

Chapter 6

Conclusions and recommendations

The question that we ask the committee to consider in its deliberations is: where is good government, good decision-making and leadership when a system is failing? Where is the leadership that is bold enough to say: 'We got this wrong. We will pull it back. We will rework it. We will review it. We will talk to the stakeholders who know best to try and get it right.' Where is good government in understanding and taking seriously its duty of care to its citizens to protect the most vulnerable and not cause vulnerability or harm its own citizens?¹

Conclusion

6.1 It was made clear to the committee during the course of this inquiry, that the evidence consistently demonstrated a key flaw in the Online Compliance Intervention (OCI) program, a flaw which filtered throughout the OCI debt recovery process: a fundamental lack of procedural fairness.

6.2 This lack of procedural fairness is evident in every stage of the OCI program. It can be seen in the drafting of the policy where there was a lack of consultation with key stakeholders who could give feedback on the potential impact to vulnerable Australians. It is evident in the testing phase for the program website which did not include an adequate cross section of users, including those with vulnerabilities or communication barriers. It is in the failure to carry out a risk assessment before the process started. In sending letters without checking addresses and taking a lack of response as a refusal to engage. In the averaging of income data, which invents a fortnightly income-earned sum for the purposes of then charging people with a debt knowing full well it is going to be wrong. In the millions of calls that went unanswered, as people tried to contact the Department of Human Services (department) to discuss their debt matter, at the request of the department itself. In the lack of information released to individuals which they required in order to challenge a debt. In the imposition of an automatic 10 per cent debt recovery fee. It can be seen in the institution of a debt recovery program reaching back six years, despite online departmental advice that welfare recipients need only retain records for six months. A lack of procedural fairness is evident in all these stages. The system was so flawed that it was set up to fail.

6.3 This lack of procedural fairness disempowered people, causing emotional trauma, stress and shame. This was intensified when the Government subsequently publicly released personal information about people who spoke out about the process.

1 Ms Kym Goodes, Chief Executive, Tasmanian Council of Social Service, *Committee Hansard*, 26 April 2017, p. 8.

6.4 What also become clear through the inquiry is that the department has a fundamental conflict of interest – the harder it is for people to navigate this system and prove their correct income data, the more money the department recoups.

6.5 Government departments must at all times act with 'best practice', and in legal issues must also act as a 'model litigant.' This principle is not just established to set an appropriate benchmark for the private sector to live up to. This principle of 'best practice' is also in recognition of the fundamental power imbalance between a government department and a single private citizen. Government departments must take all possible steps to ensure that the power imbalance that exists between an individual Australian and a large entity, such as the Department of Human Services, does not inadvertently favour the powerful to the extent that it becomes an infringement of each person's right to procedural fairness.

6.6 Witnesses and submitters unambiguously stated their support for a social security system that is fair and sustainable, which necessarily includes recovering income support payments from those who knowingly or inadvertently received overpayments. But the manner in which overpayments are recovered must also be fair and sustainable.

6.7 The department itself has agreed that there are improvements to be made to the OCI system:

It is fair to say that this process has highlighted a number of issues with debt collection that will benefit from review, because we have done more of them and we have had some exposure to have a look at some of these things. I think the officers at the table would agree that there is some opportunity for us to improve how we go about these things.²

6.8 The recommendations made in this chapter seek to address the procedural fairness problems within the OCI system. They are presented in the same order as the report itself was structured, to cover the key stages of the OCI process. The first two headline recommendations are made to address the issue of individuals being charged, or who may soon be charged, debts which have been calculated using the initial and current flawed model.

Committee recommendations

Headline recommendations

Recommendation 1

6.9 The committee recommends the Online Compliance Intervention (OCI) program should be put on hold until all procedural fairness flaws are addressed, and the other recommendations of this report are implemented. If these issues are addressed, the OCI should only be continued in its new form after the new One Touch Payroll system is implemented in 2018.

2 Ms Kathryn Campbell CSC, Secretary, Department of Human Services, *Committee Hansard*, 18 May 2017, p. 49.

Recommendation 2

6.10 The committee strongly recommends that the rollout of a redesigned system must include a robust risk assessment process, which includes consultation with relevant expert stakeholders.

Recommendation 3

6.11 The committee recommends that all people who have had a debt amount determined through the use of income averaging should have their debt amounts re-assessed immediately by a team of departmental officers with specialist knowledge of the Online Compliance Intervention program, using accurate income data sourced from employers. This re-assessment must include the full range of unpaid, partially paid and fully paid debts incurred by current income payment recipients and those debts outsourced to debt collection agencies.

Calculating debt

6.12 Government departments must, in all aspects of work, maintain 'best practice' in procedures, which includes publicly verifiable adherence to all relevant legislation, guidelines and protocols.

6.13 It is a basic legal principle that in order to claim a debt, a debt must be proven to be owed. The onus of proving a debt must remain with the department. This would include verifying income data in order to calculate a debt. Where appropriate, verification can be done with the assistance of income support payment recipients, but the final responsibility must lie with the department. This would also preclude the practise of averaging income data to manufacture a fortnightly income for the purposes of retrospectively calculating a debt.

Recommendation 4

6.14 The committee recommends all data-matching guidelines and protocols be adhered to, including the Data-matching Program (Assistance and Tax) Act 1990, regardless of whether the department is using tax file numbers. This will require the department to halt the Online Compliance Intervention process while steps are taken to ensure compliance with all mandatory and voluntary provisions. Adherence to these provisions should be verifiable by the public in order to maintain trust in the social security system.

Recommendation 5

6.15 The committee recommends the department update its privacy policy to ensure that it does not publicly release sensitive information it holds about individuals, for any reason.

Recommendation 6

6.16 The committee recommends the department resume full responsibility for calculating verifiable debts (including manual checking) relating to income support overpayments, which are based on actual fortnightly earnings and not an assumed average.

Debt recovery fee

6.17 In response to the Commonwealth Ombudsman's recommendations, the Department has ceased the automatic charging of a 10 per cent debt recovery fee, and now provides information on how individuals can apply not to have this fee imposed where they have a reasonable excuse. The committee believes that barriers to communication which impact a person's ability to complete income reporting should be included in the reasonable excuse framework for waiving the debt recovery fee.

Recommendation 7

6.18 The committee recommends the department review all debt cases where the 10 per cent recovery fee was automatically imposed, and in line with procedural fairness, allow each person a fully-informed opportunity to apply to have the debt recovery fee waived.

Recommendation 8

6.19 The committee recommends personal or technical barriers to communication which impacted an individual's ability to undertake income reporting, should be included in the reasonable excuse framework for waiving the debt recovery fee.

Communicating

6.20 The committee has found that a key impediment to procedural fairness in the OCI process has been a deficiency of appropriate and effective communication. This has presented both in the type of information available as well as the communication channels themselves. Barriers to communication throughout the OCI process have included:

- a lack of appropriately detailed information at each stage, from explaining the OCI process, through to providing the relevant debt calculation data required to challenge debts;
- a deficiency in the communication strategy to address the needs of vulnerable people and/or people with a communication barrier, including people with English as a second language and people with cognitive communication barriers;
- a shortage of sufficient communications portals. This included people not being able to reach the department via phone or online, not being able to access OCI specialist teams when finally speaking with the department, and no appropriate face-to-face assistance for people unable to use phone or internet communication channels; and
- a deficiency in the design of the OCI online portal, which is difficult to navigate even for computer literate users.

Recommendation 9

6.21 The committee recommends Accessible Information, in particular Easy English versions, be made available in all debt recovery programs, including

online portals. The committee strongly recommends this should be a whole-of-department change, to ensure that producing Accessible Information versions of all Centrelink communications material become standard operating procedure.

Recommendation 10

6.22 The committee recommends the department ensure that in the re-design of the Online Compliance Intervention system, if it continues, the new system has the necessary protocols to protect vulnerable cohorts, including people experiencing mental health issues. The committee strongly recommends this should be a whole-of-department change, including reconvening the Consumer Consultative Group, the Service Delivery Advisory Group and the Mental Health Advisory Working Party.

Recommendation 11

6.23 The committee recommends that the department provide all Online Compliance Intervention participants with the debt calculation data required to be assured any debts are correct.

Recommendation 12

6.24 The committee recommends the Department of Human Services be adequately resourced to implement all recommendations of this report, and to improve the level of service provided to Centrelink recipients. In particular, the committee recommends increased investment in communication channels and staff, to ensure calls are answered in a more timely manner. The committee strongly recommends this as a whole-of-department change.

Challenging debts

6.25 When faced with a purported debt, many individuals were unaware of the possibility of an error in the calculations, their right to have a review of that purported debt or how to undertake a review. Many individuals were so daunted by what they saw as an insurmountable task, to challenge a large government department, they simply gave up and paid what they felt was a debt they did not owe.

6.26 For many people, the department deadlines for people to provide evidence to challenge the purported income reporting discrepancy was simply not enough time to gather income documentation – resulting in a default debt amount being generated by the department and imposed.

6.27 Evidence presented by legal services also indicated an increasing burden on their services, which they could not meet due to funding cuts. Evidence also indicated an impending surge in workload for the Administrative Appeals Tribunal which has not been adequately planned for.

6.28 Of equal concern is the evidence presented which shows that where an individual has an OCI-related purported debt, even if that debt amount is being challenged, that person is not eligible for an advance payment, which is designed to assist people in financial crisis.

Recommendation 13

6.29 The committee recommends that clear and comprehensive advice on the internal and external reassessment, review rights and processes are made available to all Online Compliance Intervention-impacted individuals.

Recommendation 14

6.30 The committee recommends that clear and comprehensive advice on the ability to seek an extension of time to provide income documentation is made available to all Online Compliance Intervention-impacted individuals.

Recommendation 15

6.31 The committee recommends that community legal service funding be reviewed in the next budget, to ensure community legal services are able to meet the community need for legal advice relating to Online Compliance Intervention matters.

Recommendation 16

6.32 The committee recommends the operating budgets for the Administrative Appeals Tribunal be reviewed to plan for an increased workload on Online Compliance Intervention-related matters, to ensure these cases are progressed within appropriate timeframes.

Recommendation 17

6.33 The committee strongly recommends that an outstanding debt should not exclude a person from advance payments needed for essential goods and services.

Debt recovery

6.34 A disturbing body of evidence was presented to the inquiry regarding the recovery of purported debts. In some cases, ongoing debt repayments were enforced or coerced, even when the individual claimed the debt amount was wrong. Evidence showed that many income payment recipients often first found out about a debt when their payments were garnished. In many cases, these enforced debt payments meant the person could no longer pay for basic necessities, such as travel or food for their children. In other cases, individuals felt coerced to pay off debts using their credit card, resulting in payments of both debt recovery fees as well as credit card interest rates.

6.35 The evidence also showed that the department is not bound by all debt collection legislation and guidelines, and in its procedures does not engage in 'best practice' nor is it a 'model litigant.' This extends to the debt recovery practices it engages external contractors to undertake on its behalf, which in many cases presented to the committee, appear to be coercive practices used against some of the most vulnerable Australians.

Recommendation 18

6.36 The committee recommends the department voluntarily undertake to be bound by all debt collection and consumer law legislation and guidelines, and ensure regular external scrutiny to ensure compliance. This should explicitly include the actions of external contractors working on behalf of the department.

Recommendation 19

6.37 The committee recommends the department ensures an independent review of internal and external debt collection practices is undertaken, to ensure all procedures are adhering to industry standards, such as the suspension of debt collection where debt liability is disputed, and the provision of accurate and relevant information to debtors.

Recommendation 20

6.38 The committee recommends the department consider adoption of the principles of the Victorian Judgement Debt Recovery Act which precludes debt collection to be made from Centrelink payments that are recognised minimum payments required for food, shelter and other life essentials.

Recommendation 21

6.39 The committee further recommends the department develop guidelines on appropriate levels of debt repayment to income ratios, to ensure that debt repayment amounts do not impact any individual's ability to purchase life essentials.

Senator Rachel Siewert

Chair

