

Sep 92. P. Lucas

Please find attached my submission to the *Traditional Rights and Freedoms—Encroachments by Commonwealth Laws (ALRC Interim Report 127)* inquiry, as well as a copy of a submission I made to the Senate inquiry into the *Social Security Legislation Amendment (Debit Card Trial) Bill 2015*, for reference.

Thankyou,

Patricia Lucas



The Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

Re: Traditional Rights and Freedoms—Encroachments by Commonwealth Laws (ALRC Interim Report 127)

Thankyou for the opportunity to contribute to this inquiry. The law I would like to comment on is one which is still before parliament, the *Social Security Legislation Amendment (Debit Card Trial) Bill 2015*, which seeks to place all welfare recipients in certain areas on income management, regardless of whether they have any history of drug or alcohol abuse, or any issues with financial mismanagement. I would consider this to be relevant to the following Terms of Reference for this inquiry:

- *reverse or shift the burden of proof;*
- *deny procedural fairness to persons affected by the exercise of public power;*
- *alter criminal law practices based on the principle of a fair trial;*
- *restrict access to the courts;*

This debit card trial is based on an assumption of guilt with regards to drug use, child neglect and also on non-criminal matters such as alcoholism, gambling and financial mismanagement. No evidence is required, nor are welfare recipients even given an opportunity to prove their innocence.

This bill also touches on the following Terms of Reference for this inquiry:

- *interfere with freedom of religion;*
- *interfere with freedom of movement;*

While the debit card places no restrictions on expenditure on religious items, it would make a record of them. Therefore, if a welfare recipient subject to this card valued their privacy, they would be restricted to using the 20% discretionary cash for that expenditure, which they may also be using to protect the privacy of other purchases such as healthcare expenses or their grocery bill. Anyone who is privacy conscious therefore, would only have 20% of their income to prioritise for the items they most value the privacy of.

Likewise, while this card places no direct restrictions on freedom of movement, it would build a profile of a person's movements by recording where and when they spend money. Therefore, again, if a person is privacy conscious, this could indirectly restrict their freedom of movement.

- *disregard common law protection of personal reputation;*

By forcing people to pay by card rather than with the more private option of cash, they are also being forced to have data collected and stored on their spending habits, at both the government and business levels. This data is then vulnerable to exposure, which, depending on its contents, could affect personal reputation.

I have provided more detail on these issues in a submission I made to the Senate inquiry into this bill, which I have provided a copy of with this submission.

Thankyou,

P. Lucas

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Senate Standing Committees on Community Affairs
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Parliament House
Canberra ACT 2600

Re: Social Security Legislation Amendment (Debit Card Trial) Bill 2015

Dear Committee,

Thankyou for the opportunity to comment on this bill. I'm writing this in the shadow of this week's leadership change and with uncertainty as to the future of this policy, but I feel it is worth commenting on in any case. My concerns are with the concept of punishing innocent people for the actions of others; the privacy implications of recording people's purchase history; the right to autonomy and privacy for disabled people; the effects on anonymous healthcare; and the underlying lenient attitude towards drug use. This trial appears to have been designed by people who neither think of drug use as a crime, nor of income management as a punishment.

I note that this inquiry is being conducted at the same time as one being conducted on behalf of the government by the ALRC, the *Traditional Rights and Freedoms - Encroachments by Commonwealth Laws* inquiry. That inquiry, as noted in its terms of reference¹, seeks to discover laws which:

- *reverse or shift the burden of proof;*
- *deny procedural fairness to persons affected by the exercise of public power;*
- *alter criminal law practices based on the principle of a fair trial;*

This debit card trial is based on an assumption of guilt with regards to drug use, child neglect and also on non-criminal matters such as alcoholism, gambling and financial mismanagement. It not only makes the assumption of guilty until proven innocent, but it takes this a step further by not even offering an opportunity to prove innocence. Nowhere is there an option for voluntary drug testing, or any avenue to prove financial capability, just an inbuilt assumption of guilt.

While it may be a denial of natural justice (and somewhat offensive) to assume all welfare recipients are guilty of drug use, it wouldn't be so bad if this debit card truly were without side-effects as claimed. But as with any card payments, it is impossible to prevent the record trail of where and when a shopper has spent money, and likely, a record of what was purchased. Nothing in this bill prevents that information from being recorded by both the business and the government - on the contrary, data sharing is encouraged. An important point to note is that the purchasing data collected could reveal information about political or religious beliefs, medical conditions or sexual orientation, as well as tracking a person's movements. Why should innocent disabled people lose their right to privacy because *other people* use drugs?

Underlying this approach of broadly applied punishment is a lenient attitude towards drug use. That may seem counter-intuitive given this proposal's stated aim of reducing drug use, but it is because the government clearly doesn't see drug use (as opposed to manufacturing, trafficking or dealing) as a crime in itself, that it also doesn't see a need for evidence, a fair trial, or to only punish the individuals responsible. The natural justice implications of punishing innocent people for other people's crimes aren't as obvious if you don't see those crimes as crimes.

I do see drug use as a crime, and a more serious one than current laws treat it as. I see it as the crime that precedes most other crimes. In that first instance of someone using drugs is an implied acceptance of any criminal activity or anti-social behaviour that may follow on from it. It is comparable to other crimes of intent, and should be prosecuted as such. And if you then accept that viewpoint of drug use being a more

¹ <http://www.alrc.gov.au/publications/terms-reference-12>

serious crime than it's currently considered, then it follows on that the appropriate place to punish it is through the court system, with standard rights to a fair trial, legal representation, presumption of innocence and need for sufficient evidence.

It is clear, this proposal is soft on drugs, not tough on them.

Not only does this proposal not view drug use as a crime, but it also doesn't sufficiently recognise the punishment value of income management. The privacy impact I mentioned earlier would affect some people more than others. I'm someone who's naturally a very private person, and part of that is that I pay with cash as much as I possibly can to avoid businesses being able to record my purchase history, build a profile on me and to avoid data leaks. Aside from very rare online purchases, I only use cash.

This proposal assumes that everyone is as comfortable with paying by card as what the proposal's architects clearly are, which is simply untrue. There are many people in the community like me who value the privacy that cash offers. Again, why should innocent disabled people be stripped of their privacy and dignity as a result of *other people* using drugs?

An extension of this privacy issue is the possible impact this card could have on the ability for patients to seek and anonymously pay for anonymous healthcare. While the card doesn't restrict healthcare expenses, it would make a record of them, at both the government level and the clinic level. This would create a money trail linking the patient's treatment details with their true identity, in denial of their right to seek anonymous treatment.

The only way for a welfare recipient to pay for anonymous healthcare if they are subject to this card would therefore be out of the 20% discretionary cash, and I would question if that is enough to pay for all possible healthcare expenses, particularly if the person is also trying to protect the privacy of their grocery shopping by restricting that also to the 20% cash? The importance of anonymous healthcare is of course due to the risk of patients avoiding or delaying treatment without it, and disabled people should of course have just as much right to it as anyone else.

Finally, there are additional practical issues which haven't yet been addressed, such as the interaction between the locked bank account with any linked accounts; whether savings left over at the end of the fortnight can be transferred to interest-bearing accounts or paid as extra mortgage repayments, or whether those benefits of saving will be denied to disabled people; whether the card will give the person's name or card number to retailers; whether the cards will end up being just as recognisable to checkout operators over time as the Basics Card; whether an occasional lottery ticket counts as gambling; if this card restricts the ability to give or repay loans; and if it restricts access to the savings associated with garage sales, farmers' markets and second-hand items. This scheme appears to have been designed only with people with poor financial skills in mind, not with people who are perfectly capable of managing their finances in mind.

In conclusion, I would urge the Senate to reject this welfare card trial if it is still government policy after this week's leadership change. This proposal goes against the principles of natural justice by punishing all welfare recipients for the crimes of the few, and raises serious privacy issues through the recording of transactions by both the government and retailers, and by restricting access to anonymous healthcare. Disabled people should have just as much freedom to choose to keep their spending habits private as anyone else.