

## Document defending the use of the term “robodebt”

Tabled at the Senate Community Affairs Inquiry

Melbourne, 9<sup>th</sup> October 2019

Dr Darren O'Donovan

The term “robodebt” was coined by Mr Ben Eltham and Ms Belinda Barnet on twitter and brought to prominence by Asher Wolf and the #notmydebt campaign. While it has long since past into common usage, this short brief analyses the pattern and justification for its use within peer reviewed legal academia and advocacy. It makes no claims in relation to public or political understandings of the term and does not, in any way, claim speak on behalf of those who originated the term. It is important that academics do not speak over broader societal debates.

### 1. The term “robodebt” refers to specific cohorts of debts where authors have argued *meaningful human intervention has not occurred as required by statute.*

Claims that “robo” in “robodebt” is conclusory or ill judged are unfounded. The question whether a process is “automated”, or “robotic” is ultimately defined by the nature and quality of the human intervention. Importantly, the existing peer reviewed literature does not claim robodebt is *self-executing*. It is widely accepted that human staffing has accompanied the system. Despite their presence, **robodebt actions a reflexive assumption that averaged ATO data can be applied where the individual does not perform certain actions.** The peer reviewed arguments of Peter Hanks QC and Professor Terry Carney have drawn a careful picture of how robodebt occludes key variables and fails to recognise the flaws in the dataset.

Regulatory bodies who have consolidated of academic thinking and considered these legal boundaries include the United Kingdom’s Information Commissioner and the European Data Protection Board (EDPB) who have already published guidance relating to these issues. The key messages include:

- Human reviewers should not “routinely” apply the automated recommendation to an individual;
- reviewers must ‘consider all available input data, and **also take into account other additional factors**

Tokenistic, partial human actions will not suffice. You can “automate” without intention, even you’re filled to the brim with humans. See in particular: <https://ai-auditingframework.blogspot.com/2019/04/automated-decision-making-role-of.html>

While there we await litigation and debate about the scope and numbers of just how many “robodebts” there are, it seems impossible to maintain the such debts have not existed. Published investigations, documented tribunal successes and even the Department’s actions in recalling 56,000 debts at the height of first senate inquiry all point to this. Clearly high profile court rulings secured by Victoria Legal Aid may fix the category once and for all, but even were these cases somehow lost the term will retain accuracy as a description of a defined cohort of debts.

While authors may differ in how they view the adequacy of the department's "remediation" efforts, a cohort of debts known as robodebts exists and the word now represents an established term in academic discourse as well as broader society.

2. There are concrete situations where the term "robodebt" is actually more appropriate than the alternative formal names adopted by the Department. Using these more formal programme names may unduly expand or contract the arguments of authors criticising robodebt.

I would advise editors that there are complications accompanying each alternative label that can be proposed.

**"Online Compliance Initiative":** This is the term of art describing the Department's core online portal and letter platform from 2016 to the present day. The OCI is marked by reliance on a regime of letters, an online portal or telephone lines. Unfortunately, however, reliance upon this term can result in authors excluding robodebts or including non-robodebts.

Firstly the term does not provide the sufficient level of coverage the author is seeking:

- It will not cover the cohort of averaged debts which are likely to have been issued by via reflexive manual handling under the **"interim manual programme"** or the earlier trial of robodebt. While these phases featured risk targeting and human data entry, they appear to have adopted the robodebt approach to applying averaged ATO figures and penalties.
- It **does not cover the Department's small scale manual trials** involving vulnerable recipients (these were suspended due to political pressure but were driven by averaging)
- The **NEIDM** programme (non-employment income data matching) was initially slated for inclusion in the Online Compliance Initiative. The status of NEIDM as "part" of robodebt is contested and a full discussion is beyond the scope of your request! **Recent reporting suggests that NEIDM may be folded back into Online Compliance Initiative**, due to a failure to achieve the budget target.
- The use of averaging within standard "business as usual" processing which existed before the three budget measures is also under question.

Secondly, the use of the term **Online Compliance Initiative** may operate as to include decisions which do not fall into the carefully drawn scope of Professor Terry Carney and Peter Hanks QC. To conflate all the online compliance initiative with robodebt may cause a drift in the accuracy of claims. **It is might lead to incorrect impressions that authors oppose ideas of an online portal or asking individuals for information.**

**"Employment Income Compliance":** While this correctly emphasises the centrality of fortnightly earned income and the requirement that again it suffers from the possible overinclusion danger raised in my above discussion.

**"Averaged Debts" or "Apportioned debts":** The difficulty here is that the social security law permits "averaging" in scenarios not relevant to robodebt. This fact is used by some authors to as a contextual indicator of robodebt's unlawfulness. Again this all traces back to Hanks and Carney's work.

*Can the title of the budget measures be used?* Unfortunately, robodebt involves the splintered interaction of three budget measures. These operated cumulatively and in a highly technical fashion.

**3. The optional use of term robodebt is wholly compatible with academic integrity and citizenship.**

Clearly, as reflect academic freedom, authors should remain free to place robodebt in quotations or add monikers such as so-called robodebt. Equally the term robodebt should be embraced.

In engagement and advocacy activities, its use can promote public understanding, particularly as many support resources are structured around the term. It is vital that academics promote precision in communication, attempting to promote public understanding “reconciliation” debts which operate under different regulatory frameworks. The use of the term “robodebt” allows community legal centres to triage effectively.

The use of the term robodebt fits academics responsibility towards the public by:

- Promoting public awareness of the resources available to them.
- Clearly flagging that not all centrelink debts are robodebts.
- For socio-legal scholarship robodebt is an important social, political and cultural marker for powerful access to justice themes.

When making claims about formal legality, authors should take care to define the term robodebt, to reason closely from the text, purpose and context of the statute. There are by now a number of published examples of robodebts being remitted and set aside. They should attempt to paint a grounded picture of how large the ultimate cohort of robodebt will end up being, and the nature of the conduct that defines them.