

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

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May 2019

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1. Introduction

The Accountable Income Management Network welcomes the opportunity to provide a submission to the Special Rapporteur's report on digital technology, social protection and human rights. This submission will focus on the effects of the Cashless Debit Card (CDC), a technologically-facilitated compulsory income management trial in Australia. This case study illuminates the diverse range of rights issues arising from compulsory income management implemented through digital technologies.

2. About the Accountable Income Management Network

The Accountable Income Management Network (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. Our 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. The AIMN is particularly concerned with issues raised by compulsory income management through such programs and trials as Income Management and the Cashless Debit Card.

3. About the Cashless Debit Card Trial

The CDC trial was introduced in early 2016 as an initiative under the federal Liberal-National Coalition government, with both its commencement and expansion supported by the Australian Labor Party. The AIMN notes that the basic impetus for technologically-facilitated compulsory income management emerged from a government-commissioned report on 'creating parity' in outcomes for Indigenous Australians, produced by West Australian mining tycoon and philanthropist Andrew Forrest¹.

The stated aims of the CDC are to 'reduce the overall harm caused by welfare fuelled alcohol, gambling and drug misuse'². The trial seeks to achieve this by quarantining 80% of government income support payments in a restricted bank account-operated by government-contracted private provider Indue Ltd.- leaving participants with the ability to only withdraw 20% of their payments in cash. It also regulates income support payment expenditure on such items at the merchant level.

The CDC compulsorily targets all working-age people (15-64 years) living in trial areas who receive income support payments from the state, including disability, youth allowance, parenting, carer and unemployment benefits. People receiving the age pension and veteran's pension and people in paid work are not subject to the CDC but may volunteer to participate. In the Queensland trial site, the CDC only applies to people aged 35 and under receiving income support payments.

¹ <https://www.pmc.gov.au/sites/default/files/publications/Forrest-Review.pdf>

² <https://www.dss.gov.au/families-and-children/programmes-services/welfare-conditionality/cashless-debit-card-overview>

The CDC operates in four trial sites, and disproportionately targets Indigenous peoples across these sites. CDC trials began in early 2016 in Ceduna, South Australia, and the East Kimberley, Western Australia, where Indigenous people made up the majority of all participants- 75% and 80% respectively³. In mid-2018, the CDC was expanded to a third trial site in the Goldfields, Western Australia, where 43% of participants are Indigenous⁴. In early 2019, the CDC was rolled out in the Bundaberg and Hervey Bay areas, Queensland. While this particular area has a lower proportion of Indigenous peoples affected by the program, the proportion of Indigenous participants across all four sites has been estimated by the government to sit at around 33%⁵.

4. Human Rights Concerns Related to Digital Technologies in Social Protection Systems

Justification for the commencement and expansion of the CDC trials have included several Statements of Compatibility with Human Rights, where the government has included a discussion of the ways in which the CDC engages with and limits a range of rights. We address each of the rights raised in turn below, highlighting key concerns regarding the infringement of compulsory income management on the rights of social security recipients, which appear to be neither reasonable nor proportionate considering the trial's stated objectives. The AIMN notes that Australia is signatory to the International Convention of Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and the United National Declaration on the Rights of Indigenous Peoples (UNDRIP), it does not have a human rights charter. This makes Australian domestic law weak in its capacity to equitably account for human rights.

4.1 The right to social security

The government has recognised that the CDC limits Article 9 of the ICESCR, which recognises the right to social security at a 'minimum essential level'⁶. However, the government's justification for the proportional restriction of income support payments relies on a discriminatory view of income support recipients, where the combination of punitive restrictions and postcode-level targeting frames all CDC participants as antisocial and incapable of independent financial management. This also suggests that the government views welfare quarantining as an appropriate mechanism for addressing alcohol and other drug use and gambling, rather than appropriately investing in community-requested social services and providing an adequate and liveable amount in social security payments. Australia's lack of a human rights charter means that there is limited basis for CDC trial participants to contest the

³ https://www.dss.gov.au/sites/default/files/documents/10_2018/cashless-debit-card-trial-final-evaluation-report_2.pdf p. 37.

⁴ This figure is noted by the authors of the Goldfields Baseline report to be an estimate based on an administrative data sample. The report can be accessed here: <https://www.dss.gov.au/families-and-children-programs-services-welfare-quarantining-cashless-debit-card-cashless-debit-card-evaluation/cashless-debit-card-baseline-data-collection-in-the-goldfields-region-qualitative-findings>

⁵ https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6130_ems_9bafe413-5f49-4db7-94f4-2247c4d09854/upload_pdf/674588.pdf;fileType=application%2Fpdf

⁶ 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.

state on the basis of their right to social security- this right is implied through Australia being party to the ICESCR, rather than enshrined in domestic law.

4.2 The right to a private life

The AIMN is concerned with the government's statement that the 'limitation on the right to a private life is directly related to the objectives of reducing harms'⁷. Noting that the most recent amendment to the CDC trials engages participants' right to privacy, the government mentions in the Explanatory Memorandum that Section 124PN of the Bill 'allows the disclosure of information to the Secretary by a financial institution [Indue]... It [allows] the sharing of information necessary for the operation and evaluation of the program'⁸. However, it is highly concerning that there is no clarity provided on the type of information considered by the government to be necessary for the operation and evaluation of the CDC. The legislation only notes that there is a three-way information sharing process between the Department of Human Services, Indue Ltd., and the Department of Social Services⁹. With no transparency on this issue, the extent to which participants' information is shared without their direct knowledge and consent is unknown. This intrusion into people's digital rights and digital sovereignty is contrary to the right to privacy.

4.3 The right to equality and non-discrimination

Compulsory income management programs in Australia have been explicitly developed and trialled in Indigenous communities or communities with a high proportion of Indigenous residents. The AIMN advises the Special Rapporteur that the implementation of the first wave of compulsory income management in Australia - Income Management as part of the Northern Territory Emergency Response - was made possible by the suspension of the *Racial Discrimination Act 1975*. The Statement of Compatibility with Human Rights presented alongside the 2015 Bill proposing the CDC trial failed to explicitly identify the disproportionate effect that this trial would have on Indigenous peoples based on the choice of sites. However, when the program commenced in Ceduna and the East Kimberley, Indigenous participants made up 75% and 80% of all participants¹⁰, respectively. The most recently-passed CDC Bill's Explanatory Memorandum states that the CDC 'is not applied on the basis of race or cultural factors'¹¹ and that the proportion of Indigenous participants across the four trial sites has dropped with expansion to around 33%¹². However, this is still 10 times the percentage of identified Aboriginal and/or Torres Strait Islander peoples in Australia¹³. NACCHO, the national peak body

⁷ Explanatory Memorandum, Social Security (Administration) Amendment (Income Management and Cashless Welfare) Bill 2019, p. 8.

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

⁹ Explanatory Memorandum, Social Security (Administration) Amendment (Income Management and Cashless Welfare) Bill 2019, p. 8.

¹⁰ ORIMA Research 2017, *Cashless Debit Card Trial Evaluation: Final Evaluation Report August 2017*, Department of Social Services, p. 37.

¹¹ Explanatory Memorandum, Social Security (Administration) Amendment (Income Management and Cashless Welfare) Bill 2019, p. 9.

¹² Explanatory Memorandum, Social Security (Administration) Amendment (Income Management and Cashless Welfare) Bill 2019, p. 9.

¹³ <https://www.abs.gov.au/ausstats/abs@.nsf/mf/3238.0.55.001>

representing Aboriginal Community Controlled Health Services across Australia, has strongly condemned the CDC for its discriminatory, paternalistic, and exogenous approach to social support¹⁴.

4.4 The right to self-determination

While the Statement of Compatibility with Human Rights in the most recent extension of the CDC states that this ‘will not impact on or interfere with a person’s right to pursue freely their economic, social or cultural development,’ this has been demonstrably untrue. Socioeconomic hardship coupled with the stigma of living under compulsory income management undermines participants’ agency and constrains their ability to freely pursue meaningful economic, social and cultural engagement. For example, in the Ceduna area, some CDC participants 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 health¹⁵.

The CDC also limits the right of participants to freely pursue their economic and social development due to tokenistic and partial consultation processes in trial sites. By selectively engaging with hand-picked community members and organisations, the government has been able to promote the fiction of ‘community support’ and ‘community consultation’. Despite this, the government’s Explanatory Memorandum continues to state that sites have been chosen ‘due to strong levels of community support in each of the trial sites. This support remains today...’¹⁶. According to reports from the Australian Unemployed Workers’ Union (AUWU)¹⁷ and the Queensland Council of Social Service (QCOSS)¹⁸, as well as extensive media coverage of the current CDC trial sites, this apparent support- as claimed by the proponents of the trials- clearly misrepresents the diversity of community perspectives on the CDC. According to QCOSS’ pre-trial survey in the Bundaberg and Hervey Bay area, 75% of respondents opposed the CDC trial in its current form¹⁹. This infringes upon the right to self-determination as enshrined in the ICESCR, ICCPR and UNDRIP.

4.5 The right to an adequate standard of living

The government claims that compulsory income management does not negatively impact participants’ ability to obtain an adequate standard of living. However, this is undermined by the government’s own commissioned evaluation – the ORIMA report noted that 32% of participants

¹⁴ <https://nacchocommunique.com/2018/09/14/naccho-aboriginal-health-and-food-security-indigenoucncls-welfare-reform-is-targeting-many-remote-living-aboriginal-people-impoverishing-them-and-resulting-in-the-consumption-of-unhealthy-fo/>

¹⁵ <http://unemployedworkersunion.com/wp-content/uploads/2019/02/Ceduna-AUWU-Report-FINAL-VERSION-2019-1.pdf> p. 12-13

¹⁶ Explanatory Memorandum, Social Security (Administration) Amendment (Income Management and Cashless Welfare) Bill 2019, p. 5.

¹⁷ <http://unemployedworkersunion.com/wp-content/uploads/2019/02/Ceduna-AUWU-Report-FINAL-VERSION-2019-1.pdf>

¹⁸

https://www.qcoss.org.au/sites/default/files/QCOSS%20Cashless%20Debit%20Card%20Trial%20Hinkler%20Survey%20Results_1.pdf

¹⁹

https://www.qcoss.org.au/sites/default/files/QCOSS%20Cashless%20Debit%20Card%20Trial%20Hinkler%20Survey%20Results_1.pdf p. 9.

reported that the trial had made their lives worse²⁰. This report also explicitly acknowledged that people are restricted in their ability to engage in cash-based transactions, such as to obtain affordable second-hand goods or pool resources to collectively purchase more expensive items, such as a car²¹. A recent peer-reviewed research article also indicates that the CDC may negatively affect the amount of produce that consumers are able to obtain for their dollar in supermarket transactions²². An Indigenous participant in Ceduna noted that being on the CDC is like a return to the early colonial 'ration days when white people managed our lives and everything else and treated us like children'²³.

4.6 The rights of children

The government claims that welfare quarantining 'advance[s] the right of children to the highest attainable standard of health and the right of children to adequate standards of living'²⁴. However, as noted in the ORIMA evaluation of the CDC, 24% of participants reported that their child/children's lives were worse as a result of the CDC, with only 17% of participants indicating that there had been an improvement²⁵. In the East Kimberley area, there has been a significant increase in domestic violence since the initiation of the CDC trial- something which has been omitted from government reporting on the impacts of the trial²⁶. Looking at compulsory income management (CIM) more broadly, the Australian Research Council Centre of Excellence for Children and Families over the Life Course has engaged in longitudinal research demonstrating the negative effects of CIM on birthweight²⁷ and school attendance²⁸ for children in Indigenous communities in the Northern Territory.

5. Other Concerns

The CDC trials are **cost-ineffective**: approximately \$34m has been spent across the Ceduna, East Kimberley and Goldfields trial sites for a cohort of under 5,400 participants²⁹. This has occurred with

²⁰ https://www.dss.gov.au/sites/default/files/documents/08_2017/cashless_debit_card_trial_evaluation_-_final_evaluation_report.pdf p. 82

²¹ https://www.dss.gov.au/sites/default/files/documents/08_2017/cashless_debit_card_trial_evaluation_-_final_evaluation_report.pdf p. 89

²² Greenacre, L & Akbar S 2019, 'The impact of payment method on shopping behaviour among low income consumers', *Journal of Retailing and Consumer Services*, vol. 47, pp. 87-93.

²³ <https://www.unitingcommunities.org/wp-content/uploads/2017/10/Uniting-Communities-submission-to-Senate-Inquiry-into-Cashless-Debit-Card.pdf>

²⁴ Explanatory Memorandum, Social Security (Administration) Amendment (Income Management and Cashless Welfare) Bill 2019, p. 12.

²⁵ https://www.dss.gov.au/sites/default/files/documents/08_2017/cashless_debit_card_trial_evaluation_-_final_evaluation_report.pdf p. 80.

²⁶ <https://www.theguardian.com/australia-news/2018/jan/12/family-violence-rates-rise-in-kimberley-towns-with-cashless-welfare>

²⁷ <https://www.lifecoursecentre.org.au/research/journal-articles/working-paper-series/do-welfare-restrictions-improve-child-health-estimating-the-causal-impact-of-income-management-in-the-northern-territory/>

²⁸ <https://www.lifecoursecentre.org.au/research/journal-articles/working-paper-series/the-effect-of-quarantining-welfare-on-school-attendance-in-indigenous-communities/>

²⁹ Submission 06 from the Australian Council of Social Service (ACOSS): https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/IncomeManagementCashless/Submissions

no credible evidence of the effectiveness, efficiency or appropriateness of the CDC trials, and in the face of proliferating reports of hardship experienced under the CDC from trial participants.

The federal government has relied on **flawed evaluations** to justify the further extension and expansion of the CDC. The evaluation conducted by ORIMA research of the initial trial sites – Ceduna and the East Kimberley – has been critiqued by both the Australian National Audit Office and academic analyses on the basis of methodological flaws, lack of credible conclusions, and its continued use as a basis for expansion of a failed program. The most recently released piece of government-commissioned research on the CDC is a partial qualitative analysis of the trial in the Goldfields area, which has been critiqued for failing to provide basic information including the number of participants subject to the trial, rates of alcohol sales, the use of health facilities for addiction, or crime data prior to the trial’s commencement.

The CDC has **continued to expand** past the first two trial sites and to be extended in all sites despite the fact that both the continuation of the trial in original sites and its further expansion were only supposed to occur on the basis that the initial evaluation demonstrated success³⁰.

6. Conclusion

The Australian government’s decision to impose, maintain and extend compulsory income management in the form of the technologically-facilitated Cashless Debit Card raises clear concerns about the government’s willingness to adhere to its international human rights obligations. The AIMN encourages the Special Rapporteur to consider the harmful effects of this ideologically-motivated program on Australian income support recipients.

³⁰http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/3996105/upload_binary/3996105.pdf;fileType=application%2Fpdf#search=%22media/pressrel/3996105%22.