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**RE: Design, Scope, cost-benefit analysis, contracts awarded and implementation associated with the Better Management of the Social Welfare System Initiative**

This submission from the Australian Privacy Foundation (The “APF”) responds to the Inquiry into the *Design, Scope, cost-benefit analysis, contracts awarded and implementation associated with the Better Management of the Social Welfare System Initiative*.

This submission will respond to points a, d, e, h, i and k of the terms of reference.

**General comments**

The APF has several serious concerns about the automatic data matching (robo-debt) used by Centrelink with the Australian Tax Office. There are intrinsic problems with robo-debt including:

1. It assumes that IT systems work accurately. In fact, IT systems often fail.
2. It assumes the data held is accurate in each database. Again, this assumption can often be inaccurate.
3. It assumes the data matching algorithms are accurate. The (at least) 20% failure rate in the debt notices shows that this assumption is flawed
4. The data sets created are “big data” and security risks increase
5. Requesting additional personal information (that may be many years old) from Centrelink recipients causes hardship and is arguably harassment.

The current robo-debt process is procedurally unfair. It demands evidence from the Centrelink recipient to prove that a debt is “not” owed. The individual needs to prove a negative. The individual has to prove a “negative” and to do that they are required to find evidence that may be years old.

These problems can only be fixed with a complete revision of the current data matching process with a focus on ensuring the alleged debt has been verified based on a check of evidence held.

In summary, the APF contends that the public service and business alike must be under legal obligations to:

- act responsibly
- design business processes to reflect the fact that all results of data matching, and all automated processes, inherently involve errors of fact and judgement, and sometimes of law as well
- check the output from computer-based systems before acting on it
- ensure that there is sound evidence supporting all actions taken
- take no action harmful to the individual until after notice has been given and an appropriate opportunity has been provided for the individual to contest the matter
- provide copies of the relevant evidence, on request
- where the individual contests the matter, investigate the concerns and respond to the individual using a best practice internal dispute resolution process
- implement an independent, consumer friendly, free (non-court or Tribunal) external dispute resolution scheme to ensure all individuals have access to justice
- take no action harmful to the individual while the matter remains contested
- inform the individual about their dispute rights and where to seek advice

## The terms of reference

### **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;**

Many other organisations will be able to report on the “lived” stress caused by the automated debt collection processes on affected individuals. We want to observe that the process itself was structurally and procedurally unfair in its design and in our view, inevitably would have a severe impact on individuals.

A review of the process highlights the structural problems.

1. Data is matched automatically between Centrelink and the ATO. (The problems with automatic data matching are discussed further below).
2. A letter is generated and sent to the affected individual. The letter asks the individual to check their employment income. The first letter is procedurally unfair as it does not particularise in detail the exact periods in contention, the ATO evidence being relied on, or the evidence required to resolve the issue.
3. The above letter is followed by a debt collection letter and debt collection calls.

The above process is inherently stressful and unfair because Centrelink has failed to:

- Verify and check their evidence to ensure a reasonable basis for claiming the alleged debt;
- Particularise its claim in detail;
- Set out in detail the evidence required to resolve the issue;

- Set out the dispute resolution process in the first letter; and
- Ensure all debt collection is in accordance with acting as a model litigant and best practice debt collection.

The impact of the above failures is that the individual feels incredible stress and feels harassed.

**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 Centrelink complaint and review practices are poor in comparison to best practice dispute resolution practices used in non-Government matters in Australia. For example, in financial services the dispute resolution process includes:

1. Internal dispute resolution. The IDR process has to be accessible and comply with ASIC RG165.
2. External Dispute Resolution. An independent and free dispute resolution service (the Financial Ombudsman Service) attempts to settle the dispute and if it is not resolved the matter is determined. The entire process is free and avoids the stress of legalistic Courts and Tribunals.

In contrast, the dispute resolution process for Centrelink disputes does not encourage dispute resolution and includes a Tribunal process. There is no doubt that many individuals simply give up on pursuing a genuine dispute simply because the stress of disputing the debt is too much.

**Recommendation: the Centrelink dispute resolution process should be reformed to give individuals access to:**

- **Internal dispute resolution meeting the standards in ASIC RG 165<sup>1</sup>**
  - **External dispute resolution meeting the standards of ASIC RG 139<sup>2</sup>**
- d. data-matching between Centrelink and the Australian Taxation Office and the selection of data, including reliance upon Pay As You Go income tax data;**

The APF is particularly concerned with the problems associated with the use of automatic data matching. There are a number of problems with automatic data matching which will lead to inaccurate requests for a debt.

The first problem is the accuracy of the data in each database. The data may not be accurate. When the data is matched the algorithm used to match the data can create inaccuracies because, for example:

- Averaged income based on annual tax returns is matched against fortnightly Centrelink income
- The data matching does not detect slight differences between spelling and names. For example, the name of an employer on a group certificate.

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<sup>1</sup> <http://download.asic.gov.au/media/3285121/rg165-published-2-july-2015.pdf>

<sup>2</sup> <http://download.asic.gov.au/media/1240742/rg139-published-13-june-2013.pdf>

The examples above are only two examples of the inaccuracies created by automatic data matching. There will be other examples and the only way to ensure there is a reasonable basis for requesting further information or claiming a debt is to manually check the evidence for each record to ensure there is a reasonable basis for the claim.

**Recommendation: that all automatic data matching must be checked manually to ensure there is a reasonable basis for any claim based on the data.**

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

Reasonable basis for collecting the debt

To act as a model litigant<sup>3</sup>, the Government must have a reasonable basis for claiming that a debt is owed. There must be reasonable prospects that a court would find that the individual owes the debt claimed. Commonwealth agencies act honestly and fairly in handling claims and litigation brought by ... a Commonwealth agency, including not taking advantage of a claimant who lacks the resources to litigate a legitimate claim.

Many people receiving Centrelink are disadvantaged and low income individuals. Access to justice is difficult in those circumstances and a model litigant needs to take this into account in making any claims. The Government (as a model litigant) must not take a "drag net" approach to collecting alleged debt and instead must ensure that the evidence supports each and every claim.

A failure to respond to requests for further information does not excuse Centrelink from requiring a reasonable basis (based on evidence held) to claim a debt is owed.

ACCC/ASIC Debt Collection Guideline ('the Guideline')

The Guideline applies to debt collection of consumer debts. It does not apply to the Government or any debt collectors used by the Government. The Guideline is comprehensive and covers best practice conduct by debt collectors to ensure that individuals are treated fairly and are not harassed.

Individuals dealing with Centrelink should be able to expect fair treatment and that Centrelink will comply with the Debt Collection Guideline.

**Recommendation: Centrelink must comply with the Debt Collection Guideline.**

k. any other related matters.

Centrelink was criticised in the media by many individuals affected by the claims for a debt. The government responded to at least one person (Andie Fox) by releasing her personal information to "correct the record". This is a clear breach of privacy.

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<sup>3</sup> "The "Model Litigant Policy", as it is commonly described, is a Legal Service Direction issued by the Attorney-General pursuant to s 55ZF of the Judiciary Act 1903. It was first issued in 1999. The current version is Appendix B of the Legal Services Directions 2005"

When an individual gives their personal information to the Government, it is governed by the privacy laws. More importantly, those laws are there to reflect that individuals want their information to remain private unless they consent to its release. The whole point of privacy is to ensure individuals have control of their personal information.

Personal information should never be released to the media simply because an individual is criticising the Government. All citizens must be free to criticise the Government and not face an abuse of their privacy. The media is not a court and there is no “record” to protect.

We refer to a blog by Anna Johnston of Salinger Privacy that sets out the arguments in detail which is available at <https://www.salingerprivacy.com.au/2017/03/08/just-because-you-can-disclose-doesnt-mean-you-should/>.

**Recommendation: Centrelink policy is clarified to ensure that personal information of individuals is not released without their consent. In particular, criticising the Government is not a reasonable ground for release.**

If you have any questions please do not hesitate to contact Kat Lane.

Yours sincerely

Kat Lane, Chair