s clothing from second-hand stores or small chains, they were now compelled to shop at larger department stores with facilities for the card’.³⁴ Rather than continuing the forced physical removal of Indigenous women’s children to assimilate in spheres of Whiteness as was the approach in the Stolen Generation era,³⁵ the policy indicates to Indigenous women that ‘settler-colonial’ economic and social norms are the correct way and so they must behaviourally assimilate themselves and their children accordingly.³⁶ This is an overt shift from external to internal assimilation where, if these women fail to comply, they are cast as ‘undeserving’ recipients of State support, and unfit to care for their families and communities.³⁷

The State ‘problematising’ Aboriginality isolates women in Indigenous communities from the situations of other women in the Australian community. The cultural values of intimacy and immediacy between persons which underwrite social interaction and kinship within Indigenous communities are assaulted by neoliberal economic measures so reliant on individual responsibility and punishment for non-participation in economic activity. Observant of this mismatch constantly exploited by the State, Peterson remarks that compulsory income management coerces Indigenous women into settler-colonial patterns of work, lest they be punished with paternalistic welfare compliance measures instead of working.³⁸ He highlights the divide between the cultural roles intergenerationally instilled in and often upheld by Indigenous women and an artificially constructed ‘role’ the State would have them perform:

Under what conditions would an Aboriginal [woman] in the Mutitjulu community near Uluru choose to be a room cleaner and bed maker at the nearby Yulara resort, entirely subject to the authority of others for the foreseeable future? In addition, a person’s identity is not defined by a career with the demands of working in the market, but as a kinsperson doing work for kin.³⁹

³¹ Bielefeld (n 29) 713.

³² Watson (n 27) 163.

³³ Equality Rights Alliance, Submission to Australian Law Reform Commission, *Women's Experience of Income Management in the Northern Territory* (July 2011) 38; Watson (n 27) 161.

³⁴ Watson (n 27) 160, citing Equality Rights Alliance (n 33) 33.

³⁵ Antonio Buti, *A Stolen Life: The Bruce Trevor Case* (Fremantle Press, 2019).

³⁶ Larissa Behrendt, ‘Stories and Words, Advocacy and Social Justice: Finding Voice for Aboriginal Women in Australia’ (2019) 45(2) *Australian Feminist Law Journal* 191, 204.

³⁷ Fiona Campbell, ‘The Cape York Welfare Reform Trial – Continuing Acts of Paternalism’ (2015) 15(1) *QUT Law Review* 114, 115.

³⁸ Nicolas Peterson, ‘Other People’s Lives: Secular Assimilation, Culture and Ungovernability’ in Jon Altman and Melinda Hinkson (eds), *Culture Crisis: Anthropology and Politics in Aboriginal Australia* (University of New South Wales Press, 2014) 248.

³⁹ Ibid 255.

The neoliberal motivations behind the measures purposely disrupt and destroy traditional roles and modes of interaction among those within a community, and instil individualism within people desperate not to be burdened with the shame and stigma of being a compulsory income management participant. Thus there appears to be a forced separation of Indigenous women from cultural identity as an overlooked but purposeful objective of longstanding compulsory income management schemes, principally through the segmentation and isolation of communities who are wholly subject to the schemes.

III. COMPULSORY INCOME MANAGEMENT AND THE CASHLESS DEBIT CARD

Around the world, cashless debit cards are used to implement income management. In the United Kingdom, cashless debit cards are used to manage welfare payments for asylum seekers, where they are only allowed to use the card for limited purposes. The Azure card was first introduced in the United Kingdom in November 2009 in conjunction with s 4 of the *Immigration and Asylum Act 1999* (UK).⁴⁰ The support was designed specifically for asylum seekers estimated, in 2015, at 330,000 people. In order to receive the support, the onus was on asylum seekers to prove that they were destitute, which is defined by s 95(3) as ‘people who do not have adequate accommodation or any means of obtaining it’ or those who ‘cannot meet [their] other essential living needs’ and are accommodated in available housing.⁴¹ Asylum seekers were prevented from working, and received funds restricted to food, drinks, toiletries, clothing and credit for mobile phones.⁴² In 2010, it was identified that ‘82 percent of Section 4 recipients had been receiving support for over 6 months and 45 percent had been receiving support for over 2 years’.⁴³ They received approximately £35 each week plus payments for children.⁴⁴

Asylum seekers using cashless debit cards cannot use funds for transportation and only limited retailers accept the cards.⁴⁵ Since the funds can only be used on designated goods and products, those facing illnesses or disabilities encounter additional difficulties obtaining food that meets dietary and religious requirements.⁴⁶ If cards are used outside the asylum seeker’s area, this is considered proof that they are not destitute, can afford travel and can result in payments being discontinued.⁴⁷ Purchasing patterns and regular use of the cards were being monitored.⁴⁸

Before the *Immigration and Asylum Act 1999* (UK), the policy was that benefits included access to cash.⁴⁹ The Azure card replaced a voucher system that was in place between 2000-2002 and 2006-2009. The voucher system prohibited access to cash and restricted purchases to a few shops and products. It was thought that

⁴⁰ *Immigration and Asylum Act 1999* (UK).

⁴¹ Nicholas Dagen Bloom, Fritz Umbach and Lawrence J Vale, *Public Housing Myths: Perception, Reality, and Social Policy* (Cornell University Press, 2015) 80.

⁴² Kate Coddington, ‘The Slow Violence of Life Without Cash: Borders, State Restrictions, and Exclusion in the UK and Australia’ (2019) 109(4) *The Geographical Review* 527, 532.

⁴³ Coddington (n 42) 532, citing Sile Reynolds, ‘Your Inflexible Friend: The Cost of Living Without Cash’, *Asylum Support Partnership* (London, 2010).

⁴⁴ Coddington (n 42) 532.

⁴⁵ Pauline Carnet, Catherine Blanchard and Jonathan Ellis, British Red Cross, *The Azure Payment Card: The Humanitarian Cost of a Cashless System* (Report, 2014) 29.

⁴⁶ Ibid 29; Coddington (n 42) 534.

⁴⁷ Carnet et al (n 45) 42.

⁴⁸ Coddington (n 42) 535.

⁴⁹ Ibid 532.

electronic payments together with surveillance of the card was a means to reduce waste and fraud, and allow individuals to save. The cost of administering the system exceeded £350,000 per year.⁵⁰ In 2017, the plan was to replace the Azure card ‘with a visa chip and pin system called the Aspen card to be used for (Section 95) and (Section 4) claims’.⁵¹

In Australia, income management schemes have been controversial since the first program emerged as part of the Northern Territory Intervention. As early as 2008, the government began to use debit cards to impose income management policies through the BasicsCard managed by Centrelink. In 2014, subsequent to the recommendation of the Forrest Review,⁵² the Healthy Welfare Card (later called the Indue Card or simply Cashless Debit Card) was introduced for the purpose of expanding the then existing trials of these smart cards (the reference to ‘health’ was dropped as the card’s capacity to lead to superior health outcomes was called into question).⁵³

In March and April 2016, cashless debit cards were tested in the Ceduna region, and then the East Kimberley in April. This type of income management applies disproportionately to the Indigenous peoples, who made up 75% (or 565 of 752) and 82% (or 984 of 1,199) of those using the card in Ceduna, as well as in Kununurra and Wyndham in the East Kimberley region respectively.⁵⁴ The *Social Security Legislation Amendment (Debit Card Trial) Act 2015* (Cth) was the legislation that governed the implementation of the card. The legislation aimed to reduce the amount of cash ‘available to be spent on alcoholic beverages, gambling and illegal drugs’, ‘determine whether such a reduction decreases violence or harm in trial areas’, ‘determine whether such arrangements are more effective when community bodies are involved’, and ‘encourage socially responsible behaviour’.⁵⁵ The restricted portion of the income could be reduced by a community panel if the panel chose to exercise its discretion in favour of a reduction.⁵⁶

In March 2018, the card was extended to the Goldfields of Western Australia, and in early 2019, legislation was passed to extend the use of the card to the Bundaberg and Hervey Bay regions in Queensland.⁵⁷ In some locations, the cashless debit card applied to a range of social security payments, including a disability support pension.⁵⁸ The coercive nature of the card meant that people situated in the trial sites were automatically put on the card if they received a ‘trigger’ payment from the government. The expansion from the BasicsCard to the Cashless Debit Card has been criticised for increasing the overall cost of social security

⁵⁰ Carnet et al (n 45).

⁵¹ Coddington (n 42) 533.

⁵² Department of Prime Minister and Cabinet, *The Forrest Review: Creating Parity* (Review, August 2014) 100–108.

⁵³ Jon Altman, ‘Will the Healthy Welfare Card be Healthy?’ *ANU Reporter* (online, 25 February 2016) <<https://regnet.anu.edu.au/news-events/news/6371/will-healthy-welfare-card-be-healthy?>>; Shelley Bielefeld and Fleur Beaupert, ‘The Cashless Debit Card and Rights of Persons with Disabilities’ (2019) 44(2) *Alternative Law Journal* 114, 114.

⁵⁴ Australian Human Rights Commission, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2016* (Report, November 2016) 91–92.

⁵⁵ *Social Security Legislation Amendment (Debit Card Trial) Act 2015* (Cth).

⁵⁶ Feedback from participants indicates that community panel outcomes are seen as arbitrary and that its processes are difficult to navigate; See eg Department of Social Services, *Cashless Debit Card Trial Evaluation* (Wave 1 Interim Evaluation Report, February 2017) 158; Shelley Bielefeld, ‘Cashless Welfare Cards: Controlling Spending Patterns to What End?’ (2017) 8(29) *Indigenous Law Bulletin* 28, 28.

⁵⁷ *Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Act 2018* (Cth); Bielefeld and Beaupert (n 53) 114; Vincent, Markham and Klein (n 6) 41.

⁵⁸ *Social Security (Administration) Act 1999* (Cth) s 28.

payments.⁵⁹ The cost of implementing the BasicsCard program alone was upwards of AUD \$7 million (2007-2012).⁶⁰ Nevertheless, advocates have been keen to declare income management a success,⁶¹ rationalising further expansion and increased privatisation of social security payments in the process.

The restrictions imposed on the cashless debit card not only had a disproportionate effect on Indigenous peoples but also on those with disabilities.⁶² Challenges for consumers with disabilities using the card related to affordability of goods and limitations on where the card was accepted. Those with disabilities sometimes have limited ability to prepare meals and they buy pre-prepared food out of necessity, convenience, medical/health reasons, and other conditions.⁶³ Yet, they were unable to purchase pre-prepared food with cashless debit cards. Without cash, individuals may be subject to an ‘income quarantine’ that overlooks personal circumstances.⁶⁴

Other versions of income management are present and existing research has found that income management produced no improvements in community well-being, no greater financial autonomy by participants, but rather an increased sense of dependence on welfare.⁶⁵ In some cases, in addition to being prohibited from gambling or alcohol products, recipients were prevented from paying for legitimate purchases and rental transfers.⁶⁶ Similarly, in the United Kingdom, asylum seekers were prohibited from purchases of ‘medical goods, haircuts, laundry costs, school uniforms, and other essential items’.⁶⁷ The reality was that asylum seekers could spend years on s 4 support and require many of these items during that time.

The limitation on cash under compulsory income management makes it difficult for individuals to buy second-hand items, purchase at markets, or access other cash discounts.⁶⁸ The cards also prevented cardholders from shopping around to access cheaper goods.⁶⁹ In 2016, Bielefeld observed that compulsory

⁵⁹ Explanatory Memorandum, Social Security Legislation Amendment Bill 2011 (Cth) 2; Explanatory Memorandum, Social Security Legislation Amendment (Debit Card Trial) Bill 2015 (Cth) Outline.

⁶⁰ Dee (n 12) 280; Coddington (n 42) 533.

⁶¹ Christian Porter and Alan Tudge, ‘Cashless Debit Card Extended Following Positive Independent Evaluation’ (Media Release, 14 March 2017) 1–2.

⁶² Shelley Bielefeld, ‘Cashless Welfare Transfers for “Vulnerable” Welfare Recipients: Law, Ethics and Vulnerability’ (2018) 26(1) *Feminist Legal Studies* 1, 11; Australian Human Rights Commission (AHRC), Submission No 43 to the Senate Standing Committee on Community Affairs, Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018 (20 July 2018) 3; International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) art 1; Bielefeld and Beaupert (n 53) 118.

⁶³ Bielefeld and Beaupert (n 53) 117.

⁶⁴ Elise Klein, ‘Neoliberal Subjectivities and the Behavioural Focus on Income Management’ (2016) 51(4) *Australian Journal of Social Issues* 503, 505.

⁶⁵ See Nicholas Rothwell, ‘Cashless Welfare Card for Draws on Bankrupt Indigenous Policy’, *The Australian* (online, 16 February 2016) <https://www.theaustralian.com.au/subscribe/news/1/?sourceCode=TAWEB_WRE170_a&dest=https%3A%2F%2Fwww.theaustralian.com.au%2Fnews%2Finquirer%2Fcashless-welfare-card-for-draws-on-bankrupt-indigenous-policy%2Fnews-story%2F51ef26ef32aadfc1e7411c0adda1084f&mementype=anonymous&mode=premium&v21=dynamic-groupa-test-noscore&V21spcbehaviour=append>; Coddington (n 42) 534.

⁶⁶ Kostas Mavromaras et al, Department of Social Services (Australia), *Cashless Debit Card Baseline Data Collection in The Goldfields Region: Qualitative Findings* (Report, February 2019) 7, 55, 70, 71.

⁶⁷ Coddington (n 42) 534.

⁶⁸ See Equality Rights Alliance, Submission to Australian Law Reform Commission, *Women's Experience of Income Management in the Northern Territory* (2011).

⁶⁹ Peterie et al (n 5) 70.

income management appeared to be contributing to poverty as ‘many of Australia’s poorest people are facing increased costs of living under income management’.⁷⁰ Everyday expenses were difficult for any individual on the cashless debit cards to manage. A woman in Ceduna reported that she ‘used her card to pay for other people’s groceries so she could buy school lunches and pay for her children’s excursions’.⁷¹ Conversely, some retailers that accept BasicsCard were reported to be ‘charging higher prices for goods and giving people cash or alcohol in return’.⁷²

The BasicsCard in Australia, like the Azure card in the UK when it was introduced, prohibited the use of funds for transportation. The BasicsCard thus tied individuals ‘to nearby welfare benefits offices and denied them access to funds for travel, even as they needed to travel for funerals or significant occasions’.⁷³ The intention was that the cashless debit card would be ‘widely accepted and used to purchase all goods and services’,⁷⁴ however, ‘there are a range of necessary purchases that have been prohibited’,⁷⁵ including for example, some people have ‘been stranded without petrol where service stations did not accept the cashless debit card’.⁷⁶

The presumed assumption behind income management was that Indigenous Australians were incapable of accomplishing basic responsibilities.⁷⁷ They are often deemed by society as persons with serious alcohol, drug and gambling problems and also that individuals concerned cause ‘significant social harm to others in the form of domestic violence, the neglect of children, homelessness, destitution and a range of law and order problems’.⁷⁸ Indigenous people using the card have faced disparaging treatment in shops and in welfare offices and some ‘felt shame, confusion, and anger from having to stand in “BasicsCard only” lines at registers’.⁷⁹ Similar feelings affected users of the Azure card in the United Kingdom where card users reported feeling ‘stigmatised, as if they can no longer be trusted, and feel a loss of control over personal and family finances’.⁸⁰ In both locations, the cards impacted daily living and ‘people already at the margins of society through poverty, discrimination, and... [social] status’.⁸¹

⁷⁰ Shelley Bielefeld, ‘Income Management and Indigenous Women: A New Chapter of Patriarchal Colonial Governance?’ (2016) 39(2) *University of New South Wales Law Journal* 843, 864, citing J Rob Bray et al, ‘Evaluating New Income Management in the Northern Territory’ (Final Evaluation Report, Social Policy Research Centre, September 2014) 135.

⁷¹ Melissa Davey, ‘Cashless Welfare Card Treats Aboriginal People ‘As Third-Class Citizens’, *The Guardian* (online, 10 January 2017) <<https://www.theguardian.com/australia-news/2017/jan/10/cashless-welfare-card-treats-aboriginal-people-third-class-citizens>>.

⁷² Ibid; Coddington (n 42) 535.

⁷³ Coddington (n 42) 536.

⁷⁴ Bielefeld (n 62) 20.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Morris and Lattas (n 13) 107.

⁷⁸ Peterie et al (n 5) 62, citing Ian Goodenough, ‘Second Reading Speech: Social Security Legislation Amendment (Debit Card Trial) Bill 2015’ (Speech, House of Representatives, 15 September 2015).

⁷⁹ Coddington (n 42) 536.

⁸⁰ Dee (n 12) 273; Coddington (n 42) 536.

⁸¹ Coddington (n 42) 530.

IV. FINANCIAL CONTROL AND DISCRIMINATION

Income management perpetuates other forms of discrimination.⁸² Nagy observed that “[i]n such a harsh policy context, those experiencing poverty are conceived as “culpable actors” at risk of “moral hazard”.”⁸³ With strict financial control over spending, poverty is perceived to be the fault of the individual who lack self-discipline.⁸⁴ This logic can be traced back to where Indigenous community management was built on a long-standing racial debate about the ability of Indigenous people to manage their financial affairs.⁸⁵

To avoid a potential conflict between Australia’s responsibilities under the *United Nations Convention on the Elimination of Racial Discrimination* (UN CERD) and the *Racial Discrimination Act 1975* (Cth) (RDA), the Australian government excluded the cashless debit card from the RDA by ‘declaring that all measures constituting the Northern Territory Intervention were “special measures” for the purposes of the RDA’.⁸⁶ Section 8 of the RDA, which prohibits racial discrimination, did not apply to ‘special measures’ as defined in art 1(4) of the CERD. Article 1(4) of the CERD sets out the conditions in which a ‘special measure’ can be applied, namely, ‘for the sole purpose of securing adequate advancement of certain racial or ethnic groups’.⁸⁷ A complaint was made in 2009 by people from communities affected to the UN Committee on the Elimination of Racial Discrimination (ie CERD’s monitoring treaty body) requesting the Committee invoke its Urgent Action procedure in relation to the exclusion. In response, the Committee requested that the Australian government reinstate the application to the RDA with respect to cashless debit card.⁸⁸ Two years later, the Australian government passed the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010* (Cth), which reinstated the application of the RDA to the cashless debit card program.⁸⁹

It is known that consultations with communities took place before the *Social Security Legislation Amendment (Debit Card Trial) Act 2015* (Cth) was implemented. The extent of the consultation was, however, unclear and the National Welfare Rights Network and the Aboriginal and Torres Strait Islander Social Justice Commissioner has since expressed concerns.⁹⁰ In addition, Indigenous children and young people have a right to be involved in legislation and policy-making about matters affecting them under art 12 of the *Convention of the Rights of the Child*

⁸² See eg Steven M Graves, ‘Landscapes of Predation, Landscapes of Neglect: A Location Analysis of Payday Lenders and Banks’ (2003) 55(3) *The Professional Geographer* 303; Stephen R Holloway, ‘Exploring the Neighborhood Contingency of Race Discrimination in Mortgage Lending in Columbus, Ohio’ (1998) 88(2) *Annals of the Association of American Geographers* 252; Andrew Leyshon et al, ‘Financial Exclusion and the Geography of Bank and Building Society Branch Closure in Britain’ (2008) 33(4) *Transactions of the Institute of British Geographers* 447.

⁸³ Veronika Nagy, *Crime Prevention, Migration Control and Surveillance Practices: Welfare Bureaucracy as Mobility Deterrent* (Routledge, 2019) 20; Dee (n 12) 274.

⁸⁴ Klein (n 64) 503.

⁸⁵ Desmond Manderson, ‘Not Yet: Aboriginal People and the Deferral of the Rule of Law’ (2008) 29/30 *Arena Journal* 219, 219-272.

⁸⁶ Alison Vivian and Ben Schokman, ‘The Northern Territory Intervention and the Fabrication of “Special Measures”’ (2009) 13(1) *Australian Indigenous Law Review* 78, 78.

⁸⁷ *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) art 1(4).

⁸⁸ Holly Doel-Mackaway, ‘“Ask Us... This is Our Country”: Designing Laws and Policies with Aboriginal Children and Young People’ (2019) 27(1) *International Journal of Children’s Rights* 31, 35.

⁸⁹ Ruben Kremers and James Brassett, ‘Mobile Payments, Social Money: Everyday Politics of the Consumer Subject’ (2017) 22(6) *New Political Economy* 645.

⁹⁰ Australian Human Rights Commission, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2016* (Report, November 2016) 93–94; Bielefeld (n 62) 20.

(CRC) and under art 19 of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).⁹¹ The legislation was a ‘matter affecting [them]’ within the meaning of art 12 of the CRC. Under art 12, Indigenous children and young people should have had the opportunity to participate in the formulation of laws. Art 19 of the UNDRIP underlines the importance of ‘consulting ... with ... Indigenous peoples ... in order to obtain their ... consent before adopting laws and policies “that may affect them”’.⁹²

Compulsory income management and more specifically cashless debit card policies also raise international human rights compliance concerns for law and policy makers with respect to persons with disabilities.⁹³ The cashless debit card ‘erase[d] full legal contractual capacity for those subject to it’.⁹⁴ Also, people with disabilities are more likely to disclose their personal identification number so that someone can make a purchase for them and this risks compromising their right to privacy.⁹⁵

V. CONCLUSIONS

In Australia, the challenges for recipients of the cashless debit card are complex. In particular, Indigenous women who are subjected to financial control are marginalised and more vulnerable through lack of choices. These policies have had an enduring, gendered effect by controlling, coercing and demoralising Indigenous women. The ongoing paternalistic response to compulsory income management measures in Australia adopts the ‘low hanging fruit’ approach by restricting individual behaviour rather than developing culturally informed solutions by engaging with Indigenous community leaders. The effects of this paternalistic approach on Indigenous women includes a pejorative condemnation of mothers failing to fulfil their duties and neglecting their children. Legislative practices such as compulsory income management erase women as legal subjects. These self-disciplining sanctions have reverberated into the wider community (such as the rest of the Indigenous population and persons with disabilities) in which compulsory income management operates. While factors unique to Indigenous Australians can result in risks of vulnerability and disadvantage, the design of the legal framework needs to take into consideration that vulnerability can be transient and may affect anyone. They need to be recognised as bearing the burden of legislative decisions. Control needs to be handed back to welfare recipients to have their voices heard, so they may make their own choices for themselves and their communities.

⁹¹ Kremers and Brassett (n 89) 651; *Convention of the Rights of the Child*, signed 20 November 2020, 1577 UNTS 3 (entered into force 17 December 1990) art 12; *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) art 19.

⁹² *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) art 19.

⁹³ Bielefeld and Beaupert (n 53) 120.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*