SUBMISSION

TO | **Senate Standing Committee on Community Affairs**

TOPIC | **Inquiry into Centrelink's Compliance Program**

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Submission to the Senate Standing Committee on Community Affairs:
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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

This submission will primarily focus on terms of reference (a) the ongoing impact of the Federal Government's automated debt collection processes upon current and past income support recipients; and (e) the capacity and adequacy of Centrelink and the Department of Human Services to deliver the program, including the use of contract staff. However, a number of the other terms of reference will also be touched upon.

Uniting Communities notes that this is the Committee's second inquiry into Centrelink's compliance program and that a number of the issues raised in the first inquiry of 2017 and reported[1] on by the Committee have not, as yet, been addressed.

We note also, that this current inquiry includes a number of issues currently being considered by 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.

3. Commentary

Background and key features of the Compliance Program

The Department of Human Services' (DHS) Centrelink Compliance Program has its origins in the Australian Government's dedicated unit for promoting and implementing its digital agenda – the Digital Transformation Agency. This Agency developed a roadmap for transferring all government services into a digital environment by 2018. According to the Agency, a key pillar

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[1]https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/SocialWelfareSystem/Report/c06

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'[2].

The Centrelink Compliance Program, usually referred to as Robo-debt or the Online Compliance Intervention (OCI) system, reflects this drive towards automated systems and the elimination of manual processing and individual case management. The Program was introduced in order to raise and recover what the DHS determined were debts from Centrelink recipients. Implemented in July 2016, this Program is an example of the Government's automated approach to decision making.

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.[3] This automated system manifests the potential dangers and flaws of algorithmic systems 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 the Program 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 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'.

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'[4].

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 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 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

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

[3] 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

[4] 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

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, the lack of procedural fairness and the insistence that the onus of proof rests with the recipient.

Impact of the automated debt collection process

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.

The Minister for Government Services, Stuart Robert, has confirmed that, as at August 2019, there have been 850,000 compliance reviews finalised and that of these reviews, 20 per cent of the recipients proved that they did not in fact owe a debt.[5]

The Government's own data shows that thousands of debts have been generated in error, with approximately one in five debts having been incorrect or waived. It can be assumed that a high number of debts have simply been paid because people have been unable to provide all the supporting documentation and evidence that is required (retrospectively) by Centrelink. In certain instances, where the recipient of a debt-notice has challenged it through the Courts, the DHS has wiped the debt that was being contested and then argued that the court case should not proceed.

A more recent development that reflects unprocedural practice is that of individual tax returns being garnished by DHS/Centrelink so as to off-set the cost of an alleged debt to Centrelink. There are cases of people who are currently in the process of negotiating their debt with Centrelink only to find that their tax return has been unilaterally re-directed to pay of their assumed debt.

Technology is an obstacle for many participants
The Online Compliance Intervention system 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

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[5] Centrelink robo-debt should be scrapped. Nine News https://www.9news.com.au/national/a-current-affair-centrelink-robo-debt-anthony-albanese-demands-end/3e678048-94e5-49e8-be4f-ed175138b701

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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.

The DHS has – in the process of shedding Centrelink staff and capping its staffing at 2007 levels – spent over \$1 billion on outsourcing its services[6] to private call centre operators such as SERCO and Concentrix Services. More than 2,750 Centrelink jobs have been outsourced to private providers. This has had significant negative impacts, not only on the Centrelink staff who have lost their jobs, but also on the adequacy of the service being provided and on those seeking support and needing to communicate with Centrelink.

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 client'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 information available to them. 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

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[6] Falzon, J. With Centrelink's gutting, we lose a little more of society's collective soul
https://www.canberratimes.com.au/story/6286271/losing-more-of-societys-collective-soul/

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,[7] 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.

The Compliance program 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.[8] 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 clients, 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 client 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.

4. Conclusions and recommendations for action

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 can be used to achieve this. Our organisation has observed the emotional distress, anxiety and financial hardship that the Compliance program and its recovery scheme has caused many of our clients, more especially 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, those on the low rate of the Newstart Allowance and/or subject to the Cashless Debit Card or BasicsCard.

The government's introduction of an automated system with its blanket approach, in the absence of human interaction, and its 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.

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)[9] prohibits certain types of decisions from being solely automated and creates rights for individuals who are affected by automated processing. 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

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[7] 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

[8] 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

[9] 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.

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legal or other significant effects for individuals, should be prohibited. Having a human being 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 compliance 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 clients.

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.

- ***Calculating debt and the onus of proof***

Given that it is a basic legal principle that in order to claim a debt, a debt must be proven to be owed. The onus of proving a debt must remain with the DHS and must include verifying income data in order to calculate a debt. If necessary and appropriate, verification can be undertaken with the assistance of income support payment recipients, but the final responsibility must remain with the department. This would also preclude the practise of averaging income data to manufacture a fortnightly income for the purposes of retrospectively calculating a debt.

- ***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 to or are unfamiliar with technology. This would necessitate appropriate funding and the resourcing of Centrelink services. The DHS needs to be adequately resourced in order to improve the level of service provided to Centrelink clients. In particular, consideration needs to be given to increasing investment in improved communication channels and staffing, so as to ensure calls are answered in a more timely manner.

- ***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.