

Senate Standing Committee on Community Affairs

Centrelink's compliance program

ANSWERS TO QUESTIONS ON NOTICE

Office of the Commonwealth Ombudsman

September 2021

Department/Agency: Office of the Commonwealth Ombudsman

Question 1 (p 24 of transcript)

CHAIR: I want to go to the new debt recovery program relating to people receiving both JobKeeper and Centrelink. From memory, nearly 12,000 notices have gone out. Have you received any complaints about those specific debts?

Ms MacLeod: We'll have to take that on notice. I don't think we have, but let us take that on notice.

CHAIR: It would be much appreciated if you could take on notice whether you have received them, how many and the nature of the complaints.

Has the Office received any complaints about the new debt recovery program relating to people receiving both JobKeeper and Centrelink – if so, how many and what is the nature of the complaints?

RESPONSE:

For the period since the resumption of debt recovery on 1 February 2021 through to 14 September 2021, the Office of the Commonwealth Ombudsman has received 21 complaints concerning debt recovery and the interaction of JobKeeper with Centrelink payments.

The themes of these complaints are:

- seeking a better explanation of debts
- disputing the calculation or existence of debts
- unclear communication or incorrect advice from Services Australia about the debt repayment process or debts owed, and
- incorrect advice about overpayment of JobKeeper where other payments were being received.

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Question 2 (p 24 to 26 of transcript)

- a. Did the Ombudsman specifically request a copy of the 'Executive minute to the Minister for Social Services', dated 12 February 2015 (DHS Executive Minute)?
- b. Did the Ombudsman retain a copy of the DHS Executive Minute?
- c. Exactly how did the DHS Executive Minute come into the possession of the Ombudsman – was it handed over as part of a bunch of documents or was it specifically requested?
- d. Can the Ombudsman consider providing the committee with a copy of the DHS Executive Minute?

RESPONSE:

- a. No.
- b. Yes.
- c. The Office of the Commonwealth Ombudsman (the Office) issued a general request for information to the Department of Human Services (DHS) (now Services Australia) under section 8 of the *Ombudsman Act 1976* (Cth) (the Ombudsman Act). The request sought a broad range of information on the Income Compliance Program, including “What briefings has the minister received in relation to the Online Compliance Platform? Please provide copies.” DHS provided a copy of the DHS Executive Minute to the Office in January 2017.
- d. The DHS Executive Minute is a document of Services Australia (formerly DHS).

The Office’s purpose is to provide assurance to the Parliament and the public that the agencies we oversee act with integrity and treat people fairly; and to influence enduring systemic improvement in public administration.

We do not have the power to give binding directions to agencies to achieve this purpose. Rather, our ability to provide assurance and influence improvement depends on our capacity to influence the agencies we oversee, which in turn relies on us having robust and constructive working relationships with those agencies.

Our ability to achieve our purpose is also predicated on the Office having almost unfettered access to information from the agencies we oversee. The Ombudsman Act confers wide-ranging powers on the Office to request information for the purpose of conducting our investigations.

The corollary to these wide-ranging powers is that the Parliament, through the Ombudsman Act, requires that investigations of the Office ‘shall be conducted in private’ (section 8(2)) and the information we acquire must not be recorded, divulged, or communicated to any person except in the exercise of our powers and the performance of our functions under the Ombudsman Act (section 35).

The explanatory memorandum to clause 35 of the Ombudsman Bill 1976 explains the importance of this statutory obligation of confidentiality as follows:

“It is essential to the success of the operations of an Ombudsman that he [sic] should have the greatest possible access to departmental and other official files relating to the matters under investigation. The complement to this is that officials should be able to rely on information they give to the Ombudsman and his staff being kept confidential except to the extent to which it must be disclosed for a report by the Ombudsman to be meaningful. The purpose of these sub-clauses is to put the Ombudsman, the Deputy Ombudsmen, the staff of the Ombudsmen and others who operate under his authority under obligations of secrecy in respect of information obtained by them under the Act.”

We acknowledge there is a public interest in information or documents being made available through disclosure to the Committee. In the circumstances of this particular request of the Committee, however, we are concerned this is outweighed by the public interest in the Office not disclosing information. This is because the information in question was obtained by the Office in the performance of our functions under the Ombudsman Act, and our ability to access such information relies on agencies trusting that we will honour our statutory obligation to keep such information confidential.

The specific harm to the public interest that would result if our Office disclosed the DHS Executive Minute to the Committee—rather than Services Australia or the Minister for Social Services doing so as the relevant ‘owners’ of the Minute—is that Services Australia, and by extension other agencies, would cease to trust that our Office will keep the information they provide to us confidential, and therefore would be reluctant to provide such information in the future.

Without wide-ranging access to the information of the agencies we oversee, and the trust of those agencies that their information will be kept confidential, our ability to perform our functions and achieve our purpose would be severely compromised. In turn, this would undermine the public’s confidence in our ability to provide assurance that the agencies we oversee act fairly and with integrity and to influence improvement in public administration over time.

Having considered the possibility of disclosing the DHS Executive Minute very closely, and weighing the competing public interests, the Office’s strong preference is not to provide a copy of the Minute. The Office has significant concerns that disclosure would be likely to harm the public interest substantially by undermining the effective future performance of the Ombudsman’s functions.

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Question 3 (p 28 of transcript)

Senator O'NEILL: ... One of the things that continue to concern me—and I hope that you can assuage this concern that I have—is that the way that these claimed debts are calculated is not available immediately on receipt of the debt. The letter just says, 'This is what you owe relating to this.' It doesn't provide the details of the calculations and the decision-making tree that's led to the raising of the debt. Am I wrong there?

Ms McKay: I'd have to have a look at that communication to say either way. I can't be sure. I wouldn't want to comment.

Senator O'NEILL: Could you take it on notice, because it seems to me that the historical fact of robodebt, where the government illegally raised debts against its own people, leads to a high level of mistrust in information that's coming from the relevant department. It seems to be the continuing practice to say, 'Look, you actually owe us money: this is how much you owe us, and it's related to this program,' but there's no calculation and detail about how that was arrived at. That is absolutely unacceptable in the current historical reality, where this government illegally raised debts against its own people.

Ms McKay: We're certainly happy to take that one on notice and get back to you.

What is the Ombudsman's view of the current quality of communications regarding how claimed debts are calculated?

RESPONSE:

In February 2021, the Office of the Commonwealth Ombudsman (the Office) considered Services Australia's template debt recovery letters, which in our view appeared to provide clear and simple communication of debt.

As part of the Office's assessment of Services Australia's implementation of recommendations arising from our 2021 own motion investigation report on the Income Compliance Program, we will work with Services Australia to consider any further opportunities for improvement including whether additional information on how each individual debt is calculated would assist people to better understand the basis of their debt.