

Senate Economics Committee
Inquiry into Centrelink's Compliance Program
ANSWERS TO QUESTIONS ON NOTICE
Australian Taxation Office
DECEMBER 2019

Department/Agency: ATO

Question: 11b

Topic: Legal advice - Centrelink Compliance Program

Question:

Senator O'NEILL: What would it take to trigger seeking legal advice? Is a story in the newspaper enough or a letter from the minister? What would it take to trigger for the ATO to go, 'There's a problem here. We better find out about the legality of this'?

Mr Hirschhorn: I suppose it's a matter of judgement as to when we receive legal advice.

Senator O'NEILL: If you can provide on notice any correspondence, any logs of phone calls, any meetings called to discuss the change of policy with regard to the Robodebt program in particular?

Answer:

On 19 November, the Government announced debts arising from welfare payment compliance reviews, would no longer be raised where the only information used is DHS's averaging of ATO income data.

The correspondence between DHS and the ATO following the Government announcement were as follows;

- **18 November:** Email between ATO General Counsel and DHS Chief Counsel (*refer to email 1*)
- **19 November:** Email between ATO General Counsel and Commissioner of Taxation (*refer to email 2*)
- **20 November:** Phone call between ATO Chief Service Delivery Officer and DHS Deputy Secretary
- **21 November:** Email between ATO Chief Service Delivery Officer and DHS Deputy Secretary (*refer to email 3*)
- **2 December:** Email between ATO General Counsel and DHS Chief Counsel (*refer to email 1*)
- **6 December:** Email between ATO General Counsel and DHS Chief Counsel (*refer to email 1*)

From: Jonathan Todd
Sent: Friday, 6 December 2019 4:37 PM
To: Ffrench, Tim
Cc: CHIEFCOUNSEL OFFICE
Subject: RE: Garnishee power [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege] [DLM=For-Official-Use-Only]

Hello Tim, apologies for the delay getting back to you, we had another Senate appearance this morning.

As I understand it, this matter was resolved by our CSDO Melinda Smith, contacting Ros Baxter Band 3 DHS Compliance Integrity, who informed Melinda that DHS has made the decision to cease all debt recovery action on the "online income compliance program" known as 'Robodebt' for the time being. This, along with a time frame, will be confirmed in a letter to us.

As far as I'm aware we haven't received the letter yet.

Regards,

Jonathan Todd
ATO General Counsel
Assistant Commissioner, ATOC

From: Ffrench, Tim [REDACTED]
Sent: Monday, 2 December 2019 9:44 AM
To: Jonathan Todd
Cc: CHIEFCOUNSEL OFFICE
Subject: RE: Garnishee power [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

Hi Jonathan

Just following up on this. Happy to have a chat if it would help. Otherwise, a short note confirming the ATO position would assist from our end.

Regards

Tim

Tim Ffrench

Acting Chief Counsel
Legal Services Division, Department of Human Services

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From: Ffrench, Tim
Sent: Monday, 18 November 2019 2:02 PM
To: [REDACTED]
Cc: CHIEFCOUNSEL OFFICE [REDACTED]
Subject: Garnishee power [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

Sensitive: Legal

Hi Jonathan

Good to talk to you.

As discussed, if you could confirm the ATO position with respect to this department's use of the garnishee power for the purposes of the Income Compliance Programme that would be appreciated.

To assist, I have included a link to section 1223 of the *Social Security Act 1991*:

http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/ssa1991186/s1233.html

Happy to discuss.

Tim

Tim Ffrench
Acting Chief Counsel
Legal Services Division, Department of Human Services

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From: Jonathan Todd
Sent: Tuesday, 19 November 2019 6:07 PM
To: Chris Jordan
Subject: FW: Garnishee power [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege] [DLM=Sensitive:Legal]

Hello Chris,

I think we need to get someone senior (Melinda and/or one of her Band 1s or 2s) from SD/Debt involved in a preliminary discussion first, and examine the MOU with DSS (which I haven't had a chance to get a copy of yet). Subject to that:

In further discussion with DSS, it appears that what you need to raise is:

They have advised you that they have received legal advice that debts based solely upon DSS own income averaging of ATO annual tax data are not lawful debts ('Robodebts'). They have also suspended the raising and recovery of Robodebts as of today.

In view of that legal advice, having regard to ss 1222A, 1223 and 1224C of the Social Security Act (sections that relevantly define what is a debt due to the Commonwealth for the purpose of the Social Security Act), it appears that 'Robodebts' are not debts due to the Commonwealth.

Therefore you are not in a position to garnish Robodebts when served a notice under s 1233 of the Social Security Act, as the notice would not be in respect of a valid legal debt.

Need to discuss out what percentage of garnishee notices from DSS relate to Robodebts, what amounts per day/week relate to Robodebts, what are the overall total amounts of DSS garnished debts per day/week. Melinda's people may be able to give you some stats on this in advance.

Can DSS immediately identify and stop serving on the ATO garnishee notices in respect of Robodebts?

If not, you will have to consider suspending garnishing of all DSS debts, or at least any that cannot be guaranteed by them to have a legal basis.

I'd suggest having a meeting with Melinda and whoever else she suggests should attend tomorrow morning, and finalise the above as correct with all necessary ATO input.

Regards,

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To: Jonathan Todd
Cc: CHIEFCOUNSEL OFFICE
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Sensitive: Legal

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Tim

Tim Ffrench
Acting Chief Counsel
Legal Services Division, Department of Human Services



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From: Baxter, Ros [REDACTED]
Sent: Thursday, 21 November 2019 1:55 PM
To: Melinda Smith
Cc: [REDACTED]
Subject: ATO - Garnishee action [SEC=OFFICIAL:Sensitive]

Good morning Melinda,

It was nice to talk yesterday.

As discussed, on 19 November 2019, the Department of Human Services commenced the process of pausing debt recovery action through the garnishee of tax refunds for those who have outstanding debts raised through the online income compliance program. We should complete that process on 21 November. The Department will then then progressively update that pause action as we narrow the target cohort to those we confirm have debts determined solely by relying on the averaging of Australian Taxation Office income information.

I would greatly appreciate if you could treat this email in confidence. Please do stay in touch if there is any of this you would like to discuss,

Regards,

Ros

Making Flexibility Work - if you receive an email from me outside of normal business hours, I'm sending it at a time that suits me. Unless it's marked urgent, I'm not expecting you to read or reply until normal business hours.

Ros Baxter

Deputy Secretary

Integrity and Information Group | Department of Human Services

[REDACTED]
[REDACTED]

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