



A0015471X

22 March 2017

Committee Secretary

Senate Community Affairs References Committee

By email: community.affairs.sen@aph.gov.au

Dear Committee Secretary

The design, scope, cost-benefit analysis, contracts awarded and implementation associated with the Better Management of the Social Welfare System initiative.

Thank you for the opportunity to make this submission.

Social Security Rights Victoria (SSRV) is a specialist community legal centre that assists disadvantaged people who have legal disputes with Centrelink. We have been running an advice line five mornings a week and, where there is merit, we provide ongoing case work and representation at the Administrative Appeals Tribunal. We deliver community legal education (CLE) and engage with law reform, including contributing to the National Social Security Rights Network (NSSRN).

SSRV supports the NSSRN submission to this inquiry, and wish to make some additional comments.

Our comments are informed by our experience of our clients who have approached us with Centrelink debts. In recent months, particularly January, we have assisted a number of clients with online compliance intervention (OCI) debts, more commonly known as 'robo debts'. We anticipate another significant spike in these debts in July – October 2017 when Centrelink begins to garnish the tax returns of those Centrelink beneficiaries who have received an income for this current financial year.

The problem

1. Centrelink has questioned recipients about differences between Australian Taxation Office records and Centrelink's own data, based on a recipient's reporting of income.
2. When a recipient of a benefit or pension has not been able to resolve this difference, a debt has been raised.
3. Rather than refer this client for individual investigation, Centrelink have used an algorithm to automatically raise a debt. This is problematic.
4. If Centrelink is going to raise a debt, then like in any cause of action, Centrelink must first have evidence that a debt exists.
5. This means Centrelink needs to provide specific evidence that there was misreporting.

6. The OCI debts are characterised by an assumption that Australian Taxation Office Records, as an annual record of income, indicate 26 weeks of fortnightly income from the annual tax return or the period specified in the payment summary.
7. Many of our clients have worked for short periods of time, and correctly notified Centrelink of their income. Because they correctly notified Centrelink of their change in circumstances, they lost their payment for the period they were working, or had their Centrelink payments reduced.
8. However, where their income was high, and exceeded the income test for their payment or exceeded it for the period they were reporting, Centrelink has raised debts assuming there was misreporting. This is the effect of the algorithm annualising their income.
9. This is an incorrect assumption as it does not take into account the variation of their income from fortnight to fortnight.
10. Since most of our clients were casual and / or part-time employees with the odd penalty rate payment “thrown in” for working weekends or after hours, this assumption that the income reported to the ATO by the employer is incorrect.
11. An additional issue which has come to our attention is the name by which an employer is identified to ATO, especially by small business. While a person can report under the ABN of the employer to Centrelink, very few actually know the employer’s ABN. This means that they report under the name they know the employer by. This could be a trading name, name of a subsidiary of the employer, or the trust or company name under which the employer is operating the business and paying the wage. If this name differs from the name under which the employer reports to ATO as their ABN name, then it is doubtful that the data match could have identified that they are one and the same employer.
12. Many of our clients have ceased working for their past employers, or have moved and no longer have payslips that indicate how their annual income was broken down in fortnights during a financial year. As a result of an assumption that they did not correctly report their income, many of our clients have had to search back through bank records to prove when and how much they were paid.
13. This effectively reverses the onus of proof that is on Centrelink to prove whether there was a debt owed to the Commonwealth. We consider this to be a mischief given that without specific evidence there is no cause of action.

The need for Centrelink debt reform

14. Debts arising from misreporting are amongst the most common form of Centrelink debt. Usually they arise not from any form of evasion; rather the recipient of a benefit is simply not sure how to report their income.

- a. As an example someone is paid per fortnight, but when they attempt to report their income to Centrelink, Centrelink insists on their own fortnightly period which often differs from the period in respect of which they were paid by their employer.
- b. This is confusing, and the recipient may be a few days or a week out, which over time leads to debts.
- c. For casual or shift workers this is even more problematic because their fortnightly pay might change each fortnight.

What we are seeking

15. SSRV is not opposed to data matching; however compliance requests need to take place fairly and after all relevant checks have been made by Centrelink. This is in accordance with Centrelink's onus to prove a debt.
16. We are seeking the following:
 - a. That all current debt recovery measures are suspended whilst the Secretary undertakes a program of review in which all debts are checked for their accuracy, particularly where casual or temporary income was involved.
 - b. When after re-calculation a decision is made that a debt is owed, then the recipient is notified by mail, email or other means, and informed that if they disagree with the debt, they can challenge it through the normal review process, and receive advice on where they can seek assistance to do so.
17. We submit that if Centrelink was able to accept the pay period on the recipient's payslip, then significant sums of money spent on debt compliance and appeals would be saved.
18. SSRV notes that Centrelink is operating in a tight or restricted fiscal environment, but we submit that to remedy what is already a significant problem; the Secretary may need to seek new funds from the Minister prior to savings measures taking effect and then saving funds in the longer term.
19. People often require assistance to deal with the complexity of the Social Security system. This includes understanding their rights and obligations. People need to be able to access Centrelink staff in a timely manner and also receive assistance with 'mygov' if needed.
20. Many Centrelink recipients require independent legal advice and assistance to work through Centrelink problems including debts. This requires them to access free and expert legal services. As the Committee may be aware, community legal centres such as SSRV are facing cuts to their federal funding as of 01 July 2017, which will limit the level of assistance they can provide. We seek the Committee's support to ensure that legal assistance services are available and adequately funded to meet the needs of Centrelink recipients.
21. Access to social security is an internationally recognised human right and the right to procedural fairness is a fundamental part of Australian law. Adequate funding of community

legal centres is essential for these rights to be meaningfully and practically available to low income Australians.

22. We welcome the opportunity to speak to this submission or provide further information, including case studies.

Yours faithfully

Graham Wells

Principal Solicitor and Clinical Supervisor

On behalf of Social Security Rights Victoria