



Preventing technology from entrenching inequality
Submission to the United Nations Special Rapporteur on extreme
poverty and human rights

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Human Rights Law Centre

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The Human Rights Law Centre acknowledges the people of the Kulin and Eora Nations, the traditional owners of the unceded land on which our offices sit, and the ongoing work of Aboriginal and Torres Strait Islander peoples, communities and organisations to unravel the injustices imposed on First Nations people since colonisation and demand justice for First Nations peoples.

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1. About this submission

1. The United Nations (**UN**) Special Rapporteur on extreme poverty and human rights is preparing a thematic report to the UN General Assembly on the human rights impacts of digital technologies in the implementation of national social protection systems, especially on those living in poverty. This submission is made to inform that report and is made with reference to Australia's social security system, which provides income support payments to people in times of need. These payments are provided by the federal government and are administered by Centrelink, a branch of the Department of Human Services (**DHS**).
2. The Human Rights Law Centre is deeply concerned with growing economic and wealth inequality in Australia, and the Government's use of the social security system to blame Aboriginal and Torres Strait Islander people, single parents, people living with disabilities, migrants and others for the structural causes of inequality.
3. The Centre does not support the current "mutual obligations" framework that makes social security payments conditional on tasks being completed and threatens punishment for non-compliance. This approach to social security is demeaning, lacks an evidence-base and undermines the human rights of some of Australia's most vulnerable families at a time when they most need support.
4. For the purposes of this submission, however, the Centre has focused on a few key examples of technology use in the social security system that raise human rights concerns.

2. Executive summary

5. Most people in Australia will turn to the social security system at some time in their life. It is a system that should help us live dignified lives in times of need, without forcing us to forgo other human rights.
6. Digital technologies have the potential to increase access to the social security system by breaking down language, location and other barriers. There is, however, a significant risk that digital technologies are deliberately or inadvertently used by governments to "manage the poor" and entrench and exacerbate inequality.
7. Successive Australian governments have made deliberate decisions to target people on social security for cost-saving measures and demonise many as undeserving of support or political inclusion. At the same time, governments have targeted Aboriginal and Torres Strait Islander peoples in particular for harsh neo-colonial measures aimed at "changing behaviour".
8. In this context, we are deeply concerned that digital technologies, together with growing use of private providers to administer programs, will see an amplification of oppressive and punitive

social security policies, while restricting pathways for individuals to meaningfully hold the government to account for harms caused. Already, robo-debts are causing distress and injustice for thousands of people, while the highly automated Targeted Compliance Framework (TCF) is making life harder for single mothers living in poverty and having discriminatory impacts on Aboriginal and Torres Strait Islander people. Further, debit and credit card technological developments are making it easier for the government to expand the paternalistic policy of income quarantining.

9. It is critical that a human rights-based approach is taken to the development, adoption and evaluation of digital technologies. This is particularly important where the roll-out of such technologies is accompanied by a significant and/or expanding administrative role for private organisations.¹ The human rights impact of technological developments must be prioritised ahead of efficiency and cost gains. The aim of digital technological developments should be to breakdown the existing causes of discrimination and inequality. This requires having affected groups involved in design, implementation and evaluation, together with robust accountability mechanisms.

3. The rocky digital transformation and social security

10. The Australian Government is increasingly using digital technology, together with private contractors, to administer the social security system. The Government is committed to continuing this digital “transformation” and are taking steps to move “faster and further towards digital service delivery”.²

Robo-debt

11. The “transformation” journey is off to a rocky start, best exemplified by Centrelink’s adoption of an automated debt recovery system, “robo-debt”. The robo-debt system is a computer program that gathers data from government agencies, compares it with data that people have reported to Centrelink and identifies discrepancies. While in the past, employees from Centrelink would investigate a discrepancy, the automated system has removed a key layer of human oversight and automatically sends out letters requesting further information.
12. Thousands of people have received debt recovery letters in circumstances where they do not owe any debt. Before the system was automated, only 20,000 letters were sent a year. Now, 20,000 are sent a week.³ A Senate Inquiry into the scheme found that there is a lack of

¹ See eg, Australian Human Rights Commission, Human Rights and Technology Issues Paper (2018) 17.

² Australian Government, Department of Human Services, Technology Plan 2016–20, 6.

³ Heidi Pett and Colin Cosier, We're all talking about the Centrelink debt controversy, but what is 'robodebt' anyway? *ABC News online* (3 March 2017) <www.abc.net.au/news/2017-03-03/centrelink-debt-controversy-what-is-robodebt/8317764>.

procedural fairness evident in every stage of the robo-debt process, which causes emotional trauma, stress and shame to the people subjected to it.⁴ There was:

- (a) a lack of consultation about the impact the system would have on vulnerable people;
- (b) a failure to carry out risk assessments before letters were sent;
- (c) a failure to check correct addresses before sending letters and, in turn, incorrect assumptions made that saw a lack of response treated as a refusal to engage;
- (d) problems with the calculation used to identify discrepancies, which meant that many of the assessments were wrong;
- (e) the DHS' failure to answer millions of calls in response to Department's letters;
- (f) a lack of information set out in the letters, which meant that people were unable to properly understand and challenge any alleged debt.⁵

13. It is apparent that the human rights implications of the robo-debt system were not considered, or adequately considered, prior to implementation. There have been reports that 2,030 robo-debt letter recipients died within two years after receiving one of the 925,000 automatically generated letters sent from June 2016 to October 2018.⁶ There is also anecdotal evidence of "at least five people that have taken their own lives directly related to having received correspondence related to online compliance".⁷

14. The robo-debt system is currently the subject of a Federal Court challenge.⁸ Meanwhile, the Government has had to wipe, reduce or write-off at least 70,000 robo-debts,⁹ and spent at least \$400 million recovering an estimated \$500 million.¹⁰

⁴ Community Affairs References Committee, Design, scope, cost-benefit analysis, contracts awarded and implementation associated with the Better Management of the Social Welfare System initiative (Final Report, June 2017) 107.

⁵ Ibid.

⁶ Alex McKinnon, Robo-debt's potential toll, *The Saturday Paper* (2 March 2019) <www.thesaturdaypaper.com.au/2019/03/02/robo-debts-potential-toll/15514452007563>.

⁷ Ibid.

⁸ Victoria Legal Aid, I have a duty' – we're challenging Centrelink's robo-debt process, Victoria Legal Aid website (6 February 2019) <www.legalaid.vic.gov.au/about-us/news/i-have-duty-were-challenging-centrelinks-robo-debt-process>.

⁹ Luke Henriques-Gomes, Centrelink cancels 40,000 robodebts, new figures reveal, *The Guardian online* (6 February 2019) <www.theguardian.com/australia-news/2019/feb/06/robodebt-faces-landmark-legal-challenge-over-crude-income-calculations>.

¹⁰ Luke Henriques-Gomes, Robodebt scheme costs government almost as much as it recovers, *The Guardian online* (24 February 2019) <www.theguardian.com/australia-news/2019/feb/22/robodebt-scheme-costs-government-almost-as-much-as-it-recovers>.

4. Technology, targeting and punishment

15. Implemented on 1 July 2018, the TCF is described by the government as making “use of improved technology to allow job seekers to see their compliance status at any time” that is “designed to be simpler, fairer and more effective”.¹¹
16. The TCF is a highly automated system of sanctions that currently applies to hundreds of thousands of people in receipt of unemployment payments (newstart allowance), youth allowance, parenting payments and special benefits. These types of social security payments have mandatory “participation requirements” that force people to do certain tasks, such as attending appointments, applying for 20 jobs per month and completing training or “work-for-the-dole”. A person commits a “mutual obligation failure” if they fail to complete (and record completion of) those tasks.
17. The TCF is comprised of three zones: the Green Zone, the Warning Zone and the Penalty Zone. All people start in the Green Zone and, when a person commits a “mutual obligation failure”, they accumulate a demerit point. People move through the penalty zones and are exposed to an escalating series of sanctions, from payment suspension (for the first five demerit points) to payment cancellation and a non-payment period of four weeks. Reviews are conducted after the accumulation of three and five demerit points, first by the private employment service provider and then DHS.
18. The automation of this process is problematic, particularly in relation to payment suspensions. Payment suspensions are automatically triggered by a person receiving a demerit point while in the Green or Warning Zones without any consideration of the hardship this might cause.
19. Australia’s own Parliamentary Joint Committee on Human Rights (**the Committee**) has raised concerns about the TCF being incompatible with human rights (in the context of different social security programs).¹² The Committee was particularly concerned by the lack of waiver provisions – the right to seek a waiver from a no-payment penalty in the Penalty Zone on the basis of financial hardship was removed by the TCF legislation. Removing the right to seek a waiver effectively removes the subjective human consideration of the complex circumstances of an individual case, such as, whether a person can afford basic necessities, like food and housing during the non-payment period.
20. The increase in automated decision-making means a decrease in human-level interactions, and a lack of interpersonal responsibility and accountability on the part of the ultimate decision-maker. This means a greater burden is borne by individuals to hold private service providers (who are contracted by the government in Australia to deliver employment services)

¹¹ Department of Jobs and Small Business, Explainer: job seeker Targeted Compliance Framework (14 March 2019) <www.jobs.gov.au/newsroom/explainer-job-seeker-targeted-compliance-framework>.

¹² Eg, the Welfare Reform Bill (2017) and Community Development Program Bill (2018).

to account. Payments can be suspended by a computer program where, for example, a single mother of three children has not attended an appointment. Even if this was the fault of the service provider where, for example they failed to notify her of the appointment, it is the single mother who has to work out how to fix the mistake.

21. Rigid, automated systems do not provide flexibility to accommodate the daily realities of life. Technology can fail people when they need it most and sometimes it can be as simple as not having mobile phone credit or access to the internet. The automation of the TCF can turn these daily realities into human rights threats. For example, there have been cases of single mothers having to turn to charities for food vouchers because a sick child prevented them reporting compliance with their allocated “tasks”, triggering a payment suspension.

ParentsNext

22. Where a law or program has a discriminatory design or impact, automation is likely to entrench and intensify inequality. An example is the impact of the TCF on Aboriginal and Torres Strait Islander parents who are targeted by the Government’s punitive “ParentsNext” social security program.
23. ParentsNext applies to parents in receipt of the parenting payment (who meet particular criteria) and has an intensive stream that targets regions where there are high numbers of Aboriginal and Torres Strait Islander people in receipt of the parenting payment. In addition to raising their pre-school aged children (and, in many cases, existing study or part-time work), parents captured by the program are required to undertake “activities” as soon as their youngest child turns 6 months old or risk having their payments suspended, reduced or cancelled.
24. The Special Rapporteur has already expressed unease about the effect of cuts to payments for single parents in Australia.¹³ The punitive and automated regime of sanctions under the TCF has increased levels of emotional and financial stress for the single parent families disproportionately impacted. Some women have described feeling like their movements are being monitored by private service providers who seek to enforce compliance. Others have been left without money for daily essentials, like food, necessary for positive child health and development.¹⁴

¹³ Phillip Alston, Special Rapporteur on extreme poverty and human rights, Mandates of the Special Rapporteur on extreme poverty and human rights, OL AUS 5/2017 (17 October 2017).

¹⁴ See eg, Luke Henriques-Gomes, Service providers call for Parents Next overhaul after families left without food, The Guardian online (19 December 2018). See also, National Family Violence Prevention Legal Services Forum, SNAICC – National Voice for our Children and Human Rights Law Centre, Putting single mothers last: the economic injustice of ParentsNext, Submission to the Senate Community Affairs References Committee (8 February 2019) <www.hrlc.org.au/submissions/2019/1/23/putting-single-mothers-last-the-economic-injustice-of-parentsnext?rq=ParentsNext>.

25. The program is having a disproportionate impact on Aboriginal and Torres Strait Islander people. Data obtained from the Department of Jobs and Small Business shows that, as at 31 December 2018, Aboriginal and Torres Strait Islander parents make up 19% of ParentsNext participants, despite being approximately 3% of the adult population nationwide. The data shows that those in the “intensive” stream (which targets Aboriginal and Torres Strait Islander parents) are having their payments suspended more often. Notably, Aboriginal and Torres Strait Islander parents made up 24% of the 16,025 payment suspensions between 1 July and 31 December 2018.
26. The disproportionate impact of the automated TCF on Aboriginal and Torres Strait Islander people can also be seen outside of the ParentsNext program. Across all programs that the TCF applies to, Aboriginal and Torres Strait Islander people are falling into the Warning and Penalty Zones at higher than average rates. For example, while 29 per cent of people in the Disability Employment Services (**DES**) are in the Warning Zone (meaning they have 1-4 demerit points and have had payments suspended with each demerit), 39 per cent of Aboriginal and Torres Strait Islander people in DES are in the Warning Zone.¹⁵

5. Income quarantining, technology and human rights

27. Income quarantining – which sees the federal government impose rules about how social security payments can be spent – raises significant human rights concerns. People subject to income quarantining have 50-80 per cent of their social security payments “quarantined” by law. There are restrictions on what the quarantined funds can be spent on and they can only be spent via a “BasicsCard” or a Cashless Debit Card (they cannot be used to withdraw cash).
28. Income quarantining has discriminatory foundations. Income quarantining via the BasicsCard (referred to as “Income Management”) started under the 2017 Northern Territory Emergency Response (**the Intervention**). The Intervention saw the operation of federal and state racial discrimination laws suspended to allow for a multitude of measures to be imposed on Aboriginal and Torres Strait Islander people, including Income Management. The Intervention was viewed by many as an attempt “to replicate the paternal, racist and violent role of the colonial state.”¹⁶

The Cashless Debit Card

29. Since 2016, the Government has demonstrated a preference for income quarantining through the Cashless Debit Card – a measure proposed in a report authored by billionaire

¹⁵ Data tables provided to Education and Employment Legislation Committee, 10 April 2019.

¹⁶ Patrick Dodson & Darryl Cronin, *An Australian Dialogue: Decolonising the Country*, in *Unsettling the Settler State: Creativity and Resistance in Indigenous Settler-State Governance*, 189, 205 (Sarah Maddison & Morgan Brigg, eds., 2011).

- businessman, Andrew Forrest, and which is promoted by his charity, the Minderoo Foundation.
30. The Cashless Debit Card started in two trial sites – Ceduna in South Australia and the East Kimberley in Western Australia – where Aboriginal and Torres Strait Islander people made up the majority of all participants (75% and 80% respectively). Since then, the Cashless Debit Card has been expanded to the Goldfields in Western Australia and Bundaberg and Hervey Bay in Queensland. The proportion of Aboriginal and Torres Strait Islander participants across all four sites has been estimated by the Government to be 33%,¹⁷ when Aboriginal and Torres Strait Islander people make up approximately 3% of the adult population nationwide.
31. Some of the adverse implications of income quarantining and forcing people to use a bank card to make the majority of their purchases are that it:
- (a) restricts the ability for people to engage in cash-based transactions, such as buying affordable second-hand goods;
 - (b) restricts the pooling resources to collectively purchase expensive items, like cars;
 - (c) prevents people from being able to transfer money to family and children; and
 - (d) prevents people from making small purchases in cash-based settings, like paying admission to the local swimming pool.¹⁸
32. One Aboriginal and Torres Strait Islander person in Ceduna noted that being on the Cashless Debit Card is like a return to the early colonial “ration days when white people managed our lives and everything else and treated us like children.”¹⁹
33. The Parliamentary Joint Committee on Human Rights has repeatedly raised concerns that income quarantining unjustifiably limits the right to social security. The Committee noted that while there may be some benefits for people who voluntarily *choose* to have payments quarantined, the measure has “limited effectiveness” for most people compelled onto it.²⁰ The Australian Human Rights Commission does not consider the Cashless Debit Card to be human rights compatible, particularly because it is imposed on people without an assessment of their suitability for the card.²¹

¹⁷ Explanatory Memorandum, Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018.

¹⁸ ORIMA, Cashless Debit Card Trial Evaluation (Final Evaluation Report, August 2017) 89.

¹⁹ Uniting Communities, Submission to the Senate Community Affairs Legislation Committee, *Inquiry into Social Services Legislation Amendment (Cashless Debit Card) Bill 2017* (September 2017). See also Paddy Gibson, Return to the Ration Days: The NT Intervention: grass-roots experience and resistance (Discussion Paper, June 2009) 12.

²⁰ Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Futures Measures* (16 March 2016) 52.

²¹ Australian Human Rights Commission, Submission to the Senate Community Affairs Legislation Committee, *Inquiry into Social Services Legislation Amendment (Cashless Debit Card) Bill 2017* (29 September 2017);

34. An independent evaluation into the Cashless Debit Card trials in Ceduna and East Kimberly was criticised by the Australian National Audit Office in 2018. This has left the Government without an evidence base for its Cashless Debit Card policy.
35. Despite clear human rights concerns, the Government has committed to expand the Cashless Debit Card and is actively engaging with the Andrew Forrest's Minderoo Foundation to "improve" technological issues with the card. The technology of the Cashless Debit Card has allowed the Government to use cost as a justification for expanding income quarantining, describing it as a "more streamlined approach to welfare quarantining", with "benefits to taxpayers".²² This focus on costs and technological improvements has allowed the Government (and the Minderoo Foundation) to distance itself from the contested ethics and human rights concerns at the heart of income quarantining.
36. An additional concern is that people forced onto the Cashless Debit Card are also required to interact with the privately contracted payments company, Indue, who provide the card. The Cashless Debit Card therefore raises serious concerns about the right to privacy, because it allows the sharing of information necessary for the operation and evaluation of the program.²³ No clarity is provided on the type of information that this might include. The legislation only notes that there is a three-way information sharing process between DHS, Indue, and the Department of Social Services.²⁴ With no transparency, the extent to which people's information is shared without their direct knowledge and consent is unknown.
37. Control over the use and disclosure of data has specific implications for Aboriginal and Torres Strait Islander people. The concept of "data sovereignty" in relation to the data collected from, and in relation to, Aboriginal and Torres Strait Islander people has been recognised as central to the realisation of the right to self-determination.²⁵

6. Conclusion

38. Human rights considerations must be prioritised in the development, implementation and monitoring of digital technologies so that those technologies can be harnessed to help breakdown inequality and promote a more accessible social safety net.
39. The evidence to date in Australia demonstrates, however, that there has been little consideration of the human rights impacts of automation in the administration of social

Parliamentary Joint Committee on Human Rights, Human rights scrutiny report (Report 9 of 2017, September 2017) 38.

²² Cashless card to get \$129m boost, *The Australian*.

²³ Explanatory Memorandum, Social Security (Administration) Amendment (Income Management and Cashless Welfare) Bill 2019.

²⁴ *Ibid.*

²⁵ Jason Glanville, The Australian Indigenous Governance Institute Submission to Productivity Commission, Data Availability and Use Inquiry (29 July 2016) 2-4.

security. Nor has there been adequate consideration by successive governments of the ethical and human rights implications of using debit card technology to control how groups of people spend money.

40. A human rights-based approach must be taken to the development, adoption and evaluation of digital technologies. This requires that priority is given to identifying and eliminating discrimination and inequality and having affected groups fully participate in the design, implementation and evaluation of technological innovations. It also means making robust accountability mechanisms available and accessible to all uses of the technologies.
41. It is critical that, where digital technologies are reinforcing existing discrimination, the Government stops the measure and works in genuine partnership with those who are directly impacted, particularly Aboriginal and Torres Strait Islander people, to formulate solutions that address the underlying causes of inequality and the role that technology is playing in exacerbating them. Access to social security is a human right and should not depend on where you live, who you are or the colour of your skin.