

# Coalition Senators' Dissenting Report

1.1 In the 2016-17 Mid-Year Economic and Fiscal Outlook, the Government announced that from 1 January 2017 it would implement a package of initiatives to enhance the integrity of social welfare payments, including expanding and extending data matching activities with the Australian Taxation Office and improving engagement with welfare recipients to ensure that they understand and meet their obligations.

1.2 Coalition Senators recognise that ensuring the integrity of the welfare system is a key focus for the Australian Government.

1.3 The Commonwealth Ombudsman's April 2017 Report, Centrelink's automated debt raising and recovery system (the report), noted that the Department of Human Services (DHS) made changes to the online compliance intervention (OCI) system, partly in response to feedback from the Ombudsman.

1.4 The report notes that the 'changes have been positive and have improved the usability and accessibility of the system. The changes were developed after more comprehensive user testing involving customers and after seeking input from the Digital Transformation Agency.'<sup>1</sup>

1.5 The report also welcomes 'DHS' advice that it has now removed the automatic application of the ten per cent recovery fee for customers who engage with DHS'<sup>2</sup>, and that 'we acknowledge the improvements DHS has made to its initial contact letters since 20 January 2017. The current letters now contain the dedicated 1800 compliance helpline number...'<sup>3</sup>

1.6 The report concludes that the 'February 2017 changes which include improvements to the help functions, explanations and overall usability of the OCI go some way to addressing our concerns about usability of the system.'<sup>4</sup>

1.7 Importantly, Coalition Senators recognise that there are elements of the current welfare system integrity process which are being further improved, clarified and modernised. These include:

1. Improved data-matching and case selection;
2. Enhanced communications and interactions with recipients, including the simplification of language in letters; and
3. Improved debt management processes.

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1 Commonwealth Ombudsman, *Centrelink's automated debt raising and recovery system, Report No. 2 of 2017*, April 2017, p. 26.

2 Commonwealth Ombudsman report, p. 26.

3 Commonwealth Ombudsman report, p. 27.

4 Commonwealth Ombudsman report, p. 27.

## 1. Improved data-matching and case selection

1.8 The Commonwealth Ombudsman report examined the accuracy of debts raised under the OCI. The Ombudsman was 'satisfied the data matching process itself is unchanged'<sup>5</sup> [from its use in past programmes] and that the 'number of instances where no debts were raised following contact with a customer (approximately 20 per cent) was consistent with DHS' previous manual debt investigation process.'<sup>6</sup> Further, the report concluded that 'this figure has been incorrectly referred to as an "error" rate.'<sup>7</sup>

1.9 The Ombudsman further noted that 'We would be concerned if this figure was significantly higher under the OCI than under the previous manual process. However, this does not appear to be the case.'<sup>8</sup>

1.10 It is important to note that should the information available to DHS be incomplete, the debt amount may be affected. The Ombudsman noted that 'it is important for the system design for customers to respond to information requests from DHS so decisions are made on all available information.'<sup>9</sup>

1.11 This approach was endorsed by the Ombudsman which reported 'In our view, it is entirely reasonable and appropriate for DHS to ask customers to explain discrepancies following its data matching activities as a means of safeguarding welfare payment integrity.'<sup>10</sup>

1.12 Further, the Ombudsman noted that 'DHS has always asked customers to collect employment income information during its compliance reviews.'<sup>11</sup>

1.13 The Ombudsman also noted 'DHS has told our office the implementation of future compliance measures will take into account lessons learnt from the OCI.'<sup>12</sup>

1.14 Coalition Senators reject the view in the Chair's report that DHS has reversed the burden of proof onto recipients. The DHS Secretary stated:

How we assess income and calculate debts has not changed. The data matching process identifies differences, which we ask people to check. No debt is raised until we have attempted to contact a person and give them the opportunity to explain differences. Initial letters are not debt letters. The initial letter requests people to confirm employment and income details and

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5 Commonwealth Ombudsman report, p. 1.

6 Commonwealth Ombudsman report, p. 1.

7 Commonwealth Ombudsman report, p. 1.

8 Commonwealth Ombudsman report, p. 8.

9 Commonwealth Ombudsman report, p. 1.

10 Commonwealth Ombudsman report, p. 7.

11 Commonwealth Ombudsman report, p. 2.

12 Commonwealth Ombudsman report, p. 6.

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to correct any inaccuracies. No assumptions about debt are made. A second letter is also sent to remind people of the need to engage.<sup>13</sup>

1.15 Additionally, in its submission DHS stated:

People have always been responsible for providing the department with correct information – this has not changed. People are obliged to tell the department when their circumstances change. This can include changes to their relationship status, living arrangements, care arrangements, assets or income from work. Debts can arise when people do not provide timely updates to the department about changes in their circumstances.<sup>14</sup>

1.16 Further, as previously reported, the Ombudsman confirmed that the data-matching process remained unchanged. This supports the information from DHS that 'The way debts are calculated has not changed. The automated debt calculation tool has been in use since 2003.'<sup>15</sup>

1.17 It was apparent in the course of the course of the inquiry that there was misunderstanding on the part of recipients and some representative organisations that recipients have not previously been required to provide information to support or clarify their claim or payments. The Coalition Senators do not regard this expectation as a transfer of the burden of proof to recipients but instead a pragmatic reality that recipients are best placed to provide information that clarifies or explains their situation.

1.18 This expectation must be made clearer to recipients across the welfare system and explained that this is an ongoing requirement, not just at the time a payment claim is made. Recipients need to be empowered to manage their payments and sufficient information provided to recipients from DHS. Further, in providing information to recipients, DHS ought to draw upon all information available to it, to both verify the calculations made by DHS and reduce the requirement for recipients to seek information held by various Commonwealth authorities which can also be accessed by DHS.

1.19 Coalition Senators note and agree with changes made to allow the use of readily available sources of information such as bank statement. The Ombudsman noted that:

The ATO only requires individuals with simplified tax affairs to retain records for two years. In the OCI context, it may be reasonable for customers to retain their employment and payroll records for a similar period, but not for six or seven years, particularly where they have not been forewarned about this requirement. Some customers may face challenges

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13 Ms Kathryn Campbell, Department of Human Services, *Community Affairs Legislation Committee – Additional Budget Estimates Hansard*, 2 March 2017, p. 8.

14 Department of Human Services, *Submission 66.1*, p. 1.

15 Department of Human Services, *Submission 66.1*, p. 9.

collecting this information where their employer no longer exists, is being unco-operative or has not retained payroll records.<sup>16</sup>

1.20 Coalition Senators recommend that DHS continue to invest in its data and analytical capabilities be further improved. This ought to include an integrated case selection methodology that draws information together from data sources such as annual tax returns, financial income, company tax, foreign pension, family day care and trust income.

1.21 Developing a 'whole of recipient' review capability to inform an enhanced case selection would improve the recipient experience and interaction with the welfare system, further enhance the integrity of the system and more efficiently use Australian Government resources.

## **2. Enhanced communications and interactions with recipients**

1.22 It was widely recognised, both during this inquiry and in public discourse around OCI, that communications with recipients, including through letters and online portals, needs to be clear and include crucial information.

1.23 The Ombudsman reported 'In our view, DHS could make further improvements to improve the clarity of the initial letters and give customers better information so they understand the information and can properly respond to it.'<sup>17</sup>

1.24 DHS explained that

...data matching, sending letters and assessing and calculating differences in income and payments has been part of the department's compliance activities for many years. What has changed is the introduction of the online self-service portal.<sup>18</sup>

1.25 Through the inquiry the committee heard of difficulties experienced by recipients in using the portal. Subsequent to these concerns, DHS undertook improvements and reported '...the screens for the employment income confirmation system have recently been clarified and simplified...'<sup>19</sup>

1.26 The Ombudsman also recognised the improvements that had already been made, reporting 'Overall, communication within the OCI is improved by greater clarity. In particular, there are more prominent help functions and explanations within the system.'<sup>20</sup>

1.27 DHS explained that letters have long been used as the primary means in making contact with recipients in the first instance

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16 Commonwealth Ombudsman report, p. 13.

17 Commonwealth Ombudsman report, p. 27.

18 Department of Human Services, *Submission 66.2*, p. 1.

19 Department of Human Services, *Submission 66.2*, p. 1.

20 Commonwealth Ombudsman report, p. 37.

The department has always sent letters to recipients and former recipients, if the data-matching process has identified a difference between an individual's income tax data issued by the ATO and income data previously provided by that individual to the department, and the individual is identified for a compliance intervention. These letters explain that data-matching has identified a difference, and invites people to log-in to the online portal to clarify or confirm their income and employment information.

Initial letters are not debt letters. They simply request people to confirm their employment and income details, and to correct any inaccuracies. No assumption about debt is made. The letters invite people to provide additional information. A second letter is also sent 14 days after the initial letter to remind people of the need to engage with the department.<sup>21</sup>

1.28 DHS also confirmed that it is making several changes to improve the initial contact letters and messages within OCI to make it clearer and more accessible, in consultation with key external stakeholders.

The department is currently in the process, along with the Digital Transformation Agency (DTA) and the Australian Taxation Office (ATO), of undertaking four-weeks of user research to see whether the changes have been successful.<sup>22</sup>

1.29 Coalition Senators reject the view in the Chair's report that a lack of clarity in communications to recipients represents a lack of natural justice or procedural fairness.

1.30 The DHS Secretary explained the process for recipients following receipt of the first letter:

Currently, people have 28 days to confirm or update their information online, with a reminder sent at the 14-day mark. Even with this amount of time, our experience is that some people will not engage with our initial letters. Indeed, sometimes they do not engage with us until their payments are suspended or they receive a debt notice. For example, in 2016 we sent 260,000 reminder letters to Family Tax Benefit recipients who had not lodged a tax return. We still needed to raise 65,000 debt notices. Once the recipients engaged with us, almost a third of those were changed to \$0. By contrast, only 3.5 per cent of the 130,000 online compliance debts raised from July 2016 to January 2017 were later reduced to \$0.<sup>23</sup>

1.31 Further, in its submission to the committee DHS explained the avenues available to recipients to seek a review of the debt calculations:

If recipients do not agree with the assessment of the information they have provided to the department, there are options for re-assessment, formal

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21 Department of Human Services, *Submission 66.1*, p. 4.

22 Department of Human Services, *Submission 66.2*, p. 2.

23 Ms Kathryn Campbell, Department of Human Services, *Community Affairs Legislation Committee – Additional Budget Estimates Hansard*, 2 March 2017, p. 9.

review and appeal ... The department has continued to make improvements to the debt recovery process, such as pausing the debt recovery action while the department reviews the debt.<sup>24</sup>

1.32 Coalition Senators agree that letters should be in plain, simple and straightforward language so as to ensure recipients understand them.

1.33 It is important that the design and implementation of programmes is informed by user testing in order to better understand the experience and behaviour of the users of a service. Coalition Senators recognise that significant improvements are being undertaken, including more rigorous user testing and the release of the new-look portal for myGov that has been informed by detailed user-acceptance testing.

1.34 With regard to user testing Coalition Senators note the comments of the Ombudsman that:

The OCI is a complex automated system that was rolled out on a large scale within a relatively short timeframe. There will inevitably be problems with the rollout of a system of this scale. In our view the risks could have been mitigated through better planning and risk management arrangements at the outset that involved customers and other external stakeholders in the design and testing phases.<sup>25</sup>

1.35 Coalition Senators recommend that all changes to compliance processes be subjected to rigorous user testing with recipients to ensure that advice is as clear as possible and appropriately toned while complying with legislative requirements.

1.36 System enhancements should be tested, designed and implemented in consultation with relevant stakeholders and government agencies, especially the Digital Transformation Agency. Combined with better data analytics, an iterative and tailored approach to engaging with recipients should also enhance the integrity of the welfare system and address the concerns raised in the early stages of the OCI.

### **3. Improved debt management processes**

1.37 The committee heard through the inquiry that the majority of people who have a debt owing to the Government make arrangements to pay that debt following the information they receive from DHS. If however, the person fails to engage with DHS to arrange payment DHS will initiate debt recovery.<sup>26</sup>

1.38 The committee also heard that external collection agents are not engaged for recipients currently receiving payments. Debt repayments for current recipients are organised through alternate means, such as withholding or reducing payments. For people who are no longer in receipt of welfare payments, DHS may engage an external collection agency.<sup>27</sup>

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24 Department of Human Services, *Submission 66.1*, p. ii.

25 Commonwealth Ombudsman report, p. 26.

26 Department of Human Services, *Submission 66.2*, p. 2.

27 Department of Human Services, *Submission 66.2*, p. 2.

1.39 The committee heard that external debt collection services are contractually required to meet all relevant Australian laws and standards, good industry practice and relevant industry codes, policies and guidelines, such as '...the *Competition and Consumer Act 2010*, and the *Debt Collection Guideline for Collectors and Creditors* issued by the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission.'<sup>28</sup>

1.40 Coalition Senators recommend that DHS undertake an examination of the welfare debt recovery process and identify areas where reforms might improve the efficiency and effectiveness of debt recovery, including the customer's experience, and the cost benefit of pursuing debts.

### **Adherence to privacy**

1.41 Throughout the inquiry much comment was made regarding privacy of recipient information. In its supplementary submission DHS confirmed that it:

...is legally authorised to conduct data-matching activities, and deals with all personal information it holds in accordance with the *Privacy Act 1988* (Privacy Act) and relevant secrecy provisions in programme legislation.<sup>29</sup>

1.42 Coalition Senators note that DHS:

...notifies recipients of data-matching in its Privacy Policy, as required under Australian Privacy Principle 1. In April 2017, the department's Privacy Policy, which is publicly available, was shortened and simplified in consultation with the Office of Australian Information Commissioner.<sup>30</sup>

1.43 Further, DHS advised the committee that:

When conducting data-matching activities which do not involve matching Tax File Numbers, the department adheres to the Australian Information Commissioner's Guidelines on Data-matching in Australian Government Administration, which are issued under section 28(1)(a) of the Privacy Act. Compliance with these Guidelines is not mandatory, but is considered to be best privacy practice.<sup>31</sup>

1.44 Coalition Senators recommend that DHS continues to work with the Office of the Australian Information Commissioner to protect the privacy of welfare recipients.

1.45 Coalition Senators note that DHS has updated the *2004 Pay As You Go Data Matching Program Protocol* in consultation with the Australian Taxation Office to reflect relevant changes such as the names of applicable privacy principles and data-matching guidelines.<sup>32</sup>

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28 Department of Human Services, *Submission 66.1*, p. 11.

29 Department of Human Services, *Submission 66.2*, p.3.

30 Department of Human Services, *Submission 66.2*, p.3.

31 Department of Human Services, *Submission 66.2*, p.3.

32 <https://www.humanservices.gov.au/sites/default/files/2017/05/program-protocol-payg-data-matching-may-2017.docx>.

**Conclusion**

1.46 The Coalition Senators highlight the changes and improvements made by the Government to OCI, many of which were made before the commencement of this inquiry. It has been widely acknowledged by the Government that the initial rollout should have received more robust planning and consideration of the impact and operation of increasingly moving to digital engagement. It was also clear through the early stages of the rollout that further effort was required to ensure customers had sufficient information and access to resources to understand their requirements and to navigate the established review processes.

1.47 Coalition Senators acknowledge the evidence given by some recipients from the early stages of the OCI rollout about the confusion they experienced in being advised of a debt and in providing the information requested. At all stages of this inquiry the Coalition Senators have been focussed on practical measures and improvements to address the concerns raised by those who participated in this inquiry.

1.48 Coalition Senators reject the central conclusion of the Chair's report that the OCI process lacked procedural fairness. Coalition Senators, as did the Government and Ombudsman, acknowledge that communications early in the OCI rollout lacked clarity and gave rise to potential confusion on the part of recipients. However, at no stage did this constitute a lack of procedural fairness as review avenues remained open to recipients, and still do to this day – any person with a debt arising from OCI can request a review and provide new information at any time.

1.49 Coalition Senators further note the input from some third parties, such as #notmydebt, which were aiming solely at scoring political points and inflaming the situation rather than offering practical assistance in resolving the issues raised.

1.50 To that end, Coalition Senators thank all Senators involved in this inquiry, the many individuals and organisations genuinely focussed on improving the process who shared their experiences and, most importantly, the committee secretariat for the support throughout this inquiry.

**Senator Jonathon Duniam**

**Senator Linda Reynolds**