



Re: Digital Cash Consultation

Thank you for your time recently to discuss the work of the Reserve Bank (RBNZ) on digital cash.

Te Kāhui Tika Tangata - New Zealand Human Rights Commission (HRC) welcomes the opportunity to make a submission to the RBNZ on digital cash. This submission builds on our previous engagement with RBNZ and the short consultation documentation which we provided in November 2019.

We acknowledge your commitment to inclusion and protection of privacy, and the continued commitment to the use of physical cash, which is vital for those who may be left behind by new technology.

This submission outlines the human rights which are relevant to the issue of money and digital cash. Any work in this area must be undertaken using a human rights-based approach, taking into consideration human rights and Te Tiriti o Waitangi (Te Tiriti) obligations in all stages.

The HRC welcomes the commitment of the RBNZ to making the financial system transparent, inclusive and accessible to all.

Money and human rights

There is no specific right to money recognised in human rights law both in Aotearoa New Zealand and internationally. However, without access to the financial system and ability to purchase goods and services, people will not be able to realise many basic human rights and live a life of mana and dignity. These basic rights include the following human rights which are protected under international treaties that Aotearoa New Zealand is a party to and is obliged to uphold:

- access to food, water and housing, which are essential to the realisation of the right to an adequate standard of living;¹
- access to medical services and medical attention, as part of the right to the highest attainable standard of physical and mental health;²
- the right to education;³
- the inherent right to life, (if access to necessities such as food, water and housing are negatively impacted to a significant degree);⁴ and
- the right to work and be remunerated for all work.⁵

The Universal Declaration of Human Rights recognises that everyone has the right to a standard of living adequate for the health and well-being of themselves and their families.⁶ This standard includes many of the above-mentioned rights. This also extends to necessary social services, and the right to social security in the event of unemployment, sickness and disability. Financial

¹ Article 11 International Covenant on Economic, Social and Cultural Rights (1966)

² Article 12 International Covenant on Economic, Social and Cultural Rights (1966)

³ Article 10 International Covenant on Economic, Social and Cultural Rights (1966)

⁴ Article 6 International Covenant on Civil and Political Rights (1966)

⁵ Article 6 International Covenant on Economic, Social and Cultural Rights (1966)

⁶ Article 25 Universal Declaration of Human Rights (1948)



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services are a necessary social service that enables individuals to achieve these basic needs. Therefore, the RBNZ plays a crucial role in the realisation of human rights through its role as the central bank for Aotearoa New Zealand.

On a broader scale, financial services are critical for economic growth and development. Access to financial services enable communities to save, invest, and access credit, which creates a better standard of living and opportunities for communities to prosper and advance. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which affirms the foundational status of the Te Tiriti,⁷ includes the equal right to improvement of economic and social conditions of indigenous peoples and therefore access to the financial system.

Financial inclusion

The HRC welcomes the aims of the RBNZ review, specifically to provide additional choice for people to use cash in a fee free, accessible way. Everyone must have access to a digital account.

Physical cash continues to be key for older persons, the unbanked, new migrants and refugees, and many others. A 2023 study commissioned by Westpac⁸ looked at the unbanked and found that although being truly unbanked was not common in Aotearoa New Zealand, the negative impacts on people who have trouble accessing bank accounts are significant. Unfortunately, this burden generally lands on those who are already experiencing crises or disadvantage. Balance is necessary between the use of digital currency and physical cash. If the balance is not carefully maintained, those who already lack access may become more disadvantaged.

There may also be a need for focusing on groups who have not previously used financial services, have not made digital payments, and the 1.25% of adults who do not have transaction accounts. The options expanded by digital cash in a central reserve bank may be beneficial for financial inclusivity. However, factors such as the accessibility of technology for different groups needs to be accounted for within this process. We acknowledge that this concern is discussed within the consultation documents and represents the work the RBNZ has already undertaken in this space.

The HRC also shares the concerns of financial inclusion and the preservation of physical cash.

The responsibility to respect, protect and fulfil human rights

As part of the state, the RBNZ has clear obligations to respect, protect and fulfil human rights in Aotearoa New Zealand and uphold Te Tiriti as a Treaty partner. In any review, design and implementation process on digital cash, these obligations must be considered in all phases.

The obligation to respect human rights requires that the RBNZ refrain from interfering with or curtailing the enjoyment of human rights while undertaking its work. The obligation to protect requires that individuals and groups must be protected against human rights violations by

⁷ Article 37 affirms that Indigenous people have the right to the recognition, observance and enforcement of existing treaties and agreements

⁸ Westpac NZ Access to Banking in Aotearoa report 'small numbers, big impact - An exploration into the barriers to obtaining a bank account in Aotearoa New Zealand', April 2023, <https://www.westpac.co.nz/assets/Personal/life-money/documents/Westpac-NZ-Access-to-Banking-in-Aotearoa-Report.pdf>



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corporations or other entities. For example, any external or private company or software/application which forms part of a digital cash trial or service must comply with human rights and Te Tiriti, this responsibility rests on the government and RBNZ. The obligation to fulfil means that states must take positive action to facilitate the enjoyment of basic human rights.

Private banks as gatekeepers of the financial system also have human rights obligations under the United Nations Guiding Principles on Business and Human Rights.⁹

A human rights-based approach

Human rights require human dignity to be at the centre of decision-making processes as well as the outcome of services. A human rights-based approach (HRBA) is about ensuring that both the standards and the principles of human rights are integrated into all aspects and steps of design, policy making and rollout.

Non-discrimination

A HRBA means that all forms of discrimination in the realisation of rights must be prohibited, prevented and eliminated. Priority must also be given to people in the most marginalised or vulnerable situations who face the biggest barriers to realising their rights.

Groups that are currently or historically vulnerable to payment inequality such as those on a lower income, persons with disabilities, women and ethnic minorities may be at an increased risk with any changes to the financial system.

Providing guidance for different communities to understand proposed/implemented changes will allow for better understanding and equal accessibility. Without the assurance of equal accessibility and regulations, there is a risk of a power dynamic that is discriminatory.

Participation

The HRC commends the work that RBNZ has done to create a process which includes public consultation and feedback. We particularly welcome the provision of alternative formats to promote accessibility. A participatory approach where everyone can freely participate in issues that impact them is key to the HRBA. Any further steps resulting from this consultation must continue to include this level of participation including providing alternative formats of information and documentation. It is vital that attention is given to ensure Māori are specifically part of these consultations to recognise tino rangatiratanga.

Transparency and accountability

Transparency and accountability are crucial features of good governance, democracy, and human rights. Without transparency, individuals are not able to make informed decisions about their lives. Without accountability, human rights can easily become window-dressing.

⁹ See UN Guiding Principles on Business and Human Rights

https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf



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Te ao Māori accountability is identified as the long-term effective method of tikanga Māori, which includes clarity of purpose, responsibility, accountability, collective participation, and decision making, and systems of redress.¹⁰

It is important that any digital cash system contains a monitoring function, an independent review function and a process for remedial action/complaints. Remedial action and complaints should include complaints about account set up processes, use of data, etc, in addition to protections and compensation against theft.

The right to privacy

The HRC welcomes the consultation discussion paper ‘designing privacy into digital cash’ and the clear recognition of privacy as an inherent part of human dignity.

The impact of digital technology on the right to privacy is of particular significance.

In Aotearoa New Zealand, the Bill of Rights Act 1990 does not include a right to privacy. However, there are implied rights of privacy in other Bill of Rights Act rights such as property rights, the right to freedom of thought, conscience and religion, the right to freedom of association, the right not to be subjected to medical or scientific experimentation, and the right to refuse to undergo medical treatment. Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights uphold a fundamental right to privacy.

The Privacy Act 2020 governs how organisations and businesses can collect, store, use and share information. The Privacy Act has a number of shortcomings. These include the lack of full control over personal information, including ability to delete personal information. As highlighted in the consultation documents, forty-five percent of respondents to a Privacy Concerns survey by the Privacy Commissioner¹¹ disagreed with the statement “I feel in control of how my personal information is used by businesses” and thirty-five percent disagreed with the statement “I feel in control of how my personal information is used by government”.¹² Additionally, the Privacy Act does not specifically include specific Te Tiriti, tikanga or Te ao Māori privacy considerations.

The International Currency Association commented in December 2021 that “cash is an essential factor for personal freedom and privacy as well as social and financial inclusion for all groups of society and is the only means of payment and store of value that is itself a public good.”¹³ The anonymity of cash is also a key benefit for many people.

¹⁰ See HRC report - Discussion paper: Understanding Accountability for Māori, January 2023, <https://tikatangata.org.nz/our-work/discussion-paper-understanding-accountability-for-maori> - this is in the context of housing however these concepts are relevant for accountability in relation to all human rights areas.

¹¹ Privacy Commissioner, Privacy Concerns and Sharing Data 2020 survey, April 2020, <https://privacy.org.nz/assets/New-order/Resources-/Publications/Surveys/Privacy-concerns-and-sharing-data-OPC-reportApr-20.pdf>

¹² Ibid.

¹³ International Currency Association submission to Bank of England - consultation on its discussion paper ‘New Forms of Digital Money’, September 2021, <https://currencyassociation.org/article/ica-contribution-to-the-bank-of-england-consultation-on-its-discussion-paper-new-forms-of-digital-money/>



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Specific groups may have additional concerns in relation to privacy, for example, as mentioned in the consultation, LGBTIQ groups, who have previously experienced privacy violations. A large amount of personal information would be involved in any shift to digital currency, so sufficient management would be needed to ensure human rights are upheld.

In Aotearoa New Zealand, the constitutional status of Te Tiriti means that the right to privacy must be read alongside, and grounded on, Te Tiriti. The te ao Māori perspective discussed in the consultation documents is welcome as part of these obligations. The HRC would like to emphasise that any future stages of this work must continue to uphold the right to privacy from a te ao Māori and tikanga perspective. Contextual privacy including the freedom to make individual life choices, should be prioritised beyond the Privacy Act 2020. Contextual privacy also prioritises te ao Māori.

Digital inclusion

Digital inclusion is an all-encompassing approach that aims to provide equal opportunities and access to digital technologies and services for everyone, irrespective of their socio-economic background or geographic location. As digital technologies continue to evolve, it is crucial to ensure that no one is left behind. Digital inclusion is not just about providing access to technology; it is about creating an enabling environment where everyone can fully participate and benefit from these technologies. This is also a requirement of human rights law.¹⁴

Even in 2024, the use of internet technology is not equally enjoyed, and this must be acknowledged within any technological advancement concept. Recent statistics show there are large gaps in technology accessibility between different groups. There are gaps in internet access for those who live in social housing and for people with disabilities.¹⁵ Pasifika students also reported substantially lower rates of internet access than did students of other ethnicities.¹⁶ Older generations and people with less formal education will require specific consideration and support with new digital technologies.

In terms of gender, women continue to be severely underrepresented in technology jobs worldwide.¹⁷ In Aotearoa New Zealand, women hold about 27% of technology jobs, higher than percentages in other jurisdictions, for example 17% in Europe, but still not representative.¹⁸ Also, there are historically gender gaps in hiring, education, and pay. This is still relevant because differences in access to economic resources and training in skills, gendered societal norms, and the attitudes to women in technology all impact the equal opportunities for its use.

¹⁴ See Article 15 International Covenant on Economic, Social and Cultural Rights (1966)

¹⁵ See <https://www.digital.govt.nz/dmsdocument/161~digital-inclusion-and-wellbeing-in-new-zealand/html>

¹⁶ This study is from 2015 so more updated data is needed – see

<https://www.digital.govt.nz/dmsdocument/161~digital-inclusion-and-wellbeing-in-new-zealand/html>

¹⁷ See World Economic Forum, <https://www.weforum.org/agenda/2023/01/4-pathways-to-better-representation-women-in-tech-leadership/>

¹⁸ NZ Tech/MBIE/Ministry of Education, <https://nztech.org.nz/2022/06/15/diversity-critical-for-nz-tech-sectors-future/>; Eurostat: Employment statistics 2007-2016:

https://ec.europa.eu/eurostat/statisticsexplained/index.php?title=Employment_statistics#Employment_rates_by_sex.2C_age_and_educational_attainment_level



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The HRC welcomes the consultation's framing of the importance of digital inclusion and the role that digital cash could play in achieving a more inclusive financial option for individuals. The framing of the issue through the 'five A framework' as outlined by the National Executive Committee of Disabled Persons Assembly, in the consultation documentation, is derived from international human rights. This uses human rights principles to ensure inclusion for all. This framework must continue to be used in all aspects of this work going forward.

Services devoted to the reduction of digital access barriers must be a central priority to uphold human rights. This may include different consumer interfaces, easy connections to existing payment services, offline functionality, wrap-around help services, and careful protections of individual privacy and autonomy.

Data

The HRC welcomes the commitment to upholding Māori data sovereignty within the consultation documents including through following already established frameworks and through collaboration. Collective data may be related to whakapapa, genetic and genomic data which is aggregated to make group representations.

People have the right to autonomy in spending. There should be an understanding that cash is important for social and economic inclusion, preserving cultural identity and diversity, protecting autonomy, and promoting retail service competition.

Overall, digital currency should collect minimal data and allow users to have full control over personal information. No state access should be given to data without clear consent. Personal data should be rigorously protected from hacking, data mining or data selling. Remedies must also be in place for theft (see HRBA section on *accountability* above).

Ensuring free and informed consent

It is a one thing to make the choice to voluntarily give private corporations access to personal information, and another to feel pressured or required to give the government information. Even if this is unintentional, effects such as the lack of physical cash in circulation may force people into decisions that otherwise they would not have made. This may provide issues in different areas, such as impacting work through the ability to access pay, the lack of privacy of cash trails, and issues for undocumented workers or those on limited visas. There may be risks to those in rural communities where banks are closing, as less access to cash may force the usage of digital cash options only – this may leave behind the most rural with less connectivity or older persons with limited technological access.

Further, cultural implications need to be considered, such as ceremonial aspects of cash, and if some communities operate in cash more than others. It was found in the 2023 Cash Use Survey in Aotearoa New Zealand that Māori respondents and those in rural areas were more likely to prefer to use cash as one of their payment methods. UNDRIP specifically requires free, prior and informed consent of Māori in any legislative or policy changes that impact them.¹⁹ This must be

¹⁹ This is required under articles 10, 19, 28, 29 and 32 see

<https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf>



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read hand in hand with the human rights principles of non-discrimination and participation and in relation to Te Tiriti obligations.

Recommendations

1. HRC commends the way that RBNZ has taken a HRBA to its work on digital cash. We recommend that human rights and Te Tiriti be made explicit in any future review, design and implementation process on digital cash. This will also ensure that RBNZ complies with its human rights obligations.
2. Accessibility of technology for different groups needs to be accounted for within any continuing process. Services devoted to the reduction of digital access barriers must be a central priority to uphold human rights. This may include different consumer interfaces, easy connections to existing payment services, offline functionality, wrap-around help services, and careful protections of individual privacy and autonomy.
3. Any digital cash system must contain a monitoring function, an independent review function and a process for remedial action/complaints. Remedial action and complaints should include complaints about account set up processes, use of data etc in addition to protections and compensation against theft. Accountability processes must also consider a te ao Māori perspective.
4. Privacy considerations must be built into the planning and design of any digital cash system and must go beyond the current requirements under the Privacy Act 2020 in line with te ao Māori and tikanga. This includes the following considerations:
 - a. Minimum data should be collected;
 - b. Consideration of how more control can be given to individuals to control their own data;
 - c. Assurance of protection from risks such as financial institutions freezing accounts at their discretion and state access without consumer consent, institutions sharing personal data locally and globally without permission and hidden profiling of borrowers;
 - d. Consideration of responses to outages and cybersecurity risks;
 - e. Ongoing discussion with the Office of the Privacy Commissioner;
 - f. Ensuring Māori data sovereignty;
 - g. Regulation of use of non-aggregated data through privacy assessments and the establishment of lawful purpose.
5. Consideration must be given to how to ensure there remains freedom of choice for people in what financial services they use. The importance of access to physical cash and to any digital option, especially for those in rural areas, the elderly, and those with limited access/connectivity, must be a consideration in all stages of this work.
6. Allow for public education and access to updates and plans on digital cash processes. Transparency and engagement will help to avoid misinformation and disinformation. Providing guidance for different communities to understand the changes that are proposed or taking place will allow for better understanding and equal accessibility.



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7. A continued effort to hear the experiences of communities throughout this process is needed. There is a need to look out for and hear the experiences of any administrative burdens as this process may unfold or if cash circulation is impacted by the introduction of digital currency.