

Chapter 4

Challenging debts

That figure of my debt of \$3,154.11 was remarkably precise, but if there was any kind of detailed computation behind it I have never seen it. I have even pulled an FOI on my case and I cannot make head or tail of how that figure was arrived at. They came up with this figure, but they provided no accounting for it and they provided no explanation, initially, as to how it arose. They just said, 'Here's your debt; pay it or prove you don't owe it.'¹

Introduction

4.1 This chapter examines the barriers faced by people who wish to challenge purported debts that have been raised against them by the Department of Human Services (department). In particular it notes that the onus is placed on individuals to demonstrate that they do not owe a purported debt and that in many cases individuals are not aware of their rights.

4.2 This chapter considers:

- (a) the process to clarify or review a purported debt;
- (b) the policy on handling queries and its impacts;
- (c) the challenges posed by reversing the onus of proof;
- (d) the impact on community legal centres; and
- (e) process improvements made by the department.

Process for clarifying, reviewing or appealing a purported debt

4.3 Throughout the inquiry, the committee has received evidence from individuals, and organisations assisting them, about the difficulties individuals face in clarifying or challenging purported debts raised against them.

Clarifying

4.4 As explained in earlier chapters, the first letter the department sends to individuals notifies them that a discrepancy in their reported income may have been detected and requests that the individual visit the online portal to update their details.²

4.5 As noted in Chapter 2, the online portal averages annual income evenly over 26 fortnights if the ATO data does not include employment periods. If income is not earned evenly, individuals are expected to reconstruct their fortnightly income over the relevant period.

1 Andrej, *Committee Hansard*, 16 May 2017, p. 56.

2 Ms Kathryn Campbell CSC, Secretary, Department of Human Services, *Committee Hansard*, 8 March 2017, p. 37.

4.6 The department informed the committee that this clarification resolves the majority of discrepancies and that no further action is required by these individuals.³

4.7 The committee received some evidence that being asked to update details can be confusing where the individual believes that income was correctly reported in the first instance. Tom told the committee in Melbourne:

[They] were told to just go online and update your data. I argued with Minister Tudge's office: 'How can I update my client's income when it was correctly reported and nothing changes?' That is impossible.⁴

Reassessment and review

4.8 One of the first hurdles debt-letter recipients face is to know that they can ask for a reassessment. The department explained to the committee that reassessments are an iterative process:

...if someone asks us to [conduct a reassessment] and provides more information—and it is an iterative process where people do provide more information—then we might send them the outcome and they go, 'Oh, maybe that's not right,' and they provide us with more information, and then we reassess and we send them another outcome.⁵

4.9 Many individuals are unaware that they can request a reassessment. The Launceston Community Legal Centre said that in its experience in order to obtain reassessment:

There is a particular set of words you have to use...If you do not use the right words, you do not always get the right outcomes. Generally what you need to ask for is that you have a pause on any debt repayments that are being taken out from your benefit, and that actually does put a pause on those repayments whilst under review. You then need to ask for a subject matter expert to give you a multical assessment.⁶

4.10 The Youth Network of Tasmania provided evidence to the committee that young people were more likely to targeted by the OCI and they were less likely to be aware of their right to request reassessment or review, saying:

Young people may find it challenging to understand what their rights and responsibilities are and what processes there are for making a complaint or dispute, and are therefore more likely to require assistance...⁷

3 Ms Campbell, *Committee Hansard*, 8 March 2017, p. 35.

4 Tom, *Committee Hansard*, 11 April 2017, p. 59.

5 Ms Campbell, *Committee Hansard*, 8 March 2017, p. 45.

6 Ms Emma Smith, Welfare Rights Advocate, Launceston Community Legal Centre, *Committee Hansard*, 27 April 2017, p. 17.

7 Ms Lisa Amerikanos, Board Member, Youth Network of Tasmania, *Committee Hansard*, 27 April 2017, p. 2.

4.11 The Welfare Rights Centre told the committee that the individuals that approached them were often unaware of what actions they need to take if they received a letter from the department:

...our clients are unsure of the steps that they need to take if they receive a letter seeking clarification of income. Many have difficulty obtaining information from past employers, there is frustration with the system of uploading documents and there has been a lot of distress for some clients, particularly those receiving debt notices.⁸

4.12 Consequently, community legal centres that provided evidence to the committee advised that they have spent time trying to educate individuals about their rights.⁹

4.13 Because reassessment is an iterative process, it is possible to request additional reassessments while the individual has additional information that may clarify the purported debt. The committee received some evidence from individuals with lived experience of the process that their purported debt was revised down each time they sought reassessment.¹⁰

4.14 The process of providing documentation for these assessments can be compounded by the department's own errors. For example, Phoebe told the committee that she had to upload documentation on multiple occasions because the department had provided her with incorrect information.¹¹

4.15 In Perth, the committee heard from Margaret who has a disability known as dyscalculia. Margaret's disability meant that Centrelink staff assisted her to report her income. However, Margaret still incurred a non-OCI debt:

I believed Centrelink because they did the numbers for me. I went into their office and sat down with them. I took in all my paperwork and said: 'I work for this company. I earn this amount of money. Can you please get the numbers right, because I cannot do it myself.' They were kind of happy to do it but pointed out that they did not provide it as a service.¹²

4.16 In Launceston, the committee heard similar evidence in-camera, of a person who lodged their paperwork with Centrelink, only to be later told that no application had been registered with the department. When a nominee for this person was subsequently registered at a Centrelink office, this paperwork was also lost by the

8 Ms Caroline Odgers, Solicitor, Welfare Rights Centre, *Committee Hansard*, 19 April 2017, p. 46.

9 Mr Christopher Boundy, Manager, Access Services, Legal Services Commission of South Australia, *Committee Hansard*, 10 April 2017, p. 16; Ms Monique Hitter, Director of Civil Law, Legal Aid New South Wales, *Committee Hansard*, 19 April 2017, p. 45.

10 Andrej, *Committee Hansard*, 16 May 2017, p. 56.

11 Phoebe, *Committee Hansard*, 19 April 2017, p. 66.

12 Margaret, *Committee Hansard*, 21 April 2017, p. 53.

department who later were unable to find the nominee form, and had also not registered the phone calls from the nominee.¹³

4.17 These cases highlight that the department can and does make mistakes and underscore the importance of proper review mechanisms. The department noted recently that it 'does not currently capture the portion of overpayments raised as a result of system or administrative error' and that there is no grace period in legislation for the recovery of debts.¹⁴

4.18 Once the individual provides all possible material to the department, if the individual is still dissatisfied with the outcome they may seek a formal review.

4.19 The department confirmed this process, saying:

...reassessment is when people provide us information and say, 'I don't think that that is correct and here's another piece of information'...or they say, 'I think you've got it wrong, and this is why I think you've got it wrong,' and so we reassess. When we finally say, 'Have you got any more information?' and they say, 'No,' and we say, 'Right; this is the assessment,' and they say, 'Okay; I want it reviewed,' then it goes off to a review officer.¹⁵

4.20 Launceston Community Legal Centre explained to the committee that an authorised review officer is a senior practitioner at Centrelink responsible for reviewing decisions.¹⁶

4.21 The department has been trying to publicise to individuals the ability to request a review and that there is no formal time limit on when an individual may request a reassessment or review. A senior departmental official informed the committee that:

We are making it plain that there is no time limit on a request for a review. People can ask for that any time and we will do that.¹⁷

Appeals

4.22 Reviews cannot continue indefinitely. If an individual remains dissatisfied with the department's response after one or more reviews, the individual is entitled to challenge the decision in the Administrative Appeals Tribunal.

4.23 If an individual decides to appeal the purported debt to the Administrative Appeals Tribunal, the department has to provide certain documentation.¹⁸ The

13 *In-camera Committee Hansard*, 27 April 2017.

14 Department of Human Services, Answers to question on notice, 20 October 2016, received 2 December 2017.

15 Ms Campbell, *Committee Hansard*, 8 March 2017, p. 45.

16 Ms Smith, *Committee Hansard*, 27 April 2017, p. 19.

17 Ms Melisa Golightly, Deputy Secretary, Integrity and Information, Department of Human Services, *Committee Hansard*, 8 March 2017, p. 42.

committee has received evidence though that the onus still often falls on the individual to identify missing information.¹⁹

4.24 At the time of writing, very few matters have progressed through the Administrative Appeals Tribunal. Community legal centres reported to the committee that the majority of matters are resolved prior to a hearing with the department accepting a lower debt amount.²⁰

4.25 Evidence presented to the inquiry pointed to a reluctance among members of the Administrative Appeals Tribunal to accept debt notices from Centrelink as 'being evidence of debt.'²¹ Victoria Legal Aid quoted a case they acted in, where the Administrative Appeals Tribunal member was not satisfied the purported debt had been correctly calculated by Centrelink:

In this case, no effort has been made by Centrelink to obtain actual wage records... even though such records would very likely be readily available if required. Instead it has simply been assumed that the total year earnings can be apportioned equally to each fortnight across the relevant financial year. However, that is not consistent with the requirements of the legislation. The actual pay records are critical to the proper calculation of the overpayment. Accordingly, Centrelink will need to request and obtain those records from the employer in order to arrive at a correct debt calculation.²²

4.26 During Senate Estimates, the Administrative Appeals Tribunal advised the Senate Legal and Constitutional Affairs Committee that there was a marked increase in the number of Centrelink related cases lodged in the current financial year.²³

4.27 The Administrative Appeals Tribunal advised that 3 387 Centrelink debt cases were lodged with the tribunal in the 2015–16 financial year and 4 354 Centrelink debt cases were lodged in the 2016–17 financial year.²⁴

4.28 The department was quoted in media coverage arguing that the increase in lodgements could not be attributed to the OCI, saying:

18 Ms Tara Simpson, Team Leader, Access Services, Legal Services Commission of South Australia, *Committee Hansard*, 10 April 2017, p. 18.

19 Ms Simpson, *Committee Hansard*, 10 April 2017, p. 15.

20 Ms Simpson, *Committee Hansard*, 10 April 2017, p. 14; Ms Smith, *Committee Hansard*, 27 April 2017, p. 18.

21 Mr Ian Turton, Solicitor, Illawarra Legal Centre, *Committee Hansard*, 19 April 2017, p. 48.

22 Administrative Appeals Tribunal matter 2016/M103550 (20 March 2017), quoted in Victoria Legal Aid, Answers to questions taken on notice, 11 April 2017, p. 7 (received 12 May 2017).

23 Mr Chris Matthies, Executive Director, Strategy and Policy, Administrative Appeals Tribunal, *Committee Hansard*, 25 May 2017, p. 108.

24 Mr Matthies, *Committee Hansard*, 25 May 2017, p. 108.

The number of AAT requests for Online Compliance Interventions compared to the manual process in the previous financial year is much lower, at 0.1 per cent compared to 0.7 per cent.²⁵

Debt calculations

4.29 One of the problems for both individuals and professionals attempting to challenge a purported debt—as the quote at the top of this chapter observes—is that it is not clear how the department calculates debts. Basic Rights Queensland pointed out that:

A significant problem is that—once they do look at a debt—Centrelink's debt calculations are not actually freely available to the public. There is a debt calculator on the online compliance site where Centrelink customers can enter their figures and get an estimate, but experience from our colleagues interstate indicate that once a person has appealed a debt that calculator is no longer accessible. This means it is really difficult for advocates like us to actually assist a person. It is also difficult for the Administrative Appeals Tribunal to actually assess whether a debt is correct, so Centrelink customers and advocates really should have access to the process by which Centrelink calculates the debts, rather than just getting lists of figures.²⁶

4.30 The committee received evidence that in some cases, even a list of figures is not necessarily provided when the department assesses the debt. According to Tom:

The notice of debt states: 'More information about the debt is given below' but it gives no figures.²⁷

4.31 Jade in Adelaide had a similar experience, saying:

There was no information about the reason for the debt. It just said they have conducted a review of my income details and have changed the amount that I was entitled to receive. I had no information about it. I pretty much applied for the review via email.²⁸

4.32 Some people have attempted to use Freedom of Information requests to obtain the calculations the department used to calculate their purported debt. A lawyer that appeared before the committee in Brisbane explained that in response to a Freedom of Information request lodged on behalf of a dyslexic client, the lawyer received:

...a printout of payments made to the client dating back to 2001. But there is a bunch of acronyms. I am not really sure what a lot of them mean. There is a handwritten [annotation]...—it says what was paid today and what the

25 Noel Towell, 'Centrelink robo-debt program blamed for 50 per cent rise in legal challenges', *The Canberra Times*, 9 June 2017, <http://www.canberratimes.com.au/national/public-service/appeals-against-centrelink-debts-soar-20170607-gwmvs4.html> (accessed 9 June 2017).

26 Ms Georgina Warrington, Director, Basic Rights Queensland Inc., *Committee Hansard*, 16 May 2017, p. 2.

27 Tom, *Committee Hansard*, 11 April 2017, p. 59.

28 Jade, *Committee Hansard*, 10 April 2017, p. 29.

debt is at the moment. So that is what we were working on... We had a team of lawyers and a top-tier law firm look at that, and they came back to us and said, 'We have absolutely no idea what this means.'²⁹

4.33 The committee received confidential evidence that a few individuals had greater success. Two individuals informed the committee that after considerable effort and persistence they were sent the 'Multical calculations', an internal spreadsheet that demonstrated how the purported debt was calculated.

4.34 On notice, the department explained that Multical is:

...an Entitlement and Debt Calculator tool used by Centrelink staff. It is a macro enabled Microsoft Excel workbook...³⁰

4.35 Launceston Community Legal Centre noted that it had not experienced problems accessing the Multicals for their clients.³¹

4.36 The #NotMyDebt campaign called for the department to demonstrate in all cases how the debt was calculated. Its central recommendation was:

...that the onus of proof on any debt must be assumed by the government rather than having the alleged debtor disprove any possible debt exists.³²

4.37 As Ian said:

To wrap up, the reverse onus of proof should be on the department and it should not be on the population.³³

Committee view

4.38 The committee is concerned that the process to challenge a debt—one most likely to be used by vulnerable individuals—is difficult to navigate. It is clear to the committee that many individuals are not aware of their rights when dealing with the department.

4.39 The committee accepts that the department has been attempting to educate members of the public about their rights, but considers that more needs to be done.

29 Ms Fiona Thatcher, Lawyer, LawRight, *Committee Hansard*, 16 May 2017, p. 32.

30 Mr Jonathan Hutson, Deputy Secretary, Enabling Services, Department of Human Services, answers to questions on notice, No. 164, 26 April 2017 (received 23 May 2017).

31 Ms Smith, *Committee Hansard*, 27 April 2017, p. 19.

32 Ms Lyndsey Jackson, Coordinator, #NotMyDebt, *Committee Hansard*, 10 April 2017, p. 43.

33 Ian, *Committee Hansard*, 26 April 2017, p. 58.

4.40 The committee considers that withholding information about how a purported debt is calculated is unacceptable. Particularly when the onus to demonstrate that a debt is not owed is placed on the individual, the failure to clearly articulate how a purported debt is calculated makes it very difficult for anyone to assess whether a debt is owed. The committee considers that the department should be much more transparent with this information.

4.41 It is unclear whether OCI debts are responsible for the increase in Centrelink debt lodgements to the Administrative Appeals Tribunal, though it may become clear when monthly figures are available. However, the committee is concerned about the increasing number of appeals and whether it reflects a trend in the broader debt recovery program.

Policy on handling queries

4.42 As the department embraces online work systems, frontline Centrelink employees are asked to encourage all individuals to use the department's online platforms.³⁴

Requiring clients to self-manage

4.43 In January 2017, the Australian Broadcasting Corporation published a departmental internal memo that said 'customers must be encouraged to self-manage' and 'service delivery staff must not process activities in relation to the Online Compliance Intervention'.³⁵

4.44 If the individual did not wish to use the online portal, the individual could be referred directly to the department's debt specialists using a phone service.³⁶ But as noted in Chapter 3, using online portals or a phone service is not necessarily appropriate or possible for all recipients.

4.45 One consequence of the decision to promote online and phone service assistance is that it disadvantages persons from culturally and linguistically diverse (CALD) backgrounds who find it difficult to 'self-manage'. As the Federation of Ethnic Communities' Councils of Australia (FECCA) informed the committee:

It is often the case that CALD persons are affected by the intersection of multiple vulnerabilities. There may be gaps in their financial literacy, institutional literacy, digital literacy, English literacy and combinations of those factors. In some cases it is only through face-to-face human

34 Ms Campbell, *Committee Hansard*, 8 March 2017, p. 61.

35 Pat McGrath, 'Leaked Centrelink memo shows staff told not to process debt disputes in person', *Australian Broadcasting Corporation*, 13 January 2017, <http://www.abc.net.au/news/2017-01-12/centrelink-memo-shows-staff-ordered-not-to-process-debt-disputes/8177652> (accessed 16 February 2017), p. 1.

36 Ms Jane Steinkamp, Service Leader, Eastern Victoria, Department of Human Services, *Committee Hansard*, 11 April 2017, p. 2.

interaction that CALD persons are able to effectively communicate with government and other service providers.³⁷

Reversal of onus of proof

4.46 Under the OCI measure, once a purported debt is raised against an individual, the individual is expected to provide information to demonstrate that they do not owe a debt.

4.47 A senior departmental officer informed the committee that the onus of proof has not changed:

The onus of proof was the same in the manual system as in the recent measure. We still asked people to find the evidence of their income themselves.³⁸

4.48 However, finding evidence of income may be difficult in some cases. The Queensland Council of Social Service told the committee:

...[Centrelink] shifted all responsibility to the individuals through the process they have put in place... 100 per cent of the responsibility is placed back on the individual, with a lack of support and a lack of correspondence or communication even on a website to provide any level of support...³⁹

4.49 The #NotMyDebt campaign is also critical of a model that requires individuals to source documentation from previous years:

The department has reversed the onus of proof onto vulnerable, under-resourced people and has provided virtually no guidance, let alone assistance, for achieving what is required of them. Even for those who have the money, cultural capital, education and literacy to navigate the system or pay debts to make them go away, it is time-consuming and often distressing. We are especially concerned for people with fewer resources.⁴⁰

4.50 The effect of placing the onus on the individual is that an individual also becomes liable for any of the errors that emerge as a result of data-entry.

4.51 For others, obtaining the necessary documentation for previous years, such as payslips, may not be possible if the business is no longer trading. The Anti-Poverty Network South Australia argued that:

Many people in our group who are unemployed worked for companies that have gone out of business; they were made redundant. They would have no

37 FECCA, *Submission 52*, p. 2.

38 Mr Jason McNamara, General Manager, Integrity Process Modernisation, *Committee Hansard*, 10 April 2017, p. 2.

39 Mr Mark Henley, Chief Executive Officer, Queensland Council of Social Service, *Committee Hansard*, 16 May 2017, p. 18.

40 Ms Jackson, *Committee Hansard*, 10 April 2017, p. 42.

way of being able to track down payslips from five, six or seven years ago.⁴¹

4.52 Other documentation may not be available because it was not recorded or the data has been lost. For example, recipients often engage with Centrelink by telephone. Legal Services Commission of South Australia observed that in those cases:

Hopefully, the department has been keeping a record of the stuff that has been submitted in the past...but at the moment...it is going to be very difficult to get a consistent approach because there are many different sources of information, some of which has perished.⁴²

4.53 Reversing the onus of proof to demonstrate that the purported debt is not owed can create additional difficulties for individuals involved, beyond having to substantiate that their income was declared correctly.

Psychological impacts

4.54 The committee received some evidence that many individuals found the process of navigating the system to be stressful and frightening. The Anti-Poverty Network SA conveyed their sense that the OCI has made individuals fearful of making a mistake and incurring a debt:

The sense that we have is that this has added another layer of fear to what is already an increasingly difficult and unpleasant experience for people on welfare payments...⁴³

4.55 The Australian Capital Territory Council of Social Service reported that they believed that many people feared retribution if they contested a purported debt.⁴⁴

4.56 The National Union of Students agreed with that sentiment and suggested that students may have paid purported debts that they did not believe they owed as a result:

A massive fear was that if they refuted the debt it would impact future Centrelink payments—given how hard it is to access Centrelink in the first place and how long they have to wait for payments et cetera...So I think a lot of students felt forced to pay it up-front.⁴⁵

4.57 The committee received confidential evidence that the process of challenging the purported debt is so onerous that some individuals are being deterred from attempting to find work or accepting payments they are entitled to in exchange for certainty that a debt will not be raised against them.

41 Mr Forgione, Coordinator, Anti-Poverty Network South Australia, *Committee Hansard*, 10 April 2017, pp. 24–25.

42 Mr Boundy, *Committee Hansard*, 10 April 2017, p. 19.

43 Mr Forgione, *Committee Hansard*, 10 April 2017, p. 24.

44 Ms Susan Helyar, Director, Australian Capital Territory Council of Social Service, *Committee Hansard*, 8 March 2017, p. 5.

45 Ms Jill Molloy, Welfare Officer, National Union of Students, *Committee Hansard*, 11 April 2017, p. 35.

4.58 One individual on a disability support pension explained to the committee that he found the system of challenging the purported debt destabilised his mental health to such an extent that he was discouraged from rejoining the workforce out of fear that he may incur a debt.

4.59 The committee received evidence from the Legal Services Commission of South Australia that a client was informed that she owed the department approximately \$14 000. After the Legal Services Commission of South Australia intervened, the department reduced the purported debt to about \$7 000. The applicant may have been able to reduce the debt further, but instead decided to pay it because the applicant was, by that point, 'so exhausted by the process' that they were willing to pay a purported debt they did not believe they owe rather than continue to contest the debt.⁴⁶

4.60 For some, challenging the debts can be all too much. As Social Security Rights Victoria submitted:

We have a client now who cannot cope at all. His only recourse for assistance is a nurse in hospital, who feels sorry for him, who has contacted us on his behalf.⁴⁷

Financial

4.61 For many people who receive payments there is an economic cost to dealing with the department.⁴⁸ Launceston Community Legal Centre explained to the committee that many vulnerable people spend a large part of their payments on products and services in order to deal with the department, including internet access and mobile phone credit.⁴⁹

4.62 Some recipients informed the committee that even though they did not believe that they owed the department money, they paid the debt because they found challenging the debt to be too frustrating or difficult. More immediately, the committee received some evidence that people who relied on advance payments were paying debts they did not believe they owed.

Advance payments

4.63 An advance payment is a facility to obtain a part of an income support payment early.⁵⁰

46 Ms Simpson, *Committee Hansard*, 10 April 2017, p. 15.

47 Mr Graham Wells, Principal Solicitor and Clinical Supervisor, Social Security Rights Victoria, *Committee Hansard*, 11 April 2017, p. 22.

48 Mr Forgione, *Committee Hansard*, 10 April 2017, p. 24.

49 Ms Smith, *Committee Hansard*, 27 April 2017, p. 14.

50 Department of Human Services, *Advance Payment*, 31 May 2017, <https://www.humanservices.gov.au/customer/enablers/advance-payment-options> (accessed 1 June 2017).

4.64 The Launceston Community Legal Centre stated the OCI debt has created problems for some individuals because:

...if you have an alleged recoverable debt with Centrelink, it automatically stops you from being able to access the advance payment option.⁵¹

4.65 Some individuals rely upon this facility to meet substantial bills. A solicitor with the Welfare Rights Centre shared a client's experience with the committee:

One of my clients was an age pensioner, which is unusual with this kind of debt, and she relied on those advances to register her car. She was not able to do that, because you are not eligible to get an advance if you have a Centrelink debt. She was fortunate because she had family members who could help her out. That is a side issue that affects anybody who has a Centrelink debt. Particularly for people who are distressed and usually rely on those as part of their budgeting for the year, it is really difficult.⁵²

Time

4.66 As noted elsewhere in this report, contacting Centrelink to dispute the purported debt can be time-consuming. For some already under-resourced families, the imposition on their time has been a significant burden. Children and Young People with Disability Australia provided an insight into the imposition placed on families where a member has a disability. She said:

The practicalities of the situation for people with disability and families of children with disability...mean that they are time poor... It is not that people mind being responsible and accountable for what they are doing, but I was told you cannot even make an appointment. I had to spend two hours in there verifying [the] ID of a boy that has been on the system for 17 years.⁵³

4.67 In Canberra, the Community and Public Sector Union informed the committee:

There are alleged debts that people have travelled hours to a Centrelink office to talk to somebody about, because they could not reach anybody through their call centre network, only to find after two visits that a debt had not occurred. The one example that a member told me about was somebody that had to get on a bus for an hour and 15 minutes to get to a Centrelink office not once, not twice but three times before the matter was resolved.⁵⁴

51 Ms Smith, *Committee Hansard*, 27 April 2017, p. 14.

52 Ms Odgers, *Committee Hansard*, 19 April 2017, p. 49.

53 Ms Stephanie Gotlib, Chief Executive Officer, Children and Young People With Disability Australia, *Committee Hansard*, 11 April 2017, p. 36.

54 Ms Lisa Newman, Deputy National President, Community and Public Sector Union, *Committee Hansard*, 8 March 2017, p. 17.

Checking records held by the department

4.68 As noted in Chapter 2, the department has changed the point at which it reviews the records held by the department.

4.69 Cross-checking records held by the department used to be one of the department's routine functions. The Australian Council of Social Service (ACOSS) explained:

...departmental officers do have access to the information because people have historically reported their incomes, but the auto data-matching system has generated a particular assumption about income. Instead of those assumptions about income then being cross-checked by departmental officers with the data that Centrelink holds on past income reported, that has been completely cut out, and all the onus is put back out onto the individual to again come back to prove what income they earned in what periods of time.⁵⁵

4.70 The OCI places a greater emphasis on the individual to maintain and verify information relating to their case.

4.71 Departmental officers now cross-check the information held by the department at the reassessment stage if it is requested by the individual.⁵⁶ Welfare Rights Centre South Australia Inc. shared its observations that:

What was happening in a number of cases was that for clients who were trying to obtain information it resulted in a Centrelink officer interrogating their records for the first time in some detail and then deciding there was either no debt or the debt was incorrect. The process of asking for information was what prompted what Centrelink used to do, which was to interrogate the records.⁵⁷

4.72 The Anti-Poverty Network SA called for a degree of human oversight to be introduced before letters were issued:

...the scheme as it currently exists in its automated form needs to be scrapped. We need to move back to a system with a high level of the human checks and balances, and with a high level of manual oversight.⁵⁸

No basis in law

4.73 According to lawyers that appeared before the committee, there may be no basis in law for the department to demand that a recipient demonstrate they do not owe a purported debt. The President of the Law Society of South Australia informed the committee:

55 Dr Cassandra Goldie, Chief Executive Office, ACOSS, *Committee Hansard*, 8 March 2017, p. 9.

56 Mr Hutson, *Committee Hansard*, 21 April 2017, p. 7.

57 Mr Mark Leahy, Manager, Welfare Rights Centre, *Committee Hansard*, 10 April 2017, p. 36.

58 Mr Forgione, *Committee Hansard*, 10 April 2017, p. 24.

Like any party that claims to be owed money and to have a right of recovery, Centrelink bears the legal onus of proving that the money claimed is owed. Unfortunately, the process implemented by Centrelink has included within the process assumptions rather than reliance upon evidence.⁵⁹

4.74 That view was supported by a barrister and human rights advocate from the Australian Lawyers' Alliance:

...the idea of reversed onus, where you need to prove you do not have a debt, has no basis in law. Centrelink says, 'You owe us that amount of money,' but the way the law works is that you are entitled to say to Centrelink, 'Particularise your allegation'—in other words, 'How did you calculate that amount? How do you say that is the amount? What is the basis upon which you say an amount is owed? In what section of the act or regs et cetera is it?' That is the way it should be.⁶⁰

Committee view

4.75 The committee understands that the department is endeavouring to make greater use of technology and is encouraging more people to manage their payments online. The committee also understands that people have complex lives and that engaging with Centrelink should be a clear and manageable experience.

4.76 The committee is concerned that the department has placed the onus on the individual to demonstrate that a purported debt does not exist. The committee accepts that challenging these purported debts has taken considerable effort on behalf of those individuals.

4.77 The committee notes that no other party is entitled in law to assert that a debt exists and require the other party to disprove it. The committee accepts that the individual may know more about their affairs than the department, but in circumstances where individuals have already declared their income to Centrelink, it is only fair and reasonable that the department should attempt to investigate its own records before it requires individuals to attempt to reconstruct fortnightly earnings from previous years.

Community legal sector

4.78 The committee notes evidence that the expanded debt recovery process, lack of transparency and complexity of the system along with questions about the legality of the department's process have meant that community legal centres are experiencing a significant increase in the number of requests for assistance.

4.79 In South Australia, the Law Society of South Australia informed the committee that there had been a 'threefold increase of attendances' at community legal

59 Mr Tony Rossi, President, Law Society of South Australia, *Committee Hansard*, 10 April 2017, p. 34.

60 Mr Greg Barns, Barrister and Spokesperson on Criminal Justice and Human Rights, Australian Lawyers Alliance, *Committee Hansard*, 18 May 2017, p. 18.

centres.⁶¹ In Victoria, Social Security Rights Victoria reported a 68 per cent increase in work because of the OCI system.⁶² In other places, a change in the data-management system precluded the provision of an exact proportion, but community legal centres, such as Basic Rights Queensland, noted that the increase was significant.⁶³

4.80 Whilst the increase in the demand for services is significant, the community legal sector observed that there were likely to be many more vulnerable people who would have been unable to access legal services because community legal services did not have the resources to deal with them.

4.81 The Legal Services Commission of South Australia explained that many people do not consider their Centrelink purported debt to be a legal problem:

...when people do receive advice from the department they do not immediately see that as a legal problem, so they do not necessarily come to a legal aid agency. They see it more as a departmental problem or a financial problem.⁶⁴

4.82 Even if an individual is able to obtain legal support, it is unlikely to be from a specialist. WEstjustice expressed the view that there are very few legal specialists in this area:

Despite the number of people who are in receipt of Centrelink and depend on it for their livelihood, the number of lawyers in Victoria with a significant knowledge of Centrelink law is probably less than 10. If you receive one of these letters, your chances of finding someone to see face to face and to get advice from is somewhere between limited and non-existent...⁶⁵

4.83 WEstjustice went on to explain that there is a lack of Centrelink law specialists in Australia, not just in Victoria:

Around the entire country the number of specialist Centrelink lawyers is incredibly small...most of the people receiving these letters have almost no chance of getting specialist advice other than by going through the phone systems of the state legal aid agencies...⁶⁶

61 Mr Rossi, *Committee Hansard*, 10 April 2017, p. 35.

62 Mr Wells, *Committee Hansard*, 11 April 2017, p. 20.

63 Ms Warrington, *Committee Hansard*, 16 May 2017, p. 4.

64 Mr Boundy, *Committee Hansard*, 10 April 2017, p. 16.

65 Mr Dennis Nelthorpe, Chief Executive Officer, WEstjustice, *Committee Hansard*, 11 April 2017, p. 11.

66 Mr Nelthorpe, *Committee Hansard*, 11 April 2017, p. 12.

4.84 One of the challenges for the state legal aid agencies, and community legal centres more generally, is that funding is a considerable challenge and it has placed pressure on their ability to assist the community.⁶⁷

4.85 In places where funding to the community legal sector has been restored, a lawyer from LawRight commented:

...some of that money will be reinstated, but our understanding is that that has been earmarked for family law and domestic violence services. It does not necessarily follow that any advocates providing advice in the social security law space are going to be refunded.⁶⁸

4.86 This means that it is difficult for individuals to obtain suitable legal advice about their OCI purported debts. As LawRight pointed out:

...many of our clients are not able to address these debts by themselves, and they do need legal assistance. But that is becoming, increasingly, out of reach.⁶⁹

Committee view

4.87 The committee is concerned about the levels of demand experienced by the community legal sector. The committee considers that legal assistance should not be required to navigate Australia's social security system, but recognises that it is currently necessary for many people.

4.88 The committee appreciates the assistance that these centres have been able to provide to individuals. To continue this work, the committee recognises that the community legal sector needs to be appropriately resourced.

Process improvements by the department

4.89 The committee acknowledges that the department has made some improvements to the OCI process since the program was first trialled in mid-2016.

4.90 At the committee's initial public hearing on 8 March 2017, the department provided the committee with an overview of the improvements the department has made to the system, saying:

...we have put refinements in place, including things such as: registered mail; changes to the portal to make it easier to use, particularly around using bank statements rather than people's pay slips that they may find

67 Mrs Lisa Coulson, Northern Regional Manager, Tasmanian Aboriginal Centre Inc, *Committee Hansard*, 27 April 2017, p. 14; Mr Nelthorpe, WESTjustice, *Committee Hansard*, 11 April 2017, p. 11; Mr Bevan Warner, Victoria Legal Aid, *Committee Hansard*, 11 April 2017, p. 30; Mr Boundy, Legal Services Commission of South Australia, *Committee Hansard*, 10 April 2017, p. 14; Mr Leahy, Welfare Rights Centre, *Committee Hansard*, 10 April 2017, p. 37; Ms Kathrine Lane, Australian Privacy Foundation, *Committee Hansard*, 19 April 2017, p. 25; Ms Helen Creed, Community Legal Centres Association (WA) Inc, *Committee Hansard*, 21 April 2017, p. 26.

68 Ms Paula Hughes, Policy Lawyer, LawRight, *Committee Hansard*, 16 May 2017, p. 30.

69 Ms Hughes, *Committee Hansard*, 16 May 2017, p. 30.

harder to get access to; simpler language; different use of colours on the portal to make it easier to read; an extension from 21 to 28 days to provide the information; and, importantly, when a debt has been identified—which is a pretty long way down the track—that people, if they wish to reassess or review, can put that debt repayment on pause until that review had been completed.⁷⁰

4.91 Each of these improvements will be considered in turn.

4.92 By sending letters by registered mail, the department is able to identify whether the letter is received by the intended recipient. As identified in Chapter 3, the department's failure to send letters in this way meant that approximately 6 600 individuals only became aware that they may owe a debt when they were contacted by a debt collector because they did not receive the department's previous correspondence. To ensure that the department now has the correct address, the department now sends two letters by registered mail:

The first letter asks people to clarify and gives them a code with which to access the refined portal. The second reminder letter is also sent via registered mail—assuming the first letter goes to that address. If it comes back and says that the person was not at that address, we will then seek other means to contact them. Sometimes we can use mobile phone numbers that may be listed in the record and we can use other sources, such as the electoral roll or something like that. That is the refinement in making sure the letters get there. Even if people were registered for myGov, we are still sending them out registered mail just to make sure they get that.⁷¹

4.93 Another improvement to the system has been made to allow individuals to provide the department with bank statements to demonstrate their net income. The department explained to the committee that this was because:

The main social welfare payments are calculated on gross payment, which would require people to have access to information from employers. If we use net income, people are able to use bank statements to say what actually went into their bank accounts in different periods, so that is an improvement there. We have also automated the process of asking for an extension in which to provide more information...⁷²

4.94 As noted above, some data from employers or former employers may be difficult to obtain meaning that this is an important improvement to the system.

4.95 The department also revised their letters to make them clearer, saying:

We have also looked at some of the letters—letters are the bane of our life—trying to make them clear and easy to read. We have had another go at

70 Ms Campbell, *Committee Hansard*, 8 March 2017, p. 36.

71 Ms Campbell, *Committee Hansard*, 8 March 2017, p. 59.

72 Ms Campbell, *Committee Hansard*, 8 March 2017, pp. 59–60.

making sure the letters have a call to action so that people understand what their requirements are.⁷³

4.96 The letters now clearly contain the department's 1800 phone number. A senior departmental official explained that:

One of the things that we learnt is that our letters were not very clear on the 1800 number, and one of the areas where we have made a significant change is making the 1800 number significantly clearer to people than it was in the original letters that we sent out, so people can now access that. The other key change we have made is that people no longer have to use myGov to access the system online; that is another significant change that we made in February. If people do not want to register for myGov, they do not have to because they are now sent an access code and they are able to directly go into the OCI system.⁷⁴

4.97 Changes to the portal were also made to ensure that the department's 1800 phone number for its debt team was made more prominent.⁷⁵

4.98 The department has taken steps to ensure that an individual is aware they could ask for a pause on recovery of the purported debt while it is being reviewed.⁷⁶ The department has also recalled a number of purported debts it had referred to external debt collection agencies, including the 6 600 purported debts where the individual had not been in contact with the department because they did not receive the initial letter.⁷⁷

4.99 However, the committee also received evidence from witnesses who did not believe that the department's changes went far enough.

4.100 For example, ACOSS asserted that:

We do not believe the minor changes that the minister announced early in January have addressed the fundamental flaws in this program, so again today we will be submitting to you that the system needs to be shut down.⁷⁸

4.101 Similarly South Australian Council of Social Service noted that:

...there were some changes made to the program in January and February 2017, but we really think that those were inadequate changes. They did not

73 Ms Campbell, *Committee Hansard*, 8 March 2017, p. 60.

74 Mr McNamara, *Committee Hansard*, 10 April 2017, p. 12.

75 Mr Marc Mowbray-d'Arbela, National Manager, Whole of Government Coordination Division, Department of Human Services, *Committee Hansard*, 11 April 2017, p. 4.

76 Ms Campbell, *Committee Hansard*, 8 March 2017, p. 36.

77 The department originally referred 6 600 debt matters to external debt collection agencies. In these cases, the debts were calculated because the individuals had not responded to the initial letters. After concerns were raised that many people did not receive the letters due to incorrect addresses, these debts were recalled back to the department. See Ms Campbell, *Committee Hansard*, 8 March 2017, p. 47.

78 Dr Goldie, *Committee Hansard*, 8 March 2017, p. 2.

address the design and operational flaws that have been identified along the way...⁷⁹

4.102 In a supplementary submission to the committee, the department noted that it also made changes to the MyGov portal in May to make it easier for recipient's to use.⁸⁰

4.103 In some cases the improvements were not explained to people, which meant that they were not necessarily able to make use of some improvements, such as the recovery pause.⁸¹ Individuals may obtain a less beneficial outcome if they are unaware that particular options exist.

Concluding committee view

4.104 The committee considers that the current process of review is opaque. It is clear that many individuals remain unaware of their rights when dealing with the department. The committee considers that considerable work could be done to clearly promote an individual's rights of review and right to request a pause while the purported debt is reviewed.

4.105 The reversal of the onus of proof in respect of these purported debts has had a substantial impact of the individuals concerned.

4.106 The committee understands that the department is attempting to identify discrepancies and overpayments and that it may need the individual's assistance in some circumstances. However, the committee considers that the department should consult its own records, or design a system capable of checking its records to ascertain what the recipient previously reported to the department.

4.107 Where a purported debt is raised against an individual, the committee considers that the department should be forthcoming with the calculations that demonstrate how the debt was arrived at.

4.108 The committee considers that these factors contributed to the increased number of requests for assistance received by community legal centres. Funding for these legal centres remains a substantial issue.

4.109 The committee acknowledges that the department has worked to make some improvements to the overall system. However, the committee considers that more needs to be done.

79 Mr Ross Womersley, Chief Executive Officer, South Australian Council of Social Service, *Committee Hansard*, 10 April 2017, pp. 22–23.

80 Department of Human Services, *Submission 66.1*, p. 3.

81 Ms Charmaine Crowe, Senior Policy and Advocacy Officer, ACOSS, *Committee Hansard*, 8 March 2017, p. 5.

