

# **Chapter 5**

## **Debt recovery**

Where did it go wrong? I have had no answers, and I have to pay the debt. They give you a certain amount of time. They say, 'Either you have to pay it in full or we can take five per cent of your earnings or you can offer us more.' They were very friendly about it. They said, 'Every three months the repayments for that debt will go up from five per cent of your earnings to 15 per cent'—and that's it: they just take it.<sup>1</sup>

5.1 Once a purported debt has been raised against an individual, debt recovery may be commenced.

5.2 Debt recovery may involve seeking an individual's agreement to a payment plan with the Department of Human Services (the department) or engaging an external debt collection agency. This chapter considers both debt recovery options and the impact on the individuals affected by them.

5.3 The inquiry received evidence from the department of the importance of the debt recovery stage of the Online Compliance Intervention (OCI) program, as the key performance indicators (KPIs) for the OCI program was the level of savings made.<sup>2</sup> Of the two external debt collection agencies contracted by the department, Probe Group advised the inquiry that 'recovery performance' was one of the KPIs in its contract with the department.<sup>3</sup> Dun and Bradstreet advised that while their contract with the department did not include an explicit KPI regarding debts collection amounts, the company did set internal KPIs of 'positive outcomes' expected from its own debt recovery employees.<sup>4</sup>

### **Process of debt recovery**

5.4 How a purported debt is recovered by the department depends upon whether the individual is in receipt of a current income support payment. If the recipient is currently in receipt of a payment, an amount will be withheld from the payment each week to satisfy the purported debt.<sup>5</sup>

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1 Margaret, *Committee Hansard*, 21 April 2017, p. 51.

2 Mr Jason McNamara, General Manager, Integrity Modernisation, Department of Human Services, *Committee Hansard*, 16 May 2017, p. 48. The setting of KPIs based on amounts of debt collected provides further evidence that the desire to recover savings was paramount and overrode consideration of people's welfare and appropriate risk assessment.

3 Mr Jarrod Kagan, Chief Operating Officer, Probe Group, *Committee Hansard*, 19 April 2017, p. 17.

4 Mr Simon Bligh, Chief Executive Officer, Dun and Bradstreet, *Committee Hansard*, 26 April 2017, p. 32.

5 Ms Kathryn Campbell CSC, Secretary, Department of Human Services, *Committee Hansard*, 8 March 2017, p. 64.

5.5 If the individual is not currently in receipt of a payment, the department will first engage with them to establish a payment plan. The department can enter into a payment plan with an individual for as little as five dollars per week.<sup>6</sup>

5.6 If an individual is not in receipt of a current payment and does not engage with the department, an external debt collection agency may be engaged to recover the purported debt.

5.7 According to the department, a purported debt will only be referred to an external debt collection agency where certain criteria are satisfied:

...first is that they have to be a former recipient. We have to not be aware that there is a vulnerability there...They also have to not be engaging with us. Our first point of call is to send them a letter asking them to repay the debt or enter into an arrangement. If they do not engage with us at all, eventually we would refer them to an external collection agency for the purposes of collecting the debt.<sup>7</sup>

5.8 The committee notes that the department's estimate about the proportion of purported debts referred to external debt collection agencies has varied during the committee's inquiry. On 8 March 2017 the department informed the committee that:

Generally, as part of our broader debt program, about 10 per cent of debts are referred to collection agencies.<sup>8</sup>

5.9 But on 18 May 2017 the department said:

...the department refers around 20 per cent of its debt to external debt collectors.<sup>9</sup>

5.10 The department later provided evidence to the inquiry that of purported debts raised between July 2016 to February 2017, 42 per cent were referred to external debt collection agencies.<sup>10</sup>

5.11 The department currently uses two external debt collection agencies: Dun and Bradstreet and Probe Group.<sup>11</sup> The department allocates debts randomly between the

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6 Ms Malisa Golightly, Deputy Secretary, Integrity and Information, Department of Human Services, *Committee Hansard*, 18 May 2017, p. 51; Ms Campbell, *Committee Hansard*, 18 May 2017, p. 51.

7 Mr Jonathan Hutson, Deputy Secretary, Enabling Services, Department of Human Services, *Committee Hansard*, 26 April 2017, p. 50.

8 Ms Campbell, *Committee Hansard*, 8 March 2017, p. 47.

9 Ms Golightly, *Committee Hansard*, 18 May 2017, p. 30.

10 Department of Human Services, Answers to questions on notice, 8 March 2017, (received 7 April 2017).

11 Ms Golightly, *Committee Hansard*, 8 March 2017, p. 66. Australian Receivables won a recent tender meaning there will be three debt collection agencies.

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companies. Business rules ensure that each company is referred the same number of debts.<sup>12</sup>

5.12 The only exception to this rule is that:

...sometimes a particular recipient may have more than one debt, and if a particular company is already handling one debt for that recipient...then we would allocate any other debts to that same company, so that they are not being contacted by different companies.<sup>13</sup>

5.13 If an individual is contacted by an external debt collector and they dispute that they owe a purported debt, the matter is referred back to the department for resolution. The department reassured the committee that:

If a person whose debt has been referred to an external collection agent disputes that debt, that matter is dealt with by the department. As soon as they say that they do not owe a debt, that matter is referred to the department because only the department undertakes their reassessments or appeals. In one of our recent enhancements, we have also said that, in the event that anybody does seek a reassessment or appeal, we will pause recovery action pending the outcome of that reassessment or appeal.<sup>14</sup>

5.14 However, the individual may not necessarily know that they can have the matter referred back to the department.<sup>15</sup>

## **Debt collection by the department**

5.15 The department has greater power than ordinary private parties to collect debts from individuals that are currently in receipt of a payment because it has the power to deduct money from a payment without needing to go to court and demonstrate that it is owed a debt.

### **Powers**

5.16 As noted in Chapter 4, private parties generally need to provide evidence to demonstrate that a debt exists or obtain judgment from a court before a debt is recoverable. In respect of current payment recipients, the department does not need to do either. The Consumer Action Law Centre told the committee that:

...the tax office and Centrelink, they do not have to go to that step of going to court. They can take direct action to garnish amounts in bank accounts or Centrelink payments. So it is a different standard that applies.<sup>16</sup>

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12 Department of Human Services, Answers to questions on notice, no. 30, 8 March 2017, (received 31 March 2017), p. 10.

13 Ms Golightly, *Committee Hansard*, 8 March 2017, p. 66.

14 Mr Hutson, *Committee Hansard*, 21 April 2017, p. 6.

15 Ms Charmaine Crowe, Senior Policy and Advocacy Officer, Australian Council of Social Service, *Committee Hansard*, 8 March 2017, p. 9.

16 Mr Gerrard Brody, Chief Executive Officer, Consumer Action Law Centre, *Committee Hansard*, 11 April 2017, p. 16.

5.17 In Tasmania, the committee was told by the Launceston Community Legal Centre that if the department decides to deduct money from a current payment:

The standard repayment rate is 15 per cent of your benefit amount. That is obviously very difficult to pay if you are already in severe financial hardship. Generally, when you are contacting the debt recovery team, it is merely to renegotiate that to a lower rate of repayment which, in and of itself, can be challenging and confronting for clients, especially clients who have problems with literacy and numeracy and who may have problems with communication and expressing themselves.<sup>17</sup>

5.18 The department has confirmed that 40 per cent of individuals with an OCI purported debt are current recipients.<sup>18</sup> This means that these types of deductions may form a significant part of the underlying cash recovered to date.

5.19 The Australian Council of Social Service (ACOSS) told the committee that, in some cases, a deduction occurred despite the recipient disputing that they owed a purported debt to the department.<sup>19</sup> As noted in Chapter 4, the department refined the process earlier this year to provide that a repayment plan can be paused while the purported debt is reviewed.<sup>20</sup>

### ***Impacts of debt recovery***

5.20 Withholding part of a Centrelink payment can have a substantial impact on the recipient who is relying on the payment, as Case Study 5.1 reveals below.

#### **Case study 5.1—UnitingCare Queensland**

This is a client that has come to our service, and shows the vulnerability of a client who does owe a Centrelink debt. This client presented to our service. She is 68 years old. She is on the Centrelink age pension. She lives alone. She has no social or family support. She has no assets, no financial support and no savings. She lives in a remote town, approximately an hour away from Bundaberg—so it is pretty isolated. This client presented to our service. She was very distressed and was having suicide ideation. She had been notified by Centrelink that she was to pay 100 per cent of an \$11 000 debt that was generated when she was employed by Queensland Health as a nurse. As this client had no financial means to pay this, being on the age pension and with minimum computer skills, the financial counsellor advocated for this client.

What the financial counsellor had to do in the first instance was connect her with a generalist counsellor because she was suicidal, just to make sure that harm was minimised. She attended those appointments. Then they sat down and investigated the debt. It was her debt; it was a real debt for her.

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

18 Ms Golightly, *Committee Hansard*, 18 May 2017, p. 30.

19 Ms Crowe, *Committee Hansard*, 8 March 2017, p. 3.

20 Ms Campbell, *Committee Hansard*, 8 March 2017, p. 41.

However, as this client was on the age pension, the ability to pay back the \$11 000 was a great concern. The other issue that she was having was the online portal. She could not navigate the online portal. She had limited computer skills, so therefore she need to connect with the financial counsellor to understand how to connect with Centrelink.

Centrelink did say that they were going to take a large portion of the client's fortnightly pension in order to pay off this debt, which caused further distress because she was only just making ends meet. After considerable time, effort, phone calls, letters and advocacy to Centrelink, a debt waiver was put in and it was declined, and all other advocacy by the financial counsellor was unsuccessful. At this stage, the financial counsellor put in a payment plan of \$15 per fortnight, which was the absolute maximum this client could afford—and even then it was cutting everything down to a bare minimum. This was deducted from her pension each fortnight. However, every three months the financial counsellor still needs to contact Centrelink to get this arrangement reinstated because, after three months, it automatically falls off and the client is sent another bill asking for the full amount, which causes further trauma to the client.<sup>21</sup>

5.21 Some states have recognised recipients' reliance upon their payments in law.<sup>22</sup> Under Victorian law, Commonwealth payments cannot be used to satisfy a debt. Mr Nelthorpe, Chief Executive Officer of WEstjustice observed that:

...Victoria has a particular law worth looking at, in this context, which is the Judgment Debt Recovery Act. Under this act a private debt collector cannot access Centrelink payments at all.<sup>23</sup>

5.22 Consumer Action Law Centre recognised that this Act created something of a conflict when it came to Centrelink deducting payments, saying:

It shows that there is a conflict between what is behind those two laws. The Victorian law suggests that you need the whole of a Centrelink allowance to live on. The Centrelink capacity to take funds assumes that no matter how desperate you are they should still be entitled to take a percentage of that money.<sup>24</sup>

5.23 The committee received some evidence that payment plans were pushing individuals into hardship. The Council on the Ageing Tasmania explained that some individuals had to borrow money from friends to be able to sustain themselves:

21 Ms Jodie Logovik, Program Manager, Financial Wellbeing and Resilience, UnitingCare Queensland, *Committee Hansard*, 16 May 2017, pp. 50–51.

22 See for example *Civil Procedure Act 2005* (NSW) s. 122 (Maximum total payment under all garnishee orders) provides that a garnishee order must not reduce any net weekly wage or salary to less than \$447.70 per week.

23 Mr Denis Nelthorpe, Chief Executive Officer, WEstjustice, *Committee Hansard*, 11 April 2017, p. 16.

24 Mr Brody, *Committee Hansard*, 11 April 2017, p. 17.

He is illiterate and is unable to read or write and is in very poor health. He is on a disability pension and receiving dialysis. He had to borrow money back from a friend to pay \$50 per fortnight, and he lives on only \$125 per week.<sup>25</sup>

5.24 A similar circumstance was explained by the Welfare Rights and Advocacy Service. It had a client with significant vulnerabilities who entered into a payment plan to pay \$20 per week to satisfy a \$250 purported debt:

She is on a low income and cannot even afford \$20 a fortnight, but she is doing it to ensure that she has a payment arrangement in place.<sup>26</sup>

5.25 The committee heard that even though they may not have much money, some individuals feel compelled to pay the purported debt the department says they owe, even if they do not necessarily believe that they owe it. Anglicare SA shared a client's lived experience with the committee:

We have had a client who lives in Whyalla who received a Centrelink letter saying that he had \$1,600. He was unhappy. He saw our financial counsellor based in Whyalla and he expressed that he was unhappy about receiving this. He did not believe or understand how he could have arrived at having that kind of debt, but he felt resigned to paying it—as many people that we come across do. They feel resigned and often do not understand how to interact with the system, with Centrelink, to have further accuracy around how the debt has been accrued.<sup>27</sup>

### ***Writing off debts***

5.26 In some cases, if the value of the purported debt is minimal, the department is able to write the debt off because it is not economical to recover.

5.27 The purported debt is automatically written off if it is less than \$50, but if the individual ceases paying part of a larger purported debt, any amount over \$20 could be outsourced to an external debt collection agency.<sup>28</sup>

5.28 The department undertook to provide the committee with details on how many debts had been outsourced to external collection agencies for such small amounts, but at the time of drafting this information had not yet been provided.<sup>29</sup>

5.29 The debts of current income support payment recipients are not written off at any level because the department is able to withhold money from payments.<sup>30</sup> In

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25 Mrs Sue Leitch, Council on the Ageing Tasmania, *Committee Hansard*, 26 April 2017, p. 2.

26 Ms Kate Beaumont, Executive Officer, Welfare Rights and Advocacy Service, *Committee Hansard*, 21 April 2017, p. 26.

27 Ms Kate McGarry, Senior Manager, Community Services, Anglicare SA, *Committee Hansard*, 18 May 2017, p. 11.

28 Ms Golightly, *Committee Hansard*, 18 May 2017, p. 49; Ms Campbell, *Committee Hansard*, 18 May 2017, p. 49.

29 Ms Golightly, *Committee Hansard*, 18 May 2017, p. 49.

30 Ms Golightly, *Committee Hansard*, 18 May 2017, p. 51.

response to the committee's concerns regarding the impact of recovering debts by withholding a proportion of payments to vulnerable Australians, the department said that it works with recipients to determine the amount withheld and that these amounts can start from as low as five dollars per week.<sup>31</sup>

#### ***Committee view***

5.30 The committee understands that the department seeks to recover overpayments from current and former recipients, but the committee is particularly concerned about the impact that debt repayments are having on income support recipients who are on very low incomes and former recipients who may be on very low wages.

### **External debt collection**

5.31 The committee received some concerning evidence about the legality and appropriateness of the debt collection that was outsourced to external collection agencies.

#### ***Legal frameworks***

5.32 Though the department is not bound by debt collection guidelines or the consumer law when it engages in debt recovery, the department requires its external debt collection agencies—Dun and Bradstreet and Probe Group—to comply with these laws. As the department confirmed to the committee:

The external debt collectors are required to meet all of the guidelines, policies and requirements that are set out by the ACCC. That is part of their contract.<sup>32</sup>

5.33 This means that the debt collectors are required to comply with the debt collection guidelines produced by the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC).

5.34 The Consumer Law Action Centre told the committee that:

The [debt collection] guideline talks about how any contact by a debt collector has to have a reasonable purpose. That is a key principle in the guideline. That means, among other things, that they have a reasonable basis that the debt exists—that they have evidence of a debt.

In the past it has been problematic. For example, debt collectors have bought debts without basic information to substantiate a debt around the contract or statements of accounting and that sort of thing. That could be an analogy to this situation, where it is a question whether the debt collector that is acting on behalf of Centrelink actually has a reasonable basis that the debt exists.<sup>33</sup>

31 Ms Campbell, *Committee Hansard*, 18 May 2017, p. 51.

32 Ms Golightly, *Committee Hansard*, 8 March 2017, p. 37.

33 Mr Brody, *Committee Hansard*, 11 April 2017, p. 12.

5.35 As noted in the previous chapter, it may be difficult for the debt collectors to satisfy themselves that the purported debt exists on a reasonable basis unless they are able to determine how the department calculated the amount owed. As noted in Chapter 4, if the purported debt is disputed, the debt is referred back to the department for reassessment.

#### **Cases recalled by the department**

5.36 As noted in Chapter 3, the department sent 6 600 letters to incorrect addresses or online accounts which resulted in approximately 5 000 individuals only discovering that they may have owed a purported debt when they were contacted by an external debt collection agency.<sup>34</sup>

5.37 The 6 600 debts were part of a larger tranche of 56 504 OCI purported debts that were referred to external debt collection agencies between 1 July 2016 and 28 February 2017.<sup>35</sup> In mid-February 2017 the department recalled all OCI purported debts that had been referred to external collection agencies.<sup>36</sup> When asked the reason why the debts were being recalled from external debt collection agencies, the department did not provide specific detail, however responded that is was 'part of our service recovery processes'.<sup>37</sup>

#### **Debt recovery fee**

5.38 The committee has received evidence that individuals whose cases are referred to external debt collection agencies have been asked to pay a 10 per cent recovery fee.

5.39 Under social security law, the department is permitted to charge a 10 per cent recovery fee on 'so much of the debt as arose because the person refused or failed to provide the information' unless the Secretary is satisfied that the individual had a reasonable excuse.<sup>38</sup> Until July 2016, the letters issued by the department did not advise that an individual could apply to have the 10 per cent recovery fee waived if the individual had a reasonable excuse.<sup>39</sup>

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34 Ms Campbell, *Committee Hansard*, 18 May 2017, p. 28.

35 Department of Human Services, Answers to questions on notice, 8 March 2017 (received 7 April 2017).

36 Department of Human Services, Answers to questions on notice, 8 March 2017 (received 7 April 2017); Mr Hutson, *Committee Hansard*, 26 April 2017, pp. 50, 52–53.

37 Department of Human Services, Answers to questions on notice, 26 April 2017 (received 19 June 2017).

38 *Social Security Act 1991* (Cth), s. 1228B; Commonwealth Ombudsman, *Centrelink's automated debt raising and recovery system*, Report No. 2 of 2017, p. 8; Department of Human Services, Answer to questions on notice, No. 39, 8 March 2017 (received 8 June 2017).

39 Commonwealth Ombudsman, *Centrelink's automated debt raising and recovery system*, Report No. 2 of 2017, April 2017, p. 8.

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5.40 ACOSS expressed concern at apparent changes to departmental guidelines around the application of the recovery fee, which do not appear to be in-line with the provisions under social security law:

The government has also changed departmental guidelines around the collection of a 10 per cent recovery fee where there is a debt. They now no longer need information about the circumstances that led to a debt to apply that fee. Normally this fee would only apply if the person knowingly or recklessly provided false information or withheld information. Now the fee applies wherever a reasonable excuse is not offered via the online portal, for instance, including where contact is not made. This is in contrast to the original intent of the 10 per cent recovery fee, which was to penalise recipients who did the wrong thing as opposed to penalising those who made an inadvertent mistake.<sup>40</sup>

5.41 The Commonwealth Ombudsman's Office raised concerns with the department that individuals may have been charged the 10 per cent fee even though they may have had a reasonable excuse. In response the department informed the Ombudsman that:

...[the department] will no longer apply the fee automatically where there is no contact from the customer, or the customer responds that they had personal factors which affected their ability to accurately declare their income.<sup>41</sup>

5.42 The department informed the Ombudsman that since the department redesigned the system the penalty would be applied manually and only if the individual has been provided with an additional opportunity to provide the department with a reasonable excuse and has failed to do so.<sup>42</sup>

#### *Is the 10 per cent collection fee a penalty?*

5.43 Lawyers that appeared before the committee questioned the ability of the department to charge a collection fee. The reason for this was explained by the President of the Law Society of South Australia, Mr Rossi:

The imposition automatically of a 10 per cent penalty is inappropriate. The society notes that at common law the imposition of a penalty would be unlawful. The society is not aware of any evidence provided by Centrelink to justify an amount as significant as 10 per cent of the debt as representing the true estimate of the cost of debt recovery.<sup>43</sup>

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40 Ms Crowe, *Committee Hansard*, 8 March 2017, p. 3.

41 Commonwealth Ombudsman, *Centrelink's automated debt raising and recovery system*, Report No. 2 of 2017, April 2017, p. 8.

42 Commonwealth Ombudsman, *Centrelink's automated debt raising and recovery system*, Report No. 2 of 2017, April 2017, p. 43.

43 Mr Tony Rossi, President, Law Society of South Australia, *Committee Hansard*, 10 April 2017, p. 35.

5.44 Mr Rossi continued to say:

In simple terms: in general, someone would not be entitled to recover more than the debt plus interest until court proceedings were actually issued. It is unlawful, at common law, to charge a penalty because you have not paid on time. A penalty is a payment which has no relationship to the loss that you are suffering as a result of not having the money paid on time.<sup>44</sup>

5.45 A similar view was endorsed by Legal Services Commission South Australia, Welfare Rights Centre, Consumer Action Law Centre and National Security Rights Network.<sup>45</sup>

5.46 There was also a concern that the automatic imposition of a 10 per cent fee may be inappropriate on administrative law grounds.

...the application of the 10 per cent penalty may be a breach of administrative law because it would appear to be fettering an administrative discretion. And, as we understand it, formerly a DHS officer would consider whether this penalty should be added.<sup>46</sup>

5.47 Welfare Rights Centre explained that what that means is:

...the 10 per cent penalty, which legally should require a human decision and human discretion...is now being determined automatically.<sup>47</sup>

5.48 As noted above, the department has redesigned the system to require the 10 per cent fee to be applied manually to address this issue.

#### ***Payment of external debt collection agencies***

5.49 The committee received evidence that the department remunerates external debt collection agencies based on a commission. This can be contrast with other government departments such as the Australian Taxation Office (ATO) who said:

...we do not remunerate our debt collection agencies based on what they collect. We pay a flat fee for a referral and they are required under that referral to make a number of attempts to engage the taxpayer and then either seek payment or enter into a payment arrangement.<sup>48</sup>

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44 Mr Rossi, *Committee Hansard*, 10 April 2017, p. 39.

45 Mr Christopher Boundy, Manager, Access Services, Legal Services Commission, *Committee Hansard*, 10 April 2017, p. 14; Mr Mark Leahy, Welfare Rights Centre South Australia, *Committee Hansard*, 10 April 2017, p. 34; Mr Brody, Consumer Action Law Centre, *Committee Hansard*, 11 April 2017, p. 11; Mr Matthew Butt, National Security Rights Network, *Committee Hansard*, 19 April 2017, p. 38.

46 Mr Boundy, *Committee Hansard*, 10 April 2017, p. 14.

47 Mr Leahy, Manager, Welfare Rights Centre South Australia, *Committee Hansard*, 10 April 2017, p. 34.

48 Mr Robert Ravanello, Deputy Commissioner, Debt, Australian Taxation Office, *Committee Hansard*, 8 March 2017, p. 29.

5.50 The external collection agencies did note that more contracts operate on a commission rather than a flat fee basis, and the ATO contract of a flat fee was unusual.<sup>49</sup>

5.51 Consumer Action Law Centre argued that a flat fee may be better for individuals:

There are problems with commissions being used in debt collection, particularly if the commission is collected on the basis of promises to pay. For example, if the debt collector enters into an arrangement with the debtor that they will pay, say, \$500 a month over 12 months to repay a debt and they get that commission up-front based on that arrangement, there is a risk that it would encourage a debt collector to set an unaffordable payment plan, because they will get the commission straightaway, whereas commissions that are paid when the debt comes in the door, when it is actually paid, can align the interests a bit closer. With some of the major debt collectors that pay commissions to staff who collect debt, rather than having payments or bonuses up-front for entering into payment arrangements, the commissions are staggered over time and therefore there is a better incentive for the collector to enter into an affordable arrangement. That said, there probably is a better basis for a flat fee that does not create problematic incentives for debt collectors to try to be too harsh in any event in collecting debt.<sup>50</sup>

5.52 The committee was unable to ascertain the actual rate of commission paid to the external collection agencies because the rate was commercially sensitive.<sup>51</sup> The department confirmed that the external collection agencies receive a commission based on the amount they recover.<sup>52</sup> When asked the reason why the department pays a commission rather than flat-fee to its external debt collection agencies, the department did not provide a specific policy reason except that it 'has been the long-standing practice.'<sup>53</sup>

#### **Committee view**

5.53 The committee is pleased to see the department has amended the system to ensure that individuals are not automatically charged a 10 per cent recovery fee and for reviewing the debts that were referred to external debt collection agencies.

5.54 The committee is concerned that the department appears to be requiring individuals to pay a fee to cover the costs associated with external debt recovery. The committee considers that there is scope for the department to reconsider how it funds its external collections.

49 Mr Bligh, *Committee Hansard*, 26 April 2017, p. 30.

50 Mr Brody, *Committee Hansard*, 11 April 2017, p. 14.

51 Ms Anne Musolino, Chief Counsel, Department of Human Services, *Committee Hansard*, 8 March 2017, p. 65.

52 Ms Golightly, *Committee Hansard*, 8 March 2017, p. 64.

53 Ms Golightly, *Committee Hansard*, 8 March 2017, p. 64.

5.55 The committee considers that there is merit in the department exploring whether debt collection agencies should be engaged on a similar terms to those used by the ATO, particularly if those terms may better align the interests of the debt collection agency with those of the alleged debtor.

### ***Actions of debt collectors***

5.56 The committee has received a number of complaints from individuals and organisations that have had interactions with debt collectors, including allegations of inappropriate conduct. These allegations included threats and demanding inappropriate repayments.

#### *Inappropriate conduct*

5.57 ACOSS reported that there were multiple media articles that debt collectors may be demanding immediate repayment, threatening to seize individuals' assets or threatening other recovery actions.<sup>54</sup>

5.58 The Welfare Rights Centre South Australia told the committee of a case where an external debt collection agency suggested that the client could sell his only vehicle to satisfy the debt.<sup>55</sup>

5.59 Basic Rights Queensland explained that:

The experience of being contacted by debt collectors is probably the worst experience of all. I referred to that one where they had been threatened—the first they knew of it was via a debt collector, and they had been threatened: 'This is going to ruin your credit rating.'<sup>56</sup>

5.60 The committee is concerned by Phoebe's experience with an external debt collection agency that requested immediate payment of an amount she could not afford and continued to threaten to garnish her wages and require full payment of the debt after the matter was placed under review by the department. Phoebe's experience is below.

#### **Case Study 5.2—Phoebe's experience**

My name is Phoebe. In October of last year I was notified via a text message of mail in my myGov inbox. When I logged in I found I had three letters regarding a Centrelink debt that added up to \$14,567. I had not received any prior communication regarding this debt—in particular, the initial letter informing me of the discrepancy between my reported earnings and my taxable earnings. After only two weeks of receiving the debt letters I was contacted by Dun and Bradstreet debt collectors, demanding that I pay the debt in full. My response to this was that I believed that I did not owe the debt and that I was submitting for a review with Centrelink before I was happy to commence any repayments. However, they then threatened to

54 Ms Crowe, *Committee Hansard*, 8 March 2017, p. 4.

55 Mr Leahy, *Committee Hansard*, 10 April 2017, p. 33.

56 Ms Georgina Warrington, Director, Basic Rights Queensland Inc, *Committee Hansard*, 16 May 2017, p. 3.

garnish my wages in full if I did not make a significant repayment, which was considered to be a minimum of \$500 on the spot, to which, as any normal person would, I panicked and paid \$500 on my credit card.

Whilst continuing to fight off debt collector phone calls, who persistently threatened me with garnishing wages and enforcing repayments that I could not afford, I was working with an accountant, trying to gather pay slips from previous employers in order to prove that I did not owe the debt. The debt spanned the period that I was studying and working casually, as we have heard a lot today, and this went back to 2010, so as long as seven years ago. As I said, I was working casually, as many university students do, whilst I was studying. Any time I gained employment I informed Centrelink of my new employer, and carefully and to the best of my knowledge always reported accurately. After my accountant initially submitted all the payslips that we had managed to gather together, I still had not heard anything from Centrelink for two weeks. After that two weeks, I was informed that my accountant had uploaded them to the incorrect platform—even though she uploaded to the platform that Centrelink told her to upload them to. The following week, I was told, by a Centrelink employee, that I had to upload these details myself and was told to log on to the online platform. I then had to make another phone call to gather my customer reference number and log in details, because at this point I had not been receiving payments for, I think, three or four years. When I did log in, the platform to upload the payslips to did not exist, and this was confirmed by another phone call. This back-and-forth process between Centrelink and me has been incredibly frustrating and is still ongoing.

I would estimate that I have spent probably 100 hours, if not more, gathering payslips from multiple employers; learning my rights about debt collectors, and what debt collectors can and cannot threaten; and learning my legal rights surrounding inaccurate welfare debts. I have spent hours on the phone to Centrelink, with many calls going unanswered and cut off midway. This process has resulted in emotional and physical stress, and increased sick leave from work.

I feel that these robo-debs [sic] are targeting the wrong people, those who honestly and diligently reported believing all they were doing was right. I am now a healthcare worker and every day give back to the community yet to now be labelled as a welfare fraud could impact my future and my career. My trust in the system is definitely shaken.<sup>57</sup>

5.61 As Phoebe's case above shows, some individuals have used credit cards to repay a Centrelink debt. The Victorian Council of Social Service told the committee that many people used more expensive forms of debt in order to pay their debt to Centrelink:

We certainly know people who have gone to payday lenders and we know of people who have loaded up credit cards and used other mechanisms to

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

try to pay debts that—there is a fair chance—they simply did not owe in the first place.<sup>58</sup>

5.62 The debt collection agencies disagreed that complaints are a major issue. External debt collection agency Dun and Bradstreet informed the committee that:

...we have approximately one complaint per 100,000. We investigate them. The department investigates them. Our staff have got specific obligations and training including the ACCC and ASIC guidelines to which you referred. All communications are in a form agreed with the department. All communications happen with a frequency permitted by the guidelines so a maximum of three per week or 10 per month. When we hear of complaints and investigate them or the department investigates them, we are satisfied that our processes have been followed.<sup>59</sup>

#### *Use of departmental data*

5.63 Another area of debt collection that some submitters expressed concern about related to data.

5.64 The Australian Privacy Foundation expressed concern that the external debt collection agencies may seek to use data provided by the department for their own commercial advantage.

5.65 The committee received evidence that the external debt collection agencies kept the department's data separate and that secure arrangements are in place.<sup>60</sup> Mr Kagan from Probe Group assured the committee that only staff working directly on behalf of the department had access to the information.<sup>61</sup>

5.66 The Australian Privacy Foundation suggested that external debt collection agencies should still be required to delete the department's data at the conclusion of the contract to ensure the integrity of individuals' personal information.<sup>62</sup>

5.67 At the committee's hearing on 18 May, the department undertook to confirm whether this was already a condition of the department's contract with each debt collection agency. However, at the time of drafting, the department had not provided confirmation of this to the committee.

#### *Monitoring*

5.68 The committee notes that as part of the contracts with the debt collection agencies, the department conducts a regular program of monitoring. The department confirmed that the contracts with the external debt collection agencies require multiple

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58 Ms Emma King, Victorian Council of Social Service, *Committee Hansard*, 11 April 2017, p. 53.

59 Mr Bligh, *Committee Hansard*, 26 April 2017, p. 34.

60 Mr Kagan, *Committee Hansard*, 19 April 2017, p. 23.

61 Mr Kagan, *Committee Hansard*, 19 April 2017, p. 23.

62 Ms Kathrine Lane, Immediate Past Chair, Australian Privacy Foundation, *Committee Hansard*, 19 April 2017, p. 29.

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reviews to be undertaken at various intervals, including some reviews that are conducted informally on a monthly basis together with a program of formal quarterly reviews.<sup>63</sup>

5.69 Ms Golightly from the department clarified that formal quarterly reviews are conducted:

...against the framework that is in the contract and against the policies and principles and law that the external collection agencies have to apply.<sup>64</sup>

5.70 The committee notes that formal quarterly reviews may examine various aspects of the collection agency's performance by using surveys of customers, an evaluation according to specifications of the contract or evaluations of monitored calls.<sup>65</sup>

5.71 The department clarified the monitoring of calls may include:

...a sample of calls, double-headsetting with them to listen in to how they are handling customers, both customers who may be calling them and customers they are calling.<sup>66</sup>

5.72 The committee received evidence that this may not be the most effective form of monitoring because the debt collectors are unlikely to demonstrate inappropriate behaviours if they know they are being listened to. Consumer Law Action Centre explained that another option for monitoring could include:

...shadow shopping or other sorts of things. It might be that they would put an example into the marketplace, for want of a better word, so that the debt collectors are required to contact someone that is not a real debtor. They experience the situation—they see what it is like—to see if the debt collection process is compliant with the standards that are required of them.<sup>67</sup>

5.73 If any one does have concerns, the department told the committee:

Certainly they can ring the department. We have got a dedicated line to deal with any debt inquiries, including any issues that people may be wanting to raise about the debt collectors.<sup>68</sup>

5.74 On notice, the department advised that individuals with complaints about an external debt collection agency could contact the department 'online, face-to-face, by calling 1800 132 468 or via mail'.<sup>69</sup>

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63 Ms Golightly, *Committee Hansard*, 18 May 2017, p. 50.

64 Ms Golightly, *Committee Hansard*, 8 March 2017, p. 64.

65 Ms Golightly, *Committee Hansard*, 18 May 2017, p. 50.

66 Ms Golightly, *Committee Hansard*, 8 March 2017, p. 64.

67 Mr Brody, *Committee Hansard*, 11 April 2017, p. 13.

68 Ms Golightly, *Committee Hansard*, 8 March 2017, p. 38.

69 Department of Human Services, Answers to questions on notice, 8 March 2017 (received 10 April 2017), p. 9.

5.75 If contacting the department was not successful, a dissatisfied recipient could also contact the Commonwealth Ombudsman or the ACCC for assistance.<sup>70</sup>

### ***Impact***

5.76 The committee understands that being contacted by debt collectors can be stressful. In February 2017, an article appeared in *The Saturday Paper* titled 'Centrelink's debt recovery system "pushed him over the edge"'.<sup>71</sup> The article's thesis was that a young Melbourne man was so badly harassed by debt collectors about an OCI debt that he took his own life.

5.77 Ms Campbell, the secretary of the department told the committee that:

With the press story about the suicide—and this is a very sad event, and we do not want to make it harder for families—this was a former recipient, it was not a current recipient. That is why the debt collectors had been used on that occasion. There are always different dimensions to stories that appear in the media, as I am sure you are aware, and we have a different take on what was reported, I think it is fair to say.<sup>72</sup>

### ***Committee view***

5.78 The committee recognises that being pursued by debt collectors is likely to be very stressful. The committee is concerned about the number of reports it received about debt collectors' inappropriate behaviour.

5.79 The committee considers that the department's monitoring regime could be more rigorous and it calls on the department to do more to ensure that collection agencies are complying with all guidelines and standards.

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70 Ms Golightly, *Committee Hansard*, 8 March 2017, p. 65; Department of Human Services, Answers to questions on notice, 8 March 2017 (received 10 April 2017) p. 9.

71 Martin McKenzie-Murray, 'Centrelink's debt collection "pushed him over the edge"', *The Saturday Paper*, 18 February 2017, <https://www.thesaturdaypaper.com.au/2017/02/18/centrelinks-debt-collection-pushed-him-over-the-edge/14873364004249> (accessed 21 February 2017).

72 Ms Campbell, *Committee Hansard*, 8 March 2017, p. 38.