

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO
SUPPLEMENTARY BUDGET ESTIMATES 2024-2025

PA-Commonwealth Director of Public Prosecutions

SBE24-054 - Contact between DSS and CDPP regarding unlawful income apportionment

Senator Penny Allman-Payne asked the following question on 8 November 2024:

The Department of Social Services' Annual Report 2023-34 published earlier this month identifies, on page 262, that the practice of income apportionment dates from the 1990s.

1. Has DSS been in communication with the CDPP's office regarding prosecutions, convictions or punishments that may have been recorded against persons where those prosecutions, convictions or punishments were based on evidence of a debt to the Commonwealth that was affected by unlawful income apportionment?
2. Has DSS been in communication with the CDPP's office as to the expanded scope of income apportionment, which now may affect prosecutions, convictions or punishments going back to the 1990s?
3. In relation to debts that may be affected by unlawful income apportionment as described before, has the CDPP been conducting any reviews of its past prosecutions?
4. Please detail all steps taken by the CDPP in relation to past prosecutions, convictions or punishments related to income apportionment.
5. Has the CDPP developed any labelling or tracking system within, to identify those matters that may be affected by unlawful income apportionment under s 1073B income apportionment?

The response to the senator's question is as follows:

1. Yes. Since October 2023 DSS has been in regular contact and had regular meetings with the office of the Director of Public Prosecutions (Cth) (CDPP) regarding prosecutions that included debts that were calculated using income apportionment. Services Australia have been a party to these interactions.
2. Yes. On 1 September 2023, during a meeting with Services Australia the CDPP first became aware that matters affected by income apportionment may date back prior to 2003. More material about this issue was provided by DSS to the CDPP between October and December 2023.

3. Yes. On 5 May 2023, the CDPP accessed our case management system and obtained a list of all historical Services Australia prosecutions that had been finalised in the last 5 years (since 1 May 2018). 1856 matters were identified. From the 1856 matters the CDPP identified all matters where the defendant continued to be subject to a court order as at 15 May 2023. 365 matters were identified. On 15 May 2023, the CDPP forwarded the list of 365 matters to Services Australia for identification of which matters were affected by income apportionment. Between the 26 September 2023 and 17 October 2023, Services Australia confirmed it had identified 159 cases affected by income apportionment from the list of finalised matters. Services Australia provided the list of affected matters and the most recent contact details they held for each individual to the CDPP. They further advised that one individual had died.

4. The CDPP is reliant on Services Australia to identify which Services Australia historical prosecutions are affected by income apportionment.

In relation to the cohort of cases referred to in question 3, the CDPP took the following steps:

- wrote to the legal representatives that appeared for the individuals (where applicable) advising them of the issue and that the Office would attempt to contact their client directly;
- contacted the Legal Aid office in each state and territory, advised them of the issue and sought a contact number that could be included in a letter to each affected individual;
- wrote to each affected individual to advise them of the income apportionment issue, the details of their local Legal Aid office and suggested they seek independent legal advice.

5. The CDPP is unable to develop a labelling or tracking system to identify matters that may be affected by the income apportionment issue. The identification of affected matters can only be determined by Services Australia who are responsible for the calculation of the affected debt. The CDPP has relied upon Services Australia to confirm which referrals are affected by the issue.