The Fraught Relationship Between the Cashless Debit Card and Basic Transaction Accounts

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Most Australian adults have a transaction account. For people on low and fixed incomes it is vital there are options offering safe, fair and affordable terms. The Cashless Debit Card (CDC) presents a different approach to basic transaction accounts. Defined benefit recipients in CDC sites must have an account on terms prescribed by government. Choosing not to use the CDC means participants cannot access eighty per cent of their benefits. The limited scale of the CDC's application to date has obscured flaws in design and operation. The potential transition of people from government-controlled Income Management to the CDC represents a significant shift. Government is also exploring national CDC roll-out. The CDC is not a normal transaction account but a hybrid with significant risks. For individuals, the CDC undermines choice and empowerment. Structurally, it ignores established regulatory principles and undermines market incentives to consider the needs of vulnerable consumers.

KEY WORDS: Financial inclusion, bank accounts, regulation, conditional welfare, financial services.

The Importance of Basic Transaction Accounts

Access to a basic transaction account is a key component of financial inclusion. Opening an account establishes a financial identity and facilitates formal transactions beyond personal bartering and exchange. It is essential to engage fully in society.

The significance of access to transaction accounts in tackling global poverty has been a key component of the World Bank's financial inclusion activities. In a press release to coincide with the announcement of the Bank's 2020 development goals, member groups noted:

> The 2020 goal calls for adults worldwide to have access to a transaction account or an electronic instrument to store money, send and receive payments, recognising [sic] financial access as a basic building block to managing an individual's financial life. Access to a transaction account is a first step toward broader financial inclusion, which helps poor families escape poverty and afford essential social services such as water, electricity, housing, education and health care (World Bank: 2015).

Similarly, the United Nations Sustainable Development Goals, which list as Goal 1 to 'End poverty in all its forms everywhere', refer specifically to the importance of access to appropriate financial services (United Nations: 2015).

The Global Findex Database has released data every three years from 2011, tracking progress on expanding access to transaction accounts. The most recent report noted that an additional 515 million adults had opened a transaction account between 2014 and 2017, bringing the proportion of all adults with an account globally to sixty-nine per cent (World Bank: 2018).

Developing countries face a different scale of challenge but the importance of access to basic financial services is universal. Most developed countries have a policy commitment to financial inclusion, which recognises and measures access to transaction accounts as a key indicator.

Australia fares well in international comparisons of transaction account access. According to the Centre for Social Impact's latest Financial Resilience snap shot in 2018, 97.4% of the adult population reported having direct access to a bank account (Marjolin et al. 2018: 23). The figure had increased from 96.1% in the 2016 report (Marjolin et al. 2018: 23). Australia's social security system requires the payment of benefits into a bank account, which has no doubt played an important role in the level of access. Progress on matching low-income consumers to appropriate and affordable accounts has, however, been patchy and improvements relatively recent. Considerations of suitability and choice are also critical.

To fully understand how the Cashless Debt Card (CDC) differs from current best practice and might influence future direction, it is worth reflecting on where we are and how we got here.

Cost and Access to Transaction Accounts

Fees and charges can quickly erode the account balances of low-income people. It is vital those people have choices that minimise fees and maximise utility, especially if they require an account to access social security payments. The accessibility of low or fee-free banking options was a central focus of a 1995 Prices Surveillance Authority (PSA) inquiry (PSA 1995). The PSA review also sparked an earnest debate about whether banks owed customers and the community broader social responsibilities.

The PSA stopped short of recommending legislative intervention, preferring self-regulation and competitive pressures to deliver improvements. That theme continued through the 1997 Wallis Financial System Inquiry and is reflected in legislation. The *Corporations Act 2001* (Cth), at Part 7.9, Division 2, generally prescribes product disclosure requirements. Exemptions apply for 'basic deposit products' including transaction accounts, in sections 1012D and 1012E of the *Corporations Regulations 2001* (Cth). The exemptions recognise the role of industry-based codes of conduct, where fees and charges are often included in rules about disclosing terms and conditions.

The providers of transaction accounts have taken some significant steps in response to community concerns about affordability. In 2002, the Australian Banking Association (ABA) applied to the Australian Competition and Consumer Commission (ACCC) for authorisation to initiate a basic bank account with a set of agreed minimum features (ABA 2002b). Authorisation is a process by which the ACCC can permit conduct that might otherwise be considered anti-competitive, if it delivers sufficient net public advantage. The ACCC sought enhancements before agreeing to authorise the proposal and the ABA instead withdrew the application (ABA 2002b).

The range of account options has continued to develop and so have efforts to connect low-income people to products suitable to their needs. For example, the 2013 version of the Code of Banking Practice included a commitment to provide information about low or fee-free accounts if banks became aware a customer was the holder of certain concession cards (ABA 2013: cl 16). Industry also published information about basic bank accounts that had certain features, including no account keeping fees, unlimited transactions and free statements (CFA 2013).

The 2018 Royal Commission into Misconduct in the Banking, Superannuation and Finance Industry (the Royal Commission) considered two case studies relating to basic bank accounts. The evidence confirmed significant gaps remain in ensuring affordable access to appropriate accounts. In his recommendations, Royal Commissioner Kenneth Hayne urged the ABA to amend its Banking Code of Practice with respect to basic bank accounts (Hayne 2019: rec 1.8).

In May 2019, the ABA proposed amendments to the Banking Code. It again sought authorisation from the ACCC to set the minimum features of a basic bank account and standard eligibility criteria (ABA 2019). The proposed minimum features included no account keeping fees, free periodic statements, no minimum deposits, free direct debit facilities, access to a debit card at no extra cost and free unlimited domestic transactions.

On 21 November 2019, the ACCC responded to the authorisation application by providing conditional approval (ABA 2019a). One of the extra conditions applied by the ACCC requires the ABA to provide the ACCC with a report, annually, listing the names of Member Banks that have started, continued and ceased to offer basic bank accounts. The objective of this condition is to provide transparency over the availability of basic bank accounts and to reduce the likelihood that banks will cease to offer them.

Another ACCC condition requires banks to take reasonable steps to identify and contact existing customers who are, or may be, eligible for a basic account and who do not already hold such an account. The ACCC also imposed a condition requiring banks to publicly report to the ACCC twice during the authorisation on actions taken by banks to identify and contact existing customers potentially eligible for basic bank accounts and how many accounts were opened. Neither the ABA application, nor the ACCC conditions require all banks with a retail account presence to offer a basic bank account.

These conditions will likely result in many more eligible customers accessing basic bank accounts and making significant savings on bank fees, including interest charges. It is interesting however that twenty-five years after the PSA review, the Royal Commission was still content to rely on self-regulation. Regulating basic accounts as an essential service and requiring their provision would arguably have ensured they were accessible to more people, much faster.

Suitability and Choice

Alongside the Royal Commission reforms are new laws designed to promote suitability and safety in financial services. These laws apply to transaction accounts and emanate from the Murray Financial System Inquiry (Murray et al. 2014). In a break from the earlier Wallis review, the Murray Inquiry recognised the limitations of disclosure in connecting consumers to appropriate financial services.

> [B]ehavioural biases undermine the assumption that individuals are 'rational'. They limit the efficacy of disclosure as a regulatory tool and can lead to sub-optimal outcomes for consumers. Although disclosure remains a valuable tool to improve consumer outcomes, it should not be relied on in isolation (Murray 2014: 8).

Murray recommended the best way to reduce the incidence of consumers buying financial products and services unsuited to their needs was a regulatory regime that required only suitable products and services be developed and sold.

The changes were reflected in the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* (Cth). The law includes design and distribution obligations, promoting the provision of suitable financial products to consumers. In particular, the new regime requires issuers and distributors to appropriately identify and distribute products to target markets and regularly review to minimise the risk that these products are sold to consumers outside the target market. The proposed *Corporations Amendment (Design and Distribution Obligations) Regulations 2019* would, if adopted in the format suggested in the Exposure Draft, specifically cover transaction accounts including basic bank accounts, a change also suggested by the Royal Commission Final Report (Hayne 2019: 294).

In combination, an enhanced regulatory regime and the authorisation of a basic bank account would dramatically increase the likelihood that low-income people will be connected to affordable transaction accounts. A simple summary might be as follows. Consumers have a right to choose; to support effective choice, their circumstances must be considered in the design and distribution of options; the providers of the services have a positive obligation to connect consumers with accounts that suit their needs and means.

That is a good point to consider the significantly different design features of the CDC.

The Construct of the CDC

The legislative basis for the CDC can be found in Part 3D of the *Social Security (Administration) Act 1999 (Cth) the (SSA)*. It was initially inserted into the SAA by the *Social Security Legislation Amendment (Debit Card Trial) Act 2015* (Cth), with section 124PJ providing that eighty per cent of welfare payments will be directed into a CDC, while the remainder are paid into the recipient's nominated bank account.

Currently, the CDC trial applies to defined social security recipients in Ceduna in South Australia, the East Kimberley and Goldfields in Western Australia and Bundaberg/ Hervey Bay in Queensland. The *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019* (Cth) is currently before the Federal Parliament. As the name suggests, if the Bill is passed, people who are subject to income management in the Northern Territory and Cape York will be transitioned to the CDC. Prescribed benefit recipients in designated communities must receive a CDC. They can choose not to use it to access the quarantined funds, however, exercising that choice means they lose access to eighty per cent of their income.

The *Social Security (Administration) (Welfare Restricted Bank Account) Determination 2016* provides that the CDC and any tied account is to be established with Indue Ltd. The determination also sets out the key terms and conditions applying to the account, including:

- It may only be opened in a single name and operated by the sole account holder.
- Cash cannot be withdrawn.
- There are systems to prevent money being used to purchase alcohol, gambling products, or gift cards, store cards or vouchers that might allow the purchase of alcohol or gambling products.
- There are systems to prevent the transfer of money to another bank account that might facilitate access to cash or the purchase of excluded goods or services.
- Fees may not be charged for depositing money into the account, or in relation to providing an initial CDC.
- Interest cannot be paid on account balances or charged on balances less than zero.
- It cannot be used to make automatic payments to a third party based on bank details and an account number.
- Limitations are applied to the amounts a participant can spend using a CDC, or transfer out of the account.

Section 12PN of the SSA authorises Indue Ltd to provide information about the operation of accounts and use of CDCs to the Secretary of the Department of Social Services.

Indue Ltd may, under section 124PQ of the SSA, decline any transaction that is inconsistent with the terms for operating the account, including but not limited to any attempt to use the CDC for alcohol or gambling. The *Social Security (Administration) (Trial - Declinable Transactions) Determination 2016* sets out the kinds of businesses to which payments may be declined. It lists businesses by description, merchant code (a code used by credit card companies to identify underlying services), BPay biller codes and terminal identification codes.

In addition to the legislative framework, Indue Ltd maintains its own terms and conditions for a CDC account (Indue Ltd 2019). These terms replicate the limitations referred to in the Determinations and regulate a range of other matters, including the use of BPay and the CDC Visa card. The terms and conditions confirm Indue Ltd can share personal information about account holders, including name, address, date of birth and transaction history, with the Commonwealth Government.

Clause 71 of Indue Ltd's terms and conditions notes that Indue Ltd does not subscribe to the ePayments Code, set by the Australian Securities & Investments Commission (ASIC) to provide protection in relation to consumer electronic payments (Indue Ltd 2019). The ePayments Code includes rules about who pays for unauthorised transactions (ASIC 2011). Indue Ltd separately warrants that it complies with the ePayments Code, but its status as a non-signatory means that ASIC has no regulatory oversight of its compliance with code obligations.

Similarly, Indue Ltd is not a signatory to relevant industry codes, such as the Banking Code of Practice (ABA 2019) or the Customer-Owned Banking Code of Practice (COBA 2018). Commitments made in these codes, including customer service, competency of staff, account management and dispute resolution, do not apply to Indue Ltd and it does not submit to the scrutiny of any self-regulatory body. The Australian Financial Complaints Authority can, however, receive complaints about Indue relating to the operation of the CDC.

Is The CDC and Tied Account a Normal Transaction Account At All?

There are a number of operational limitations applying to the CDC and tied account that make it significantly different to normal transaction accounts, including the basic bank account proposed by the ABA. Not only do the restrictions limit the choice of financial services provider, but they also limit choices available to participants in their interactions with the broader economy. There are many ways the limitations might impact, for example:

- Share accommodation can be a cost-effective option for low-income people. It is unlikely a CDC cardholder could rent accommodation privately in a share house, where to do so involved paying another occupant.

- A CDC cardholder cannot access goods and services where cash is the only payment option. That would include many markets or roadside stalls, buy/swap/sell Facebook groups or other online marketplaces, or for the purchase of second-hand goods through private transactions. The limitation would also likely include school tuckshops, or lunch money for excursions.

- Limitations placed on CDC accounts can restrict large purchases, where approval is required. This can mean that CDC cardholders miss out on competitively-priced deals.

CDC cardholders, who are by definition low-income earners, are likely to have additional cost of living pressures, because of the restrictions imposed by the regime.

Another critical difference is the role of government. The features of the CDC are prescribed in legislation, which removes or reduces normal consumer rights. The Department of Social Services tells Indue Ltd who must be sent a card and then establishes the account, without reference to the benefit recipient. Forwarding the CDC without the consumer's request or consent would otherwise breach section 12DL of the *Australian Securities & Investments Commission Act 2001* (Cth) which prohibits the unsolicited issue of debit cards. To facilitate the process, ASIC provided Indue Ltd with a letter noting it would not take any action in relation to the unsolicited issue of the CDC for the purpose of the trial (ASIC 2016: 46).

The CDC redefines the normal contractual arrangements between a transaction account holder and the organisation that provides the account and issues an electronic access card. In a practical sense, Indue Ltd's customer is the Department of Social Services which established the scheme and sets its rules. The benefit recipient is more like a conscript.

The CDC is closer in nature to the role played by a State Trustees' compulsory management of the financial affairs of identified individuals, but without targeting the intervention to people who might require it, based on objective criteria (cf. Banks and Tennant 2016).

Conclusion: Is the CDC solving a problem, or making new ones?

In March 2019, the Hon Paul Fletcher MP who was then Minister for Social Services, delivered a speech to the Sydney Institute, exploring the rationale for the CDC. He stated:

> It helps to ensure that welfare payments are used for their intended purpose: so vulnerable Australians can put food on the table, can pay the rent, can buy clothes for their children. Every time a welfare dollar goes to a drug dealer or grog seller, it is not being used to provide this primary support (Fletcher 2019).

Minister Fletcher did not explore how the CDC fits with, or differs from, the current regulatory environment. Nor did the speech reference any potential consequences for other policy priorities like financial inclusion, financial literacy, the availability of affordable financial services, or ensuring financial services are matched to consumers' needs and means.

In key ways, the CDC pushes against best practice and modern policy development. For example:

- Whereas the latest financial system reforms require products and services consider consumers' needs and means, the CDC applies blanket rules regardless of those needs, or additional costs incurred by cardholders.
- Rather than encouraging prudent spending and shopping for the best deal, the CDC imposes restrictions discouraging budgeting and planning.
- At a time when the financial services industry is again being asked to develop and promote fee-free account options for low-income people, the CDC potentially diminishes market incentives by imposing standard government directed terms.
- When other human services reforms, for example the National Disability Insurance Scheme, are encouraging 'customer directed care', the CDC restricts choice and agency.

When the World Bank released its 2018 Findex update on increasing global access to transaction accounts, it included commentary from a key philanthropic benefactor, Melinda Gates, Co-Chair of the Bill and Melinda Gates Foundation:

> When the government deposits social welfare payments or other subsidies directly into women's digital bank accounts, the impact is amazing. Women gain decision making power in their homes, and with more financial tools at their disposal they invest in their families' prosperity and help drive broad economic growth (World Bank 2018).

In Australia, we have been directly depositing social welfare payments into bank accounts for a long time. Reaching into the home to define what those accounts are, how they can be operated and monitoring their use serves no obvious positive social policy purpose and undermines personal choice and agency.

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Porter

It was a workplace where you'd likely clock out
but even on graveyard shifts as he wheeled
the last to go he'd listen to the hospital
rocking all night on the wave-hills,
steaming through dark its delivered freight,
the new in its relay race with the old,
late for its date with the end of the world.

He'd be first on deck, combing the quay
for the morning's first homecoming ships
where the old men and the children sailed from each other
and a nurse from short ages past
who thought he was old as the century
said how it would be the end of the world
if today's first-born were the last.

Then the century grew young again
and, weary of his company
and the old women with their grandchildren,
went off without him, left him stuttering
seaward through a braille of bedrail,
a triangle of pain grimacing skin
down the slant of nose to the curl of lips,
tight on a lobstered-cold-blue skull.

He heaves at air now from shrunken shells
of lungs, wave-sick, riddled with light.
Helpless we come to earth, helpless we leave her,
he thinks, the old fools babes again,
and if these last-born lived for ever
that too would be the end of the world.

He's wheeled through it daily now, this portal
where the future's ships are crossing
whose passengers are always getting young
or babes that, bald and bare, become
again as old ones, born for burial.
They catch his breath, each gasp at landfall.
Not sea or shore, they see-saw, poised, rocking.

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