

# Chapter 2

## Data matching

Raising a debt is no small matter. Most Centrelink customers rely upon income support for their survival. To make them pay money back can result in significant financial hardship and social problems. That is why Centrelink, prior to the robo-debt regime, had procedures in place to ensure that they could be satisfied a debt had occurred before issuing a debt notice. That is not to say mistakes were not made, but the procedures minimised risk.<sup>1</sup>

What the robo-debt process does is shift the onus onto the client to prove their innocence, and that is unusual. Data-matching is not new. The problem with the system as it stands is that, rather than Centrelink making the inquiries when there is perhaps evidence to suggest a person has underreported their income, they turn it over to the client to contact them.<sup>2</sup>

2.1 As outlined in chapter 1, data-matching with Australian Taxation Office (ATO) records and subsequent debt collection to recover income support overpayments is not a new process for the Department of Human Services (department). What is different in the Online Compliance Initiative (OCI) program, is how the lump sum income information data from the ATO is subsequently checked against actual fortnightly income support payments, to determine if overpayments have been made. As noted in Chapter 1, this process has largely been outsourced to the individual income payment support recipients under the new OCI program. This change in process has had a significant impact on the accuracy of the department's advice to income payment support recipients regarding purported debts incurred as a result of income support overpayments.

2.2 This chapter will outline the debt calculation process from the initial data matching, to seeking clarification from individuals where there is a discrepancy in income data, up to the point when a formal decision is taken by the department that there is a purported debt amount owing. This chapter will also outline the relevant laws and provisions which govern how this should be undertaken.

### Overpayment data matching

2.3 Centrelink income support payments are subject to an income test which means that a recipient's fortnightly payment may be reduced once their income reaches a specific threshold. The more income a recipient earns, the greater the rate

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1 Mr Mark Leahy, Manager, Welfare Rights Centre South Australia, Inc., *Committee Hansard*, 10 April 2017, p. 33.

2 Mr Ian Turton, Solicitor, Illawarra Legal Centre, *Committee Hansard*, 19 April 2017, p. 43.

that their fortnightly payments are reduced. The rate at which the payments are reduced depends on the individual's circumstances.<sup>3</sup>

2.4 Centrelink payment recipients must report their income fortnightly and their fortnightly payments are calculated based on this information.<sup>4</sup> Where it is found that a recipient has incorrectly reported their fortnightly income, and the correct amount would have affected their entitlement to a payment, a Centrelink debt may be raised.

2.5 Such purported debts are usually identified by the department following some form of data-matching process to check whether a recipient's income information reported to Centrelink is consistent with records held by other agencies, such as the ATO.

2.6 The department provides the ATO with the identity information of Centrelink recipients which the ATO matches against their records. In order for the ATO to provide income information to the department, the ATO must identify a high confidence match between the identity information provided and the ATO's records.<sup>5</sup>

2.7 The data-matching process then involves comparing Pay-As-You-Go (PAYG) statements provided by employers to the ATO with the information on earned income declared by Centrelink recipients. The data-matching is used to identify whether there is a potential discrepancy between the amount of income self-reported by the recipient to Centrelink, and the amount reported by the recipient's employer to the ATO.

2.8 Up until recently, if a potential discrepancy was found, a departmental officer would seek date-specific income data directly from an individual's employer to verify dates of when the income was earned.

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3 For example, a Newstart recipient who is single and not a principal carer will have their payments reduced by 50 cents for each dollar earned between \$104 and \$254 and then by \$75 plus 60 cents for each dollar over \$254. A Newstart recipient (single, no children) earning \$1036.34 per fortnight will have their payment cut off as their income exceeds the income test. See: Department of Human Services, *'Income test for Newstart Allowance, Partner Allowance, Sickness Allowance and Widow Allowance'* <https://www.humanservices.gov.au/customer/enablers/income-test-newstart-allowance-partner-allowance-sickness-allowance-and-widow> (accessed 5 June 2016).

4 Department of Human Services, *'Income test for Newstart Allowance, Partner Allowance, Sickness Allowance and Widow Allowance'* <https://www.humanservices.gov.au/customer/enablers/income-test-newstart-allowance-partner-allowance-sickness-allowance-and-widow> (accessed 5 June 2016).

5 A high confidence match includes a match on at least three identity fields which normally includes a person's name, address and date of birth. See: Mr Greg Williams, Deputy Commissioner, Smarter Data, Australian Taxation Office, *Committee Hansard*, 8 March 2017, p. 23. Of the eight million records which the Australian Taxation Office has provided to the department, there have been only two instances which have resulted in an identity mismatch between Centrelink and Australian Taxation Office records. In both instances the Australian Taxation Office contacted the department on behalf of the mis-identified individual and resolved the issue on behalf of the two individuals. See: Australian Taxation Office, *Answers to questions on notice*, 8 March 2017 (received 27 March 2017).

2.9 As noted above, the new Online Compliance Intervention (OCI) system has altered the way in which the department verifies discrepancies between self-reported income and the ATO income data. Since November 2016, the department has significantly changed the protocol for the data-matching program, by removing the requirement for a departmental officer to undertake this manual income verification process<sup>6</sup>. Instead, individuals are now required to undertake this process and communicate the verified data back to the department.

### **OCI data matching program**

2.10 As noted above, the department uses a data-matching process to determine whether a current or former recipient of Centrelink payments has correctly declared their income and received the correct payment.

2.11 The Illawarra Legal Centre noted the key change is not in the data matching process, but in the way that data is later verified:

There is nothing new in this. Data-matching has been around for years. If Centrelink has suspicions, it could contact the employers directly. All of this is a cost-saving exercise, transferring the cost of administration. Centrelink could contact the employer: 'What did this person earn? Can you provide me fortnightly earnings for this person for this period of time?' It has moved from that to asking the client, who may no longer be a Centrelink client, to provide details of their fortnightly earnings from some time past. People do not keep those records. It is an unwarranted intrusion.<sup>7</sup>

2.12 Previously, where a discrepancy was identified between these two sources, the department manually checked the information for accuracy and contacted the recipient and/or their employer to clarify the information. The department's data matching program protocol of May 2004 explains the process:

Upon contacting Centrelink, the customer is provided with an opportunity to respond to the information and provide appropriate evidence of their income from employment. Where Centrelink is satisfied that the information provided by the customer is complete and accurate, Centrelink will not approach third parties for further information. **If the customer is unable to provide sufficient evidence, the employer may be contacted to provide further information** [emphasis added].<sup>8</sup>

2.13 The department confirmed that '[i]n the past, if the person was not able to provide the information themselves, or sometimes even when they did, we used to go to the employer and get their records.' Ms Golightly, Deputy Secretary of Integrity and Information, further clarified:

**CHAIR:** So you used to go to the employers to get the employment records?

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6 Department of Human Services, *Submission 66.1*, Attachment D, p. 11, Attachment E, p. 7.

7 Mr Turton, *Committee Hansard*, 19 April 2017, p. 44.

8 Department of Human Services, *Submission 66.1*, Attachment D, p. 11.

**Ms Golightly:** In some cases we would go to employers, but we always went to the individual first.

**CHAIR:** Yes, and when they had difficulty you went to the employers?

**Ms Golightly:** When they had difficulty, we would talk them through what other information they might have—like bank statements et cetera—but, yes, we used to go to employers. Now we are trying to eliminate the need for anybody to do that so that it is easier...<sup>9</sup>

2.14 The OCI system now, in essence, outsources the clarification stage to the income payment recipient. Where this was previously a function performed by a staff member of the department trained in such operations, the department now directs income payment recipients to an online portal to clarify and update their information:

[T]he recipient is contacted by letter which provides the recipient the employment information that DHS has received from the ATO and requests them to clarify this information online...

Upon contacting DHS or accessing the online system, **the recipient is provided with the opportunity to clarify the information and provide appropriate evidence of their income from employment** [emphasis added].<sup>10</sup>

2.15 A key concern raised throughout this inquiry, has been that the data-matching process identifies income reporting discrepancies by comparing different sources of information, that is, a person's annual total income amount provided by the ATO, with the total fortnightly income amounts a person declares to the department, which was how the department calculated the income support payment a person received.<sup>11</sup>

2.16 The period of employment and fortnightly income information is fundamental to the department being able to accurately assess whether a recipient has received the correct fortnightly payment. The information provided to the department for data-matching purposes by the ATO includes a person's payment summary, investment income information and income tax data.<sup>12</sup>

2.17 It is important to note that employers are not required to provide period of employment information to the ATO for their staff, rather employers must only provide an annual figure paid during that financial year.<sup>13</sup> The ATO advised that of the income information transferred to the department in 2016, 49.1 per cent of records were for a full year employment and 50.9 per cent of records included part-year

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9 Ms Malisa Golightly, Deputy Secretary, Integrity and Information Group, Department of Human Services, *Committee Hansard*, 18 May 2017, pp. 31–32.

10 Department of Human Services, *Submission 66.1*, Attachment E, p. 7.

11 See, for example: Australian Council of Social Service *Submission 31*; Community and Public Sector Union, *Submission 65*; National Social Security Rights Network, *Submission 107*; University of Adelaide Student Representative Council, *Submission 127*.

12 Mr Williams, *Committee Hansard*, 8 March 2017, p. 24.

13 Mr Williams, *Committee Hansard*, 8 March 2017, p. 24.

employment information. A similar proportion of records included full or part-year employment information in the preceding five years.<sup>14</sup>

2.18 The ATO noted that while there has been an increase in the volume of data-matching requests processed by the ATO, the ATO's processes have not changed since the introduction of the OCI system.<sup>15</sup>

2.19 However, prior to the OCI system, when data matching identified a discrepancy, a departmental officer would contact the recipient by letter and by phone to clarify the discrepancy. The departmental officer would then undertake a manual assessment to determine if a debt was owed.<sup>16</sup>

2.20 Under manual data-matching arrangements in 2009-2010, approximately 25.5 per cent of identified discrepancies were resolved as the recipient or employer was able to provide information which confirmed the recipient had received the correct Centrelink payment.<sup>17</sup>

### ***What's changed?***

2.21 Three key changes have occurred under the OCI system. Firstly, the responsibility for checking and clarifying income information has shifted from the department to current and former recipients of Centrelink payments. Secondly, recipients are directed to an online portal to check the information and provide supporting evidence of their fortnightly income, dating back to 2010 for some people.<sup>18</sup> . And third, the significant reduction in workload for the department by this outsourcing, has allowed for a huge increase in the number of income discrepancy investigations that the department initiates, the start of which is the initial letter sent to an individual.

2.22 The department's 2017 data matching program protocol, released in April 2017, outlines that where a discrepancy is identified between the information provided by the ATO and the information on Centrelink's record, the department issues an initial clarification request to recipients: 'the recipient is contacted by letter which provides the recipient the employment information that DHS has received from the ATO and requests them to clarify this information online'.<sup>19</sup>

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14 Australian Taxation Office, Answers to questions on notice, 18 May 2017 (received 30 May 2017). Note: where income data is for a full financial year, there is no capacity for the department to accurately assess at what period during the year income has been earned, leading to a greater chance of income support assessment discrepancies.

15 Mr Williams, *Committee Hansard*, 8 March 2017, pp. 23-24.

16 Mr Jason McNamara, General Manager, Integrity Modernisation, Department of Human Services, *Committee Hansard*, 16 May 2017, p. 43.

17 Centrelink, *Data-matching program: Report on progress 2007–10*, January 2011, p. 14 <https://www.humanservices.gov.au/corporate/publications-and-resources/centrelink-program-data-matching-activities> (accessed 1 June 2017).

18 Ms Golightly, *Committee Hansard*, 8 March 2017, p. 40.

19 Department of Human Services, *Submission 66.1*, Attachment E, p. 7.

2.23 The initial letter directs recipients to an online portal and requests recipients to confirm the annual income information provided by the ATO or provide evidence such as bank statements or payslips to demonstrate how much income was earned per fortnight.<sup>20</sup> The department then utilises this information to recalculate whether past Centrelink payments have been paid at the correct rate and whether a purported debt is owed.<sup>21</sup>

2.24 Notably, the 2017 data matching program protocol does not include reference to Centrelink contacting a customer's employer where the customer cannot provide the information. In addition, there is no indication that Centrelink staff must undertake an assessment that the information provided by the customer is 'complete and accurate', rather the information provided by the letter recipient must meet the lower threshold of 'sufficient'.<sup>22</sup>

2.25 While data-matching systems have been in place for a number of years, the implementation of the OCI system has enabled the department to significantly increase the number of recipients who are subject to the process, by virtue of removing the manual verification process undertaken by the department, and having income payment recipients undertake the verification function. Since November 2016, the department has issued between 10 000 and 20 000 compliance interventions per week compared to only 20 000 a year previously.<sup>23</sup>

2.26 The Community and Public Sector Union (CPSU) expressed concern that the move away from manual processing and towards the OCI system had negatively impacted on departmental staff:

This new approach, which removes and reduces human oversight of suspected overpayments and reduces employees' roles in a range of elements of the system, has been an absolute disaster for many Centrelink use[r]s and also for the workers charged with implementing a system they know to be deeply flawed and unfair.<sup>24</sup>

2.27 The CPSU attributed the shift to the OCI system to a lack of resources within the department as a result of budget cuts across successive governments and

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20 Initially the department requested that payslips were provided to verify fortnightly earnings, but extended the information which recipients could provide to verify income to include bank statements to assist in cases where a previous employer no longer exist or there are particular sensitivities around contacting a former employer.

21 Department of Human Services, *Submission 66.1*, Attachment E, pp. 7–8.

22 Department of Human Services, *Submission 66.1*, Attachment E, p. 7.

23 The Hon. Alan Tudge MP, Minister for Human Services, 'New technology helps raise \$4.5 million in welfare debts a day', *Media release*, 5 December 2016. Note that the department now sends initial letters by registered mail, which has reduced the number of weekly compliance interventions as Australia Post is only able to process 10 000 registered mail letters per week.

24 Ms Nadine Flood, National Secretary, Community and Public Sector Union, *Committee Hansard*, 8 March 2017, p. 12.

questioned whether the change was counter-productive to budget saving measures.<sup>25</sup>  
The CPSU stated:

If we want to look at where robo-debt has come from, it is a fairly obvious consequence of a department that no longer has the resources to provide effective services. The decision to replace the human oversight of debt recovery with automated data matching was absolutely based on a desire and an imperative to save money. It has of course proven to be a classic false economy and has created costly reverse workflows where staff are taken offline to deal with complex and difficult disputes over incorrectly raised automated debts.<sup>26</sup>

2.28 Furthermore, the consequences of not providing, or being unable to provide, information which verifies income received during a particular period are potentially severe. Under the OCI system, if the recipient of a letter seeking clarification does not provide further information or confirms the annual income received without providing fortnightly income information, the ATO income information alone is used to assess whether the recipient received the correct Centrelink payment and whether a purported debt is owed.<sup>27</sup>

2.29 The committee heard from a number of witnesses and submitters that this has resulted in debt notices being issued based on inaccurate or incomplete information. This is because the purported debt is calculated by averaging the annual income data into an average fortnightly sum, which may then retrospectively change a person's eligibility for a fortnightly Centrelink income support payment.<sup>28</sup>

#### ***Committee view***

2.30 The committee is concerned about the shift in the onus from the department to the individual recipient to verify whether or not a purported debt exists. The committee is particularly concerned that individuals do not have access to the same resources and coercive powers as the department to access historical employment income information.

2.31 The committee notes that the department has taken some steps to make this process less burdensome for recipients, such as by allowing recipients to provide bank statements as opposed to payslips, which may be particularly difficult for a recipient to obtain.

#### ***How the OCI system works***

2.32 The data-matching process and OCI system utilised by the department have three fundamental elements:

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25 Ms Flood, *Committee Hansard*, 8 March 2017, pp. 12-13.

26 Ms Flood, *Committee Hansard*, 8 March 2017, p. 13.

27 National Social Security Rights Network, *Submission 107*, p. 3.

28 See, for example: Australian Council of Social Service, *Submission 31*; Community and Public Sector Union, *Submission 65*; National Social Security Rights Network, *Submission 107*; University of Adelaide Student Representative Council, *Submission 127*.

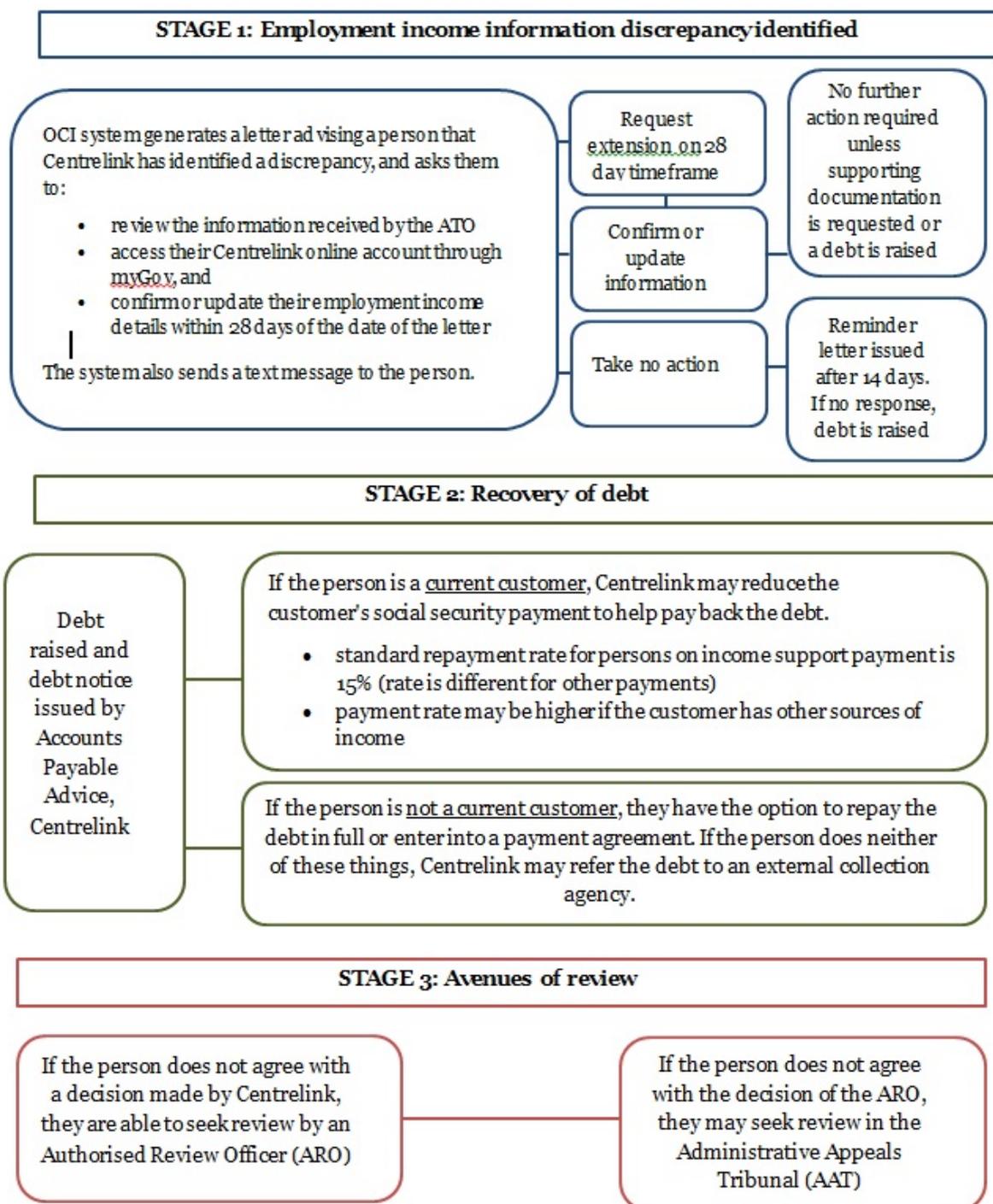
- Stage 1: Employment income information discrepancy identified and income data verified.
- Stage 2: Recovery of purported debt (by the department or external debt collection agencies).
- Stage 3: Avenues of review.

Figure 2.1 below summarises each stage of the process.

2.33 It is important to note that Stages 2 and 3 are not distinct stages, as alleged debtors are able to seek review of the debt amounts at any time through the process. Additionally, many alleged debtors first became aware of the purported income data discrepancy only after receiving an accounts payable letter, commonly referred to as a debt notice. This issue is discussed in greater detail in chapter 3. The recovery of the purported debt once a notice has been received and the avenues of review available will be explored further in chapters 4 and 5.

Figure 2.1: Stages of OCI system<sup>29</sup>

### How the OCI system works



29 Based on information from the following: Department of Human Services, *Owing Money*, <https://www.humanservices.gov.au/customer/enablers/owing-money> (accessed 6 June 2017).

### **Consultation**

2.34 A number of submitters raised concerns that the department had not adequately consulted with other government agencies and stakeholders prior to the commencement of the OCI system.

2.35 The Digital Transformation Agency (DTA) is responsible for leading the digital transformation of government services and advising government about digital service delivery and shared platforms.<sup>30</sup> Despite their role and experiences in digital transformation, the committee heard that the department did not consult with the DTA prior to the implementation of the OCI system. During the 2017 additional estimates, the DTA clarified:

[The Program Management Office of the DTA] were not previously involved in any of those particular projects that you have mentioned. The only thing I would add is that, while we were not involved in the Centrelink project, we did do some work in late January on the request of DHS to work with them on some short-term user design expertise to add to their team and to assist with the automated debt calculator project.<sup>31</sup>

2.36 The ATO also noted that it had not been consulted on the design or implementation of the system.<sup>32</sup> The department clarified that the ATO's role in providing income information for data-matching purposes had not changed under the OCI system and that the measure was the development of an online tool to seek clarification from recipients.<sup>33</sup> However, following the roll-out of the OCI system the department and the ATO discussed the OCI system during two teleconferences on 14 December 2016 and 7 February 2017.<sup>34</sup>

2.37 The Australian Council of Social Service (ACOSS) noted they were not consulted on the design of the OCI system and that had key experts in social security administration such as themselves, the National Social Security Rights Network (NSSRN) and Legal Aid groups been consulted prior to implementation, a number of flaws may have been prevented.<sup>35</sup> At a later hearing, ACOSS indicated 'there had not been a further meeting with the Minister in relation to the robo-debt program, including ACOSS and other stakeholders', despite ACOSS's clear articulation of the desire for engagement in the stakeholder process.<sup>36</sup>

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30 Digital Transformation Agency, 'What we do', <https://www.dta.gov.au/what-we-do/> (accessed 1 June 2017).

31 Ms Nerida O'Loughlin, Interim Chief Executive Officer, Digital Transformation Agency, *Committee Hansard*, Finance and Public Administration Legislation Committee, 27 February 2017, p. 135.

32 Mr Williams, *Committee Hansard*, 18 May 2017, p. 23.

33 Ms Golightly, *Committee Hansard*, 18 May 2017, p. 24.

34 Australian Taxation Office, Answers to questions on notice, 18 May 2017 (received 30 May 2017).

35 Australian Council of Social Service, *Submission 31*, p. 3.

36 Dr Goldie, *Committee Hansard*, 16 May 2017, p. 22.

2.38 The department provided evidence on 16 May 2017 indicating that they had not as yet had any discussions with stakeholders who raised concerns about the system, but that they would 'plan to have discussions... before we change the system structurally'.<sup>37</sup>

2.39 Similarly the CPSU described the increasing level of alarm and distress as the OCI system was rolled out and noted that neither departmental staff nor the union were consulted on the design of the system or its potential impact on staff.<sup>38</sup> One department staff member told the CPSU that:

The OCI program was rolled out without my team in Compliance ever having had the chance to look at it or understand the details - had we been consulted, we could have pointed out many problems (some of which have been addressed in later updates, months down the track).<sup>39</sup>

2.40 On 19 January 2017, the CPSU requested a briefing with the secretary of the department, Ms Kathryn Campbell CSC, in order to understand the operation of the OCI system and its potential impact on staff. At the committee's hearing on 8 March 2017, the CPSU advised that the request for a briefing had, to date, not been responded to.<sup>40</sup>

2.41 The concerns raised by submitters regarding a lack of consultation were echoed in the Ombudsman's report. The report noted that a lack of risk management and consultation contributed to the number of issues raised after the system was implemented:

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>41</sup>

#### ***Committee view***

2.42 The committee notes concerns from a number of key stakeholders that they were not adequately consulted by the department concerning the implementation of the OCI system. The committee considers that it is important that stakeholders are widely consulted when system changes which alter established practices and have the potential to affect a large number of vulnerable people are being considered for implementation.

37 Mr McNamara, *Committee Hansard*, 16 May 2017, p. 41.

38 Ms Lisa Newman, Deputy National President, Community and Public Sector Union, *Committee Hansard*, 8 March 2017, p. 14.

39 Community and Public Sector Union, *Submission 65*, p. 20.

40 Ms Newman, *Committee Hansard*, 8 March 2017, p. 15.

41 Commonwealth Ombudsman, *Centrelink's automated debt raising and recovery system*, April 2017, p. 26, [http://www.ombudsman.gov.au/\\_data/assets/pdf\\_file/0022/43528/Report-Centrelinks-automated-debt-raising-and-recovery-system-April-2017.pdf](http://www.ombudsman.gov.au/_data/assets/pdf_file/0022/43528/Report-Centrelinks-automated-debt-raising-and-recovery-system-April-2017.pdf) (accessed 13 June 2017).

## Debt collection and privacy guidelines

2.43 Debt collection of income support overpayments is not a new process for the department. Where an individual has a debt to the department for an overpayment, there are a range of debt recovery actions the department may take. For current income payment recipients, up to 15 per cent of their payments can be reduced until the debt is paid. For individuals who are no longer receiving payments, the department generally first seeks to contact the individual and negotiate a repayment plan. Where debts are not paid, the department contacts the ATO and seeks to recoup the debt from the next tax refund. At the same time, the department can also: add an interest charge to the debt; refer the debt to an external collection agency; recover the amount from wages, other income and assets, including money held in a bank account; refer the matter to solicitors for legal action, and issue a Departure Prohibition Order to stop debtors from travelling overseas.<sup>42</sup>

2.44 There are a range of laws, guidelines and voluntary codes relating to data-matching, privacy and debt collection, that are relevant to any data matching and debt collection undertaken by the department, including the OCI process. As discussed in greater detail below, many submitters and witnesses questioned whether the actions of the department and its contracted service providers are fully compliant with all relevant provisions restricting how programs such as the OCI can operate.

### *Privacy Act 1988*

2.45 The *Privacy Act 1988* (Privacy Act) regulates how personal information is handled. Schedule 1 to the Privacy Act sets out the Australian Privacy Principles (APPs). The APPs apply to most Australian Government agencies and regulate how APP entities must collect, use, disclose and store personal information.

2.46 The APPs impose a number of obligations on entities, including:

- protection of a debtor's personal information, including the collection, use and disclosure of personal information; and
- maintenance of accurate, complete and up-to-date records.<sup>43</sup>

2.47 The department has a privacy policy which outlines the department's information handling practices in accordance with APP 1 of Schedule 1 to the Privacy Act. The department's privacy policy sets out its practices relating to collection, use, disclosure and storage of personal information, as well as its policy for handling requests to access or correct personal information.<sup>44</sup>

2.48 The Office of the Australian Information Commissioner (OAIC) identified a number of APPs which were relevant to the department's processes under the OCI

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42 Department of Human Services, *Owing Money*, <https://www.humanservices.gov.au/customer/enablers/owing-money> (accessed 18 June 2017).

43 *Privacy Act 1988*, sch. 1.

44 Department of Human Services, *Privacy Policy*, p. 4.

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system and raised concerns that the department's activities were not meeting their obligations under the APPs.<sup>45</sup>

2.49 Specifically, the OAIC noted APP 10 which relates to the quality of personal information:

An APP entity must take reasonable steps to ensure the personal information it collects is accurate, up to date and complete. An entity must also take reasonable steps to ensure the personal information it uses or discloses is accurate, up to date, complete and relevant, having regard to the purpose of the use or disclosure.<sup>46</sup>

2.50 With regard to APP 10, the OAIC raised concerns about the practice of averaging annual income over the year, the use of automated data-matching which resulted in duplication of income, recipient's not receiving correspondence from the department and the department placing the onus on the individual to establish whether any of the ATO data used was not accurate.<sup>47</sup>

2.51 In addition, APP 13 requires an entity to take reasonable steps to correct personal information to ensure that it is accurate, up-to-date, complete, relevant and not misleading. APP 13 also requires that an entity must state in its privacy policy how an individual may make a request to correct information.<sup>48</sup>

2.52 The OAIC noted their concern at media reports which indicated that a number of individuals had experienced difficulties uploading evidence and correcting their data through the online platform. The OAIC also noted that while the department was able to draw individual's attention to a preferred method of correcting their information, they cannot require an individual to follow a particular procedure, and encouraged the department to ensure their processes were flexible and facilitative.<sup>49</sup>

2.53 The Australian Information Commissioner, Mr Timothy Pilgrim, advised the committee that in the 2017-18 financial year, the OAIC will be conducting an audit of the department's PAYG data-matching program and OCI system. The audit, which is initiated under section 33C of the Privacy Act, will focus on the quality and accuracy of personal information handling practices of the program, with specific references to APPs 109 and 13.<sup>50</sup>

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45 Office of the Australian Information Commissioner, *Submission 10*.

46 Office of the Australian Information Commissioner, *APP quick reference tool*, 12 March 2014, <https://www.oaic.gov.au/agencies-and-organisations/guides/app-quick-reference-tool#app-10-quality-of-personal-information> (accessed 13 June 2017).

47 Office of the Australian Information Commissioner, *Submission 10*, pp. 3–4.

48 Office of the Australian Information Commissioner, *Submission 10*, p. 5.

49 Office of the Australian Information Commissioner, *Submission 10*, p. 5.

50 Mr Timothy Pilgrim, Australian Information Commissioner and Australian Privacy Commissioner, Office of the Australian Information Commissioner, *Committee Hansard*, 18 May 2017, p. 2.

2.54 During the course of the inquiry, a number of witnesses and submitters raised concerns about the issue of privacy in relation to personal data held by the department and its public release in response to critical comments in the media by individuals. Witnesses cited the case of Ms Andie Fox, discussed in greater detail below, where the department provided personal data to the Minister, who subsequently released the information in response to an article Ms Fox wrote criticising the OCI program.<sup>51</sup>

***Case study: Ms Andie Fox***

2.55 Ms Andie Fox, an income support payment recipient, wrote an article critical of the OCI program after she began to receive calls from a debt collector.<sup>52</sup> The department subsequently released information to the Human Services Minister, the Hon. Alan Tudge MP, pertaining to Ms Fox's claims history with Centrelink, as well as details of her interactions with the department. The Minister then released the information to Fairfax Media and it was published in a separate article.<sup>53</sup>

2.56 The department stated the release of information was justified in order to correct the public record about inaccurate claims made by Ms Fox, and stated:

Unfounded allegations unnecessarily undermine confidence and takes staff effort away from dealing with other claims. We will continue to correct the record on such occasions.<sup>54</sup>

2.57 This case has garnered much media and public attention, with many submitters and witnesses to this inquiry expressing concerns around the breach of Ms Fox's privacy and concerns for the impact on broader public discourse. The Australian Privacy Foundation (APF) submitted this release of information was a clear breach of privacy:

Personal information should never be released to the media simply because an individual is criticising the Government. All citizens must be free to

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51 This case was cited by many witnesses, including: Miss Kate Zizys, Branch Coordinator and Advice and Advocacy Volunteer, Australian Unemployed Workers Union, *Committee Hansard*, 11 April 2017, p. 42, Ms Katherine Lane, Immediate Past Chair, Australian Privacy Foundation, *Committee Hansard*, 19 April 2017, p. 27, Ms Kate Galloway, Assistant Professor of Law, Bond University and Melissa Castan, Senior Lecturer, Monash University *Submission 115*, pp. 5–6.

52 Ms Andie Fox, 'As a struggling single mother, Centrelink terrorised me over ex-partner's debt', *Fairfax Media*, 6 February 2017, <http://www.canberratimes.com.au/lifestyle/life-and-relationships/real-life/as-a-struggling-single-mother-centrelink-terrorised-me-over-expartners-debt-20170205-gu61nu.html>, (accessed 5 June 2017).

53 Mr Paul Malone, 'Centrelink is an easy target for complaints but there are two sides to every story', *Fairfax Media*, 26 February 2017, <http://www.smh.com.au/comment/centrelink-is-an-easy-target-for-complaints-but-there-are-two-sides-to-every-story-20170224-gukr4x.html> (accessed 5 June 2017).

54 Christopher Knaus and Paul Farrell, 'Centrelink recipient's data released by department to counter public criticism', *The Guardian*, 27 February 2017, <https://www.theguardian.com/australia-news/2017/feb/27/centrelink-recipients-data-released-by-department-to-counter-public-criticism> (accessed 5 June 2017).

criticise the Government and not face an abuse of their privacy. The media is not a court and there is no 'record' to protect.<sup>55</sup>

2.58 Willing Older Workers submitted that many people in the community were concerned that they might be subjected to similar actions and stated 'We've been inundated by calls from people who are stressed because they heard the news about Human Services Minister Alan Tudge speaking to a reporter about Andie Fox.'<sup>56</sup>

2.59 The Victorian Council of Social Service agreed with this view, and told the committee of the impact this has had on the community by making individuals afraid to speak out:

The government has created a climate of fear that has silenced victims and critics. One woman who received a bogus debt notice would not let me talk about her experiences today, even when I explained to her that her name would not be used.<sup>57</sup>

2.60 A submission from legal academics has stated the release of information 'represents a breach of procedural fairness, in failing to recognise the power of government against the relative lack of power of the citizen. The rule of law is expressly designed to protect citizens against such an abuse of power.'<sup>58</sup>

2.61 Following the release of Ms Fox's information, the Hon Ms Linda Burney MP, Shadow Minister for Human Services, referred the matter to the Australian Federal Police (AFP) for investigation. In May 2017, the AFP released a statement noting, 'The AFP has conducted an evaluation into this matter and concluded that there was no breach of Commonwealth legislation.'<sup>59</sup>

2.62 The release of the information is currently under investigation by the Australian Privacy Commissioner.<sup>60</sup>

### ***Data matching laws and guidelines***

2.63 Prior to the OCI program, the department and the ATO conducted their data-matching activities using Tax File Numbers (TFNs).<sup>61</sup> The use of TFNs triggers a requirement to comply with the *Data-matching Program (Assistance and Tax) Act 1990* (Data-matching Act), which regulates the use of TFNs to compare personal information held by the ATO and an 'assistance agency', such as the department.<sup>62</sup>

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55 Australian Privacy Foundation, *Submission 106*, p. 5.

56 Willing Older Workers, *Submission 35*, p. 4.

57 Ms Emma King, Chief Executive Officer, Victorian Council of Social Service, *Committee Hansard*, 11 April 2017, p. 50.

58 Assistant Professor Galloway and Ms Castan, *Submission 115*, p. 6.

59 Mr Matthew Doran, 'AFP drops Alan Tudge investigation over Centrelink information leak', *ABC News*, 8 May 2017, <http://www.abc.net.au/news/2017-05-08/afp-drops-investigation-into-centrelink-information-leak/8507710> (accessed 13 June 2017).

60 Mr Pilgrim, *Committee Hansard*, 18 May 2017, p. 6.

61 Office of the Australian Information Commissioner, *Submission 108*, p. 3.

62 *Data-matching Program (Assistance and Tax) Act 1990*, s. 3.

Subsection 12(2) of the Data-matching Act gives the OAIC the power to issue legally binding rules relating to the matching of data under the Data-matching Act.

2.64 However, the department has chosen not to use TFNs under the OCI program. This has meant that, unlike previous data-matching processes, the OCI program is not legally bound by the provisions of the Data-matching Act.<sup>63</sup> Of particular note, while the Data-matching Act only allows for data-matching in relation to the previous four financial years, the decision not to use TFNs has allowed the department to data-match up to six years in the past<sup>64</sup>

2.65 The OAIC has issued non-binding voluntary data guidelines, which outline best practices in instances where the Data-matching Act does not apply.<sup>65</sup> The voluntary data-matching guidelines provide greater 'flexibility as to how data-matching activities may be conducted' and do not restrict the volume of data matching activity.<sup>66</sup> However, the voluntary guidelines do require that agencies develop a data-matching program protocol which is to be provided to the OAIC and is generally made publicly available:

Protocols must contain the information set out in the guidelines, this includes a description of the data to be provided and the methods to be used which will ensure the data is of sufficient quality and accuracy for use in the data-matching program. This reflects the principles contained in APP [Australian Privacy Principles] 10, which requires agencies to take reasonable steps to ensure that the information it uses or discloses, having regard to the purpose of the use or disclosure, is accurate, up-to-date, complete and relevant. A copy of the program should be provided to the OAIC and generally made publicly available<sup>67</sup>

2.66 The department's privacy policy states that '[it] prepare[s] a Program Protocol for each of our data matching programs, in accordance with guidelines issued by the [OAIC]'.<sup>68</sup> Although the protocol was available on the department's website at least by June 2017,<sup>69</sup> it appears this protocol was only made publicly available sometime after April 2017, well after the initial start of the OCI program. In its submission, Victoria Legal Aid outlines a previous unsuccessful attempt to seek a copy of the protocol from the department.<sup>70</sup>

2.67 The Australian Privacy Foundation has argued the OCI program has breached a number of Privacy Act provisions:

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63 Office of the Australian Information Commissioner, *Submission 108*, p. 3.

64 *Data-matching Program (Assistance and Tax) Act 1990*, s. 7.

65 '[Guidelines on Data Matching in Australian Government Administration](#)', 2014, p. 6.

66 Office of the Australian Information Commissioner, *Submission 108*, p. 3.

67 Office of the Australian Information Commissioner, *Submission 108*, p. 3.

68 Department of Human Services, [Privacy Policy](#), p. 10.

69 See: <https://www.humanservices.gov.au/corporate/publications-and-resources/centrelink-program-data-matching-activities> (accessed 1 June 2017).

70 Victoria Legal Aid, *Submission 111*, pp. 15–16.

The voluntary data-matching guidelines have pages and pages of principles in relation to what you are supposed to do before a data-matching exercise. I cannot see evidence that Centrelink did any of it—not one bit. They did not do a report, they did not communicate with the people who were affected. All these issues that simply were not done are set out in the Privacy Commissioner's submission. I can only come to the conclusion that they decided that, because they were voluntary, somehow they did not apply to them, even though [they] were issued by a government regulator and described as best practice.<sup>71</sup>

2.68 Echoing the evidence provided by other witnesses, the Australian Privacy Foundation made the recommendation that the non-binding voluntary data guidelines should be 'mandatory and subject to active compliance and enforcement action.'<sup>72</sup>

### ***Commonwealth consumer protection laws***

2.69 The *Competition and Consumer Act 2010* (CAC Act) provides protection for consumers in their dealings with creditors. Schedule 2 to the CAC Act sets out the Australian Consumer Law (ACL), which is enforced by the Australian Competition and Consumer Commission (ACCC). The *Australian Securities and Investments Commission Act 2001* (ASIC Act) contains similar consumer protection provisions to the CAC Act and is enforced by the Australian Securities and Investment Commission (ASIC).

2.70 Commonwealth consumer protection laws impose certain obligations and prohibitions on creditors, including prohibitions on:

- the use of physical force, undue harassment and coercion;<sup>73</sup>
- misleading or deceptive conduct<sup>74</sup>; and
- unconscionable conduct.<sup>75</sup>

2.71 The ACL applies to Commonwealth government agencies, to the extent that they can be said to be 'carrying on a business'.<sup>76</sup>

### ***Debt collection guidelines***

2.72 The ACCC and the ASIC joint guideline entitled 'Debt collection guideline: for collectors and creditors' (collection guidelines) sets out the laws and regulations

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71 Ms Lane, *Committee Hansard*, 19 April 2017, p. 26.

72 Ms Lane, *Committee Hansard*, 19 April 2017, p. 25.

73 *Competition and Consumer Act 2010*, sch. 2, s. 50; and *Australian Securities and Investments Commission Act 2001*, s. 12DJ.

74 *Competition and Consumer Act 2010*, sch. 2, s. 18; *Australian Securities and Investments Commission Act 2001*, s. 12DA(1).

75 *Competition and Consumer Act 2010*, sch. 2, ss. 20, 21 and 22; *Australian Securities and Investments Commission Act 2001*, ss. 12CA, 12CB and 12CC.

76 *Competition and Consumer Act 2010*, s. 2A.

applicable to debt collection practices in Australia.<sup>77</sup> The ACCC and ASIC are the agencies responsible for regulating and enforcing Commonwealth consumer protection laws, including laws relevant to debt collection.<sup>78</sup> The collection guidelines assist creditors, collectors and debtors to understand their rights and obligations.

2.73 The collection guidelines set out best practice recommendations for creditors when dealing with debtors, including initial contact, hours of contact, frequency and location of contact, and obligations to protect a debtor's personal information.<sup>79</sup> The collection guidelines also recommend maintenance of accurate and up-to-date records of correspondence with debtors, and provision of information and documents to debtors where requested.<sup>80</sup> Further, the collection guidelines state that if a debt liability is disputed, collection should be suspended.<sup>81</sup>

2.74 The collection guidelines are not legally enforceable, but their adoption is encouraged by the ACCC and ASIC to ensure that creditors' collection activities are compliant with Commonwealth consumer protection laws.<sup>82</sup> The collection guidelines apply to government bodies in so far as they are engaged in trade and commerce.<sup>83</sup>

2.75 Mr David Tennant, Chief Executive Officer of FamilyCare and former consultant with Care Inc. Financial Counselling Service and the Consumer Law Centre of the ACT in Canberra, submitted that the collection guidelines do not apply to Centrelink's debt collection process, as it is not considered to be a business practice:

Centrelink is not however required to comply with the Australian Consumer Law and the debt collection guideline only applies to government bodies engaged in business activities. In other words Centrelink is not bound by the rules that apply to every consumer creditor and collection body in Australia – even the much maligned banks.<sup>84</sup>

2.76 Mr Tennant submitted that Centrelink could opt to be bound by the collection guidelines by adopting them into its service standards or operating procedures.<sup>85</sup>

2.77 The Australian Privacy Foundation also submitted that the debt collection guidelines do not 'apply to the Government or any debt collectors used by the Government'.<sup>86</sup>

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77 Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investment Commission (ASIC), *Debt collection guideline for collectors & creditors*, 2016, p. 1, <https://www.accc.gov.au/publications/debt-collection-guideline-for-collectors-creditors> (accessed 28 February 2017).

78 *Debt collection guideline for collectors & creditors*, 2016, p. 1.

79 *Debt collection guideline for collectors & creditors*, 2016, pp. 1–6.

80 *Debt collection guideline for collectors & creditors*, 2005, pp. 23–25.

81 *Debt collection guideline for collectors & creditors*, 2005, pp. 27–28.

82 *Debt collection guideline for collectors & creditors*, 2016, pp. 1, 3.

83 *Debt collection guideline for collectors & creditors*, 2016, pp. 5, 61.

84 FamilyCare, *Submission 4*, p.3. See also '[Centrelink outside the law on robo-debt recovery](#)', *The Canberra Times*, 28 February 2017.

85 FamilyCare, *Submission 4*, p.3.

2.78 However, the department told the committee that the private debt collection agencies which the department engages are required under contract to comply with the debt collection guidelines:

The external debt collectors are required to meet all of the guidelines, policies and requirements that are set out by the ACCC. That is part of their contract.<sup>87</sup>

2.79 The department further commented that it monitors the compliance of its external collection agencies with the guidelines, noting that:

We also have very good guidelines in the contracts about reasonable hours of contact and reasonable amounts of contact within a certain period.<sup>88</sup>

2.80 The two debt collection agencies with operational contracts to undertake debt collection activities on behalf of the department, Dun and Bradstreet and Probe Group, provided evidence to the inquiry on their operations and compliance with relevant laws and guidelines.

2.81 Dun and Bradstreet outlined that their staff are trained as to obligations under the ACCC and ASIC guidelines, such as limiting communications with individuals to a maximum of three per week or 10 per month.<sup>89</sup> Dun and Bradstreet further outlined that as members, they also comply with the guidelines of the Australian Association of Debt Collectors.<sup>90</sup> The company acknowledged that although they complied with debt collection guidelines once a purported debt had been referred to them, whether or not the actual debt itself was raised in accordance with relevant laws and guidelines was 'a matter for the department.'<sup>91</sup>

2.82 Probe Group confirmed that relevant debt collection laws and guidelines were built into the contract it holds with the department.<sup>92</sup> Furthermore, Probe Group's Chief Operating Officer provided evidence to the committee that the debt collection sector saw taking a contract with the department as providing premium status to contract holders because:

...[u]sually the Commonwealth has the highest standards in terms of compliance and information security, technology and physical security. In terms of industry standing, it is quite significant.<sup>93</sup>

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86 Australian Privacy Foundation, *Submission 106*, p. 4.

87 Ms Golightly, *Committee Hansard*, 8 March 2017, p. 37.

88 Ms Golightly, *Committee Hansard*, 8 March 2017, p. 37.

89 Mr Simon Bligh, Chief Executive Officer, Dun and Bradstreet, *Committee Hansard*, 26 April 2017, p. 34.

90 Mr Bligh, *Committee Hansard*, 26 April 2017, p. 35.

91 Mr Bligh, *Committee Hansard*, 26 April 2017, p. 35.

92 Mr Jarrod Kagan, Chief Operating Officer, Probe Group, *Committee Hansard*, 19 April 2017, p. 20.

93 Mr Kagan, *Committee Hansard*, 19 April 2017, p. 14.

**Committee view**

2.83 The committee acknowledges concerns raised by some submitters that the department is not bound by debt collection guidelines issued by the ACCC and ASIC. The committee notes the department's comments that it is a requirement of its contract with the external debt collection agencies it engages that they comply with the collection guidelines. The committee also notes that the department regularly monitors compliance of its external collectors with the collection guidelines.

2.84 However as will be noted further in the report the committee did receive evidence of people being contacted in circumstances that appear to be contrary to the guidelines.

**Error rates**

2.85 The OCI system's use of data-matching has required current and former recipients of Centrelink payments to re-report their fortnightly income in order for Centrelink to re-apply the income test and re-calculate whether they were paid the correct Centrelink payment. Furthermore, as employers are not required to provide period of employment or fortnightly income information, only an annual figure for a financial year, many people who correctly reported their fortnightly income information in the past were subject to this process.

2.86 Submitters and witnesses informed the committee that where a discrepancy or purported debt was identified and later resolved, this was often due to the OCI system making assumptions about their income and incorrect information was therefore included in Centrelink's calculation. These assumptions include:

- income averaged over 26 fortnights in equal portions when the income was earned in a shorter time period;
- difference in employer's name (for example, where a business name is provided to Centrelink and the ATO record includes company name) which resulted in the same income being duplicated; and
- non-assessable income considered assessable income such as a lump sum termination payment, paid parental leave and meal, laundry and uniform allowances.<sup>94</sup>

2.87 While the department's calculations may have been mathematically correct, the inclusion of these assumptions has resulted in debt calculations which were not based on accurate information and therefore have become known as errors.

2.88 In approximately 20 per cent of cases where an individual has received an initial letter identifying a discrepancy between the ATO and Centrelink information,

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94 See, for example: Assistant Professor Galloway and Ms Castan, *Submission 115*, [p. 3]; National Social Security Rights Network, *Submission 107*, p. 9; Ms Newman, Community and Public Sector Union, *Committee Hansard*, 8 March 2017, p. 17; Christopher Knaus, 'Centrelink staff told not to fix mistakes in debt notices – whistleblower' *The Guardian*, 19 January 2017, <https://www.theguardian.com/australia-news/2017/jan/19/centrelink-staff-told-not-to-fix-mistakes-in-debt-notices-whistleblower> (accessed 31 May 2017).

the individual has been able to provide clarifying information and this has resulted in no debt being owed.<sup>95</sup>

2.89 The media and submitters have generally referred to this as an error rate of 20 per cent, however, the department disputes the characterisation of these instances as 'errors' or 'inaccurate'.<sup>96</sup> The department released a statement emphasising that:

Commentary on the department's online compliance system continues to incorrectly say 20 per cent of letters are being issued in error. This is misleading and a misrepresentation of the process.

Initial notices request information to explain differences in earned income between the Australian Taxation Office and Centrelink records. These result in a debt in 80 per cent of cases. The remaining 20 per cent are instances where people have explained the difference and don't owe any money following assessment of this updated information.

This is how the system is designed to work, in line with the legal requirements of welfare recipients to report all changes in circumstances and the department's obligation to protect government outlays.<sup>97</sup>

2.90 The secretary of the department also explained that the department does not believe that initial clarification letters have been sent in error:

When there is a difference between the two sets of information, we ask the recipient or the former recipient to clarify. On 20 per cent of occasions, they were able to clarify something in it. It may have been dates. It may be that the information held by the tax office said that they had worked an entire year when in fact they had only worked two months. When we had that clarification, we were able to identify that was the end of the matter, and nothing further went on. I do not consider that that makes the initial letter wrong.<sup>98</sup>

2.91 However, the Victorian Council of Social Service raised concerns that the error rate may actually be greater than 20 per cent of cases, commenting that:

Given the scale of the program and the issues that are set out in the Ombudsman's report, I think it is reasonable to assume others have no debt but have not been able to provide an explanation. From the Ombudsman's report, DHS cannot say how many more debts might be over calculated and by what margin.<sup>99</sup>

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95 Ms Kathryn Campbell CSC, Secretary, Department of Human Services, *Committee Hansard*, 8 March 2017, p. 35.

96 Ms Campbell, *Committee Hansard*, 8 March 2017, p. 35.

97 Mr Hank Jongen, General Manager, Department of Human Services, 'Misleading claims about online compliance system', *Media release*, 16 January 2017, <http://mediahub.humanservices.gov.au/media/misleading-claims-online-compliance-system/> (accessed 18 June 2017).

98 Ms Campbell, *Committee Hansard*, 8 March 2017, p. 39.

99 Ms King, *Committee Hansard*, 11 April 2017, p. 51.

2.92 ACOSS concurred, pointing out that while it is known that in 20 per cent of cases an individual can explain the discrepancy and does not owe a debt, the circumstances of the remaining 80 per cent of cases is not known. ACOSS told the committee that:

Using the government's own figures, we know at least 20 per cent of these so-called discrepancy notices, generated automatically, are in fact incorrect. What we do not know is how many more have been sent in error. We do not know how many have been sent that have alleged debts that do not in fact exist. We do not believe we know how many debts have been pursued that were higher than what was actually owed. We certainly do not know how many people have entered into agreements to repay debts that they did not owe, or certainly a level of debt that they did not owe. And we do not know in how many cases people have entered into debt repayment arrangements that they simply cannot afford.<sup>100</sup>

2.93 ACOSS attributes this to concerns that the OCI system has created a climate of fear where recipients of letters feel they cannot challenge the information provided by the department or risk losing the financial safety net which the department provides.<sup>101</sup> There have also been accounts of debt notice recipients simply paying the purported debt amount without investigating the circumstances of the purported debt due to other challenges in their life such as unstable employment or a lack of time to consult the department.<sup>102</sup>

### ***Consequences of averaging***

2.94 The committee received evidence that the averaging of annual income under the OCI program has in some instances led to inaccurate calculations of debt.

2.95 The department advised that annual income provided by the ATO is averaged over 26 fortnights when:

- a recipient reports equal earnings across a period;
- a recipient accepts the averaging of their earnings equally across the period;
- a recipient chooses to accept the dates provided by the ATO and does not provide a further detailed breakdown; or
- no other information is provided by the recipient.<sup>103</sup>

2.96 In many circumstances a purported debt has been raised for a current or former recipient due to averaging annual income over a 26 fortnight period. The National Social Security Rights Network (NSSRN) noted that averaging 'may result in

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100 Dr Goldie, *Committee Hansard*, 8 March 2017, pp. 1-2.

101 Dr Goldie, *Committee Hansard*, 8 March 2017, p. 6.

102 Mr Craig Wallace, Advocacy Manager, Australian Capital Territory Council of Social Service, *Committee Hansard*, 8 March 2017, p. 6.

103 Department of Human Services, *Submission 66*, p. 9.

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factual error if a person's fortnightly income was not stable across the period of employment recorded by the ATO.<sup>104</sup>

2.97 Due to the application of the income test, averaging income is particularly problematic for recipients who have inconsistent working hours or who have received Centrelink payments 'on-and-off' throughout a year as averaging their annual income over 26 fortnights will not reflect the 'peaks and troughs' of the recipient's income throughout the year.

2.98 The Welfare Rights and Advocacy Service provided the following example:

Pretend it is \$500 as the cut-off for Newstart for this fortnight. If I earn \$5,000 in this fortnight, I am cut off for Newstart. It does not matter whether I earn the \$500 that is the cut-off or anything above. In the next two fortnights, I might have no income, so I have got an entitlement to Newstart for two fortnights. If you average my \$5,000 across those three fortnights, I have got a debt for the two fortnights.<sup>105</sup>

2.99 The ACT Council of Social Services outlined their concerns with the operation of the OCI system and its inability to accommodate the circumstances of Centrelink's clients:

One of the concerns we have about the regime is that it does not recognise the labour market in which people are trying to work and comply with their Centrelink requirements, which is a market in which people get bits and pieces of work; work irregular hours and often spend periods of time across a financial year out of the workforce. This leads to it being way more complicated and extremely onerous to comply with a Centrelink system that assumes that people either have or do not have a job across a financial year.<sup>106</sup>

2.100 The University of Adelaide's Student Representative Council explained that in particular the OCI system does not account for the intermittent nature of student's work and study commitments throughout a year. For example:

Students might be studying and receive Centrelink benefits such as youth allowance, and then in the same financial year drop their studies and work full time, temporarily foregoing their benefits. The automated system averages ATO data over 26 periods in a year which means if students were to work full time at parts of the year when they are not receiving benefits, their income is averaged and false debt notices are issued when students were rightfully receiving those benefits at the time.

The automated debt collection system is not equipped to address the often sporadic work and study nature of students, contradicting the purpose of

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104 National Social Security Rights Network, *Submission 107*, p. 9.

105 Ms Catherine Eagle, Principal Solicitor, Welfare Rights and Advocacy Service, *Committee Hansard*, 21 April 2017, p. 29.

106 Ms Susan Helyar, Director, Australian Capital Territory Council of Social Service, *Committee Hansard*, 8 March 2017, p. 4.

Centrelink by creating additional stress and anxiety for students than supporting them through their period of studies.<sup>107</sup>

2.101 ACOSS highlighted that the consequences of averaging annual income over 26 fortnights may result in an incorrect purported debt being raised:

Where someone does not enter that fortnightly income through the online portal, it will automatically average that income over the 26 fortnights and subsequently result in a debt that may be incorrect or, indeed, higher than what is actually owed. Previously, Centrelink would investigate data matches between Centrelink and the ATO to be (a) certain that a debt existed and (b) sure about the level of that overpayment if it did indeed exist. Now the responsibility lies with the person targeted, and we believe that is fundamentally unfair.<sup>108</sup>

#### ***Committee view***

2.102 The committee notes concerns expressed by submitters that the averaging of annual employment income information into fortnightly data has in some instances resulted in incorrect calculations of debt, especially where a recipient's income was intermittently earned over a 12 month period.

2.103 The committee considers that it is important that calculation of debts is based on complete and accurate information, and that the fluctuations in recipient's income, particularly if they are employed on a casual or part-time basis, should be closely reviewed before issuing a debt notice.

#### **Individuals' experience**

2.104 In order to avoid income averaging, the OCI system requires recipients to confirm their fortnightly income information in the online portal in order for Centrelink to re-apply the income test and re-calculate their Centrelink payment, often dating back over a number of years. This has placed a significant burden on individuals who have spent hours finding old bank statements and payslips for each fortnight, in conjunction with difficulties using the online portal.<sup>109</sup>

2.105 As the provider of social security in Australia, the department holds a position of power in its recipients' minds, and the power imbalance this creates cannot be underestimated when considering individuals' reactions to the OCI system.<sup>110</sup>

2.106 The committee heard that some individuals were not confident enough to correct the information provided by Centrelink or challenge the purported debt

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107 University of Adelaide Student Representative Council, *Submission 127*, p. 4.

108 Ms Charmaine Crowe, Senior Policy and Advocacy Officer, Australian Council of Social Service, *Committee Hansard*, 8 March 2017, p. 3.

109 See, for example: Phoebe, *Committee Hansard*, 19 April 2017, p. 66; Andrej, *Committee Hansard*, 16 May 2017, p. 56; Ian, *Committee Hansard*, 26 April 2017, p. 58.

110 Dr Goldie, *Committee Hansard*, 8 March 2017, p. 6.

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calculated by Centrelink, as well as instances where people were simply overwhelmed by the possibility of repaying thousands of dollars.<sup>111</sup>

2.107 Queensland Advocacy Incorporated submitted a case study outlining the experience of one of their clients. The client first noticed a problem with their Centrelink payments when \$86 was deducted from their Newstart allowance three fortnights in a row. The client attempted to phone Centrelink 5 or 6 times but found the phone line was engaged each time. Following this the client visited their local Centrelink office in person. The Centrelink officer found that the client had not been sent a letter requesting further information, or notifying them a purported debt had been raised and referred the client to contact the 'Compliance' area by phone.<sup>112</sup>

The officer I spoke to explained: 'our software presumes that income is distributed evenly over 26 fortnights per annum. It operates on the presumption that people are working permanently part-time or full-time, but it has no provision for casual work.' The officer explained that I had to contact my previous employers to get pay slips, and I explained that I had only one. The software had presumed (because of inadequate free character spaces in the Field for 'Employer') that I had two sources of income, instead of one only.<sup>113</sup>

2.108 This individual's experience is representative of many personal accounts the committee heard at public hearings and received via email. The committee often heard that individuals had not received letters from Centrelink, that their calls to Centrelink went unanswered, or they spent hours on hold. When individuals have managed to speak to someone, a Centrelink officer was able to identify the issue such as averaging or out of scope income being included in the calculation of assessable income yet individuals were still directed to the online portal.

2.109 In Brisbane, the committee heard from Michael whose income was averaged over 26 fortnights, resulting in advice that he owed \$3000. Following a review, Michael's purported debt was reduced to \$50. Michael explained the evident problem with averaging his income:

**Michael:** When I clicked open the letter I clicked the link and it gave me the option. I knew it was going to happen before I clicked, because I had heard about it happening to people. It said \$26,000. I checked my records and it was accurate. I believe it was maybe a couple of dollars different and that is what triggers the process, as I understand it. But it was within a dollar or two so I went, 'Well it is within a dollar or two. Sure. Why not?'

**CHAIR:** Of what you put on your tax return?

**Michael:** It was my records of what I had declared to Centrelink versus the ATO: it was within a couple of dollars and so I had no problem in saying, 'Correct.' Instantly my phone beeped and the initial decision had been made

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111 Dr Goldie, *Committee Hansard*, 8 March 2017, p. 6.

112 Queensland Advocacy Incorporated, *Submission 79*, p. 8.

113 Queensland Advocacy Incorporated, *Submission 79*, p. 8.

instantly, within 10 seconds. So I went back onto the website and it gave me the report of how it had made the finding. It was \$1,000, \$1,000, \$1,000 for each fortnight and so it was instantly obvious. I was only on Centrelink for nine payments, over three months. Each payment said: 'You declared this much income'—but, according to information you have just gave to the government by clicking yes, the government suggested that I had asserted that I had made a salary of \$1,000 every fortnight for the whole year. So for me, seeing \$1,000, \$1,000, \$1,000, it was obvious. Just to beat a dead horse: 10 seconds of staff time would have been enough—10 seconds.<sup>114</sup>

2.110 The committee repeatedly heard from individuals that the OCI system had caused them feelings of anxiety, fear and humiliation and dealing with the system had been an incredibly stressful period of their lives. Individuals had spent hours finding the required pay slips and bank statements, some dating back to 2010-11, often for Centrelink to find that no debt was owed.

2.111 At its hearing in Sydney, the committee heard from Phoebe who was one of the first recipients of a clarification letter in October 2016. Phoebe had been told she owed Centrelink \$14 576 due to payments made as far back as 2010 and had spent many months challenging the purported debt, which had taken a significant emotional toll:

I would estimate that I have spent probably 100 hours, if not more, gathering payslips from multiple employers; learning my rights about debt collectors, and what debt collectors can and cannot threaten; and learning my legal rights surrounding inaccurate welfare debts. I have spent hours on the phone to Centrelink, with many calls going unanswered and cut off midway. This process has resulted in emotional and physical stress, and increased sick leave from work.

I feel that these robo-[debts] are targeting the wrong people, those who honestly and diligently reported believing all they were doing was right. I am now a healthcare worker and every day give back to the community yet to now be labelled as a welfare fraud could impact my future and my career. My trust in the system is definitely shaken.<sup>115</sup>

2.112 The impact of Phoebe's experience on her trust for Centrelink was echoed by Ewan in Melbourne:

But the threat to financial security that this process creates for anyone involved in the welfare system is absolutely terrifying. It is the greatest threat you can have when you have known what it is like to not have a home. It does not treat people with the dignity they deserve, and the concern I have is how many people do not want to even touch the system now. It is so poorly tainted by the fear that if you get caught up in any of the welfare system the government could actually come after you in years to come. It is not just a problem for people now; it is a problem for an entire

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114 Michael, *Committee Hansard*, 16 May 2017, pp. 57–58.

115 Phoebe, *Committee Hansard*, 19 April 2017, p. 66.

generation of people, who might not want to go into the system to get the help they need when they need it.<sup>116</sup>

2.113 These individuals' accounts represent only a small proportion of people affected by the OCI system and of those who told the committee their experience. The personal accounts which the committee heard were instrumental to understanding how purported debts had been calculated and the consequences of the OCI system. Individual's interactions with the department and the online portal are discussed further in Chapter 3.

#### ***Committee view***

2.114 The committee notes concerns expressed by several submitters regarding the difficulty and distress many recipients have experienced attempting to access payslips and bank statements, in some instances dating back over 5 years, in order to verify their employment income information. The committee considers that it is important recipients are supported throughout the process of verifying a purported debt, and that they are given adequate information as to how their purported debt has been calculated.

#### **Communication process**

2.115 As outlined above, the responsibility to verify income information has placed a significant burden on current and former Centrelink recipients. The challenges individuals have faced in providing the required information and understanding how a purported debt was calculated has been compounded by the difficulties individuals faced communicating with Centrelink.

2.116 The committee heard that individuals had experienced great difficulty in receiving information from the department about how their purported debts were calculated. The Welfare Rights Centre of South Australia explained that often their requests for information to understand their client's purported debt were met with the response 'We cannot provide you with any information. You have to resolve this through the online process.'<sup>117</sup>

2.117 Victorian Legal Aid considers that the data-matching process and the way in which discrepancies and purported debts are identified lacks transparency.<sup>118</sup> Victorian Legal Aid advised that the lack of information surrounding the process has had a significant impact on the resources of legal service providers who are unable to understand how their client's purported debt has been raised and have resorted to Freedom of Information (FOI) requests in an attempt to gather information relating to their client's purported debt.<sup>119</sup>

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116 Ewan, *Committee Hansard*, 11 April 2017, p. 58.

117 Mr Mark Leahy, Manager, Welfare Rights Centre, South Australia, Inc., *Committee Hansard*, 10 April 2017, p. 36.

118 Victorian Legal Aid, *Submission 111*, p. 15.

119 Victorian Legal Aid, *Submission 111*, p. 15.

2.118 Individuals have also resorted to FOI requests to understand their purported debts, however, as Geoff explained to the committee in Melbourne, the thick wad of papers he received through FOI was total 'gibberish' and the income numbers did not make sense or appear to correlate.<sup>120</sup> In another instance an individual was provided with their complete 600 page file in order to assess how their purported debt was calculated.<sup>121</sup>

2.119 The challenges people encountered communicating with Centrelink will be explored further in Chapter 3.

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120 Geoff, *Committee Hansard*, 11 April 2017, p. 60.

121 Ms Lyndsey Jackson, Coordinator, #NotMyDebt, *Committee Hansard*, 10 April 2017, p. 45.