



Tasmanian Council of Social Service Inc.

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# TasCOSS Submission on Centerlink Debt Collections



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## Introduction

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Thank you for the opportunity to contribute to the Senate Community Affairs References Committee's Inquiry into the design, scope, cost-benefit analysis, contracts awarded and implementation associated with the Better Management of the Social Welfare System initiative.

Established in 1961, the mission of the Tasmanian Council of Social Services (TasCOSS) is twofold:

- to act as the peak body for the community sector in Tasmania, and
- to challenge and change the systems, behaviours and attitudes that create poverty, inequality and exclusion.

We work with integrity and compassion to amplify the voices of Tasmanians and we name up bold, brave leadership when we see it.

TasCOSS is contributing to this inquiry because the system established by the Federal Government to recover alleged Centrelink debts will create and further exacerbate poverty, inequality and exclusion. The design of the system fails to take account of obvious factors that affect people in receipt of Centrelink pensions or benefits, including their various vulnerabilities, lack of access to resources, legal and other supports, and financial disadvantage.

TasCOSS supports a social security system through which people are paid what they are entitled to, no more and no less. TasCOSS is not opposed to the use of data-matching to assist Centrelink in identifying potential over or under payments for further investigation and decision making.

However, the current data-matching system, which has resulted in the raising of many alleged debts, has significant and predictable flaws. It has been shown repeatedly to have led to incorrect decisions to allege a debt is owing by a current or former recipient and has caused significant, indeed sometimes profound, distress and hardship to many Australians. This submission includes a number of case examples (see Appendix 2: Case examples that support the need for urgent reform).

The Committee cannot, in TasCOSS's submission accept that the data presented by Centrelink in relation to the levels of debt recovery and levels of challenges indicates the system is working. Just because a person pays a debt alleged by Centrelink doesn't mean the debt is provable and proven. Just because a person doesn't pursue a challenge to that alleged debt, doesn't mean the debt is provable and proven. Citizens should be entitled to expect its Government will act with due care before engaging in collection of alleged debts, particularly from people with known vulnerabilities and little or no access to legal and financial support to challenge the Government.

As outlined in our recommendations, TasCOSS calls on the immediate abandoning of this process.



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TasCOSS looks forward to providing in person input into this process when the Committee visits Tasmania in April. We also have a number of individuals and organisations who are ready to provide direct information.

In closing, as of today as we finalise this submission for lodgment, I have just spent some time on the phone with a mother of a young woman with an intellectual disability. She has just spent considerable time helping her daughter to be reimbursed by Centrelink for the \$1300.00 that has been incorrectly deducted from her disability support payment for a debt she didn't owe, over the last weeks and months. Her daughter was not able to understand what had occurred, and it was not until her mother intervened to support her that the error in payments – on Centrelink's behalf – were identified. The \$1300 debt was quickly identified by a Centrelink staff member as incorrect. The young woman and her mum have been advised that it will now take approximately 12 weeks for Centrelink to reverse the deductions that had been made to full compensate the young woman for the money she was rightfully entitled to.

Enough is enough, it is time to pay attention to the hundreds of examples and take action.

Please do not hesitate to contact me if you wish to discuss any matters raised in this submission.

Yours sincerely

**Kym Goodes**  
Chief Executive - TasCOSS





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## Recommendations

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1. That the current Centrelink debt recover program be abandoned immediately.
2. That all current actions and processes being undertaken by Centrelink and its agents (including, but not limited to debt collection agencies) to collect any alleged debt generated through the data-matching system be suspended immediately.
3. That all alleged debts recovered to date be reviewed and the person be invited to raise any concerns about the amount of the debt, the process used and offered the opportunity of review and be provided with information on where they can get assistance to support them in the review process.
4. That Centrelink work with representatives of key stakeholders to design a new system that fairly and accurately deals with potential debts and underpayments. The redesigned system should accord with Centrelink's legal obligations, principles of good government decision making and fairness. It should take account of the significant imbalance of power between the Federal Government and pension and benefit recipients and also information provided to recipients in the past. Key representatives should include the Australian Council of Social Services (ACOSS), the National Social Security Rights Network, Financial Counselling Australia, Council on The Ageing, the Australian Federation of Disability Organisations, the National Association of Community Legal Centres, National Legal Aid, and the ACCC.
5. The new system should have the features set out below

### Features of the Centrelink debt and underpayment system

- A. Centrelink must not take action on an alleged debt unless and until it is properly satisfied that the amounts alleged are owed. This means:
  - a) a decision to raise a debt will only be made if there is accurate information that clearly shows a debt is owed, having taken account of the dates of receipt of payments and of other income, and other factors such as hardship, which might be relevant to waiver or write-off, have been fully considered (this will require effective human oversight);
  - b) debts will not be raised in reliance on broad data-matching assumptions in the absence of accurate information about previous income or other data, that reasonable satisfied Centrelink that a debt is owing;
  - c) data matching used to assist decision making will reflect social security law regarding fortnightly income assessment.
- B. Centrelink should not shift its onus to prove the debt to being an onus on people to prove a negative, that is that they do not owe a debt, or that they were entitled to past payments received in good faith. This means:
  - a. people will not be required to obtain payslips or other material from more than a period to be determined as reasonable by the expert stakeholder group;





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- b. Centrelink will not raise debts in the absence of confirmation that the person has been properly notified and given a proper opportunity to respond to information, in any of a variety of ways (not limited to online or provision of documents);
- C. Effective access to review and suspension of all debt recovery processes when a review has been requested until all review steps have been completed. This means:
  - a. people notified of an alleged debt will be informed of their right of review, and that Authorised Review Officers (AROs) are able to consider all factors in undertaking a review;
  - b. time limits for review will be extended where there has been delay due to Centrelink system problems or delays, lack of access to Centrelink information, and any other delays that are outside the control of the person notified of an alleged debt;
  - c. no action is taken in respect of an alleged debt before the time limit for review (including any extended time limit) has been exhausted or while an internal or external review is yet to be determined;
  - d. reasonable consideration is given to possible waiver or write-off of alleged debts and the person notified of the alleged debt is to be notified in a timely way of the right to apply for write-off or waiver and what types of information may be relevant to the decision maker.
- D. The system is to be transparent and capable of rebuilding community confidence in Centrelink and its staff. This means:
  - a. making public on a regular and (at least annual) basis the rate at which decisions to raise debts that are challenged are being changed by review processes;
  - b. complete transparency in relation to the assumptions underpinning the system and all instructions given to staff of Centrelink;
  - c. proper assessment is done of the secondary impact of the system, including impact on Centrelink and its staff, on legal assistance providers and tribunals, and identifying the level of funding needed to ensure they are adequately funded and supported to respond.



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## Summary response to the terms of reference

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- a. **the impact of Government automated debt collection processes upon the aged, families with young children, students, people with disability and jobseekers and any others affected by the process**

TasCOSS has been advised of many Tasmanians very seriously and negatively affected by the Government's automated debt collection processes. The following are extracts of case examples notified to TasCOSS. The full case examples are set out in Appendix 2: Case examples:

### **Family with Young children**

P and QB have three young children.

P and QB recently received a debt notice for \$10,000 for alleged overpayment of parenting payment from 2014–15. P and QB were given 3 weeks to pay.

### **Elderly person**

BC is the carer of a 77-year-old woman who is bedridden with rheumatoid arthritis. The 77-year-old woman had got a letter on the day before Christmas Eve with an incorrect debt notice. This sent her into a panic. She stopped eating, and became extremely unwell. This prompted her doctor to arrange for her to be admitted into hospital.

### **Student**

WA is a university student who was doing exams when she got a letter from Centrelink alleging a debt.

W was too stressed due to the exams so she confirmed the debt when it arrived as she didn't know what to do.

### **Person with disability**

HA suffers from severe anxiety.

...

This has had a serious impact on his mental health and he is speaking about suicide. H's mum contacted a staff member at the organisation and said that after their meeting he had an anxiety attack, vomited on the street three times and had to be carried home.

### **Person with disability**

MA was told she owed \$5,000 for a year in which she had taken 8 months off work due to mental illness.

...

M said the experience brought back the stress of that difficult time in her life ...



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**Person with disability**

FA got a letter stating he owed a debt from June 2013 until January 2014.

...

F called the 1800 number and was told not to bother filling out the required form on MyGov. He didn't trust this advice and so called again. He was then told that if he didn't fill out the form as required the debt would automatically be confirmed. He has been into Centrelink three times to do MyGov and each time the site has been down. F receives a Disability Support Pension due to poor health and trips into town are difficult.

For job seekers caught up in the system, it adds to the demands placed on them by Centrelink and interferes with them engaging in active job seeking activities as is required:

**Job seeker**

IA receives NewStart.

I has been receiving NewStart for 1 year and was being investigated for a debt from 2011–12.

I has spent many hours arguing with Centrelink and it is now been whittled down to \$1 [REDACTED]. The confusion was around a termination payment that he could not explain through MyGov because it wasn't a given option.

The day before he contacted an organisation for help, I spent 8 hours on the phone to Centrelink getting it sorted.

I said it has been an incredibly stressful process.

**Job seeker**

RA currently receives NewStart and has been accused of not reporting her income correctly for 2014–15.

R works on a temporary basis through recruitment agencies...

Because the debt claim has not yet been finalised, R is having trouble reporting her current income online and she has to keep calling Centrelink to get it fixed.

As well as the particular groups identified by the Committee in its terms of reference, the system is also affecting people in employment as the Centrelink process is among other things slow, often not working, and demanding in terms of documentation.

**Current worker**

JA was contacted 2 weeks before Christmas to advise she owed \$2,500 from an overpayment 5 years ago.

J spent hours on the phone at work trying to rectify the situation





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#### **Parent of a current worker**

VA is the nominee for her son who has been told he has an alleged debt of \$1,200 for the 2011–12.

This matter has not yet been resolved after V has spent approximately 6 hours on the phone, 5 hours at the local Centrelink office and 20+ hours working out the information for her son who now works up to 60 hours a week and doesn't have the time himself to work this out.

#### **Current worker**

FB was repeatedly receiving a call from an unknown number earlier this year. She thought it was a scammer, but it turned out to be a debt collection agency.

FB was stunned to learn she had several debts totalling around \$9,500 from 5 years ago...

FB tried to get all the payslips and information to fight this. She works full time and, because of this, it is too hard to be available to speak to someone and sort it out. FB has let the review of the debt lapse.

Such employees potentially risk their employment if their employer is not sympathetic to their situation. No person should be put in the position of having to choose between maintaining a current role and responding to a Government demand for information to disprove an alleged debt. In the last of the above case examples, the person has given up their right of review because it is 'too hard' to do while working full time.

It was always highly likely that the system would have a particularly egregious impact in Tasmania. Tasmania has the highest rate in the nation of children living in low-income, welfare-dependent families (30%), the highest youth unemployment rate (16.2%), and the highest rate of female sole-parent pensioners (5.5%). It also has high levels of inadequate adult literacy (less than 50% of Tasmanian adults have literacy skills at or above OECD level 3).<sup>1</sup> Tasmanians, like many in rural and remote parts of Australia, have very limited access to legal assistance services and effectively no access to pro bono legal services.

These factors together mean that dealing with a system that relies on online, written communication will be fraught with difficulty. This is exacerbated by the apparent limits within the online system to provide detailed explanations or information. The case example of IA indicates the online system is insufficiently flexible to allow for explanations to be provided through that portal.

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<sup>1</sup> See, for example, *Tasmania's strategy for adult literacy and numeracy 2016–2025* (2016) <<https://26ten.tas.gov.au/Pages/Strategy.aspx>>.



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The lack of knowledge of an alleged debt has also resulted in people finding they are unable to access credit, as the debt has been notified to the Credit Reference Agency but not successfully to the alleged debtor.<sup>2</sup>

Many people have indicated significant difficulty with getting documents from businesses that have (a) changed hands; (b) ceased to operate; or had (c) poor record-keeping practices. This is particularly a problem where the alleged debt is several years old and business have disappeared or new owners are unwilling to assist. Case examples BA, HA, JA and KA (and others<sup>3</sup>) all indicate significant difficulties with locating the documents Centrelink has sought.

B has been informed that he needs to provide payslips from this period [2010–11]. He doesn't have them and he worked for a company that has gone into liquidation and hence cannot retrieve payslips. He has been told that all companies must keep pay slips somewhere and he needs to find them.<sup>4</sup>

K is required to provide pay slips from four different employers (one of which no longer exists) over a 7-year period.<sup>5</sup>

It is important for the Committee to also consider this requirement in light of Centrelink's previous advice to recipients that they need only keep such documents for 6 months.

While none of the case examples indicate homelessness, poor literacy, intellectual or learning disability, relocation due to domestic violence or Aboriginality, all of these could and are likely to have had an impact on recipients, both in terms of their capacity to locate and provide documents and also in terms of them receiving the notification before Centrelink transferred the debt to a private debt collection agency.

**b. the capacity of the Department of Human Services and Centrelink services, including online, IT, telephone services and service centres to cope with levels of demand related to the implementation of the program**

Many of the concerns raised with and identified by TasCOSS relate to the capacity of Centrelink and the Department of Human Services to cope with the levels of demand.

There are various elements to this. These are set out below with one or more examples:

- Centrelink's capacity to provide consistent (and therefore accurate) information: there are a number of case examples that indicate that people have received conflicting advice from Centrelink and have been unable to rely on that advice. The following are just two examples:

<sup>2</sup> See, for example, case example GB.

<sup>3</sup> See case examples OA, TA, IB and TB.

<sup>4</sup> See case example BA in **Appendix 2: Case examples**

<sup>5</sup> See case example KA in **Appendix 2: Case examples**.



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EA is very frustrated with the process and has called the compliance line and has received a different response each time in terms of the information required and the appeals process.

FA called the 1800 number and was told not to bother filling out the required form on MyGov. He didn't trust this advice and so called again. He was then told that if he didn't fill out the form as required the debt would automatically be confirmed.

- Centrelink's capacity to process information provided in response to notification

IA has spent many hours arguing with Centrelink ... The confusion was around a termination payment that he could not explain through MyGov because it wasn't a given option.

- The capacity of the online system to cope with the level of demand

FA has been into Centrelink three times to do MyGov and each time the site has been down.

LA tried to upload the documentation that proved the notice was incorrect, but MyGov was repeatedly down. Because of this his local Centrelink branch eventually accepted the documents over the counter...

When L called Centrelink, he was initially told he had to submit all the documents again online, before staff agreed that he had in fact already submitted the information.

- The capacity of the staff to cope with the level of demand and capacity to provide information in a timely way

Centrelink staff said they would look into it and then took weeks to get back to GA. He called and found no one had tried to follow it up at all.

[Centrelink staff] explained [LA's] case hadn't been finalised because of the Christmas break and that, because of this, he would need to set up debt recovery payments (despite the fact he had met Centrelink's deadlines).

This all needs to be considered in the context of individuals being given a strict time limit for providing information through the online portal and debts being transferred to debt collection agencies who are not so clearly subject to the service obligations of Centrelink.

Finally, the requirement imposed on individuals to obtain, collate and provide extensive documentation to Centrelink to disprove the alleged debt inevitably results, where the person is able to meet this requirement, in greater demand on Centrelink staff resources to review all of the documents provided.





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- d. the adequacy of Centrelink complaint and review processes, including advice or direction given to Centrelink staff regarding the management of customer queries or complaints

The range of situations that TasCOSS is aware of indicate that the review processes are not currently adequate to respond to the level of demand created by the system.

Of particular concern is the situation identified in a number of case examples whereby people are being required to make payments for an alleged debt even while the review process is underway.

CA has an alleged debt of \$5,000 from 2010–11.

...

C has since received a letter from a debt agency demanding the \$5,000 up front even though the appeal process is still occurring.

LA received an incorrect debt notice for \$5, [REDACTED] just before Christmas.

L tried to upload the documentation that proved the notice was incorrect, but MyGov was repeatedly down...

When L called Centrelink ... They explained his case hadn't been finalised because of the Christmas break and that, because of this, he would need to set up debt recovery payments (despite the fact he had met Centrelink's deadlines).

QA has an alleged debt of \$2,500 from 2 years ago.

Q was easily able to track down and get copies of pay statements yet it has taken Centrelink over 2 months to resolve the issue and determine that she does not have a debt.

In the meantime, Q had to start making payments on the debt, which has still not been resolved.

TasCOSS notes also at least one case example that indicates that, by contrast, where the review results in a finding that the debt was incorrectly raised, the person has had to wait some time to have the money refunded to them.

BB owed an alleged debt of \$1, [REDACTED]

BB believed this was incorrect and spoke to Centrelink staff by phone and they agreed it was an incorrect debt and that an actual person (rather than the automated computer program) would have to do the review. BB was told that, in the meantime, she had to pay the debt and it would be later credited.

BB called debt recovery and was told 'you have the money in your bank account so you can pay' even though she explained that Centrelink staff agreed the debt was false.

BB has since received a phone call from Centrelink saying the debt has been reviewed and it will be reversed, that she doesn't owe any money and that they will pay her back.

It took many weeks to get to that point and she is still waiting for the money to be paid into her account.



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**e. data-matching between Centrelink and the Australian Taxation Office and the selection of data, including reliance upon Pay As You Go income tax data**

This aspect of the Committee's inquiry is of critical importance and highlights the inevitable problem of acting presumptively on an alleged debt in reliance on data matching without human consideration and decision making.

A significant number of the case examples received by TasCOSS indicate that debts have been raised without any real evidence of money being owed. Effectively people are being deemed to have acted wrongfully in relation to Centrelink benefits and pensions and many indicate they feel they are being required to 'prove their innocence'.<sup>6</sup> This is entirely inconsistent with the Australian legal systems requirements and with expectations of a fair government process. One person indicated that he felt he was being accused of fraud:

XB now has to provide payslips from the employer that no longer exists and is made to feel like a fraud with the onus of proving his innocence when Centrelink is the one that made the error.

Many indicate that errors have arisen in years where the person at different times earned income and received some form of payments from Centrelink.

FA got a letter stating he owed a debt from June 2013 until January 2014.  
F didn't start receiving Centrelink payments until February 2014.

LB got letters from Centrelink saying he owed a debt of over \$14,000 over a 10-year period. LB disputed this as he has made no claims during the period indicated on the letters. He was ignored by Centrelink and the debt collection agency letters started coming, threatening court action....

SB has an alleged debt of \$24,500k from 2011–14.  
During this time, SB was a casual employee who always reported her income diligently every fortnight, and she was never informed anything was wrong with her payments...  
SB says Centrelink is obviously averaging out her income for the financial year, which would provide inaccurate data as on a casual wage her income varied week by week.

UB suspects the issue is that Centrelink has averaged out his income over 52 weeks, which would result in an incorrect debt. UB asked Centrelink five times to send him proof of his alleged overpayments and Centrelink still has not sent anything.

VB's former employer went into liquidation in 2014. He was given only one days' notice and was forced to seek Centrelink payments for a few months.

<sup>6</sup> See, for example, Case examples EB and KB.



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This year when VB did his tax, the ATO sent incorrect information to Centrelink of his earnings, stating that he finished work in July 2014, when it was April 2014. The ATO wrongfully assumed VB was still working with his former employer when he was receiving a NewStart allowance.

It may be that more extensive data matching, using detailed information of when PAYG payments were made by employers, could have avoided much of this mis-matching.

**g. the error rates in issuing of debt notices, when these started being identified and steps taken to remedy errors**

TasCOSS does not seek to comment on the error rates other than to repeat its view that people paying alleged debts and/or not seeking review is not proof that the alleged debt was actually owing and not raised in error. TasCOSS also notes that the case examples indicate a number of people being required to commence payment of the alleged debt while the review process was underway (this is discussed in further detail under term of reference i.). This clearly indicates that the claims of accuracy and low error rates cannot be relied on.

**i. Centrelink's Online Compliance Intervention (OCI) and its compliance with debt collection guidelines and Australian privacy and consumer laws**

The use by Centrelink of private debt collection agencies is a matter of significant concern to TasCOSS. Centrelink's actions in this regard remove it from having to deal with people who challenge the alleged debt and privatise this process.

There is no indication that the debt collection agencies have been specifically instructed to act in a manner consistent with the Department of Human Services' Service Commitments (see the discussion below under other related matters). Indeed the way in which the agencies appear to have acted, at least in some cases, is entirely inconsistent with reasonable expectations of Government dealings with members of the public. There are many case examples that suggest conduct that may be inconsistent with the obligations of debt collectors as described by the Australian Competition and Consumer Commission in its online 'Dealing with debt collectors'.<sup>7</sup>

CA has since received a letter from a debt agency demanding the \$5,000 up front even though the appeal process is still occurring.

FB was repeatedly receiving a call from an unknown number earlier this year. She thought it was a scammer, but it turned out to be a debt collection agency.

<sup>7</sup> Australian Competition and Consumer Commission, *Dealing with debt collectors* <<https://www.accc.gov.au/consumers/debt-debt-collection/dealing-with-debt-collectors>>.





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KB has been repeatedly called by Dun & Bradstreet (a debt collection agency), and received a threatening voicemail saying she owes a debt from years ago, and that it has been escalated due to her non-response to previous mail.

MB claims that she ... [was] pursued by Dunn & Bradstreet over an assumed Centrelink debt from several years ago (2012 in her case).

This involved daily mobile cold calling from multiple automated numbers linked to Dunn & Bradstreet over several months.

MB was asked to confirm her personal details in order to be told what the debt was. Dunn & Bradstreet refused to send her the details in writing.

- a. the adequacy of departmental management of the OCI, including:
  - i. the adequacy of staff numbers to manage the workload associated with the OCI, including customer complaints,
  - ii. what impact the roll-out of the OCI has had on other areas of work and whether resources have been diverted from other areas,
  - iii. training and development provided to staff who are working on this program or in related areas (for example, telephony and complaints),
  - iv. how the Department of Human Services and Centrelink are tracking the impact of the OCI rollout on staff, including stress and incidents of customer aggression,
  - v. any advice and related information available to the Department of Human Services in relation to potential risks associated with the OCI and what action was taken as a result, including feedback arising from system testing and staff, and
  - vi. decisions taken in relation to IT systems and service design that may have contributed to problems experienced by Centrelink clients; and
- k. any other related matters

An important consideration is how inconsistent the current system is with the Service Commitments of the Department of Human Services. These state as follows. The commitments in bold italics are all ones that the case examples and information available to TasCOSS indicates are not being met in the current Centrelink system. This is a significant failure by the Department. Sadly, these impacts were predictable and highlight the effect of failing to consult with affected groups and their representatives (one of the commitments below) before implementing the system.

#### **What you can expect from us**

##### **Respect**

We will listen and work with you to *understand your individual and cultural needs*.

This means we will:

- treat you with courtesy and *value your individual circumstances*
- listen to you
- adhere to the Values of the Australian Public Service



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Our business improvement priorities for 2015–19 are to:

- provide quality services *that take into account your individual circumstances*
- provide targeted services when your needs are more complex

#### **Quality information**

We are *committed to providing consistent and accurate information.*

This means we will:

- *provide accurate payments and services*
- *explain our decisions to you and outline your options if you think our decision is wrong*
- *help you understand your rights, entitlements and obligations*

Our business improvement priorities for 2015–19 are to:

- *provide options for you to access the information that you need across the Department*
- *ensure our decision-making timeframes and processes are clear and available to you*
- *design products and services that take into account your feedback*

#### **Honesty and integrity**

We will be open and honest and follow through on our commitments.

This means we will:

- *be accountable for our actions, acknowledge mistakes and take timely corrective action*
- *do what we say we will do*
- *make information available that is simple and easy to understand* so you can make informed decisions
- *protect your personal information*

Our business improvement priorities for 2015–19 are to:

- *act in a manner that is transparent and consistent*
- improve access to payments and services to all in the community
- measure your satisfaction with your services and use this to improve our service.

#### **Efficiency**

We will simplify the way we deliver services to you.

This means we will:

- *respond to and resolve your enquiry in a timely manner*
- *improve our self-managed service options so you have easy access to government services*
- allow you to manage your own business
- make our forms and letters easier to understand

Our business improvement priorities for 2015–19 are to:

- *use new technology so systems are flexible and easier for you to use*
- increase the number of services available to you through our self-managed services channels
- give you the choice to have your information shared across the department and via myGov



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Another matter of which the Committee is already aware is the impact of reliance by Centrelink on historic address data and an expectation that people who have no ongoing contact with Centrelink will maintain an active MyGov account. It appears that in at least some cases, current address data was available to Centrelink but notification was not sent to that address. It appears that in other cases, the ATO has current address data but Centrelink's data-matching did not include seeking current address data.

FB was stunned to learn she had several debts totalling around \$9,500 from 5 years ago. Apparently, several letters were sent to her previous address, even though her current address records were updated and correct with Centrelink.

KB does not have access to Centrelink or her 'inbox' via MyGov, and the letter was sent to an old address even though her current address has been correct for some years with the ATO.

The following sections identified other matters TasCOSS submits are relevant to the Committee's inquiry.

## Right to social security

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The international human rights framework has recognised the right to social security as a fundamental human right since the adoption of the *Universal Declaration of Human Rights* by the United Nations General Assembly on 10 December 1948.

Article 22 of the *Universal Declaration of Human Rights* states:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 25 states:

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. [emphasis added.]
2. ...

At the time of the United Nations General Assembly's adoption of the *Universal Declaration*, Australia's H V Evatt was the President of the General Assembly, and one of the drafters of the Declaration. Australia has had a proud history of leadership in international human rights.





These related and relevant rights were subsequently reflected in the *International Covenant on Economic, Social and Cultural Rights*<sup>8</sup>, adopted by the General Assembly on 16 December 1966 and ratified by Australia on 10 December 1975.

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* states:

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

The right to social security is further recognised in Article 10:

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

Nations that have ratified the Covenant (referred to as ‘States Parties to the Covenant’) have specific obligations, including in respect of the right to social security:

#### Article 2

1. Each State Party to the present Covenant undertakes to take steps ... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries ...

Further, it has been clarified by the United Nations that States parties have obligations to respect, protect and fulfil the rights set out in the Covenant.<sup>9</sup> These are detailed in the relevant General Comment and should be part of the Committee’s consideration.

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<sup>8</sup> *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, GA Res 2200A (XXI), 993 UNTS 3, Australian Treaty Series 1976 No 5, UN Doc A/6316 (1966) (entered into force 3 January 1976, entered into force for Australia 10 March 1976).

<sup>9</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 19: The right to social security (art. 9)* UN E/C.12/GC/19, 39<sup>th</sup> sess, (5–23 November 2007) [44]–[50].



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The UN Committee on Economic, Social and Cultural Rights<sup>10</sup>, has clarified in its *General Comment No. 19: The Right to Social Security*<sup>11</sup> that:

1. ... The right to social security is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realize their Covenant rights.

...

9. The right to social security includes the right not to be subject to arbitrary and unreasonable restrictions on existing social security coverage ...

Relevantly, the Committee stated:

24. Qualifying conditions for benefits must be reasonable, proportionate and transparent. The withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable, **subject to due process**, and provided for in national law. [emphasis added]

...

26. Beneficiaries of social security schemes must be able to participate in the administration of the social security system. The system should be established under national law and ensure the right of individuals and organizations to seek, receive and impart information on all social security entitlements in a clear and transparent manner.

...

78. Before any action is carried out by the State party, or by any other third party, that interferes with the right of an individual to social security the relevant authorities must ensure that such actions are performed in a manner warranted by law, compatible with the Covenant, and include: (a) **an opportunity for genuine consultation with those affected**; (b) **timely and full disclosure of information on the proposed measures**; (c) **reasonable notice of proposed actions**; (d) legal recourse and remedies for those affected; and (e) legal assistance for obtaining legal remedies...

The right to social security is also found in the specialist human rights treaties, all of which Australia has ratified and, as such, accepted that it has obligations to promote, protect and fulfil the rights contained in them:

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<sup>10</sup> United Nations Human Rights Office of the High Commissioner, *Committee on Economic, Social and Cultural Rights* [2017] <<http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>> states:

The Committee was established under ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the United Nations Economic and Social Council (ECOSOC) in Part IV of the Covenant.

<sup>11</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 19: The right to social security (art. 9)* UN E/C.12/GC/19, 39<sup>th</sup> sess, (5–23 November 2007).



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- The *Convention on the Elimination of All Forms of Racial Discrimination*<sup>12</sup>: Article 5;
- The *Convention on the Elimination of All Forms of Discrimination Against Women*<sup>13</sup>: Article 11;
- The *Convention on the Rights of the Child*<sup>14</sup>: Article 26;
- The *Convention on the Rights of Persons with Disability*<sup>15</sup>: Article 28.

As with all internationally recognised human rights, the right to social security is considered indivisible from all other fundamental human rights. This means all rights identified as fundamental human rights need to be promoted, protected and fulfilled if they are all to be meaningful. For example, for the right to social security to be fully enabled, the right to equality before the law<sup>16</sup> must also be fully protected, as must the right to privacy.<sup>17</sup>

The current system being used by Centrelink is inconsistent with these rights accepted as obligations by the Commonwealth of Australia. In particular, the approach taken is inconsistent with the following requirements set out in the General Comment:

- Paragraph 9: 'the right not to be subject to arbitrary and unreasonable restrictions on existing social security coverage': the system does not require Centrelink to fully prove a debt is owed before restricting a person's social security income, including through withholding pensions or benefits to satisfy the debt. Case studies HB and JB demonstrate current recipients of Centrelink benefits are having their entitlement reduced arbitrarily.
- Paragraph 24: 'withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable, subject to due process, and provided for in national law': again, the system does not require Centrelink to fully prove a debt is owed before restricting a person's social security income, including through withholding pensions or benefits to satisfy the debt.
- Paragraph 26 and 78: 'Beneficiaries of social security schemes must be able to participate in the administration of the social security system': the design of the scheme was not developed with input from recipients or organisations that represent recipients and the Government has continued to exclude ACOSS from any discussions about the scheme.
- Paragraph 26: 'The system should ... ensure the right of individuals and organizations to seek, receive and impart information on all social security entitlements in a clear and transparent

<sup>12</sup> *International Convention on the Elimination of all Forms of Racial Discrimination*, opened for signature 7 March 1966, 660 UNTS 195, Australian Treaty Series 1975 No 40 (entered into force 4 January 1969, entered into force for Australia 30 October 1975, except Article 14, which entered into force for Australia on 28 January 1993).

<sup>13</sup> *Convention on the Elimination of all Forms of Discrimination against Women*, opened for signature 18 December 1979, Australian Treaty Series 1983 No 9 (entered into force 3 September 1981, entered into force for Australia 27 August 1983).

<sup>14</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3, Australian Treaty Series 1991 No 4 (entered into force 2 September 1990, entered into force for Australia 16 January 1991).

<sup>15</sup> *Convention on the Rights of Persons with Disability*, opened for signature 30 March 2007, 2515 UNTS 3, Australian Treaty Series 2008 No 12 (entered into force 3 May 2008, entered into force for Australia 16 August 2008).

<sup>16</sup> *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, GA Res 2200A (XXI), 999 UNTS 171, Australian Treaty Series 1980 No 23, UN Doc A/6316 (1966) (entered into force 23 March 1976, entered into force for Australia 13 November 1980, except Article 41 which entered into force on 28 January 1993) Article 26.

<sup>17</sup> *International Covenant on Civil and Political Rights*, Article 17





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manner': the scheme appears to have resulted in significant levels of misinformation and conflicting information being provided to those alleged to have a debt to Centrelink. Case studies EA, FA, GA, KA and LA, for example, demonstrate the absence of clear and transparent information provision.<sup>18</sup>

## Right of government to recover debts proven to be owed

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There can be no question that the government, as with any creditor, has the right to recover a debt that has been proven.

The government does not, however, have any special priority as a creditor, indeed, in relation to Centrelink debts, the government would be an unsecured creditor and debts owed, for example, under a mortgage would have priority.

It is relevant to note that other creditors are generally not able to recover debts from Centrelink pensions or benefits, yet, it appears Centrelink is permitted to do this (or at least is doing this). This leaves people who rely on social security payments with less than the statutory payment amount, creating a poverty trap that affects the most financially disadvantaged members of the community.

## Responsibility of government to act as a model litigant

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Governments are required to act in a manner that is consistent with the model litigant rules. At the Commonwealth level, these have been enacted through the *Legal Services Directions 2005* (Cth), made under section 55ZF of the *Judiciary Act 1903* (Cth). Appendix B to the Legal Services Directions set out the 'Commonwealth's obligation to act as a model litigant'. This relevantly states<sup>19</sup>:

### **Nature of the obligation**

- 2 The obligation to act as a model litigant requires that the Commonwealth and Commonwealth agencies act honestly and fairly in handling claims and litigation brought by or against the Commonwealth or a Commonwealth agency by:

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<sup>18</sup> See also, case studies SA, TA, VA, YA, HB, LB, P & QB, SB, UB, YB and ZB in Appendix 2: Case examples.

<sup>19</sup> *Legal Services Directions 2005* (Cth) Appendix B (emphasis added).





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- (a) dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation
- ...
- (c) acting consistently in the handling of claims and litigation
- ...
- (e) where it is not possible to avoid litigation, keeping the costs of litigation to a minimum, including by:
  - (i) not requiring the other party to prove a matter which the Commonwealth or the agency knows to be true
- ...
- (f) not taking advantage of a claimant who lacks the resources to litigate a legitimate claim
- ...
- (i) apologising where the Commonwealth or the agency is aware that it or its lawyers have acted wrongfully or improperly.
- ...

**Note 2:** In essence, being a model litigant requires that the Commonwealth and Commonwealth agencies, as parties to litigation, act with complete propriety, fairly and in accordance with the highest professional standards. The expectation that the Commonwealth and Commonwealth agencies will act as a model litigant has been recognised by the Courts. See, for example, *Melbourne Steamship Limited v Moorhead* (1912) 15 CLR 133 at 342; *Kenny v State of South Australia* (1987) 46 SASR 268 at 273; *Yong Jun Qin v The Minister for Immigration and Ethnic Affairs* (1997) 75 FCR 155.

**Note 3:** The obligation to act as a model litigant may require more than merely acting honestly and in accordance with the law and court rules. It also goes beyond the requirement for lawyers to act in accordance with their ethical obligations.

**Note 4:** The obligation does not prevent the Commonwealth and Commonwealth agencies from acting firmly and properly to protect their interests. It does not therefore preclude all legitimate steps being taken to pursue claims by the Commonwealth and Commonwealth agencies and testing or defending claims against them. ...

Many of the examples notified to TasCOSS (see

Appendix 2: Case examples) indicate that Centrelink may not have acted in a way that is consistent with these principles. In particular:

- Clause 2(a): 'not causing unnecessary delay in the handling of claims': many of the case examples indicate people have had significant difficulty getting in contact with Centrelink and



delays in obtaining information from Centrelink and in the process. See, for example, Case examples FA, GA and LA.

- Clause 2(c): 'acting consistently in the handling of claims': many of the case examples indicate people have received significantly conflicting information from different Centrelink staff members. See, for example, Case examples EA, FA, GA, KA and LA.
- Clause 2(e)(i): 'not requiring the other party to prove a matter which the ... agency knows to be true': many of the case examples indicate people have been required to re-provide information already provided to Centrelink. See, for example, Case examples KA and LA.
- Clause 2(f): 'not taking advantage of a claimant who lacks the resources to litigate a legitimate claim': many of the case examples indicate people who are particularly vulnerable and unable to respond effectively to the claim by the Commonwealth. See, for example, Case examples CA, FA, GA, HA and MA. Some also have indicated that their situation is such that they do not have the emotional or financial capacity to respond to the Commonwealth's claim. See, for examples, Case examples JA, WA and FB. The use of debt collectors, who appear, from the case examples, to have engaged in conduct that was arguably harassment and was clearly distressing, exacerbates this situation.

It is likely that many of those who have received notice of an alleged debt have given in to the process and simply agreed to pay it, rather than assert their legal rights. This, in part, appears likely to be due to the significant imbalance in power between the Commonwealth and individuals. By using this imbalance to its advantage in obtaining payments, the Commonwealth has acted inconsistent with the principles of model litigant conduct.

The case examples also indicate Centrelink has required people to repay an unproven and challenged debt even while there were Centrelink delays and review processes were underway. This appears inconsistent with the principles underpinning the Model Litigant rules.

## Creating a welfare trap

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Another aspect of the scheme that is of particular concern is its potential impact on current and future social security recipients.

One concerning aspect of the scheme is that Centrelink's data matching does not take account of the different time periods within which a person was (a) earning income; and (b) receiving pension or benefit payments. This is likely already to be discouraging people from seeking temporary work while in receipt of government income support. In the past, people have been able to do this and declare that income (both to Centrelink and the ATO) and move on and off benefits and pensions when work allows. The risk of being required, many years after the fact, to prove to dates on which particular income was earned may well discourage recipients from seeking work. This both has the short-term impact of meaning the recipients continues to receive a full pension or benefits and the long-term impact of



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recipients not gaining work experience and potentially moving into permanent or consistent employment.

## Unconscionable conduct

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Unconscionable conduct is generally understood to mean conduct which is so harsh that it goes against good conscience.

...

Unconscionable conduct does not have a precise legal definition as it is a concept that has been developed on a case-by-case basis by courts over time. Conduct may be unconscionable if it is particularly harsh or oppressive. To be considered unconscionable, conduct it must be more than simply unfair—it must be against conscience as judged against the norms of society. Business behaviour may be deemed unconscionable if it is particularly harsh or oppressive, and is beyond hard commercial bargaining.

For example, Australian courts have found transactions or dealings to be 'unconscionable' when they are deliberate, involve serious misconduct or involve conduct which is clearly unfair and unreasonable.<sup>20</sup>

The ACCC identifies that the Australian Consumer Law prohibits businesses from engaging in unconscionable conduct.<sup>21</sup> It appears, however, that this prohibition does not apply to the conduct of the Federal Government. The ACCC provides the following information about unconscionable conduct under that law:

### Determining whether conduct is unconscionable

- There are a number of factors a court will consider when assessing whether conduct in relation to the selling or supplying of goods and services to a customer, or to the supplying or acquiring of goods or services to or from a business, is unconscionable.
- These include:
  - the relative bargaining strength of the parties
  - whether any conditions were imposed on the weaker party that were not reasonably necessary to protect the legitimate interests of the stronger party
  - whether the weaker party could understand the documentation used
  - the use of undue influence, pressure or unfair tactics by the stronger party
  - the requirements of applicable industry codes
  - the willingness of the stronger party to negotiate
  - the extent to which the parties acted in good faith.

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<sup>20</sup> Australian Competition and Consumer Commission, *Unconscionable conduct*  
<<https://www.accc.gov.au/business/anti-competitive-behaviour/unconscionable-conduct>>.

<sup>21</sup> Australian Competition and Consumer Commission, *Unconscionable conduct*  
<<https://www.accc.gov.au/business/anti-competitive-behaviour/unconscionable-conduct>>.



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This is not an exhaustive list and it should be noted that the court may also consider any other factor it thinks relevant.

TasCOSS is not suggesting that the Federal Government's conduct is unconscionable conduct as defined in statute law, but is of the view that all of the factors identified above apply to the situation of people who are in receipt of or who have at some time in the last five or more years received a benefit or pension from Centrelink. The Committee is urged to consider how these factors might apply to the process the Federal Government has adopted to recover unproven Centrelink debts.

The use of private debt collectors and the alleged conduct of some of those debt collectors may fall foul of statutory unconscionable conduct prohibitions, particularly where a person has been given the option to enter a debt repayment agreement or told they must do this without being told of any impact of such an agreement on the alleged debt or their right to seek review of the debt.

TasCOSS urges the Committee to seek advice about the application of common law, the law of equity and statutory prohibitions on unconscionable conduct on the Government and any agents of the Government, such as debt collectors.





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## Appendix 1: Extracts from the Legal Services Directions 2005 (Cth)

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### Appendix B—The Commonwealth’s obligation to act as a model litigant

#### The obligation

- 1 Consistently with the Attorney-General’s responsibility for the maintenance of proper standards in litigation, the Commonwealth and Commonwealth agencies are to behave as model litigants in the conduct of litigation.

#### Nature of the obligation

- 2 The obligation to act as a model litigant requires that the Commonwealth and Commonwealth agencies act honestly and fairly in handling claims and litigation brought by or against the Commonwealth or a Commonwealth agency by:
  - (a) dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation
  - (aa) making an early assessment of:
    - (i) the Commonwealth’s prospects of success in legal proceedings that may be brought against the Commonwealth; and
    - (ii) the Commonwealth’s potential liability in claims against the Commonwealth
  - (b) paying legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be paid
  - (c) acting consistently in the handling of claims and litigation
  - (d) endeavouring to avoid, prevent and limit the scope of legal proceedings wherever possible, including by giving consideration in all cases to alternative dispute resolution before initiating legal proceedings and by participating in alternative dispute resolution processes where appropriate
  - (e) where it is not possible to avoid litigation, keeping the costs of litigation to a minimum, including by:



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- (i) not requiring the other party to prove a matter which the Commonwealth or the agency knows to be true
  - (ii) not contesting liability if the Commonwealth or the agency knows that the dispute is really about quantum
  - (iii) monitoring the progress of the litigation and using methods that it considers appropriate to resolve the litigation, including settlement offers, payments into court or alternative dispute resolution, and
  - (iv) ensuring that arrangements are made so that a person participating in any settlement negotiations on behalf of the Commonwealth or a Commonwealth agency can enter into a settlement of the claim or legal proceedings in the course of the negotiations
- 
- (f) not taking advantage of a claimant who lacks the resources to litigate a legitimate claim
  - (g) not relying on technical defences unless the Commonwealth's or the agency's interests would be prejudiced by the failure to comply with a particular requirement
  - (h) not undertaking and pursuing appeals unless the Commonwealth or the agency believes that it has reasonable prospects for success or the appeal is otherwise justified in the public interest, and
  - (i) apologising where the Commonwealth or the agency is aware that it or its lawyers have acted wrongfully or improperly.

**Note 1:** The obligation applies to litigation (including before courts, tribunals, inquiries, and in arbitration and other alternative dispute resolution processes) involving Commonwealth Departments and other Commonwealth agencies, as well as Ministers and officers where the Commonwealth provides a full indemnity in respect of an action for damages brought against them personally. Ensuring compliance with the obligation is primarily the responsibility of the Commonwealth agency which has responsibility for the litigation. In addition, lawyers engaged in such litigation, whether AGS, in-house or private, will need to act in accordance with the obligation and to assist their client agency to do so.

**Note 2:** In essence, being a model litigant requires that the Commonwealth and Commonwealth agencies, as parties to litigation, act with complete propriety, fairly and in accordance with the highest professional standards. The expectation that the Commonwealth and Commonwealth agencies will act as a model litigant has been recognised by the Courts. See, for example, *Melbourne Steamship Limited v Moorhead* (1912) 15 CLR 133 at 342;



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*Kenny v State of South Australia* (1987) 46 SASR 268 at 273; *Yong Jun Qin v The Minister for Immigration and Ethnic Affairs* (1997) 75 FCR 155.

- Note 3:** The obligation to act as a model litigant may require more than merely acting honestly and in accordance with the law and court rules. It also goes beyond the requirement for lawyers to act in accordance with their ethical obligations.
- Note 4:** The obligation does not prevent the Commonwealth and Commonwealth agencies from acting firmly and properly to protect their interests. It does not therefore preclude all legitimate steps being taken to pursue claims by the Commonwealth and Commonwealth agencies and testing or defending claims against them. It does not preclude pursuing litigation in order to clarify a significant point of law even if the other party wishes to settle the dispute. The commencement of an appeal may be justified in the public interest where it is necessary to avoid prejudice to the interests of the Commonwealth or a Commonwealth agency pending the receipt or proper consideration of legal advice, provided that a decision whether to continue the appeal is made as soon as practicable. In certain circumstances, it will be appropriate for the Commonwealth to pay costs (for example, for a test case in the public interest.)
- Note 5:** The obligation does not prevent the Commonwealth from enforcing costs orders or seeking to recover its costs.

#### **Merits review proceedings**

- 3** The obligation to act as a model litigant extends to Commonwealth agencies involved in merits review proceedings.
- 4** A Commonwealth agency should use its best endeavours to assist the tribunal to make its decision.

**Note:** The term 'litigation' is defined in paragraph 15 of these Directions in terms that encompass merits review before tribunals. There are particular obligations in relation to assisting a tribunal engaged in merits review to arrive at a decision. Commonwealth agencies should pay close attention to the legislation under which a tribunal is established, and any practice directions issued by the tribunal. In the case of the Administrative Appeals Tribunal see in particular subsection 33(1AA) of the Administrative Appeals Tribunal Act 1975 and the explanatory memorandum to the Administrative Appeals Tribunal Amendment Bill 2005.



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### **Alternative dispute resolution**

- 5.1 The Commonwealth or a Commonwealth agency is only to start court proceedings if it has considered other methods of dispute resolution (eg alternative dispute resolution or settlement negotiations).
- 5.2 When participating in alternative dispute resolution, the Commonwealth and Commonwealth agencies are to ensure that their representatives:
- (a) participate fully and effectively, and
  - (b) subject to paragraph 2 (e) (iv), have authority to settle the matter so as to facilitate appropriate and timely resolution of a dispute.

### **Appendix C—Handling monetary claims**

- 1 This policy concerns the handling of monetary claims against the Commonwealth or a non-corporate Commonwealth entity, and monetary claims by the Commonwealth or a non-corporate Commonwealth entity, other than claims that need to be determined under a legislative mechanism (for example, a Comcare benefit) or under a mechanism provided by contract (for example, an arbitration of a disputed contractual right).

**Note:** An action to enforce a penalty imposed under Commonwealth legislation is not considered to be a monetary claim for the purposes of Appendix C.

### **Criteria for settlement**

- 2 Monetary claims covered by this policy are to be settled in accordance with legal principle and practice, whatever the amount of the claim or proposed settlement. A settlement on the basis of legal principle and practice requires the existence of at least a meaningful prospect of liability being established. In particular, settlement is not to be effected merely because of the cost of defending what is clearly a spurious claim. If there is a meaningful prospect of liability, the factors to be taken into account in assessing a fair settlement amount include:
- (a) the prospects of the claim succeeding in court
  - (b) the costs of continuing to defend or pursue the claim, and
  - (c) any prejudice to Government in continuing to defend or pursue the claim (eg a risk of disclosing confidential government information).
- 3 Settlements for amounts not exceeding \$25,000 may be approved by the accountable authority of the non-corporate Commonwealth entity, or the accountable authority's delegate, on the basis of a common sense view that the settlement is in accordance with legal principle and practice. However, if a claim, together with any related claim, cannot be settled for \$25,000 or less, it is to be treated as a major claim.





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- 4 Major claims may only be settled if:
- (a) written advice is received from AGS or a legal adviser external to the entity that the settlement is in accordance with legal principle and practice, and
  - (b) the accountable authority (or delegate) agrees with the settlement.
- 5 If a non-corporate Commonwealth entity considers that a claim raises exceptional circumstances which justify a departure from the normal mechanism for settling a claim, it is to refer the matter to OLSC. The Attorney-General may permit a departure from the normal policy, but may impose different or additional conditions as the basis for doing so.

#### Release

- 6 It should ordinarily be a condition of any settlement involving the payment of money to a claimant that the claimant sign a suitable release and, where appropriate, an indemnity against claims by third parties that arise from the event giving rise to the settlement.
- 6A Paragraph 6 does not apply if the claimant is the Commonwealth.



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## Appendix 2: Case examples

AA has an alleged debt of \$6,000 from 2013.

A claims he was paid a higher amount of Youth Allowance because he was travelling for work placement as he was studying as a physio. This has not come up on his file and he has no way of proving it.

BA has an unknown debt amount from 2010–11.

B has been informed that he needs to provide payslips from this period. He doesn't have them and he worked for a company that has gone into liquidation and hence cannot retrieve payslips. He has been told that all companies must keep pay slips somewhere and he needs to find them.

CA has an alleged debt of \$5,000 from 2010–11.

C stopped receiving payments because she started to draw down from her superannuation. It was Centrelink that suggested she does this and helped her fill out the forms and initiate the process.

C has since received a letter from a debt agency demanding the \$5,000 up front even though the appeal process is still occurring.

C suffers from anxiety and the whole thing has made her very sick.

DA has an alleged debt of \$8,000

Originally D received a notice from a debt collection agency for \$1,000 and when she contacted Centrelink and appealed the amount she received notification that the debt had increased to \$8,000

D is taking the matter to AAT.

EA has an alleged debt of \$6,500 from 2013–14.

E was receiving a sickness benefit for only 4–5 months due to workplace injury.

E is very frustrated with the process and has called the compliance line and has received a different response each time in terms of the information required and the appeals process.

FA got a letter stating he owed a debt from June 2013 until January 2014.

F didn't start receiving Centrelink payments until February 2014.

F called the 1800 number and was told not to bother filling out the required form on MyGov. He didn't trust this advice and so called again. He was then told that if he didn't fill out the form as required the debt would automatically be confirmed. He has been into Centrelink three times to do MyGov and each time the site has been down.

F receives a Disability Support Pension due to poor health and trips into town are difficult.

GA has an alleged debt of \$10,000.

Centrelink staff said they would look into it and then took weeks to get back to G. He called and found no one had tried to follow it up at all.



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G tried to commit suicide 2 weeks before telling the organisation about this. The organisation contacted Centrelink, which then called G and told him he is owed \$700.

HA has an alleged \$1,000 debt relating to Youth Allowance.

H suffers from severe anxiety.

H was told when declaring his income that he had \$1,000 debt to Centrelink. This was the first time he was notified of this. He has been asked to provide all income statements for 2011. He worked three jobs during this time.

This has had a serious impact on his mental health and he is speaking about suicide. H's mum contacted a staff member at the organisation and said that after their meeting he had an anxiety attack, vomited on the street three times and had to be carried home. The organisation HA contacted has since managed to get his debt cleared.

IA receives NewStart.

I has been receiving NewStart for 1 year and was being investigated for a debt from 2011–12. I has spent many hours arguing with Centrelink and it is now been whittled down to \$1,000. The confusion was around a termination payment that he could not explain through MyGov because it wasn't a given option.

The day before he contacted an organisation for help, I spent 8 hours on the phone to Centrelink getting it sorted.

I said it has been an incredibly stressful process.

JA was contacted 2 weeks before Christmas to advise she owed \$2,500 from an overpayment 5 years ago.

J spent hours on the phone at work trying to rectify the situation.

J always declared accurately each fortnight and always put her tax return in on time every time. The onus is now on her to go through these payslips, but just getting the payslips is proving very difficult.

After discussion with her family J decided that the angst, her time and the negative impact on her wellbeing is worth more than \$2,500.

KA has been advised by Centrelink that she owes nearly \$12,000 going back as far as 2007.

K has rung Centrelink and managed to speak to a staff member on a couple of occasions. She has been given conflicting advice but overwhelmingly it appears that there is a discrepancy between what she owes and the amount of the debt which was due to be paid by 30 December.

K is required to provide pay slips from four different employers (one of which no longer exists) over a 7-year period. K spoke to Centrelink and a staff member told her he could 'see where the mistake had been made' and he thought Centrelink had incorrectly recorded that she worked for two employers for a full year but only reported income from one, when in fact she had worked for one employer at a time during the year, and reported her income.

No one at Centrelink has been able to advise what the correct amount is.



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K has had money deducted from her pay leaving her with just \$64 for the fortnight.

LA received an incorrect debt notice for \$5, [REDACTED] just before Christmas.

L tried to upload the documentation that proved the notice was incorrect, but MyGov was repeatedly down. Because of this his local Centrelink branch eventually accepted the documents over the counter.

The week L contacted this organisation, he received another letter from Centrelink saying he still owed the money and that the debt could be referred to an external collection agency. When L called Centrelink, he was initially told he had to submit all the documents again online, before staff agreed that he had in fact already submitted the information. They explained his case hadn't been finalised because of the Christmas break and that, because of this, he would need to set up debt recovery payments (despite the fact he had met Centrelink's deadlines).

MA was told she owed \$5,000 for a year in which she had taken 8 months off work due to mental illness.

M received no sick or other pay from her employer during that year as she had exhausted it, hence needing Centrelink assistance.

M said the experience brought back the stress of that difficult time in her life, and it took hours of her time to resolve the matter with Centrelink.

NA was never issued with the initial letter and was shocked to receive a phone call and debt notice for a years' worth of student payments totalling just under \$17,000.

N was told that even if he can produce the documentation absolving him of the alleged missed payments, Centrelink would then claim that he had not completed enough of the study before he informed Centrelink he was no longer studying.

OA has a debt from 2010–11.

As soon as O started working, he stopped his Newstart payments that year.

O explained the dates but Centrelink wanted the payslips for the year. The company no longer exists. He rang Centrelink and told them about this but they said he had to get them.

O spoke of how worried this is making him and he was offered no assistance. He is incredibly worried and not sleeping but he can't do anything and is waiting for the bill.

PA has an alleged debt of around \$7,000.

P is highly stressed about it as he is required to update payslips for each week since 2013. The time he had to do this has expired as he had been given wrong information when he first enquired.

P has made a complaint to Centrelink but not heard back yet.

QA has an alleged debt of \$2,500 from 2 years ago.

Q was easily able to track down and get copies of pay statements yet it has taken Centrelink over 2 months to resolve the issue and determine that she does not have a debt.





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In the meantime, Q had to start making payments on the debt, which has still not been resolved.

RA currently receives NewStart and has been accused of not reporting her income correctly for 2014–15.

R works on a temporary basis through recruitment agencies. That year, R worked for several months at the beginning and again at end of the financial year and didn't claim during that period. Even though the time periods didn't match up she was still required to give weekly payslips for the year.

Because the debt claim has not yet been finalised, R is having trouble reporting her current income online and she has to keep calling Centrelink to get it fixed.

The whole process has been very harrowing.

R recently sold something via Gumtree to make ends meet and has kept all supermarket receipts since this began as she is so stressed that all her finances will be checked.

SA's son recently received a debt notice from 2012 for \$1,200.

S's son has suffered severe mental health problems for over a decade. He was and still is in a psychiatric hospital suffering from major depression, anxiety and post-traumatic stress disorder. He has been suicidal a number of times this year and in previous years.

In October 2016, Centrelink sent a notice claiming he owed them about \$1,200. An invoice was sent dated 15 November. The 'invoice' for \$1,200 has no details of how this amount was calculated or the basis of Centrelink's claim. The debt repayment was due on 13 December 2016. The invoice has a phone number to ring if you want details. S has tried to get through on this number three times with no success.

A letter dated 17 November was then received stating that the 'employment income review has been completed' and the amount owing is now \$1,200. Again, there was no explanation as to the nature of the debt, how it was calculated or when the variations purportedly occurred. It says that a separate notice will be sent about how to pay the debt and claims it is a 'decision under social security law'. Again, the letter is unsigned, no invoice has been sent and there is even less detail to justify Centrelink's calculations.

TA has an alleged debt of \$3,000 from 2012.

Centrelink claims T declared the wrong income for 2 weeks while he started a new job. However, it turns out that Centrelink averaged his income over the year from his group certificate, and falsely calculated the amount he earned over that 2-week period.

The business he worked with has since been sold, and T has no way of getting in contact with the business owner to retrieve his payslips. He was told by a Centrelink staff member to get a copy of his bank statement to prove what he earned in that fortnight. He got the statement, which proved he declared his income correctly (original declaration was \$4,000, and bank statement showed \$3,000 which means he was taxed \$1,000). When T uploaded this to show the person dealing with his appeal, he was told this was not good enough as a bank statement only shows net income, not gross.



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UA has an alleged debt of \$3,000 from 2010.

U had a heart attack and required surgery and he was off on sickness benefits until early March 2011.

The signed declarations of U and his wife's income provided to Centrelink were meticulous and all the time off was covered by doctor's certificates.

VA is the nominee for her son who has been told he has an alleged debt of \$1,200 for the 2011–12.

This matter has not yet been resolved after V has spent approximately 6 hours on the phone, 5 hours at the local Centrelink office and 20+ hours working out the information for her son who now works up to 60 hours a week and doesn't have the time himself to work this out.

WA is a university student who was doing exams when she got a letter from Centrelink alleging a debt.

W was too stressed due to the exams so she confirmed the debt when it arrived as she didn't know what to do.

XA was told by Centrelink he owed \$6,000.

Many Centrelink letters to him had been sent to the wrong address.

Apparently, Centrelink mismatched his sickness allowance from 2011 with employment wages before and after this time.

X appealed the decision and had his case reviewed.

When the decision came back, X was told his debt increased to \$10,000, which was more than double the benefits he had ever received during this time. Y then requested another review.

This review decided that X in fact did not owe any money and was entitled to a substantial refund. X knew he was not entitled to a refund that large and repealed the decision again, not wanting to be given money he was not entitled to. X then had a fourth review, which concluded the first three were wrong, and that he was in fact paid the right amount in 2010–11 and 2011–12 financial years.

YA got a letter on 16 December 2016 from Probe Collections Debt Recovery for the sum of \$6,000.

Y has not had any contact from Centrelink, no phone calls, no notice letters, etc, regarding this sum that is allegedly owed.

Y has not had any assistance from Centrelink for at least 3 years, to which at the time he was reporting his earnings correctly.

No justification was given by Centrelink as to how this debt is owed.

Y is already suffering from depression over the death of a close family member and this letter is pushing him over the edge.

ZA has an alleged debt from 2010.



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At the time, Z was studying full time to be a pilot until mid-December and was not allowed to do any external work. Z was there from March 2010 till December 2010, so there is no way this is correct. Centrelink even cut the payments short back in 2010 by 1 month as his course was extended due to weather and scheduling, but Centrelink required too much information to extend it.

Z is unable to conduct any action online through the Centrelink website as it constantly says the service is unavailable.

AB allegedly owes a debt from 2011.

AB had lost her job so, for the last 2 months of the financial year, she was receiving Centrelink payments. The system averaged out income over the course of the entire year, which made it seem she has earned income whilst on Centrelink, which she did not.

BB owed an alleged debt of \$1, [REDACTED]

BB believed this was incorrect and spoke to Centrelink staff by phone and they agreed it was an incorrect debt and that an actual person (rather than the automated computer program) would have to do the review. BB was told that, in the meantime, she had to pay the debt and it would be later credited.

BB called debt recovery and was told 'you have the money in your bank account so you can pay' even though she explained that Centrelink staff agreed the debt was false.

BB has since received a phone call from Centrelink saying the debt has been reviewed and it will be reversed, that she doesn't owe any money and that they will pay her back.

It took many weeks to get to that point and she is still waiting for the money to be paid into her account.

CB got notice of a Centrelink debt of \$3, [REDACTED] from 2010–11.

CB has answered Centrelink's review question correctly confirming her total earnings for that year were \$13, [REDACTED]. She asked for a re-assessment as, after double checking fortnightly earnings reported to Centrelink, she was within \$15.

Re-assessment came back with the same amount of debt.

CB uploaded confirmation of her fortnightly earnings to the Centrelink system and waited for a manual review. A compliance operator confirmed her total earnings for 2010–11 year were \$13, [REDACTED] of which she allegedly only reported \$13, [REDACTED] (she disputes this). Nevertheless, under \$500 difference doesn't account for a \$3, [REDACTED] debt.

DB has been harassed since August last year about an outstanding debt to Centrelink.

DB asked for it to be reviewed, and it doubled.

DB then asked for it to go to an AAT hearing. The Tribunal said the whole thing needed re-evaluation and yet only a tiny portion of the debt was.

DB hardly has any time to respond and now she owes over \$8,000 after already paying back \$1,000.





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DB receives a Disability Support Pension for Post-Traumatic Stress Disorder and struggles with pressure like this.

EB allegedly owes \$3,500 from 2011–12 and 2012–13.

Due to the online system failing, EB cannot upload her 110 payslips from these time periods to prove her innocence.

Centrelink has told her its system needs to be fixed so she can upload these supporting documents. However, this feature may not be available until after the due date for repayment. Centrelink advised her she will need to pay the amount and, once the upload is completed, it will take 14 days for the assessment process which is too late.

FB was repeatedly receiving a call from an unknown number earlier this year. She thought it was a scammer, but it turned out to be a debt collection agency.

FB was stunned to learn she had several debts totalling around \$9,500 from 5 years ago.

Apparently, several letters were sent to her previous address, even though her current address records were updated and correct with Centrelink.

FB tried to get all the payslips and information to fight this. She works full time and, because of this, it is too hard to be available to speak to someone and sort it out. FB has let the review of the debt lapse.

GB allegedly owes a debt from 2011.

The company GB worked for no longer exists and has removed its ABN so he cannot get a letter from them stating this.

The debt seems to have damaged GB's credit rating as he has no other debt and was recently told he could not get a loan to buy a business to help him get off the NewStart payment.

HB received a debt notice from Centrelink saying she had worked for several employers while receiving an Age Pension, and not declared the income.

The only way to deal with this was online, with only 'yes'/'no' answers. She went through this process.

HB then got a letter which, with no details, informed her she owed Centrelink over \$69,000.

While she realised this was a mistake, it still distressed her greatly.

HB took the letter to her local office, where the staff were helpful and immediately lodged an appeal.

Following this, she received a phone call insisting that she needed to locate all her pay slips from 2013. She did this, and asked for a detailed statement from Centrelink to avoid future errors.

HB then got a letter telling her she had been incorrectly billed and now owed \$3,000 with no explanation.

She went into the office again and was told she needed to pay the debt in full by the due date (19 December) otherwise Centrelink would reduce her fortnightly payment by 15% of the debt until it was repaid. She has since received a 'detailed' statement that still doesn't explain the debt.





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IB was told she owed a \$600 debt.

IB suffers from anxiety and being told this caused her a great deal of stress; she was not able to leave the bed for two days straight.

IB was asked to get payslips for the year. This was very difficult as IB had worked in four different places.

Once IB submitted the payslips, Centrelink reviewed her debt. During the review, IB received two text messages from a debt collection agency and a notification letter stating she owed a debt and needed to pay it immediately.

In the end, Centrelink's review found that she didn't owe anything.

JB has an alleged debt of \$8,000 from 2011, 2012, and 2013.

JB is currently having the issue reviewed, but Centrelink has already begun taking money from his NewStart allowance to reclaim the 'debt'.

It is causing his great distress on top of his being unemployed and suffering major depression.

KB has been repeatedly called by Dun & Bradstreet (a debt collection agency), and received a threatening voicemail saying she owes a debt from years ago, and that it has been escalated due to her non-response to previous mail.

KB does not have access to Centrelink or her 'inbox' via MyGov, and the letter was sent to an old address even though her current address has been correct for some years with the ATO.

KB was ordered to pay immediately, however the debt collection agency is still after her despite KB being able to prove her innocence.

KB suffers from depression and has been unable to eat at times due to the stress that this is causing.

LB got letters from Centrelink saying he owed a debt of over \$14,000 over a 10-year period.

LB disputed this as he has made no claims during the period indicated on the letters. He was ignored by Centrelink and the debt collection agency letters started coming, threatening court action.

LB made an application through FOI to find the claim forms he had 'submitted'. In July he received hundreds of printouts of screenshots from his files, but there was nothing that gave him any information.

Shortly after this, LB checked his MyGov account and the debt had disappeared. He has not received any correspondence or explanation from Centrelink or debt collection agencies since.

MB claims that she and many others were pursued by Dunn & Bradstreet over an assumed Centrelink debt from several years ago (2012 in her case).

This involved daily mobile cold calling from multiple automated numbers linked to Dunn & Bradstreet over several months.

MB was asked to confirm her personal details in order to be told what the debt was. Dunn & Bradstreet refused to send her the details in writing. She ignored them and has since had



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hundreds of dollars automatically debited from her 2015–16 tax return with no explanation other than it's a Centrelink debt.

NB got a letter asking her to verify her income in the 2014 financial year.

NB called Centrelink to ask why and, after 45 minutes on hold, spoke to a Centrelink staff member who told her that the ATO had provided information to Centrelink that showed a \$7,000 debt. This is apparently due to a discrepancy between what she had declared in that financial year and what she had earned. Even though NB explained the discrepancy to Centrelink and the staff member agreed she probably didn't owe the money (she had signed up to Youth Allowance in December), she was told she had to first pay the debt, then request an appeal. In the meantime, NB had to collate all her payslips from that year, scan them and send them to Centrelink.

OB was receiving Austudy several years ago.

OB had been studying a course through TAFE. The course was poorly designed, kept changing, and eventually got cancelled before he was able to complete it.

OB informed Centrelink at the time and stopped getting payments.

Recently, OB got a letter from a debt collector stating he owed \$13,000 as he was 'claiming Austudy whilst not studying full time'.

When OB tried to dispute this, he was told it was too late for disputes, despite the fact he was not given any warning in writing. At a loss for what to do, he ended up paying the alleged \$13,000 debt.

P and QB have three young children.

P and QB recently received a debt notice for \$10,000 for alleged overpayment of parenting payment from 2014–15. P and QB were given 3 weeks to pay.

There was no explanation as to how this was calculated, and when P and QB called Centrelink they were told to go online and complete compliance.

P and QB requested a review as they believe it to be a mistake, but are still waiting for any communication from Centrelink, including confirmation that the review is being processed.

The whole thing is extremely stressful for the family and P and QB are yet to receive an explanation as to how the debt was raised.

RB got an SMS from Centrelink asking him to provide information online about his earnings going back to 2014. He was told that otherwise he would be issued with a debt.

RB has moved since 2014 and the letters went to his old address.

RB called Centrelink and talked to several people on the compliance team who didn't understand his case (he works as an actor and frequently receives lump sums in royalty payments and commission).

RB was told the only way to prove his innocence was to provide all the correct documentation from that year.



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RB then completed the online form, and requested a fast resolution over the phone to 'clear his name' before going on an overseas holiday. The compliance officer estimated he would be looking at a debt of \$3,000.

RB contacted his accountant (at considerable cost) to assist him providing the documentation and was told the case would be resolved within 14 days, allowing him to appeal the decision before going overseas.

Centrelink admitted to losing some of his documents in 2014 when he provided them.

Three weeks later, RB got a debt notice for \$4,000.

As RB is now overseas he has had to contact his accountant to conduct the appeal process on his behalf.

SB has an alleged debt of \$2,000 from 2011–14.

During this time, SB was a casual employee who always reported her income diligently every fortnight, and she was never informed anything was wrong with her payments.

SB is now on to her second appeal after 5 months, and has found countless inconsistencies and problems that she believes are due to their computer system and staff error.

SB says Centrelink is obviously averaging out her income for the financial year, which would provide inaccurate data as on a casual wage her income varied week by week.

TB was phoned by Centrelink in August 2016 and told that, due to her non-response to mailed letters, she would be receiving a debt.

On enquiry, TB found out that these letters had been sent to an address that she vacated in 2013. These letters were asking to confirm that the income she received for dates ranging from 2010–14 were correct.

Before TB had a chance to confirm the information she was issued a debt notice of over \$12,000 claiming she was ineligible for all Youth Allowance payments claimed in 2010 and 2013.

After phoning the helpline, TB was told that this was probably because she had worked full time in 2014 (when she wasn't claiming benefits) and that the income reported to the ATO for the 2013–14 tax year would have been averaged out over the year, heavily inflating her income for 2013 (this is the same as in 2010).

Despite this, Centrelink informed her that the onus was on her to prove otherwise.

Having worked casual jobs for 12 employers during that time, some of which no longer exist, it was near impossible for TB to track down payslips and she had to get help from the Fair Work Ombudsman in one case to access the records.

TB submitted all the supporting paperwork in early December and has been told the earliest she will hear would be February.

In the meantime, TB has been ordered to make fortnightly payments to the debt collectors (one person at Centrelink told her \$600, while another person told her \$100).

UB got a letter in October 2016 saying he owed \$7,000.

UB works casually as a bus operator and often has long period of no work (school holidays).





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UB says Centrelink has been a nightmare from the start, losing his payslips on multiple occasions. After multiple phone calls to Centrelink and sending payslips for the third time his debt was reduced to \$5, [REDACTED]

UB suspects the issue is that Centrelink has averaged out his income over 52 weeks, which would result in an incorrect debt. UB asked Centrelink five times to send him proof of his alleged overpayments and Centrelink still has not sent anything.

During this time, Dunn & Bradstreet has been calling him repeatedly demanding full payment of the 'debt'.

VB has been notified of an alleged \$3,000 debt by a debt collection agency.

VB's former employer went into liquidation in 2014. He was given only one days' notice and was forced to seek Centrelink payments for a few months.

This year when VB did his tax, the ATO sent incorrect information to Centrelink of his earnings, stating that he finished work in July 2014, when it was April 2014. The ATO wrongfully assumed VB was still working with his former employer when he was receiving a NewStart allowance.

VB was notified by the debt collection agency before he had the chance to prove his innocence.

VB has filed a complaint to the Commonwealth Ombudsman, and has all the documents to prove he doesn't owe the debt. He is still waiting for his case to be assessed.

WB was sent a \$25,000 bill.

Centrelink has confirmed it was an error but it cannot be resolved for weeks. WB has been told it cannot be resolved until after repayment is due to start.

WB is a single mother with two children who works part time.

XB got a letter from Centrelink saying he owes \$1 [REDACTED] from 2010–11.

For that financial year, XB got five payments from Centrelink totalling \$2 [REDACTED]. He received these five payments when he was out of work and not receiving any income. He declared everything that needed to be declared at the time.

XB says to receive \$2, [REDACTED] in total from Centrelink and have an alleged debt of \$2, [REDACTED] is absurd.

XB now has to provide payslips from the employer that no longer exists and is made to feel like a fraud with the onus of proving his innocence when Centrelink is the one that made the error.

YB is the partner of a man with an alleged Centrelink debt, and mental health issues. YB has taken on the payments for him because he was suffering so much from the stress.

YB has called Centrelink at least four times and has got different information each time, despite being hounded by the debt collection agency.

YB felt she was treated like scum by a woman in the debt recovery area and it is not even her debt.

ZB's husband receives a Disability Support Pension.

In February 2015, when updating her income, ZB was told she had not reported for 3 years and that she would have to pay back \$30,000.





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ZB says that she always updated the Family Tax Benefit online and usually would ring Centrelink as well. The debt caused her to have a mental breakdown.

Soon after, a Centrelink investigator contacted her and said it could be as much as \$17,000 to \$19,000. She did not hear from Centrelink for a year. It has since come to light that ZB's income for the Family Tax Benefit was all correct and they owe nothing relating to that payment, but they do allegedly owe \$5,000 to Centrelink for overpayments in relation to the Disability Support Pension.

AC got a letter In October 2016, stating she had a debt of over \$4,000.

From July to December 2014, AC was employed and paid a wage.

On 16 January 2015, AC was involved in a car accident. She was confined to a wheelchair. She received NewStart payments, backdated from the date of the accident. She complied with everything requested of her by Centrelink.

AC returned to work on 2 July 2015.

In early September 2015, AC received her last NewStart payment.

BC is the carer of a 77-year-old woman who is bedridden with rheumatoid arthritis.

The 77-year-old woman had got a letter on the day before Christmas Eve with an incorrect debt notice. This sent her into a panic. She stopped eating, and became extremely unwell. This prompted her doctor to arrange for her to be admitted into hospital.



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