SUBMISSION

TO | **Submission to the Senate Legal and Constitutional Affairs References Committee**

TOPIC | **The Impact of changes to Service Delivery Models on the Administration and Running of Government Programs.**

DATE | 22nd August 2019

CONTACT

Simon Schrapel (CE): SimonS@unitingcommunities.org
Sarah Watson (on NDIA): SarahW@unitingcommunities.org
Susan Tilley (on Robo-debt): SusanT@unitingcommunities.org

Table of Contents

1. About Uniting Communities

Uniting Communities is an inclusive not-for-profit organisation working alongside more than 30,000 South Australians each year as they strive for bright futures and great lives. We value diversity and are committed to providing respectful, accessible services to all.

Uniting Communities seeks to reduce inequality and improve wellbeing for all who are striving to overcome disadvantage – individuals, their families and communities – so that they can realise their potential and live the best lives they can. We do this in a way that is non-judgemental, generous and supportive; that embrace diversity; and that values and promotes fairness, justice and the benefits of strong communities.

Our service delivery, advocacy and community-building activities are central to achieving this.

We offer more than 90 services to support the needs of both individuals and our community, across a range of areas. These include mental health and counselling; residential aged care and support for independent living; housing crisis and emergency support; disability services; services for Aboriginal and Torres Strait Island people; financial and legal; drug and alcohol counselling; family relationships; and respite and carer support.

2. Introduction and focus of this submission

Uniting Communities welcomes the opportunity to provide comment to the Senate Legal and Constitutional Affairs References Committee on the Impact of changes to Service Delivery Models on the Administration and Running of Government Programs.

The key focus of this submission is on two of the Inquiry's terms of reference, namely (b) Centrelink's Robodebt compliance and outsourced debt collection program, and (c) the broader outsourcing of functions in the Human Services portfolio and at the National Disability Insurance Agency.

3. Commentary

3.1 Terms of Reference (b): Centrelink's Robo-debt compliance and outsourced debt collection program:
  i.   The integrity and impact of the automated debt collection processes
  ii. The limitations and impact of Robodebt collection methods
  iii. The identification of inaccurate debts – made without human oversight.

This submission provides a combined response to the terms of reference (b)(i), (b)(ii) and (b)(iii), focusing on the integrity, limitations and impact of the automated debt collection processes and methods, as well as the identification of inaccurate debts, made without human oversight.

The Digital Transformation Agency and the Online Compliance Intervention
The Australian Government's dedicated unit for promoting and implementing its digital agenda – the Digital Transformation Agency – developed a roadmap for transferring all government services into a digital environment by 2018. According to the Agency, a key pillar of its agenda is the replacement of all 'user-facing services' with a 'highly automated back office that eliminates almost all manual processing and case management'[1].

Aligned to this agenda and implemented in July 2016, the Department of Human Services' (DHS) Centrelink Online Compliance Intervention (OCI) system (commonly referred to as 'Robo-debt') is an example of the Government's automated approach to decision making.

Key features of Robo-debt
The OCI system was introduced in order to raise and recover what it determined were debts from Centrelink recipients. The defining features of this new system of debt recovery were key changes in the automation and algorithmic processing of the debt identification and recovery process.[2] This automated system manifests the potential dangers and flaws of algorithmic arrangements and the ways in which these can impact on a large number of people, more especially when implemented in the absence of human oversight.

One of the more detrimental design features of Robo-debt is the inclusion of an automatic procedure that is triggered in the event of a non-response from a welfare recipient. If a Centrelink recipient fails to respond to DHS in person or online, or if they do not provide sufficient supporting documentation or information, the Robo-debt system automatically substitutes these information gaps with a fortnightly income figure derived from income data held by the Australian Taxation Office (ATO) for the relevant employment period. This is referred to as 'income averaging'.

---

[1] Digital Transformation Agenda, Australian Government Digital Transformation Agency. (2018). Accessed at https://www.dta.gov.au/what-we-do/transformation-agenda/

[2] Park, S & Humphry, J. 2019 'Exclusion by design: intersections of social, digital and data exclusion' in *Information, Communication & Society*, 22:7, 934-953, DOI: 10.1080/1369118X.2019.1606266

The former member of the Administrative Appeals Tribunal, Terry Carney, maintains that by utilising the 'income averaging' technique, Centrelink, has failed to adhere to ethical administration and the rulings of the AAT. He says that the continued use of this system breaches 'principles of ethical administration regarding avoidance of oppression of vulnerable and uninformed citizens'[3].

In the event that Centrelink recipients are unable to respond, for whatever reason – including, for example, a lack of access to the internet, a mobile phone, funds for mobile data, no fixed address due to homelessness, or for other reasons – they are then sanctioned by the imposition of what could potentially be an incorrect assessment and their case is then progressed to the next step of the debt recovery process without an opportunity to correct, question or appeal the decision.

This uni-directional system is compounded by the delivery of Robo-debt letters that include information that is not user-friendly or in plain language and which do not provide details to assist the recipient to make contact with the Department, such as details of the dedicated OCI phone number or how to access disability assistance or a language interpreter. Even if a Robo-debt notification is received, many people find it very time consuming and difficult to interact with the system, never mind contest a debt, due to the *labyrinthine and confusing nature of* the *MyGov* and OCI online portals.

While it is acknowledged that, in response to frequent challenges, the DHS/Centrelink has taken steps to reduce some of the more harsh aspects of the system – such as granting people more time to find and provide evidence of their past income prior to the Department applying its averaging methodology – this is insufficient and does not address the intrinsic problem of the unilateral system and the insistence that the onus of proof rests with the recipient.

Impact on Centrelink recipients
Given that it is the majority of society's more vulnerable people and those who are reliant on income support who tend to engage most with government services, it is this group of people who tend to be most significantly affected by changes to service delivery systems, such as the increasing degree of automation and reliance on technology.

The uniform application of the OCI has resulted in a great deal of distress for many participants, who are made to feel that they are at fault. Invariably, participants with an alleged debt do not appear to have been invited to provide clarification but instead receive what is in effect a debt notice and frequently find themselves caught up in a debt recovery process. The automation of the system and reduction in the level of human interaction in determining alleged debt, serves to compound the flaws in the system design and increases levels of alienation and frustration experienced by Centrelink participants. Under the current arrangements, the burden of proof is placed on the alleged debtor, and in the absence of information from Centrelink that would assist them in the task of verifying the information sought by the Department.

---

[3] The Guardian 18 December 2018. *Expert attacks Centrelink robo-debt and 'moral bankruptcy' that allows it* https://www.theguardian.com/australia-news/2018/dec/18/expert-attacks-centrelink-robo-debt-and-moral-bankruptcy-that-allows-it

Technology is an obstacle for many participants

The Online Compliance Intervention presupposes that all Centrelink participants have expertise in and access to the internet as well as sufficient funds and data to access online or telephone services. This is frequently not the case.

The auto-debt system assumes that the *MyGov* facility provides easy access to participants in order for them to engage with Centrelink about their alleged debt. Aside from the frustrations experienced by those participants who do attempt to access *MyGov* and/or the call centre, many participants do not have access to computers or digital technology and/or cannot afford to pay for the necessary data or phone calls, with the latter invariably involving very lengthy wait times. It is not uncommon to hear that people wait on the phone to Centrelink for at least one to two hours before their call is responded to.

Language, literacy and lack of interpreters

The OCI is premised on a basic level of literacy/numeracy and language proficiency (usually in English). This complicates the level of access by those participants who may have insufficient literacy/numeracy, a lack of confidence when engaging with a complex system, or have different language skills to those of mainstream speakers. The lack of available language interpreters – more especially those who are able to speak Aboriginal languages – at Centrelink or other service provider offices is evident.

The absence of human oversight

As indicated above, Government agencies and service providers such as the Department of Human Services and Centrelink are increasingly using automated tools to make or facilitate decisions that affect citizens' lives. However, it is seldom appropriate or effective for important decisions to be based on algorithms and computer software systems in the absence of human oversight.

It would appear that the design of the system and its automation has, in part, been driven by the government's insistence on clawing back as much money as possible and by the significant cuts in funding and, consequently, a reduction in the employment of Department of Human Services' Centrelink staff.

Given that parts of the debt-raising process – previously done manually by compliance officers within the Department of Human Services – are now done using an automated and algorithm-based system, this increases the potential for the application of a 'one-size-fits-all' approach that overlooks the variations presented in each Centrelink recipient's records and increases the likelihood of inaccurate debts being identified and errors occurring. In the absence of human mediation, a reliance on automated decision-making can pose significant risks for individuals' rights and entitlements and necessitates that appropriate safeguards are put in place.

Prior to the introduction of the automated system, Centrelink staff were responsible for checking income discrepancies based on an analysis of discrepancies. Any discrepancy was

not immediately acted on but checked and verified against employment records requested from employers.

The Community and Public Sector Union (CPSU), which represents Centrelink employees, has suggested that the primary reason for the negative impacts on welfare recipients, as a result of the OCI system, is due to the loss of human interaction and oversight of recipients' apparent income discrepancies.

Not only has the new automated system resulted in a change regarding who was responsible for carrying out the task of verifying a welfare recipient's income, thereby transferring responsibility from the Centrelink employee to the welfare recipient (who is now also responsible for providing the onus of proof), there has also been a transfer in the presumption of innocence,[4] with all discrepancies automatically assumed to be a debt until proven otherwise. Challenging this status of 'guilty until proven innocent', has resulted in significant negative impacts on people.

Robo-debt is not simply about removing humans from the equation but also includes the removal of key points in the debt-issuing and recovery process that previously provided opportunities for errors to be recognised and for the system to be made accountable and more interactive.[5] This is evident in the way in which the onus to identify and respond to errors in calculating the initial debt has been transferred onto Centrelink recipients, and how the ability to dispute and respond to these is more onerous and hampered because, rather than resolving issues through human interaction between the recipient and a Centrelink worker, it now has to be done online and/or, after long call waiting times, through a mobile phone, and with little or no consideration of access and communication barriers.

Concluding comments on Robo-debt
While, fiscal responsibility is a legitimate responsibility of government, Uniting Communities believes that there are a number of less punitive and more supportive approaches that could have been used to achieve this. Our organisation has observed the emotional distress, anxiety and financial hardship that Robo-debt and its recovery scheme has caused many of our clients, more especially for those who are vulnerable and who are already living below the poverty line and struggling to make ends meet on their income support payments, most notably, the low rate of the Newstart Allowance.

The government's introduction of an automated system with its blanket approach, in the absence of human interaction, and the choice of a debt recovery scheme which places the onus of proof on the most vulnerable income support recipients, and reverses the presumption of innocence, reflects a lack of procedural fairness and denies natural justice to recipients.

---

[4] Park, S & Humphry, J. 2019 'Exclusion by design: intersections of social, digital and data exclusion' in *Information, Communication & Society*, 22:7, 934-953, DOI: 10.1080/1369118X.2019.1606266
[5] Park, S & Humphry, J. 2019 'Exclusion by design: intersections of social, digital and data exclusion' in *Information, Communication & Society*, 22:7, 934-953, DOI: 10.1080/1369118X.2019.1606266

3.2 Terms of Reference (c): the broader outsourcing of functions in the Human Services portfolio and at the National Disability Insurance Agency.

Uniting Communities supports and commends the move to outsourcing NDIA by offering the following insight regarding the following terms of reference thus:

  iv.   the processes for contracting and tendering under the outsourcing of services,
  v.   the impact of capped staffing numbers and the efficiency dividend at government departments/agencies,
  vi.   the future planning and preparation for the outsourcing of departmental functions,
  vii. the impact outsourcing has on service provision, and

i.   the processes for contracting and tendering under the outsourcing of services,

The government outsourced the Local Area Coordination (LAC) for the NDIS. There were significant delays with the implementation due to alleged contracting issues with the new provider(s) and commencement of the service. This had a significant impact on the rollout of the NDIS for specific regions and the ability of people to get plans. NDIA planners were already seeing a larger than usual volume with South Australia's initial estimates of children entering the scheme 50% of actual figures. Planning meetings were unable to be undertaken and lack of trust in the scheme grew. This placed additional pressure on an already stressed workforce and system that was under a lot of pressure to get it right.

Workforce mobilisation and Key Performance Indicators relating commencement of services is usually a part of the tendering process. It was disappointing that such a crucial part of the scheme was implemented with such delays.

A LAC from New South Wales was engaged to manage some of the backlog which was caused due to delays.

The LAC tender was restricted to organisations not undertaking direct service delivery. Whilst having safeguards for conflicts of interest and the separation of service delivery and planning is crucial, this eliminated a number of local, well established and highly skilled organisations that could have applied. This has resulted in a LAC's (Feros Care, BaptCare and Mission Australia) being all interstate providers. Governance and Senior Management are all based interstate without local knowledge of South Australia and its regions and without existing infrastructure in place. Safeguarding measures could have been put into place for the conflicts as had been done in other states such as New South Wales where this has been managed effectively where a disability service provider has also been a LAC.

This has also been successfully evidenced through the aged care assessments team as aged care providers have managed successfully to build in conflict of interest mitigation strategies to deliver both assessment and service arms within their business.

ii.   the impact of capped staffing numbers and the efficiency dividend at government departments/agencies,

Capped staffing numbers reduce accessibility for people and increase bottle necks during periods of peak demand. This increases waiting times, slow responses, rushed planning sessions and poor participant outcomes.

During the implementation of the scheme staffing should have been flexible to manage peak demand times and the additional time needed to navigate new participants through the scheme. With low plan implementation rates (SA approx. 50%) financial costs were should not have been seen to be impeded as savings from plan activation were building at the back end. Resourcing the front end could have produced better participant outcomes, decreased complaints and increased plan implementation/activation rates.

iii   the future planning and preparation for the outsourcing of departmental functions,
The NDIS is based on a mature market. The current market is still not mature and as such the model should reflect an implementation stage that addresses the needs of all stakeholders entering the scheme including participants, the NDIA, state government and disability organisations. Whilst the scheme had pilot sites and a staged rollout the government needs to ensure that future implementation of new schemes allows for adequate adjustments to address market stages.

Non government organisations provide highly efficient services, have local knowledge, relationships and existing infrastructure that allow for flexible and responsive services that produce high quality participant outcomes.

As seen within Aged Care Assessment Teams (ACAT's) and the Regional Assessment Service (RAS) where both non government and state government services are working together to deliver assessments with the Federal Government retaining governance management and oversight responsibilities of contractors and the My Aged Care Portal additional outsourcing of NDIS activities would be welcomed for the right providers.

iv   the impact outsourcing has on service provision
Outsourcing can have a positive impact on service provision including efficient use of a localised work force, leveraging existing community relationships and infrastructures and increased flexibility and responsiveness with of not for profit organisations.

In comparison delays with contracting and tendering processes can produce instability and fragility to the system and in turn distrust from stakeholders. Example of this is around the new Integrated Carer Gateway System that had significant delays that has now resulted in 6 months contract extension for existing providers.

4. Recommendations for action

Recommendations regarding Terms of Reference (b) Robodebt:

Uniting Communities wishes to register its concern about the automated debt recovery system, and calls for the consideration of the following recommendations:

- ***That safeguards are put in place***

  Uniting Communities urges that safeguards are put in place for automated decisions that are made by government agencies, including Centrelink. These safeguards could be similar to those applied in the European Union, where the General Data Protection Regulation (GDOR)[6] prohibits certain types of decisions from being solely automated and creates rights for individuals who are affected by automated processing.

  We need similar safeguards in Australia for high-impact automated decisions made by government agencies. In contrast to Australia's non-regulated approach, legislative controls on data protection and automated decision making included in the GDPR are an example of best practice. Similar protections and safeguards would limit the types of government processes that can be fully automated.

  Decisions that affect individual rights and interests should require meaningful human involvement and oversight. The use of solely automated processing for decisions that produce legal or other significant effects for individuals, should be prohibited. Having a human allocated to simply 'rubber stamp' a decision made by automated outputs is not sufficient.

  If Australia had GDPR-type protections, meaningful human involvement would be required before an automated debt notice was sent. Manual review by human decision makers is important to ensure that a welfare debt is in fact owed.

  Australia's non-binding guidance on automated decision making is a step in the right direction, but it needs to be supported and underpinned by legislation that limits the type and scope of decisions that can be fully automated. This is particularly important for government decisions that have serious consequences for individuals, such as those associated with Robo-debt and the auditing of other rebates.

- ***A thorough overhaul of the automated Robo-debt system***

  Given the design and structural flaws in the debt-recovery system and the widespread distress that it has caused many Centrelink recipients, Uniting Communities supports a thorough overhaul of the automated debt recovery system that includes a re-design of the system in such a way that it takes into account the reality of the needs and lived experience of income support recipients, and the limits of access to information, resources and technology experienced by many Centrelink participants.

---

[6] General Data Protection Regulation https://ec.europa.eu/commission/priorities/justice-and-fundamental-rights/data-protection/2018-reform-eu-data-protection-rules_en In particular, Article 22 of the GDPR is of interest for Australia.

In place of the current dysfunctional and unfair debt-recovery system, Uniting Communities proposes that a more equitable and user-friendly system is designed through a process of genuine engagement and in conjunction with peak bodies and relevant community organisations and agencies.

Included in a re-designed arrangement should be the retrospective scrapping of any current debt-recovery claims.

- ***Increased human interaction and requisite resourcing of Centrelink***
  Central to such a new design should be the re-introduction and increase of human interaction between clients and Centrelink staff, with less reliance on online systems, more especially for those who do not have access or are unfamiliar with technology. This would necessitate appropriate funding and the resourcing of Centrelink services.

- ***Increased levels of support: Language, literacy and access to interpreters***
  It is recommended that increased levels of support are made available to those participants who require assistance due to their level of literacy/numeracy and who may speak languages other than English and may require a language interpreter. Language interpreters need to be made available to participants on request, either face-to-face at Centrelink offices or via phone or video-conferencing facilities.

Recommendations regarding Terms of Reference (c) NDIA:
Uniting Communities supports and commends the move to outsourcing NDIA by offering the following insights:

i. **the processes for contracting and tendering under the outsourcing of services,**
   The LAC tender should not be restricted to organisations not undertaking direct service delivery. Safeguards for conflicts of interest and separation of service delivery are possible. This would provide a deeper pool of well established and highly skilled organisations to tender and then deliver LAC.

ii. **the impact of capped staffing numbers and the efficiency dividend at government departments/agencies**
    During the implementation of the scheme staffing should have been flexible to manage peak demand times and the additional time needed to navigate new participants through the scheme. Resourcing rather than capping the front end would have avoided much of the rushed planning and complaints which are now in the system.

iii. **the future planning and preparation for the outsourcing of departmental functions**
     Non government organisations provide highly efficient services, have local knowledge, relationships and existing infrastructure that allow for flexible and responsive services that produce high quality participant outcomes.

iv. **the impact outsourcing has on service provision**
    Outsourcing service delivery has a positive impact on service provision including efficient

use of a localised work force, leveraging existing community relationships and infrastructures and increased flexibility and responsiveness with of not for profit organisations.