



Submission to the United Nations Special Rapporteur on extreme poverty and human rights, for the thematic report to the UN General Assembly on digital technology, social protection and human rights

Submitted by Uniting Communities, Adelaide, Australia.

May 2019

Table of Contents

| | |
|---|----------|
| 1. Introduction | 2 |
| 2. The focus of this submission | 2 |
| 3. Commentary | 2 |
| 3.1 Impact of digital technologies – a case study of the Cashless Debit Card | 2 |
| 3.2 Human rights concerns associated with the automated Cashless Debit Card | 5 |
| 4. Conclusions..... | 7 |

Contact:

Susan Tilley
Manager, Aboriginal Policy and Advocacy
Uniting Communities
10 Pitt Street
Adelaide 5000
South Australia
Australia
Tel: + 61 + (08) 8202 5867
SusanT@unitingcommunities.org

1. Introduction

Uniting Communities welcomes the opportunity to provide comment to the United Nations Special Rapporteur on extreme poverty and human rights, as a contribution towards the thematic report to the UN General Assembly on digital technology, social protection and human rights.

Uniting Communities is a not-for-profit organisation, based in Adelaide in the state of South Australia, Australia. Our organisation works with South Australians across metropolitan, regional and remote communities through more than 90 service programs.

The organisation is made up of a team of more than 1,500 staff and volunteers who support and engage with more than 20,000 South Australians each year. We engage in direct service provision to clients who struggle on a daily basis to maintain their wellbeing and a decent standard of living, as they are reliant on social security payments which are too low and do not enable them to cover their basic living costs.

Uniting Communities is a founding member of the Accountable Income Management Network (AIMN), which focuses on Australia's social welfare system and plays an advocacy role by drawing attention to the issues and impacts of compulsory income management and welfare conditionality. The AIMN is a nation-wide group of community members; representatives of national, state and local non-government organisations and community bodies; academics; social researchers and public policy experts. Its members have a strong commitment to social justice and human rights and are concerned about the provision of equitable and appropriate social security support to economically marginalised Australians.

2. The focus of this submission

This submission focuses on income support payment mechanisms that are increasingly becoming automated, with the concomitant privatising and outsourcing of aspects of the administration of these systems. The specific case study is that of the Cashless Debit Card, and attention is given to the implications for the digital rights and human rights of those subjected to this Card.

3. Commentary

3.1 Impact of digital technologies – a case study of the Cashless Debit Card

Background and introduction of the automated Cashless Debit Card

Following the passing of the *Social Security Legislation Amendment (Debit Card Trial) Bill 2015* by the Australian Parliament, in early 2016 the Federal Government introduced a trial of the Cashless Debit Card (CDC) for working-age adults receiving specific income support payments in the Ceduna and surrounding region in South Australia and in Kununurra and Wyndham, located in the East Kimberley region of Western Australia. The Card was then introduced in the Goldfields region of Western Australia in March 2018, and in the Bundaberg and Hervey Bay areas in Queensland in January 2019.

According to the Australian Government, the trial of the Cashless Debit Card was introduced in order to 'reduce the social harm caused by welfare-fuelled alcohol and drug abuse and gambling'¹ by reducing the amount of cash available to people receiving income support.

Under the CDC, 80 per cent of people's welfare payments is quarantined in a restricted bank account, the administration of which has been outsourced by the Government to a private company called Indue Ltd. The quarantined amount cannot be used for alcohol, drugs or gambling and no cash can be withdrawn from the Card. Income support payment expenditure is also monitored and regulated at the merchant level.

¹ Government of Australia, Department of Social Services, *Cashless Debit Card Trial Progress Report*, October 2016, p. 1.

Participation in the three initial CDC trial sites is mandatory for all working-age income support recipients, with the exception of Age Pensioners and Veterans' Affairs Pensioners. The subsequent trial sites in Queensland include a narrower scope, only including people who receive Newstart, the Youth Allowance or Parenting Payment and who are under 36 years of age.²

As of August 2017, 79 per cent of the 25,009 welfare recipients nationwide who are subject to income management identified as Aboriginal or Torres Strait Islander.³ The initial CDC trial sites included communities with a high number of First Nations welfare recipients.⁴ In Ceduna, First Nations people comprised 75% of those subject to the CDC, and in Kununurra and Wyndham, 82% on the CDC were First Nations Australians.⁵ Noting that First Nations people constitute only 3 per cent of the total population of Australia and given the high number of First Nations people subject to income management, this submission considers the ways in which conditional welfare policy and digital technology is directed towards this constituent and the associated human rights implications.

Comments provided to Uniting Communities by First Nations Ceduna CDC cardholders illustrate common responses to the Card:

We're starting to feel like we're back in the ration days when white people managed our lives and everything else and treated us like children. It's the same now. We're treated like children and so we can't make decisions for ourselves. We're moving backwards, not forwards. We want to make our own choices and not be treated like children - Ceduna resident, August 2017.

This sentiment and the proposition of the continuity of the settler-colonial project was echoed by Mr Greg Peters from the Oak Valley Maralinga Tjarutja Council; Mr Jody Millar, a First Nations cardholder in Ceduna; and Ms Susan Haseldine, a Ceduna resident and First Nations elder who has been subjected to the Cashless Debit Card:

Being on the card is like being placed on a ration. But we're not in the old days; we're looking forward now. How can we go back to ration days? ⁶ They'll be coming around with dog tags⁷ again soon.⁸ What our mob just said was, 'Why didn't you just put the chains on us again?' That's how they felt.⁹

For a more detailed background and analysis of the Cashless Debit Card, please see previous submissions by Uniting Communities to various Australian Senate Inquiries.¹⁰

Digital technology and the automation of income management administration

There are both positive and negative human rights impacts resulting from the introduction of digital technologies in the implementation of national social protection systems. In considering the use of

² Australian Government, Department of Social Services. *Cashless Debit Card - Bundaberg and Hervey Bay region: Who will receive the Cashless Debit Card in the Bundaberg and Hervey Bay region?* As accessed on 9 February 2019 at <https://www.dss.gov.au/families-and-children-programs-services-welfare-quarantining-cashless-debit-card/cashless-debit-card-bundaberg-and-hervey-bay-region>

³ Department of Social Services August 2017. *Income management and cashless debit card summary*, Canberra, www.data.gov.au/dataset/income-managementsummary-data/resource/b898777c-8a2b-4094-b378-cdb48346a110

⁴ Department of Social Services 2016. *Cashless debit card trial – Overview*, DSS, Canberra, www.dss.gov.au/families-and-children-programmes-services/welfare-conditionality/cashless-debit-card-trial-overview

⁵ Aboriginal and Torres Strait Islander Social Justice Commissioner, 2016. *Social Justice and Native Title Report 2016*, Australian Human Rights Commission, Sydney.

⁶ Davey, M. 2017. *Ration Days Again: Cashless Welfare Card Ignites Shame* as accessed on 12 February 2019 at <https://www.theguardian.com/australia-news/2017/jan/09/ration-days-again-cashless-welfare-card-ignites-shame>

⁷ A 'Dog tag' is the term used by First Nations to describe the citizenship certificates issued to them until 1975. To obtain a certificate, entitling them to move freely, people were required to renounce their Aboriginality and speak only English.

⁸ Davey, M. 2017. *Ration Days Again: Cashless Welfare Card Ignites Shame* as accessed on 12 February 2019 at <https://www.theguardian.com/australia-news/2017/jan/09/ration-days-again-cashless-welfare-card-ignites-shame>

⁹ Gage, N. ABC News article. *Ceduna's cashless welfare card a 'massive inconvenience' but council sees improvements*. 12 September 2016. As accessed on 10/01/2019 at <https://www.abc.net.au/news/2016-09-12/ceduna-cashless-welfare-card-massive-inconvenience/7836942>

¹⁰ Uniting Communities submissions can be accessed at <https://www.unitingcommunities.org/wp-content/uploads/2017/10/Uniting-Communities-submission-to-Senate-Inquiry-into-Cashless-Debit-Card.pdf> and <https://www.unitingcommunities.org/wp-content/uploads/2018/07/UC-submission-Expansion-of-Cashless-Debit-Card-Trial-Expansion-Bill-2018.pdf>

technology and the automation of social welfare, this submission sets out the ways in which notions of closing the digital divide and including First Nations in the digital era, while seemingly progressive, can also serve particular vested interests and increase levels of control and surveillance.

The Australian Department of Human Services has indicated that ‘the Department is continuing to transform its services by moving towards digital service delivery, so that all but the most vulnerable recipients can manage their interactions through easy-to-use, secure, integrated digital channels’.¹¹

This increasing promotion of the use of technology is taking place in the context of the ‘digital divide’. Technological stratification and the digital divide can take the form of differential race, geographic and class-based access to technology, which can lead to a further entrenchment of inequality, particularly for those who have less access to technology.¹² The introduction and application of technology can create changes that lead to ever greater social inequalities.

With the advent of the Australian government’s move towards digital service delivery and the use of digital technology, the focus is primarily on the nature and effects of the digital divide and the ways in which digital technologies can be used as an effective means to overcome First Nations’ disadvantage and close the digital gap. However, the application of the notion of ‘digital inclusion’ can also be misused to justify the introduction of a mandated and automated conditional welfare payment system, ostensibly in the name of closing the digital divide and expanding human rights; indirectly, it can be used to perpetuate and entrench social exclusion. Attention needs to be refocused away from simply the access that people have to technology and towards a consideration of the ways in which access to digital technology and automated systems, such as the Cashless Debit Card, can potentially exacerbate different forms of deprivation and disadvantage.

In the name of ‘digital inclusion’ and of overcoming the ‘digital divide’, Virginia Eubanks (2017) argues that the use of digital technologies, analytics and automation have been introduced in order to control and regulate people’s access to and use of income support payments, reminiscent of what she calls ‘the digital poorhouse’.¹³ This is echoed in the work of Bielefeld and her framing of the Government’s intervention, in the form of the CDC, as ‘technologizing the poor’.¹⁴

The introduction of the CDC allows for the surveillance of welfare recipients in new ways, which Lattas and Morris (2010) describe as the ‘electronic omniscient watchfulness’ of purchases being made by welfare recipients.¹⁵ In addition to the electronic scrutiny and purchase restrictions as a function of the CDC itself, shop cashiers and merchants can act as another layer of surveillance to check that no ‘prohibited’ items are purchased. The data gathered from transactions on the Card can also be used to facilitate further analysis and scrutiny by government agencies, the Card administrators and data analysts. In addition, the personal data of cardholders can be monetised and used without their knowledge or permission.

Altman & Hinkson¹⁶ and Stanford & Taylor¹⁷ suggest that the increase in digital technology access and usage intersects with the neo-liberal social policy agenda in Australia, which increasingly reflects an emphasis on the imposition of behavioural conditionalities on those receiving government income support payments, and on the need for efficiency and a return on investment.

¹¹ Australian Government, Department of Human Services 2017. *Design, Scope, Cost-Benefit Analysis, Contracts Awarded and Implementation Associated with The Better Management of The Social Welfare System Initiative* Submission to The Senate Community Affairs References Committee, Submission 66.

¹² Weng, Scho-chi 2000. *Mass Communication Theory and Practice*. Taipei, San-ming.

¹³ Eubanks, V. 2017. *Automating Inequality – How High-tech Tools Profile, Police and Punish the Poor*. St Martin’s Press. New York.

¹⁴ Bielefeld, S. 2018. *Technologising the poor: Cashless Debit Card trials expanding despite no credible evidence regarding positive outcomes* as accessed on 29/12/2018 at <https://app.secure.griffith.edu.au/news/2018/08/03/technologising-the-poor-cashless-debit-card-trials-expanding-despite-no-credible-evidence-for-positive-outcomes/>

¹⁵ Lattas, A and Morris, B. 2010. The Politics of Suffering and the Politics of Anthropology. In *Culture Crisis: Anthropology and Politics in Aboriginal Australia*, ed. Jon Altman, and Melinda Hinkson, 61–87. Sydney: UNSW Press.

¹⁶ Altman J & Hinkson M (eds), 2010 *Culture crisis: anthropology and politics in Aboriginal Australia*, UNSW Press, Sydney.

¹⁷ Stanford S & Taylor S 2013. Welfare dependence or enforced deprivation? A critical examination of white neoliberal welfare and risk. *Australian Social Work* 66(4):476–494, doi: 10.1080/0312407X.2013.832789.

This imposition of behavioural conditionalities is further elaborated upon by a number of commentators and CDC cardholders, who highlight the ways in which coercion and automation are used in the interests of modifying the behaviour of those receiving income support.¹⁸ It is suggested that the Australian state has responded by putting in place a technocratic and administrative solution to what is an inherently socio-economic and politically-determined condition. The material conditions and social hardships experienced by those requiring income support are not being addressed by the imposition of the CDC, but are being exacerbated and compounded.

With reference to the Special Rapporteur's interest in whether any international organizations were involved in the domestic debate about the introduction of digital technologies in the national social protection system, the introduction of the automated and outsourced CDC can be seen as a manifestation of the global move by neo-liberal governments and their institutions towards conditional welfare and its automation and privatisation, as exemplified by the United States of America and by Britain since the Thatcher years. Australia has drawn extensively from these models of conditional welfare and the application of their associated automated administrative mechanisms.

The outsourcing and privatisation of social welfare

Integral to the automation of the administration of income support payments in Australia, is the concomitant insertion of privatised and outsourced mechanisms into the sphere of social welfare. In the case of the CDC, the design, building and operation of the automated/digital technologies were outsourced by the Government to a private company called Indue Ltd.

This was based on an internal desktop review, conducted by the Department of Social Services in early 2015, to determine potential card service providers for the Trial. Indue Ltd was identified as the preferred provider. The [Australian National Audit Office Report \(2018\)](#)¹⁹ highlights a number of irregularities in the tendering process and contract management of Indue, stating that 'aspects of the procurement process to engage the card provider and evaluator were not robust. The department did not document a value for money assessment for the card provider's IT build tender or assess all evaluators' tenders completely and consistently (p. 15)'. See also page 6 of the [Uniting Communities submission](#).²⁰

The social return on investment of the CDC trials is very poor. In the first 12 months of the Trial, the cost of administering the Card was \$10,000 per participant. To date, approximately \$34m has been spent across the Ceduna, East Kimberley and Goldfields trial sites for approximately 5,400 participants,²¹ with very little, if any, evidence of its efficacy or contribution to improving people's lives, and with increasing reports of the hardship being experienced by participants. Regular complaints are made by cardholders regarding the Indue system being offline and them being unable to pay for purchases or make transaction. Frequent power outages in remote areas have also resulted in people not being able to buy food and basic items. The use of digital technologies and automated systems through a private company has cost more to administer than the existing income support payment system administered by Centrelink.

3.2 Human rights concerns associated with the automated Cashless Debit Card

The Australian Human Rights Commission stated in February 2018 that the CDC raises concerns 'about the non-voluntary nature of the card, and its compatibility with human rights standards, specifically the right to social security, the right to a private life and the right to equality and non-discrimination (p. 17)'.²²

¹⁸ Examples include: Soss, J, Fording, R and Schram, S. 2011. *Disciplining the Poor: Neoliberal Paternalism and the Persistent Power of Race*; Piven, F. and Cloward, R. 1993 (2nd Ed) *Regulating the Poor – The Functions of Public Welfare*; Strakosch, E. 2015 *Neoliberal Indigenous Policy: Settler Colonialism and the 'Post-welfare' State*; Watts, B and Fitzpatrick, S. 2018. *Welfare Conditionality*. Routledge, London and New York.

¹⁹ <https://www.anao.gov.au/work/performance-audit/implementation-and-performance-cashless-debit-card-trial>

²⁰ <https://www.unitingcommunities.org/wp-content/uploads/2018/07/UC-submission-Expansion-of-Cashless-Debit-Card-Trial-Expansion-Bill-2018.pdf>

²¹ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/IncomeManagementCashless/Submissions submission 6 from ACOSS

²² <https://pmc.gov.au/sites/default/files/public-submissions/remote-employment-2018/Australian%20Human%20Rights%20Commission.pdf>

The ongoing breaches of a number of the international conventions on human rights regarding the CDC are significant, with specific reference to the Declaration on the Rights of Indigenous Peoples, the United Nations Convention on the Rights of People with Disabilities, and the United Nations Convention on the Rights of the Child.

The Parliamentary Joint Committee on Human Rights (PJCHR) has regularly raised concerns regarding income management, including its review of the government's claims in the Human Rights Compatibility Statement accompanying the 2017 Cashless Debit Card Amendment Bill. The PJCHR has noted that the CDC 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.²³

The Government's Statement of Compatibility derives much of its justification from the flawed findings of the ORIMA Research evaluation²⁴ of the initial trials and concludes that the amendments are compatible with human rights. It states that, 'the continuation of and expansion of the CDC 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 (Statement of Compatibility with Human Rights, page 11)'.

International Covenants on Human Rights, and United Nations Declaration of the Rights of Indigenous Peoples

The *Statement of Compatibility* fails to include a consideration of a number of other human rights which are being eroded by the imposition of the CDC, more specifically in relation to First Nations peoples subjected to the Card. The lack of community consultation about the design and implementation of the Card is a breach of the right of Aboriginal peoples to self-determination and flies in the face of Article One of the International Covenants on Human Rights, and the United Nations Declaration of the Rights of Indigenous Peoples, which require meaningful consultation with and the informed consent of Aboriginal peoples during the development and implementation of policies and laws that affect them. This is evidenced by the lack of genuine consultation across all trial sites and the fact that key groups from the Bundaberg region, such as the Gidarjil Development Corporation, one of the largest Aboriginal organisations in Bundaberg, was not consulted or approached by the Government about its views on the Card prior to it being implemented. This imposition contradicts the right to self-determination as enshrined in the ICESCR, ICCPR, and UNDRIP.

Compulsory income management programs in Australia have been targeted at First Nations communities or regions with a high percentage of First Nations residents. It is noteworthy that the earlier introduction of compulsory income management in the form of the BasicsCard, under the Northern Territory Emergency Response, known as *The Intervention*, was enabled by the suspension of the *Racial Discrimination Act 1975*.

The right to social security

While the Australian Government has acknowledged that the implementation of the CDC limits Article 9 of the International Convention of Economic, Social and Cultural Rights (ICESCR) – the right to social security at a 'minimum essential level'²⁵ – it attempts to justify the proportional restriction of income support payments based on a prejudicial attitude towards income support recipients.

Freedom of choice and right to privacy

The imposition of the CDC and its associated automated technology, removes people's rights regarding freedom of choice in relation to their private banking arrangements – the Government has prescribed that all income recipients are placed on a card managed by an outsourced private company, Indue. People have not been given the choice as to which banking institution they would prefer and the fundamental architecture of income management and the CDC serves to preclude this.

²³ PJCHR, Report Number 9 of 2017, 37

²⁴ ORIMA Research <https://www.dss.gov.au/families-and-children-programs-services-welfare-quarantining-cashless-debit-card/cashless-debit-card-evaluation>

²⁵ Explanatory Memorandum for 2015 Bill, for 2017 Bill, for 2018 Bill, Explanatory Memorandum, Social Security (Administration) Amendment (Income Management and Cashless Welfare) Bill 2019, p. 6.

In the Ceduna area, CDC participants have reported that financial constraints caused by the CDC have prevented them from engaging in community events, resulting in social isolation and detrimental effects on their mental health²⁶.

In the Explanatory Memorandum to the latest Bill to expand the CDC, Section 124PN of the Bill 'allows the disclosure of information to the Secretary by a financial institution (Indue)' and allows for 'the sharing of information necessary for the operation and evaluation of the program'.²⁷ The criteria and details regarding the type of information to be provided or accessed remains unclear. The extent to which participants' information is shared without their consent or knowledge is not known, thereby flouting people's right to privacy and their digital sovereignty.

The prescriptive introduction of mobile phone apps for checking a CDC account balance, hailed by the Department as 'digital inclusion', has left many people on the Card feeling belittled because they either do not own smart phones, are not familiar with such technology, do not have the literacy or numeracy skills, and/or do not have sufficient funds to pay for the cost of mobile data and downloads. The use of technologies in the name of 'digital inclusion' are in fact serving to exclude and alienate a number of people on the Card who have previously been comfortable with managing their own cash payments.

When using the Indue card for transactions, cardholders are conspicuous and can easily be identified as being 'on welfare'. This makes cardholders visible to others in public spaces and reduces their privacy and dignity when paying for goods. Such exposure increases people's sense of stigma, shame and embarrassment, more so when the Card doesn't work due to technical failures or Indue being offline.

The rights of children

In its Explanatory Explanation to the 2019 Bill, the Government states that quarantining people's income support payments will 'advance the right of children to the highest attainable standard of health and the right of children to adequate standards of living'²⁸. This is starkly contradicted by the commentary provided by numerous cardholders and the findings of the ORIMA evaluation of the Card which states that 24% of participants reported that their children's lives were worse as a result of the CDC, with only 17% of participants indicating that there had been any improvement²⁹. It is clear that the rights of children are not being protected or advanced as a result of the CDC.

4. Conclusion

The imposition by the Australian Government of mandatory and punitive income management schemes, such as the automated and privatised Cashless Debit Card, do not adhere to Australia's international human rights obligations or to its duty to provide adequate income support to people in need.

The Australian Government's determination to justify, extend and expand the Cashless Debit Card to further locations is driven, not by a recognition of its human rights obligations or a sound evidence base, but by an ideological imperative and a particular and disparaging view of citizens who require income support.

²⁶ <http://unemployedworkersunion.com/wp-content/uploads/2019/02/Ceduna-AUWU-Report-FINAL-VERSION-2019-1.pdf> p. 12-13

²⁷ Explanatory Memorandum, Social Security (Administration) Amendment (Income Management and Cashless Welfare) Bill 2019 p 8.

²⁸ Explanatory Memorandum, Social Security (Administration) Amendment (Income Management and Cashless Welfare) Bill 2019 p 12.

²⁹ https://www.dss.gov.au/sites/default/files/documents/08_2017/cashless_debit_card_trial_evaluation_-_final_evaluation_report.pdf p80