

SENATE COMMUNITY AFFAIRS REFERENCES COMMITTEE

PUBLIC HEARING, 29 MARCH 2021

PARLIAMENT HOUSE, CANBERRA

Administrative Appeals Tribunal

Question 6

Senator Deborah O'Neill asked the following question on 6 May 2021:

Since 1 July 2016, has anyone at the Tribunal produced – or circulated – a memorandum or other document for members of the Social Services & Child Support Division that uses the word “Robodebt” or “Robo-debt” or “Robo Debt”? If so, on what date(s), who authored the document(s) and what was the purpose of the document(s). Please also provide a copy of the document(s).

The response to the Honourable Senator’s question is as follows:

The following table sets out information about 3 emails and one document sent to members of the Social Services and Child Support Division of the Administrative Appeals Tribunal (AAT) in which the words ‘Robodebt’, ‘Robo-debt’ or ‘Robo debt’ appeared in the subject line or body of the email or document. The content in the emails and document that related to the Income Compliance Program has also been set out in the table.

Date	Author	Purpose
28 November 2019	Senior Member Diana Benk	Email sent to all Social Services and Child Support Division members to inform them of developments relating to the Income Compliance Program and the management of reviews in the Division
Dear Members,		<p>As many of you are aware last week DHS announced that it was making significant changes to the way in which debts are raised under the Online Income Compliance Programme (OIC). DHS has advised that it will no longer raise a debt based solely on its own averaging of income data from the Australian Taxation Office (see the release here). Consent orders were also subsequently made in a Federal Court matter relating to such a debt included declarations to the effect that that the particular debt had not been validly raised as it had been based solely on income averaging from ATO data.</p> <p>DHS has undertaken to identify and reassess debts that have previously been raised solely on averaging from ATO data. No action is required from the alleged debtor for the reassessment to occur.</p>

What does it mean for matters before the Tribunal?

It is important to note that this only affects debt decisions based solely on averaging from ATO data. Our DHS liaison group is currently in discussions with DHS about obtaining more detailed information and projections around the number of debts that are likely to be in that cohort and how that may impact on applications and processing.

For Members there should be very little change. Once an application for first review is made, the task continues to be to determine the correct or preferable decision on the material before the Tribunal. As with all debt matters, if the member cannot be satisfied that there is a debt or of the correct quantum of a debt it is open to the member to set aside the decision and either remit it for reconsideration with/without direction, or to substitute a new decision in its place.

In matters where the debt has been raised solely by reference to averaging from ATO data, a Member may be able to reach their conclusion quite efficiently and without the need for a detailed examination of the calculations or other issues.

Date	Author	Purpose
18 December 2019	Social Services and Child Support Division Member Support Unit (MSU)	The MSU Newsletter is sent to all Social Services and Child Support Division members and to certain AAT staff to provide information on appeals, legislative changes and other important developments relevant to reviews in the Division. This content was included to inform members of developments relating to the Income Compliance Program and the management of reviews in the Division.

...

Online Income Compliance Programme / “Robodebt” Update

On 19 November 2019, DHS announced that it was making significant changes to the way in which debts are raised under the Online Income Compliance Programme (OIC). DHS has advised that it will no longer raise a debt based solely on its own averaging of income data from the Australian Taxation Office.

DHS has undertaken to identify and reassess debts that have previously been raised solely on that basis. No action is required from the alleged debtor for the reassessment to occur. Although recovery will be put on hold while an identified debt is reassessed, normal recovery will continue unless and until a particular debt is identified as being affected.

The identification and reassessment is a matter for DHS. DHS are required to notify the Tribunal if a particular debt is varied or set aside before the Tribunal completes its review. In relation to debt decisions that come before a member for review, Senior Member Benk has now confirmed that:

Once an application for first review is made, the task continues to be to determine the correct or preferable decision on the material before the Tribunal. As with all debt matters, if the member cannot be satisfied that there is a debt or of the correct quantum of a debt it is open to the member to set aside the decision and either remit it for reconsideration with/without direction, or to substitute a

new decision in its place.

In matters where the debt has been raised solely by reference to averaging from ATO data, a Member may be able to reach their conclusion quite efficiently and without the need for a detailed examination of the calculations or other issues.

...

Date	Author	Purpose
1 June 2020	Senior Member Diana Benk	Email sent to all Social Services and Child Support Division members to inform them of developments relating to the Income Compliance Program and the management of reviews in the Division

Dear Members

Yes, the weeks go by so quickly. I was awaiting a media release before sending this email, hence the delay.

Robodebts

The Government announced late last week it will be clearing all debts “raised wholly or partially using income averaging of ATO data” (Robodebts) and that any recovered amounts will be refunded.

The announcement can be read in full here: <https://minister.servicesaustralia.gov.au/media-releases/2020-05-29-changes-income-compliance-program>

It is suggested that approximately 470,000 debts are impacted.

I have little detail as to how matters are being identified by Services Australia or when “no debt” determinations are likely to be made. It is unclear how many current applications to the Tribunal are impacted. I am seeking further information from Services Australia and hope to provide you with some greater clarity early next week.

In the interim, where a Member has a matter coming up for hearing in the next two weeks that they believe is impacted by income averaging from ATO data they can forward the details of the case to Joe Guthrie, MSU (cc DHLiaisonGroup@aat.gov.au) and he will attempt to have Services Australia confirm whether it is affected and ask them to confirm when a “no debt” determination is expected to be made. This also applies to matters recently heard but not yet determined. All matters where the applicant has been sent a class action notice should be referred. At this stage it is not intended that hearings will be postponed.

Even where Services Australia determines that there is no longer any debt, the matter will remain before the Tribunal (the no debt decision being substituted as the decision under review) unless the applicant withdraws their application for review or the application is dismissed.

Finally, it is important to remember that the debt continues to exist until either the Secretary

or the Tribunal set it aside. In circumstances where the Secretary has not set aside the debt and the Tribunal proceeds to make a decision on review, the Tribunal's task remains the same as it was prior this announcement.

In general debts, which are not affected by averaging - Robodebts, can I ask that you consider making a finding in your decision *that the debt is not a robodebt*. This is to avoid confusion and unnecessary further reviews.

...

Date	Author	Purpose
29 September 2020	Senior Member Diana Benk	Email sent to all Social Services and Child Support Division members to inform them of matters relating to the management of reviews in the Division affected by developments relating to the Income Compliance Program, including the class action.

Dear All

A short note on robo debts and the class action.

Robo debts

There is no longer any need for members to refer suspected "Robo debt" cases to MSU or me.

In August, Services Australia provided the Tribunal with a list of all current SSCSD matters that were identified as being impacted by the May 2020 announcement relating to the refunding of debts raised using income averaging based on ATO data. In those cases, Services Australia performed a further internal review and set the debts aside themselves.

The members assigned to each of those cases have been notified and the majority of the matters have now been finalised. The Tribunal has not subsequently been advised of any additional cases that Services Australia has identified to be refunded under the announcement.

While it is expected that the Tribunal will continue to see applications that relate to the use of income averaging, in accordance with its objective as stated in section 2A of the *Administrative Appeals Tribunal Act 1975*, the Tribunal will proceed (without delay) to determine the correct or preferable decision in those matters based on its own assessment of the evidence and the law.

Services Australia has a statutory obligation to notify the Tribunal where they vary or substitute a decision while that decision is the subject of an application to the Tribunal. It can therefore be reasonably assumed that unless and until Services Australia notify the Tribunal they have performed an internal review and changed a particular decision, the decision under review by the Tribunal is the decision as it stood at the time of application.

Class Action

The “Robodebt” class action is separate and distinct from the administrative review of a debt by the Tribunal and potentially seeks outcomes beyond the Tribunal’s powers. The Tribunal should be careful not to provide applicants with advice relating to the class action or how a decision of the Tribunal may impact on their involvement in the class action. The applicant should instead be instructed to seek independent legal advice (for example by contacting the law firm representing them in the class action). Generally, it would not be expected that involvement in the class action would require the Tribunal application to be delayed or put on hold. As always it is open to the applicant to withdraw if they do not wish the Tribunal to proceed to determine their application for review.

...