

Services Australia's Income Compliance Program

A REPORT ABOUT SERVICES AUSTRALIA'S IMPLEMENTATION OF
CHANGES TO THE PROGRAM IN 2019 AND 2020

April 2021

Report by the Commonwealth Ombudsman,
Michael Manthorpe PSM, under the *Ombudsman Act 1976*

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Part 1: INTRODUCTION

Background to the investigation

- 1.1. The Office of the Commonwealth Ombudsman (the Office) has had an ongoing interest in the Income Compliance Program (IC Program) since its commencement in 2015. At the time of its commencement, the IC Program was administered by the Department of Human Services. On 29 May 2019, the Department of Human Services was renamed ‘Services Australia’ and on 1 February 2020, Services Australia was formally established as an Executive Agency. For ease of reference, this report will refer to Services Australia as the responsible agency for the administration of the IC Program.
- 1.2. In April 2017, the Ombudsman published the report, *Centrelink’s Automated Debt Raising and Recovery System* (the 2017 report). The 2017 report highlighted systemic issues with the IC Program, including problems with fairness, transparency and usability of the IC Program’s online system and found that many of these issues could have been avoided by better project management, design, user testing and support for users of the online system. The report made eight recommendations aimed at improving Services Australia’s administration of the IC Program, all of which were accepted by Services Australia. The recommendations focused on:
 - written and online communication with customers
 - assistance for customers to gather income information in limited circumstances
 - service delivery and support for vulnerable customers
 - review of recovery fee decisions
 - staff communication and training
 - complaint information—capturing and using complaint information for continuous improvement
 - program evaluation (including how to further mitigate the risk of over-recovery of debts) and an incremental approach to any further rollout.
- 1.3. In April 2019, the Ombudsman published a follow up report, *Centrelink’s Automated Debt Raising and Recovery System* (the 2019 report). That report reviewed Services Australia’s implementation of the recommendations made in the 2017 report. The 2019 report found that Services Australia had made significant progress in implementing the recommendations, and made further recommendations aimed at improving correspondence and messaging to customers about the application of recovery fees and use of averaged Australian Taxation Office (ATO) income information in raising debts.

Changes to the Income Compliance Program

- 1.4. In early 2019, the Department of Human Services was renamed as Services Australia and became part of the Social Services portfolio. On 19 November 2019, the Australian Government announced that Services Australia would no longer use averaged ATO income information without other proof points to raise debts under the IC Program.¹ In an update on its media hub on the same day, Services Australia advised that it would make contact with individuals for whom Services Australia had used ‘only income averaging’ to raise a debt and

¹ Minister for Government Services, [Transcript: Doorstop, ABC News](#), 19 November 2019.

would provide advice to those individuals about ‘freezing’ repayment arrangements while it reassessed debts.²

- 1.5. This announcement was closely followed by Federal Court of Australia consent orders on 27 November 2019 in the matter of *Amato v The Commonwealth of Australia* ([VID611/2019](#)) which declared, among other things, that averaged ATO income information was not capable of satisfying a decision-maker that Ms Amato owed a debt within the scope of ss 1222A(a) and 1223(1) of the *Social Security Act 1991*.
- 1.6. In light of the changes to the IC Program in November 2019, the Ombudsman decided to commence an own motion investigation, pursuant to s 5(1)(b) of the *Ombudsman Act 1976* (Ombudsman Act), into Services Australia’s use of averaged ATO income information in its income compliance program. The Ombudsman formally notified the then-interim Chief Executive Officer of Services Australia of his decision on 19 February 2020.
- 1.7. On 29 May 2020 the Australian Government announced³ that it would refund repayments made on debts based wholly or partially on income averaging of ATO data. In addition, Services Australia subsequently announced that any outstanding debts based wholly or partially on income averaging would be reduced to zero. Following that announcement, our investigation focussed on the implementation of the refund process. For ease of reading, this report refers to the ‘refund’ process, recognising this process incorporates both debts that have been paid being *refunded*, as well as debts which remain outstanding being reduced to zero.

Objective and scope of our investigation

- 1.8. The Ombudsman limited the scope of this investigation to the administration of the announced changes to the IC Program, and in particular to seek assurance that Services Australia’s processes for identifying and refunding debts raised using income averaging was, and continues to be, fair and transparent.
- 1.9. In order to ensure we did not duplicate or prejudice legal proceedings that were underway at the time of our investigation, we determined the question of the lawfulness of the income averaging methodology previously employed by Services Australia would be out of scope of our investigation.
- 1.10. Rather, the scope of this investigation is fundamentally concerned with the adequacy of the arrangements that Services Australia put in place to ensure that those hundreds of thousands of Australians who were subject to debts on ‘legally insufficient’ grounds have those debts refunded.
- 1.11. During the course of our investigation, we identified some issues and concerns with the identification process which have now been overtaken by the refund process itself. These matters are described and subject to comment in this report but require no immediate action by Services Australia.
- 1.12. While the refund process is nearing its completion, we also identified some matters where we consider that more still needs to be done to reasonably complete the task, as well as other

² Services Australia, [Online Income Compliance Program Update](#), 19 November 2019.

³ Minister of Government Services, [Media release: Changes to the Income Compliance Program](#), 29 May 2020.

matters relating to the ongoing administration of the IC Program. These matters are subject to recommendations in the report.

- 1.13. In July 2019, the Senate Community Affairs References Committee (the Senate Committee) commenced an inquiry into the IC Program, which focused on the impact of the IC Program, income averaging methodology and the legality of the debt collection processes. Our Office made a submission to the inquiry in September 2019 and a supplementary submission in September 2020. Our supplementary submission outlined our previous interest in the IC Program and some of the issues we identified during the earlier part of this investigation. A copy of this submission is at **Appendix A** to this report.

Methodology

- 1.14. Our Office engaged with Services Australia a number of times between November 2019 and November 2020 about the IC Program and our investigation. We also sent questions and requests for information to Services Australia under s 8 of the Ombudsman Act.⁴
- 1.15. In addition, our Office investigated a number of individual complaints about the IC Program which raised issues including communication, availability of records, delays in reassessments and reviews, interest charges, access to advance payments and bankruptcy which also formed the basis of this report.
- 1.16. The analysis of the investigation and our recommendations and comments are based on our assessment of the material provided by Services Australia and the issues we saw in individual complaints we investigated.
- 1.17. During the investigation, Services Australia was still developing its identification and refund processes. The Office made a number of inquiries to Services Australia throughout the investigation and we acknowledge that Services Australia undertook a significant amount of work to provide our Office with a high volume of information.

Our role

- 1.18. The Office investigates complaints and provides independent oversight of public administration by Australian government agencies and certain private sector businesses. The Ombudsman makes recommendations to improve government administration.
- 1.19. The Ombudsman cannot be directed to undertake an investigation, to arrive at a certain conclusion or on the scope of an investigation. Rather, the Ombudsman decides what is in or out of scope of his investigations in accordance with his statutory function as set out in the Ombudsman Act.
- 1.20. The Ombudsman's role is limited to investigating 'action that relates to a matter of administration'.⁵ Accordingly, our focus is on the administration or implementation of legislation and policy by officials in government departments and statutory agencies.

⁴ Section 8 questions sent 5 March, 6 April and 23 July 2020.

⁵ *Ombudsman Act 1976* s 5(1)(b), which relates to own motion investigations.

Recommendations and comments

The Office makes **nine** recommendations for action to Services Australia.

Recommendation 1

As soon as it has completed identifying all individuals who are and are not eligible for a refund, and without duplicating communication that may be required as a result of legal proceedings, Services Australia should communicate directly with individuals who have had debts raised under the IC Program and who have not been assessed as eligible for a refund or removal of their debt. That communication should be in writing and include clear advice about the individuals' review rights. (Page 25)

Recommendation 2

If it is anticipated that Services Australia may re-raise debts that have been refunded, it should, at the earliest opportunity, publish general information on its website to enable individuals to understand that the Australian Government's decision to refund eligible debts does not preclude Services Australia from raising another debt for the same debt period without relying solely on income averaged information. (Page 26)

Recommendation 3

In circumstances where Services Australia decides to revisit and potentially re-raise refunded debts it should, at the earliest opportunity, write to affected individuals and provide information to enable them to understand the impact of its decision. This information should include:

- a) the basis on which any decision to revisit and re-raise debts will be made
- b) an assurance that income averaging alone will not be used to re-raise debts
- c) information about individuals' review rights.

Alternatively, if Services Australia does not intend to revisit and potentially re-raise debts which have been the subject of refunds, it should confirm this publicly at the earliest opportunity. (Page 26)

Recommendation 4

Services Australia should continue to identify options to resolve the issue of individuals' debts having been affirmed by the AAT with income averaging in the final decision, ideally with a view to refunding those debts which would otherwise have been eligible for refund as soon as possible. (Page 28)

Recommendation 5

Services Australia should review its guidance to staff, including all relevant policies, procedures and training materials, to ensure it aligns with Services Australia's stated position that where an individual requests a formal or ARO review, their request is referred directly to an ARO. (Page 30)

Recommendation 6

In circumstances where Services Australia is unable to obtain income information from the individual or third parties for the purposes of an SME review, it should finalise the review based on evidence other than averaged ATO information on hand and provide a decision to the individual. (Page 30)

Recommendation 7

Services Australia should only rely on 'net to gross converted income information' from bank statements in income compliance activity, in the absence of other proof points, with express confirmation from individuals that the grossed up amount accurately represents their fortnightly earnings for the relevant period. (Page 32)

Recommendation 8

In circumstances where Services Australia continues an individual's income compliance in-flight review and where the individual had previously been contacted about an income discrepancy, Services Australia should include in its written communication a correction to any information provided in the initial correspondence that is no longer accurate.

At a minimum, the correspondence should note that Services Australia made changes to the IC Program in November 2019, and that it will no longer raise debts relying solely on estimating the person's income by 'averaging' ATO income information over multiple fortnights. (Page 35)

Recommendation 9

Whenever Services Australia is requested by an individual to review a debt raised pre-2015 it should explicitly consider whether income averaging was used, following the same manual process it undertook for the refund process for the IC Program. If it identifies that income averaging was used as the sole basis for any portion of the debt, it should reduce that portion of the debt to zero, regardless of when that debt was raised. If the individual has repaid that debt and has no other debt owing to Services Australia, that payment should be refunded.

Services Australia should ensure its website clearly identifies the availability of this process, how a person can request it, and the person's options for further review should they be dissatisfied with the initial decision. (Page 36)

The Office also makes a further **seven** comments to Services Australia about matters that have occurred, but where due to the passage of time, no remedial action is required. These comments sit alongside our formal recommendations.

Comment 1

In order to mitigate future risks and minimise adverse impact upon affected individuals, Services Australia should have recorded appropriate indicators on individuals' records to capture the method of calculating debts, allowing timely identification of, as well as reporting on, debts which relied wholly or partially on income averaging.

Services Australia should have recorded, for each debt raised on an individual's file, the basis on which it was raised, including whether it relied wholly or partially on income averaging or whether other 'proof points' were relied on, and if so which ones.

Services Australia should have recorded, on each debt it considered, the basis on which it categorised the debt as being raised using income averaging or not. (Page 17)

Comment 2

In light of the 19 November 2019 announcement by Government that averaged ATO income information alone is 'legally insufficient' to raise a debt, the more appropriate approach would have been for Services Australia to be able to immediately freeze recovery on all income compliance debts while it conducted its identification process, only re-starting recovery once a debt was determined to have not been raised relying on income averaging. (Page 19)

Comment 3

In light of the risks associated with accepting an individual's 'agreement' to averaged income amounts, Services Australia should have immediately frozen recovery on 'agreed to' debts. (Page 19)

Comment 4

Services Australia should have taken more proactive steps to ensure that any individual seeking an advance payment was not prohibited from doing so by a debt Services Australia had determined was 'legally insufficient'. (Page 21)

Comment 5

Services Australia should have communicated directly with all individuals who had debts raised under the IC Program immediately after the November 2019 announcement. This communication should have informed individuals that Services Australia was reviewing debts, the impact on outstanding debts (ideally, consistent with our earlier comment that debt recovery action had been frozen), that individuals did not need to take any action and would be contacted within an indicative timeframe. (Page 22)

Comment 6

While we are satisfied with the steps Services Australia has now taken, it should have taken more proactive steps from November 2019 to identify individuals with private payment arrangements relating to a debt which had been frozen, and contact all individuals within the cohort to ensure they were aware of their entitlement to pause the arrangement. (Page 23)

Comment 7

Following the 29 May 2020 announcement, Services Australia communicated extensively about the Australian Government's decision to refund debts, including through a wide range of mediums to communicate with affected individuals and with instructional materials for staff. We are satisfied Services Australia took appropriate steps to communicate with individuals eligible to receive a refund during this period. (Page 24)

Part 2: THE INCOME COMPLIANCE PROGRAM

What is income averaging?

- 2.1. In the 1990s, the former iterations of Services Australia, including as the former Department of Human Services (from 2011) established a ‘data matching program’ to identify potential social security overpayments.⁶ Since 2004, this involved comparing income information reported to Services Australia by an individual with Pay As You Go (PAYG) information for the individual from the ATO for the same period, to determine if there was a discrepancy.
- 2.2. Prior to the introduction of the IC Program, Services Australia manually investigated discrepancies identified through data matching to determine whether the individual had been overpaid and had a debt that should be recovered. Approximately 20,000 of the ‘highest risk’ files underwent manual investigation annually. It did this by requesting information from the individual or using its information gathering powers under the *Social Security (Administration) Act 1999* (Administration Act) to request information directly from third parties, such as employers.
- 2.3. If Services Australia was unable to obtain income information from the individual or from third parties, it could use the ATO information to determine whether there was a debt. Under the *Social Security Act 1991*, the rate of payment to which a person is entitled is determined fortnightly, based on how much income they earned, derived or received within the fortnight. However, the ATO assesses income differently, as an annual amount. As such, Services Australia would ‘average’ the ATO amount over the fortnights in the relevant period in order to compare it against the individual’s reported income. Historically, income averaging was only used in last resort situations.

The Income Compliance Program

- 2.4. In 2015, Services Australia conducted a two-stage pilot to inform the design of the IC Program. The two-stage pilot involved 2,600 customers with debts for the period 2010–2011 to 2012–2013.⁷ The IC Program was subsequently introduced as part of a 2015–16 Budget measure, as a new approach to income compliance.⁸ The new approach allowed Services Australia to review all discrepancies identified through data matching since 2010–11, and differed from the old approach in the following significant ways:
 - An online system would be introduced to automate parts of the debt raising and recovery process.
 - In the majority of cases, Services Australia would no longer use its information gathering powers to investigate discrepancies.⁹ It would now be the individual’s

⁶ Services Australia commenced data matching, using Tax File Numbers (TFNs), in 1991 under the *Data-matching Program (Assistance and Tax) Act 1990*.

⁷ The findings of the pilot are set out in Commonwealth Ombudsman, *Centrelink’s automated debt raising and recovery system*, April 2017, p 32.

⁸ The IC Program was introduced as part of the 2015-2016 Budget measure, ‘Strengthening the Integrity of Welfare Payments’ and a December 2015 Mid-Year Economic Fiscal Outlook announcement.

⁹ Services Australia continued to use its information gathering powers in limited circumstances, such as where expecting the person to obtain the information would be unreasonable or would place them in financial hardship. See Commonwealth Ombudsman, *Centrelink’s automated debt raising and recovery system*, April 2017, p 14.

responsibility to explain the discrepancy by checking, updating and/or confirming their income information in the online system.

- In circumstances where the customer did not provide information to explain the discrepancy, or provided incomplete information, Services Australia would rely on averaged ATO income information to determine any overpayment and raise a debt.
- Where a customer provided incomplete information, averaged ATO income information was applied for those periods where other information (verbal and/or online) was not available.

2.5. Services Australia launched the first online system for raising and recovering debts, known as the Online Compliance Intervention (OCI), in three stages:

- From 1 July 2015 it introduced an ‘interim process’, which involved Services Australia investigating approximately 100,000 discrepancies manually, in the same manner that the OCI was being designed to do automatically.
- From 1 July 2016, it commenced rollout of the OCI with a limited release of 1,000 cases into the OCI.
- From September 2016, Services Australia commenced rollout of the fully automated OCI.

2.6. From February 2017, Services Australia commenced release of an enhanced online system, known as the Employment Income Confirmation (EIC) system. The EIC system incorporated improvements to the usability of the system, which were made partly in response to our 2017 investigation report.

2.7. In October 2018, Services Australia released a new online system known as the Check and Update Past Income (CUPI) system, which is still in operation.

Changes to how averaged ATO income information is used

2.8. On 19 November 2019, the Australian Government announced that Services Australia would no longer use averaged ATO income information without other proof points to raise debts under the IC Program.

2.9. On 29 May 2020, the Australian Government announced that Services Australia would refund those debts raised under the IC Program based wholly or partially on income averaging. Services Australia subsequently confirmed that any outstanding debts based wholly or partially on income averaging would be reduced to zero.

2.10. Services Australia confirmed that the decision of 29 May 2020 to refund and/or reduce income averaged debts to zero was, in effect, a decision by the Secretary under s 126 of the Administration Act¹⁰ to review and set aside eligible debts on the grounds that ‘there was not a legally recoverable debt’ for the purposes of sections 1222A and 1223 of the *Social Security Act 1991*.¹¹ When an eligible debt is set aside, a new decision is substituted that there was no debt payable. This has the effect of ‘zeroing’ the debt, so that it no longer exists.

2.11. At the time of the May 2020 announcement, the Australian Government stated that Services Australia had identified approximately 470,000 debts raised wholly or partially using income averaging. In August 2020, following ongoing review of debts Services Australia advised our

¹⁰ See s 303 of the *Student Assistance Act 1973* for ABSTUDY debts.

¹¹ See s 39 of the *Student Assistance Act 1973* for ABSTUDY debts.

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Office that 525,648 debts (being approximately 70 per cent of debts raised under the IC Program) were raised using income averaging, not including debts that were already reduced to zero or completely waived.

- 2.12. Services Australia told our Office that individuals would have their debts refunded and/or reduced to zero from July 2020. It subsequently advised that by November 2020 this had occurred for the majority of individuals.

Part 3: ISSUES ARISING OUT OF INVESTIGATION

- 3.1. Our investigation found that Services Australia undertook a significant amount of work to first identify debts from November 2019, and then refund eligible debts from May 2020. For the most part, we found Services Australia administered the refund process as efficiently as possible.
- 3.2. However, we identified a number of issues of administration that impacted individuals with debts raised under the IC Program between the 19 November 2019 announcement and the 29 May 2020 refund announcement. Some of these issues stem from how the IC Program has been administered since 2015. While many, if not all, of these issues have now been overtaken by the refund announcement of 29 May 2020 and the subsequent actions of Services Australia, we consider they are important to highlight as lessons to be learnt for the future administration of similar programs.
- 3.3. We also identified some areas of concern related to ongoing activities under the IC Program.

Identifying relevant debts

- 3.4. From the first announcement in November 2019, Services Australia commenced a process to assess all income compliance debts to determine those debts that had been raised wholly or partially using income averaging. Under this process, staff categorised debts as follows:
 - Category A: debt raised wholly on the basis of income averaging
 - Category B: debt raised partially on the basis of income averaging
 - Category C: debt ultimately not raised on the basis of income averaging—that is, the debt was fully based on other proof points, such as payslips or bank statements
 - Category D: debt raised wholly or partially on the basis of income averaging, but there is ‘clear evidence’ on the customer’s record that they ‘agreed the averaged income reflected their earnings’
 - Category Z: debt not related to the IC Program.
- 3.5. Services Australia advised it undertook this process as there was no existing indicator on its system for it to systematically identify debts raised relying wholly or partially on income averaging, requiring each debt to be considered manually.
- 3.6. This involved conducting analysis to locate all income compliance debts to be scoped in for triage and categorisation, followed by manually investigating debts and assigning them one of the categories above.
- 3.7. Services Australia advised it commenced an iterative process to classify debts into different priority groupings, so that those debts that were more likely to be raised using income averaging would be investigated by staff first. For example:
 - Priority Group One: relevant debt period had 90+ per cent consecutive identical earnings—considered highly likely to have been wholly or partially raised on the basis on income averaging.
 - Priority Group Two: relevant debt period had one per cent–89 per cent consecutive identical earnings—considered possible to have been wholly or partially raised on the basis on income averaging.

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- Priority Group Three: relevant debt period had zero consecutive identical earnings—considered unlikely to have been wholly or partially raised on the basis on income averaging.
- 3.8. In February 2020, as Services Australia’s understanding of the issues to be resolved developed, two additional priority groups were introduced:
- Priority Group Four: income compliance debts raised from 1 July 2015, prior to the launch of the online portal in July 2016.
 - Priority Group Five: while not a distinct category, other debts which had not been initially captured due to system limitations.
- 3.9. By including these additional categories, Services Australia identified more than 97,000 additional income compliance debts which were ultimately categorised as having been raised relying wholly or partially on income averaging.
- 3.10. Services Australia advised 96 per cent of debts had been assessed by the end of February 2020 and it had ‘substantially completed’ the process by May 2020. We also acknowledge that some people may also have had debt recovery action paused as a result of the national debt pause due to the COVID-19 pandemic, which commenced on 3 April 2020.
- 3.11. Services Australia told us it took a risk averse approach to identifying those debts that had been raised using income averaging, which included checking debts with little to no likelihood of having resulted from income averaging, and engaging in a number of quality assurance activities.
- 3.12. Services Australia provided our Office with copies of staff guidance, which explained in general terms what information its staff should consider when determining whether a debt was averaged, and whether the individual ‘agreed’ to the use of averaged data, including:
- an assessment of the PAYG match information received from the ATO
 - a comparison of the employment income records on a customer’s record against the PAYG information
 - identification of patterns of regular income being recorded with the assessment Identification Number that is attached to the resulting debt
 - consideration of whether the regular patterns of employment income matched the periods listed on the PAYG statements
 - review of documentation or notes stored on a customer’s record that outlined the information used within an assessment or any subsequent assessments.
- 3.13. Based on the guidance, it appears this process was highly manual and non-prescriptive in nature requiring presumed level of knowledge about typical income patterns, thorough investigative skills and subjective analysis to make consistent and correct decisions. Services Australia advised that as those staff undertaking the identification process had previously undertaken income compliance reviews, they were familiar with how averaged income would be represented on the customer records.
- 3.14. While the guidance provided to us appears not to provide detailed information on how to make an assessment in circumstances where there was insufficient information available, Services Australia advised us that the material was designed to provide experienced staff with operational guidance for the specific requirements of this task.

- 3.15. Services Australia advised it had a number of processes in place to check and ensure the accuracy of its staff's initial categorisation decision. In particular:
- Services Australia undertook standard Quality On-Line checking on two per cent of decisions made by proficient staff and 100 per cent for novice staff. In addition, Quality Development Officers sample checked two decisions per day for each staff member making a categorisation decision.
 - Staff coded both a categorisation decision and the proposed next steps, and Services Australia's system was set up to flag a mismatch between these two fields. These decisions were rechecked by a compliance officer.
 - Services Australia advised that *'additional cohorts were also subject to full or sample-based rechecking as identified based on various risk assessments'*. No further information about what these additional cohorts were, and what the relevant risk assessments were, was provided by Services Australia.
- 3.16. Services Australia advised that 45,000 categorisation decisions were checked as part of the above processes.
- 3.17. In June 2020, Services Australia estimated there was a risk that between 2,000 and 6,000 debts that were calculated with averaged ATO data may not be captured as 'averaged' and not included in the refund process, although it is not clear how this estimate was determined. By October 2020, it had identified 11 debts which were not initially included in the categorisation process, but subsequently found to be eligible for refund. It further, advised that it had identified 102 debts which were originally categorised as Not Averaged in July 2020, but were subsequently determined to be eligible for refund.
- 3.18. It is not clear whether the identification of these cases arose from internal assurance processes or requests from the individuals concerned, such as by requesting a review request.
- 3.19. Services Australia engaged KPMG to provide external assurance on the identification process. The assurance report produced by KPMG noted that the process *'was reasonable given the inherent limitations of the underlying technology and customer data, and the manual approach that was adopted in the identification of the customer population with income averaging applied'*. However, KPMG also noted in its report that Services Australia acknowledged and accepted a high residual risk that not all income compliance debts would be correctly identified for refund.
- 3.20. We understand Services Australia has some mechanisms in place to address the residual risk that not all income compliance debts have been correctly identified for a refund. For example, it implemented a 'refund query tool' accessed through myGov, which allows individuals to query whether their debt is eligible for a refund and, if they disagree with the decision, request a review. We consider this mechanism will operate as a better safeguard if Services Australia more proactively notifies individuals who are not receiving a refund of this option. This is discussed further at paragraph 3.67 of the report.

Recording and reporting on reasons for decisions

- 3.21. As outlined above, from the first announcement in November 2019, Services Australia underwent a significant exercise with a large number of staff to manually categorise whether a debt was raised relying wholly or partially using income averaging.

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- 3.22. Services Australia advised it undertook this manual process as there was no existing indicator on its system for it to identify debts raised relying wholly or partially on income averaging, requiring each debt to be considered manually.
- 3.23. We acknowledge that prior to the implementation of the IC Program such indicators may not have been considered necessary. However, given the risk associated with the OCI and the significant interest from individuals, the Parliament and external bodies, including our Office, there was value in tracking such an indicator on a customer's record.
- 3.24. In our view, if Services Australia had recorded reliable system indicators to track what information was relied on to raise the debt, including whether a debt had been raised relying wholly or partially using averaged data, this would have reduced the intensive and manual nature of this process and reduced the adverse impact upon affected individuals. This would have enabled greater understanding by Services Australia about the proportion of debts raised under the IC Program that relied wholly or partially on income averaging.
- 3.25. In addition, it would have facilitated a clearer picture within the agency, and greater ability to respond to external requests for information, about the use of income averaging as part of the IC Program.
- 3.26. It also appears individual records did not always clearly identify the basis on which a debt was raised. Services Australia acknowledged there were situations during this identification process in which 'there was insufficient information to determine conclusively how the debt was calculated' after reviewing the information on a customer's record. In these circumstances, review staff could escalate the matter to onsite and virtual support networks. If this did not resolve the query it would be escalated to a helpdesk. Services Australia did not advise how a decision could be reached through the escalation process in situations where there was insufficient or conflicting evidence of income averaging on the record.
- 3.27. Services Australia also did not record reasons for its decisions during the identification and categorisation stage process. Services Australia staff recorded their categorisation of the debt, but were not required to annotate an individual's record to identify what information the decision maker used to make the categorisation decision.
- 3.28. This meant that once the identification process was finalised, Services Australia had information about whether debts were averaged and to what extent, albeit not in a format that would be easily accessible to the individual to whom the debt related. This information and the information that was used to come to this decision should have been clearly documented at the time a categorisation decision was made. In addition to representing good administrative practice, including these reasons would have provided greater assurance of Services Australia's processes, as well as facilitating any future request for reviews by individuals concerned.

Comment 1

In order to mitigate future risks and minimise adverse impact upon affected individuals, Services Australia should have recorded appropriate indicators on individuals' records to capture the method of calculating debts, allowing timely identification of, as well as reporting on, debts which relied wholly or partially on income averaging.

Services Australia should have recorded, for each debt raised on an individual's file, the basis on which it was raised, including whether it relied wholly or partially on income averaging or whether other 'proof points' were relied on, and if so which ones.

Services Australia should have recorded, on each debt it considered, the basis on which it categorised the debt as being raised using income averaging or not.

Pausing debts at risk of being ‘legally insufficient’

- 3.29. In 2020, the Department of Social Services publicly confirmed ‘it was legally insufficient to use ATO income averaging either fully or partially’ to raise debts.¹² It also confirmed this ‘legal insufficiency’ was why the Australian Government announced in November 2019, that Services Australia would no longer raise debts using income averaging without other proof points.¹³
- 3.30. As noted above, from November 2019, Services Australia commenced a process of identifying and categorising all debts raised under the IC Program. Once a debt was categorised as being wholly or partially raised on the basis of income averaging, Services Australia froze recovery action on that debt. Recovery action continued on all income compliance debts, including those ultimately determined to be raised wholly or partially using income averaging, until they were categorised.
- 3.31. Services Australia also advised that where a debt had been categorised as having been raised using income averaging and frozen, an individual could request to continue making repayments on the debt and, in these instances, its staff would make arrangements to allow this to occur.
- 3.32. We acknowledge that not all debts raised under the IC Program relied wholly or partially on income averaging. However, in the absence of knowing which were and were not, we are concerned that Services Australia nevertheless continued to recover income averaged debts despite a high risk that many of those debts were ‘legally insufficient’.
- 3.33. We acknowledge Services Australia acted as quickly as it was able to identify debts that were raised wholly or partially using income averaging and to freeze recovery action on those debts. Given this was an intensive, manual process, it probably could not have reasonably been done any faster without appropriate indicators on individuals records.
- 3.34. Despite this, there was a period of some months during which debt recovery action was continuing in relation to many debts which Services Australia knew had a high likelihood of being raised on ‘legally insufficient’ grounds. We consider this created a high degree of risk for Services Australia and unnecessary hardship for individuals affected, which was compounded by Services Australia’s knowledge that the identification process would be largely manual and therefore take some time to complete.
- 3.35. In our view, the better approach would have been to pause debt recovery action on *all* debts raised under the IC Program, only recommencing such action in relation to a debt once it had been identified as *not* being wholly or partially raised on the basis of income averaging. We consider the risk of temporarily pausing debt recovery action on a valid debt to be far less consequential than the risk associated with continuing to recover debts highly likely to be raised on a legally insufficient basis.

¹² Ms Kathryn Campbell, Secretary, Department of Social Services, [Centrelink's compliance program Public Hearings – Parliament of Australia](#) Senate Committee hearing, 31 July 2020, p 9.

¹³ *Ibid* p 19.

- 3.36. During this investigation, our Office raised concerns with Services Australia about its decision to continue recovery action on income compliance debts while it undertook its identification process, rather than freezing all income compliance debts before undertaking the process. Services Australia advised it was not technically feasible to do this, as the design of its debt management system did not enable it to easily freeze only those debts raised under the IC Program.
- 3.37. In particular, it advised it was unable to isolate an individual's income compliance debt from other debts they may owe. This is because when an individual makes a debt repayment to Services Australia and they have multiple debts, the repayment is not made against a particular debt. Rather, Services Australia's system allocates the repayment against the debts, based on an internal debt hierarchy. Services Australia advised that because of this, it believed a freeze could not be implemented 'en masse' for all income compliance debts, because any individuals with non-income compliance debts would also have these debts frozen. It explained that when it did freeze income averaged debts during the identification process, it did so manually, on an individual basis.
- 3.38. If Services Australia wishes to maintain the ability to pause some debts and not others, we consider its systems should be designed to facilitate this approach. In our view, not being able to pause debt recovery action on all debts of a particular type, without slow and resource-intensive manual intervention, creates significant risk of inappropriate debt recovery action.
- 3.39. Services Australia also advised that if it had frozen all income compliance debts before undertaking the identification process, this would have resulted in non-income averaged debts being frozen and then debt recovery action subsequent reinstated. It was concerned this 'may have caused greater confusion during this time'.
- 3.40. We do not share Services Australia's concern. While there may have been some confusion or disruption to individuals, we consider it to be analogous to other broad-based debt pauses, such as the national debt pause due to COVID-19 or pauses targeted to specific locations impacted by natural disasters. As noted above, we consider the risk and consequences of debt recovery action on debts suspected to be raised on a 'legally insufficient' basis to outweigh any potential disruption to people from having their debt temporarily paused and then subsequently reinstated. This could also have been explained through transparent communication, an issue addressed further from paragraph 3.51 of this report.

Comment 2

In light of the 19 November 2019 announcement by Government that averaged ATO income information alone is 'legally insufficient' to raise a debt, the more appropriate approach would have been for Services Australia to be able to immediately freeze recovery on all income compliance debts while it conducted its identification process, only re-starting recovery once a debt was determined to have not been raised relying on income averaging.

Ongoing debt recovery for 'agreed to' debts

- 3.41. Following the 19 November 2019 announcement, one of the categories used in Services Australia's assessment process was debts where it considered there was 'clear evidence' on a person's record that they had 'agreed' the averaged ATO income information reflected their actual earnings. Services Australia did not freeze recovery action on debts placed in this category.

- 3.42. During this investigation, our Office raised concerns with Services Australia about its continued recovery action on ‘agreed to’ debts. Concerns about the nature of a person’s ‘agreement’ to the use of averaging, and whether it could be said to be fully informed agreement, were raised in our earlier investigations into the IC Program¹⁴.
- 3.43. In our supplementary submission to the Senate Committee at Appendix A, we again identified potential problems associated with accepting an individual’s ‘agreement’ to averaged income amounts. For example, an individual may have agreed that pay information provided by the ATO was accurate, without actually understanding (and therefore without informed agreement) that the pay information would be averaged over a series of pay periods. Similarly, ‘agreement’ may have been influenced by the likelihood of penalties being imposed if individuals did not fully engage with the process.
- 3.44. Services Australia advised our Office that the Australian Government decided that, as at 29 May 2020, ‘agreed to’ debts would be eligible to receive refunds. As at November 2020, a significant portion of people in this cohort will now have received a refund.
- 3.45. However, for the reasons outlined above, we consider there was also sufficient doubt as to the debts raised on this basis that the better course of action would have been to freeze all debt recovery action on debts of this type pending an Australian Government decision. Ideally this should have occurred immediately, as with all debts raised under the IC Program, consistent with our comment above. However, at the least, it should have occurred as soon as a debt was identified as being within this category.

Comment 3

In light of the risks associated with accepting an individual’s ‘agreement’ to averaged income amounts, Services Australia should have immediately frozen recovery on ‘agreed to’ debts.

¹⁴ Recommendation 3 of the Commonwealth Ombudsman, *Centrelink’s automated debt raising and recovery system*, April 2017, p 27–28.

Inability to access advance payments

- 3.46. During the course of our investigation, our Office continued to receive complaints from individuals who experienced issues due to their income averaged debts remaining on their record following both the 19 November 2019 announcement and 29 May 2020 refund decision. Our Office raised concerns with Services Australia in relation to how these issues impacted particular cohorts of individuals, and outlined these concerns in a supplementary submission to the Senate Committee.
- 3.47. One particularly impacted cohort were individuals seeking advance payments. Individuals with income compliance debts were precluded from accessing lump sum advance payments. Services Australia advised that this is because, under social security law,¹⁵ an individual is not eligible for an advance payment if they owe a debt to the Commonwealth, recoverable by deductions from their social welfare payment.
- 3.48. During this investigation, our Office advised Services Australia that we had received a number of complaints from individuals who reported that they had been unable to obtain an advance payment due to their income compliance debt, including in circumstances where Services Australia had confirmed their debt had been raised using income averaging. We noted that although Services Australia advised that other options were open to individuals, including repaying the debt in full or requesting an urgent payment, we did not consider these options were an appropriate substitute for an advance payment for many people. For example, an urgent payment is only payable to an individual in exceptional and unforeseen circumstances. In contrast, individuals seeking an advance payment do not need to be in such hardship to apply, but it can provide a useful lump sum to cover irregular expenses.
- 3.49. Following the 29 May 2020 refund decision, our Office suggested to Services Australia that it should prioritise refunds for those individuals seeking advance payments. In response, Services Australia advised it had confirmed that while the majority of refunds for current customers (i.e. those who will be impacted by the inability to claim advance payments) would be processed by mid-August 2020, it decided to implement a triage process for individuals requiring prioritisation for the purpose of claiming an advance payment. In November 2020, it further advised that it had identified all those individuals that had been denied advance payments since 19 November 2019, and confirmed that their debts had been refunded and/or reduced to zero. As such, these individuals would no longer be prevented from accessing an advance payment due to their income compliance debts, where no other debt was outstanding.
- 3.50. In our supplementary submission to the Senate Committee at Appendix A, we noted that while we welcomed Services Australia's decision to prioritise the refund process for individuals seeking advance payments, we remained concerned that some individuals were prevented from receiving advance payments on the basis of debts raised using information that Services Australia had determined many months earlier was 'legally insufficient'.

¹⁵ See Social Security Guide, [5.4.1.10 Qualification for Certain Benefits & PPS Advance Payments](#).

Comment 4

Services Australia should have taken more proactive steps to ensure that any individual seeking an advance payment was not prohibited from doing so by a debt Services Australia had determined was 'legally insufficient'.

Communication with impacted individuals

The period 19 November 2019 to 29 May 2020

- 3.51. As outlined above, we remain concerned Services Australia did not freeze all debt recovery action in relation to the debts for which there was a high likelihood that the basis on which they were raised was 'legally insufficient'.
- 3.52. In our view, this was exacerbated by the absence of communication from Services Australia to impacted individuals. As we noted in our supplementary submission to the Senate Committee at Appendix A, in the six months between the 19 November 2019 and 29 May 2020 announcements, Services Australia did not provide substantive communication about its actions to impacted individuals. There was a short message on the website, but no direct communications to individuals.
- 3.53. We consider it likely this contributed to some of the uncertainty and confusion that individuals reported, including in complaints to our Office.
- 3.54. Some individuals would have been aware of the Australian Government's announcement in November 2019, including people who still had outstanding debts, and would have liked to know the impact it would have on them. Others may have heard some media reporting but not realised this related to them at all.
- 3.55. We acknowledge Services Australia did not have a full picture of which debts were impacted, did not know what decision the Australian Government would make regarding refunds, and did not know how long the process would take. We also acknowledge, as we did in our supplementary submission to the Senate Committee at Appendix A, there were factors that may have impeded Services Australia's ability to communicate with individuals whose debts were raised as a result of income averaging. This includes the *Katherine Prygodicz & ORS v Commonwealth of Australia* (VID1252/2019) class action (the class action), as well as competing priorities associated with the 2019–20 bushfire crisis and subsequently the COVID-19 pandemic.
- 3.56. Notwithstanding these factors, we are of the view that Services Australia should have communicated in a more transparent manner with impacted individuals, ideally to complement the November 2019 announcement, rather than waiting until the further announcement in May 2020.

Comment 5

Services Australia should have communicated directly with all individuals who had debts raised under the IC Program immediately after the November 2019 announcement. This communication should have informed individuals that Services Australia was reviewing debts, the impact on outstanding debts (ideally, consistent with our earlier comment that debt recovery action had been frozen), that individuals did not need to take any action and would be contacted within an indicative timeframe.

‘Voluntary’ repayments

- 3.57. One cohort particularly impacted by the lack of communication were people making ‘voluntary’ repayments. This refers to people who had commenced a private arrangement, such as a regular direct debit transfer, credit card or BPAY payment, to progressively pay down a debt raised by Services Australia.
- 3.58. Services Australia also advised that, as at September 2020, it had identified 5,833 individuals who continued to make payments towards income averaged debts through private arrangements such as direct debit transfer, credit card and BPAY. Services Australia told our Office that under its usual process for managing voluntary repayments, where a person fully repays their debt but continues their voluntary arrangement, this creates an *‘over recovered amount’* on their record. In these instances Services Australia will contact them to provide information about how to cease their arrangement and reverse the additional repayments.¹⁶ Our view is that this process alone was not sufficient for income averaged debts, as individuals will only receive contact *after* Services Australia accepted full repayment of their ‘legally insufficient’ debt.
- 3.59. During this investigation, our Office raised concerns with Services Australia about the appropriateness of accepting voluntary repayments in relation to debts that had been categorised as having been raised using income averaging. In our supplementary submission to the Senate Committee at Appendix A, we acknowledged that in circumstances where voluntary payments were being made through a private arrangement, Services Australia was unable to cease the arrangement on the individual’s behalf and that this must be done by the individual contacting their financial institution. We concluded, however, that this only served to increase the need for Services Australia to quickly identify and contact individuals with private payment arrangements to advise that they could cease them.
- 3.60. Following our Office’s supplementary submission, Services Australia advised that it intended to contact 169 individuals with private payment arrangements, on the basis that these individuals required ‘tailored servicing’ to assist them to manage their refund. It confirmed that it would make these individuals aware of the private payment arrangement and advise what action was required to cease the arrangement. In relation to the remaining 5,664 individuals with private payment arrangements, Services Australia advised that their refunds had been ‘activated’ as a priority. It advised that as at November 2020, 5,574 of these individuals received their refund and 36 had ceased their voluntary repayments. The remaining 54 individuals have not received their refund or ceased voluntary repayments.
- 3.61. We understand that these 54 individuals are former customers, who have been sent a ‘refund pending task’ to their myGov account requesting that they confirm their details in order for a

¹⁶ Operational Blueprint ‘Refunding Debt Payments’ 107-05140030 (process step 1, table 2).

refund to be paid, but have not completed the task. Services Australia advised it had and would continue to take steps to contact these individuals to assist them to engage in the refund process, including via reminder letters, SMS messages and investigating additional data sources to verify their contact details, as well as broadcasting information for former customers about the refund pending task via radio and its social media accounts. It also advised it is reviewing its website content to include specific information for individuals with voluntary repayments.

Comment 6

While we are satisfied with the steps Services Australia has now taken, it should have taken more proactive steps from November 2019 to identify individuals with private payment arrangements relating to a debt which had been frozen, and contact all individuals within the cohort to ensure they were aware of their entitlement to pause the arrangement.

The period since 29 May 2020

3.62. Since 29 May 2020, Services Australia communicated extensively about the Australian Government’s decision to refund debts wholly or partially raised in reliance on averaged ATO income information. That communication included the following:

- *Messages on Services Australia’s website*—Services Australia published multiple announcements and updates on its website about the refund process since 29 May 2020, including an initial news item notifying of the refund process that was due to occur in July 2020 and subsequent refined and tailored information about the refund process for current and former customers. This content also included information about matters of potential concern for impacted individuals including:
 - Why a person may not have received a refund notification and what they can do to query that assessment or request a review of their debt.
 - Information about the difference between the class action and the refund process.
 - Information about tax and income reporting implications.
 - Information for people with multiple debts to the Commonwealth, including whether the refund will be used to pay other debts.
 - Information about refunds being paid in instalments in some circumstances.
- *Letters and online notifications*—Services Australia sent written correspondence directly to individuals identified as eligible for a refund. That correspondence was sent to individuals via myGov or via letter mail, depending on whether the person had a myGov account linked to Centrelink. For those who did not, Services Australia sent a letter to the person’s last known address. Communication differed slightly for current and former customers in the following ways:
 - Current customers were sent letters between 13 and 24 July 2020 notifying them that refunds would automatically be paid within two to four weeks to the bank account their Centrelink payments are made to.¹⁷ Once that payment had been made, or once the individual’s debt had otherwise been reduced to zero, they would receive a further ‘post-refund’ letter specifying the refund

¹⁷ Services Australia advised that a ‘small number’ of current customers might receive their refund notification after 24 July 2020 but did not explain how many might be impacted or why.

amount that had been paid and/or the specific debts that had been reduced to zero.

- Former customers were sent letters after 27 July 2020 instructing those individuals to update their bank details online (via a ‘refund pending’ task) so that their refund could be paid to the correct account. Once that occurred, Services Australia advised that those individuals received their refund within five business days and received the aforementioned ‘post-refund’ letter.

- *Social media*—Services Australia published a range of updates on its social media pages (Twitter and Facebook) about the refund process.¹⁸

- 3.63. Services Australia also highlighted a range of other ways it communicated about the refund process, including via radio, online infographics and embedded video content and communication with representatives from community sector organisations. We also note that the Minister for Government Services published online media releases, including to announce Services Australia’s refund process on 29 May 2020.
- 3.64. In addition to this external messaging, Services Australia provided a range of instructional materials, including detailed ‘Frequently Asked Questions’ (FAQ) documents for its staff, which are designed to prepare them to respond to a range of queries from individuals during telephone contact, and help ensure consistency of messaging.
- 3.65. We also recognise that a range of actions were taken by Services Australia to take a user-centric approach to communicating with impacted individuals. Its correspondence was informed by user testing and consultation with third parties, and it published factsheets about the refund process in a range of common languages other than English.¹⁹ Furthermore, it committed to providing financial information and social worker support to some individuals who will receive a refund and who have a BasicsCard or Cashless Debit Card.
- 3.66. Overall, we consider this messaging to have been reasonable and included information about a range of commonly queried issues.

Comment 7

Following the 29 May 2020 announcement, Services Australia communicated extensively about the Australian Government’s decision to refund debts, including through a wide range of mediums to communicate with affected individuals and with instructional materials for staff. We are satisfied Services Australia took appropriate steps to communicate with individuals eligible to receive a refund during this period.

- 3.67. However, we are concerned that Services Australia has not advised of any plans to communicate directly with individuals not considered, or identified, as eligible to have their debt refunded. We are concerned there may be a large number of individuals who are broadly aware of issues regarding the way Services Australia raised debts under the IC Program, but do not know whether their particular debt is eligible for a refund. In particular, Services Australia’s

¹⁸ Posts were made on multiple dates, including on 2 and 29 July 2020.

¹⁹ Those updates were published on 1, 13, 17, 28 and 29 July 2020, and have since been updated. Those updates included more detailed information about when customers might expect to receive their refund, and what former customers would need to do to claim their refund. Fact sheets have also been published in a range of languages other than English, including Arabic, Assyrian, Chaldean, Chinese, Dari, Dinka, Hazagari, Khmer, Farsi, Spanish and Vietnamese, and are accessible [here](#).

initial messaging was that people did not need to contact it, and that it would make contact with them as required.

- 3.68. People with income compliance debts that are not eligible for a refund may continue waiting on advice from Services Australia before considering their options (for example, querying their debts or seeking review).
- 3.69. Further, as a particular example, in early 2020 Services Australia sent correspondence to all individuals with debts raised under the IC Program, in accordance with the directions of the court in the class action.²⁰ The correspondence advised people that a class action had been brought in the Federal Court about the legality of some aspects of the IC program, and that they qualified as members of the ‘class’ on whose behalf the action had been brought. As this class is broader than those who are eligible for a refund, there will be a high number of people who received that correspondence, may be broadly aware of the Government’s decisions about refunds, but will not hear anything further from Services Australia.
- 3.70. As outlined above, Services Australia has acknowledged that there is some residual risk that not all income compliance debts have been correctly identified for a refund, as outlined in KPMG’s report. While Services Australia published information on its website about review rights available to individuals, including in relation to refund-related decisions, we consider that additional actions should be taken to proactively engage with these individuals. We acknowledge that court processes may dictate how Services Australia will communicate with individuals covered by the class action.

Recommendation 1

As soon as it has completed identifying all individuals who are and are not eligible for a refund, and without duplicating communication that may be required as a result of legal proceedings, Services Australia should communicate directly with individuals who have had debts raised under the IC Program and who have not been assessed as eligible for a refund or removal of their debt. That communication should be in writing and include clear advice about the individuals’ review rights.

Communicating about raising new debts

- 3.71. We understand that where Services Australia set aside an income averaged debt under s 126 of the Administration Act and substituted it with a decision that there was no debt payable, it is not prevented from subsequently raising a new debt for the same debt period, using non-income averaged information such as payslips and bank statements.
- 3.72. We also acknowledge that Services Australia has an obligation to recover public monies incorrectly paid under social security legislation and the *Public Governance, Performance and Accountability Act 2013*.
- 3.73. We made inquiries with Services Australia about whether it intends to revisit and potentially re-raise debts for individuals who have had their income averaged debts refunded and/or reduced to zero. It advised that it is considering the circumstances in which this may be appropriate, but did not provide further information on what those circumstances might be or when it expected to complete its consideration.

²⁰ *Katherine Prygodicz & ORS v Commonwealth of Australia* (VID1252/2019).

- 3.74. We acknowledge Services Australia has not yet determined whether it will revisit and potentially re-raise debts that have been refunded. However, we do not consider that Services Australia has been sufficiently transparent with individuals about the possibility that this may occur.
- 3.75. For those individuals who have had income averaged debts refunded, any future decision by Services Australia to revisit and re-raise debts for the same debt period may cause distress. In the circumstances, we consider Services Australia should provide information to these individuals to assist them to understand the nature and impact of the Australian Government's 29 May 2020 refund decision. We note information on its website about its 29 May 2020 refund decision, and in its refund notification letters to individuals, does not currently include any information about its ability to potentially revisit and re-raise debts.

Recommendation 2

If it is anticipated that Services Australia may re-raise debts that have been refunded, it should, at the earliest opportunity, publish general information on its website to enable individuals to understand that the Australian Government's decision to refund eligible debts does not preclude Services Australia from raising another debt for the same debt period without relying solely on income averaged information.

Recommendation 3

In circumstances where Services Australia decides to revisit and potentially re-raise refunded debts it should, at the earliest opportunity, write to affected individuals and provide information to enable them to understand the impact of its decision. This information should include:

- a) the basis on which any decision to revisit and re-raise debts will be made
- b) an assurance that income averaging alone will not be used to re-raise debts
- c) information about individuals' review rights.

Alternatively, if Services Australia does not intend to revisit and potentially re-raise debts which have been the subject of refunds, it should confirm this publicly at the earliest opportunity.

Refunding eligible debts

The refund process

- 3.76. The Government's May 2020 refund decision applied to any income compliance debt that was raised from 1 July 2015 onwards where income averaging was identified as having been used wholly or partially in the debt calculation at the time of identification. Any of these debts which remained outstanding would be reduced to zero. Services Australia confirmed that the entire amount of eligible debts would be refunded or reduced to zero, including any interest charges and/or recovery fees that had been applied.
- 3.77. The Australian Government's decision does not apply to any debts raised under the IC Program that were never calculated using income averaging or were not ultimately reliant on income averaging in the final debt calculation. As such, debts raised under the IC Program that may have initially been raised using averaged income information but which were later reassessed once a person updated their fortnightly earnings (for example, with payslips or bank statements), were not refunded or set aside.

Commonwealth Ombudsman—Services Australia: Income Compliance Program

- 3.78. For most eligible individuals, Services Australia paid refunds to their bank accounts from July 2020. In acknowledgement of the potential for former customers' personal details to have changed over time, and to ensure that refunds are sent to the intended recipients, Services Australia decided to administer refunds differently for current and former customers.
- 3.79. As Services Australia already has up-to-date financial institution details for current customers on record, it has processed refunds automatically for this cohort, without the need for individuals to do anything.
- 3.80. Individuals, whether current or former customers, who are not owed a refund do not need to do anything to have their debt reduced to zero.
- 3.81. For former customers who were owed a refund, Services Australia established a process requiring people to confirm or update their bank details online using a 'refund pending' task that was displayed in their myGov account, before they received a payment. Provided that reasonable steps were taken to engage with individuals within this cohort, we consider that this is a reasonable course of action to have taken to mitigate the risk of individuals' refunds being incorrectly disbursed. Services Australia's strategies for ensuring that former customers were alerted to their refund eligibility included sending a reminder letter and text messages, using a third party provider to check and confirm contact address details, making outbound calls, and paid online promotions. It also noted that there is no time limit for individuals to receive their refunds. We consider that those strategies are reasonable in the circumstances.
- 3.82. Services Australia advised that due to a system limitation, it is only able to transfer a maximum of \$6,999 to individuals' bank accounts in any given day.²¹ This means that individuals with debts that exceed this amount will not receive their refund in a single lump sum. Despite this system limitation, Services Australia committed to transferring any remaining funds to eligible individuals over consecutive days following the initial deposit. We also consider this to be a reasonable action to take in the circumstances.

Debts affirmed by the Administrative Appeals Tribunal

- 3.83. According to guidance given to Services Australia staff in August 2020, individuals whose income averaged debt was affirmed by the Administrative Appeals Tribunal (AAT) prior to the Australian Government's announcement in November 2019 are not eligible for a refund. This is apparent from the following Services Australia Operational Blueprint from August 2020:

If the customer has had a review of their debt by the Administrative Appeals Tribunal (AAT) and their appeal was not completely successful, they will not receive a refund. Services Australia cannot change a decision made by the AAT.

- 3.84. We note the Operational Blueprint has subsequently been updated with the following advice:

If the Administrative Appeals Tribunal (AAT) has reviewed the customer's debt and their appeal was not completely successful, they may or may not be eligible to receive a refund. Advise the customer a specialist team will review their case and contact them with the outcome. If the debt has been subject to a decision by the AAT [it is to be referred to the Customer Compliance Service Desk].

²¹ Services Australia provided information regarding the nature of the system limitation to the Senate Committee during a [public hearing](#) dated 31 July 2020.

- 3.85. These decisions were made prior to the Australian Government’s November 2019 announcement. This means the AAT did not have the benefit of the Government’s changed policy when it made these decisions. As a matter of principle, we do not consider these individuals should be at any disadvantage compared to others who did not go through the AAT process.
- 3.86. Services Australia advised that from 1 July 2015, approximately 5,200 income compliance debts were appealed at the AAT. Of these, approximately 2,000 have been categorised as raised using income averaging, which relates to around 1,400 individuals.
- 3.87. We acknowledge that addressing debts of the individuals in this cohort is a more complex undertaking than the action Services Australia took to refund affected customers more broadly. Nevertheless, we consider Services Australia should seek to identify a solution to enable refunds to be made payable to people in these circumstances. Services Australia informed us it is engaging with the Department of Social Services on this matter and we welcome this approach.

Recommendation 4

Services Australia should continue to identify options to resolve the issue of individuals’ debts having been affirmed by the AAT with income averaging in the final decision, ideally with a view to refunding those debts which would otherwise have been eligible for refund as soon as possible.

Internal reviews

Appeals (new and in progress) since 19 November 2019

- 3.88. We received a number of complaints from individuals and their representatives about Services Australia’s handling of their requests for internal review of their income compliance debts. These complaints related to review requests lodged both prior to and following the 19 November 2019 announcement.
- 3.89. Under s 129 of the Administration Act, a person affected by a decision of an officer under the social security law may apply for a review of that decision. The Administration Act requires that, in response to a request for review, either the Secretary, Chief Executive of Centrelink or an Authorised Review Officer (ARO) must review the decision and either affirm the decision, vary the decision or set the decision aside and substitute it with a new decision.²² Further, that decision must be communicated in writing to the applicant, including reasons for the decision, information on which findings were based and information about the applicant’s right to apply to the AAT for a review.²³
- 3.90. Since the refund announcement of 29 May 2020, Services Australia advised the following in relation to how it has been processing review requests:
- Internal review requests relating to debts that will be refunded or zeroed, including existing review requests, are not being progressed. While individuals will be entitled to continue with those review requests after their debt has been set aside. Services

²² *Social Security (Administration) Act 1999* s 135(1).

²³ *Social Security (Administration) Act 1999* ss 136 and 138.

Australia notes that they will be invited to withdraw their request to review the previous debt decision.

- Review requests relating to debts that will be refunded or zeroed and that are awaiting consideration by the AAT are also being set aside. Services Australia advised that once relevant debts have been set aside and refunded, ‘appropriate action’ will be taken to finalise AAT proceedings where there is no longer a practical reason to continue. It advised that it is working with the AAT and applicants to manage this process, but has not provided any specific information about how it is doing so.
- Review requests relating to debts that have not been identified as eligible for a refund will be progressed in accordance with normal procedures. Services Australia introduced a ‘refund query’ tool through the Centrelink Online account to assist individuals to request a review of a refund assessment that Services Australia made, or ‘any other decision’ regarding their income compliance debt.²⁴
- If a person requests a review of their debt, or follows up in relation to an existing review or reassessment request, and the person is identified as a member of the class action, staff have been instructed to refer the person to Gordon Legal before they will proceed (or proceed any further) with the review. Other individuals are invited to query or appeal their debt online.²⁵

3.91. Services Australia also uses a process by which a Subject Matter Expert (SME) undertakes a quality check and/or reassessment. It provided us with copies of task cards demonstrating that a review request to an SME to quality check the decision will not always progress to an ARO review. Those task cards instruct SMEs to obtain further information from individuals or third parties to verify a person’s income. The advice notes that the SME may perform the quality check if ‘full verification’ has been supplied. However, if income information has not been verified, and ‘all avenues have been exhausted’, they are instructed to follow a process to ‘...hold reviews that can’t be completed with the information already provided.’²⁶

3.92. We acknowledge the roles of SMEs to attempt to resolve customer concerns as quickly as possible. However, we also note the ability of a customer to apply to the AAT is dependent on them first having an ARO review.

3.93. Services Australia advised the Office that ‘if at any point, a person advises they want to proceed directly with a formal or ARO review of the decision, it is referred to an ARO.’ We welcome this advice.

3.94. However, complaints to our Office suggest that this is not occurring in all circumstances, raising one or more of the following concerns:

- Services Australia did not appear to be acting on or progressing review requests.
- Services Australia was informing individuals that it required additional income information before a review could proceed.
- Despite requesting an ARO review, Services Australia advised that it would be undertaking an ‘explanation of decision’ by the original decision maker, ‘quality check’ and/or reassessment by a SME before a formal ARO review would take place.

²⁴ Instructions for impacted individuals are available from the Services Australia [website](#).

²⁵ Operational Blueprint ‘Income Compliance Programme class action’

²⁶ SME Quality Check Task Card v1.3.

- 3.95. We remain concerned that review requests were not progressing to formal or ARO reviews in some cases, and raised these concerns with Services Australia. In response, it advised that the SME process deals with the ‘vast majority’ of review requests, and that this is administratively more feasible and better for individuals. It also confirmed that in circumstances where an SME is unable to obtain information from the individual or third parties, they are advised not to finalise the quality check. It stated *‘In the absence of full verification being available, the agency was not able to finalise the SME quality check in line with the decision to no longer base decisions on the application of the averaging of ATO data.’*
- 3.96. While we acknowledge that Services Australia’s informal review processes assist Services Australia to process review requests more efficiently, we consider that those individuals who specifically request formal or ARO review should be referred directly to an ARO for consideration.
- 3.97. Further, in circumstances where Services Australia is unable to obtain income information from the individual or from third parties for the purposes of an SME quality check, we consider it should finalise the quality check based on evidence other than averaged ATO information on hand. This would allow the individual to receive a decision and progress to an ARO review, should they wish to do so.

Recommendation 5

Services Australia should review its guidance to staff, including all relevant policies, procedures and training materials, to ensure it aligns with Services Australia’s stated position that where an individual requests a formal or ARO review, their request is referred directly to an ARO.

Recommendation 6

In circumstances where Services Australia is unable to obtain income information from the individual or third parties for the purposes of an SME review, it should finalise the review based on evidence other than averaged ATO information on hand and provide a decision to the individual.

Ongoing actions under the Income Compliance Program

Using bank statements as evidence of a person’s income

- 3.98. Throughout the IC Program, Services Australia accepted net income from individuals’ bank statements as evidence of their historical fortnightly income in circumstances where other evidence (e.g. payslip information) has been unavailable.²⁷
- 3.99. We have the following concerns regarding the assumptions Services Australia is required to make about a person’s income when relying on bank statement information to raise a debt:
- Income tests that apply to social security payments are calculated using gross income information. As bank statements will generally display a person’s net income, Services Australia uses a ‘net to gross’ calculator. This process makes assumptions about the amount and timing of tax paid by the individual. If a person has total earnings for the financial year of less than \$18,200 (i.e. below the tax-free threshold), Services

²⁷ Commonwealth Ombudsman, *Centrelink’s Automated Debt Raising and Recovery System, Report No. 2 of 2017, April 2017*. The Office noted that Services Australia introduced a bank statement net to gross function in February 2017 to address concerns about people being unable to obtain their payslips to provide their income information to Services Australia.

Australia assumes that the person paid no tax and that their net income is equal to their gross income. Where the person has provided information indicating earnings of more than \$18,200 across the financial year, the calculator will assume the amount of tax paid by the person was evenly apportioned across the payment period and convert the net figure to a gross amount on that basis.

- A person receiving a social security income support payment will generally have their employment income assessed in the period in which it is earned, derived or received. As a matter of policy, Services Australia generally bases its income test on when the income is earned, as this usually occurs first.²⁸ Bank statements show when a person received their income, but do not generally indicate when it was earned.
- Unlike payslips, bank statements do not generally include information that would enable a decision maker to determine whether income received by a person from their employer should be considered ‘income’ for the purposes of the *Social Security Act 1991*. For example, there are a range of income types that are exempt from the income test such as reimbursement for work-related expenses and work-related allowances that are not broken down in income amounts displayed on bank statements.²⁹

- 3.100. Services Australia has advised that in the future, it ‘does not intend to raise debts solely on the basis of bank statements’ and that bank statements have been ‘used in compliance reviews only after a person engaged as part of the review’. It further advised that in the future, ‘information from bank statements is just one of the additional proof points that can be used by a decision-maker to determine a debt’. The agency can also refer to other relevant supporting information and documents such as payslips, letters from a person’s employer, amended payment summary information from the ATO, other information from the customer, and other third-party information’.
- 3.101. We welcome this advice, as we do not consider it is appropriate to use bank statements in the absence of either additional proof points, or fully informed agreement by the individual as to how the information in a bank statement will be used.
- 3.102. Services Australia emphasised that ‘*the customer themselves is a critical information source for providing information*’. However, it is not clear that Services Australia has sufficiently robust procedures in place to ensure that all individuals subject to this practice are fully informed about, or are able to understand, assumptions that may have been made, even if they are asked to confirm the accuracy of this information.
- 3.103. In our view, fully informed agreement would only be achieved if Services Australia informs an individual exactly *how* the gross figure was calculated, and then asks the individual to expressly agree that the grossed up amount, including the assumptions about taxation, can be used to represent their fortnightly earnings for the relevant period.
- 3.104. Services Australia has not provided detail of exactly how bank statements *will* be used in compliance activities in the future. Further, while an individual’s own advice is considered to be a critical information source, it is not clear how Services Australia considers that information alongside other available evidence, including income that an individual might have previously reported to Services Australia.

²⁸ <https://guides.dss.gov.au/guide-social-security-law/4/3/3/05>

²⁹ <https://guides.dss.gov.au/guide-social-security-law/4/3/2>

- 3.105. Services Australia subsequently advised it 'is in the process of updating its guidance relating to the use of bank statements to support compliance activities and is engaging with the [Department of Social Services] on the policy approach'. As part of this update, we consider Services Australia should make clear the need for fully informed agreement from individuals, and ideally the use of further proof points, before relying on net to gross converted income information.

Recommendation 7

Services Australia should only rely on 'net to gross converted income information' from bank statements in income compliance activity, in the absence of other proof points, with express confirmation from individuals that the grossed up amount accurately represents their fortnightly earnings for the relevant period.

In flight income compliance reviews

- 3.106. Services Australia uses the term 'income compliance review' to refer to activity by its compliance staff to 'review' discrepancies between people's income reported to Services Australia and information obtained from the ATO to determine if a debt might exist.
- 3.107. Services Australia advised that at the time of the Australian Government's 19 November 2019 announcement, there were approximately 240,000 income compliance reviews 'in flight' (that had commenced but had not yet been finalised).³⁰ On 10 September 2020, it reported the number of 'in flight' reviews had decreased to 199,065 (i.e. a reduction of approximately 41,000 reviews since changes were made to the IC Program).
- 3.108. Services Australia advised that it has been finalising in-flight income compliance reviews following the 19 November 2019 announcement, without relying on averaged ATO income information in the process. It provided the following information about what it has been doing, and what it intends to do with these reviews:
- *Between 19 November 2019 and 3 April 2020*—Where Services Australia received confirmation that an individual had received an initiation letter, staff have contacted individuals to ask for information or seek clarification on information previously provided. If officers have been unable to contact individuals, they have been instructed to use 'information already provided' to finalise the review.³¹
 - *3 April 2020 and 2 November 2020*—The national debt pause applied to in-flight reviews between 3 April and 2 November 2020. During this time, Services Australia finalised in-flight reviews in circumstances 'where a person requests', but if the result of the review is a debt, it postponed raising and recovering any debts until the end of the debt pause.

³⁰ 'In flight-reviews' include any circumstances where Services Australia has initiated an income compliance review but has not yet made a decision about whether or not a person owes a debt. This may include where a person has been sent a discrepancy notice but has not responded, or where a person has commenced engaging with Services Australia through its online portal but has not finished updating and confirming their income information. In-flight reviews are a separate and distinct process from an 'internal review', through which a person can seek a fresh look at a Services Australia decision with which they disagree.

³¹ This policy is referenced in a document titled 'Messaging/Overview of the 'Process for Started EIC or CUIPI Reviews'. Services Australia's records do not specify whether 'information already provided' includes customers' historical income reports.

- *After 2 November 2020*—Since the end of the national debt pause, Services Australia gradually recommenced debt-raising activity, including in-flight reviews, and has recommence debt recovery activity in February 2021.

3.109. Although the changes made in November 2019 mean that debts are no longer raised solely using averaged ATO income data, in-flight reviews will have already been impacted, albeit indirectly, by the practice of income averaging. In particular, individuals with in-flight reviews will have already been warned that if they did not check and update their income information, or could not obtain payslips or bank statements, Services Australia would or could use (and average) income information it had received from the ATO in the review. This advice was provided to individuals at various points in the review process, as documented in the Office’s April 2019 implementation report.³² Below we have highlighted examples of information provided to individuals with review initiation letters³³ and embedded within the online review system.³⁴

It is important you engage with us to confirm the dates you worked and the amount you earned. If you don't, we'll use the information we get from the other agency to identify and calculate if we've overpaid you.

For example, if the ATO shows you worked for a period of 5 months, we will equally divide your income over the 5 months. This will calculate the payment you should have got.

We recommend you get your past payslips or bank statements to continue.

If you can't get your past payslips or bank statements, we can use the details we already have.

We'll use the information from the ATO and compare it to what you told us in the past.

- We'll divide the ATO amount by the number of fortnights you worked. This will give us an average of your earnings for this time.
- However, if the hours you worked or the amounts you earned changed each fortnight, you need to tell us, including the exact amounts you were paid.
- You should also tell us if you only worked for part of the year, or if the employer names we have don't match your records.
- If you end up owing us money, not providing this information may mean you pay back more than you need to.

Do you want us to use the information we already have to work out if you have received the right amount of payments from us in the past?

Yes No

3.110. These and other similar messages have the potential to influence how individuals engage in the review process. In particular, the potential for a person to be influenced by Services Australia stating that they may be subjected to income averaging and required to ‘pay back more than (they) need to’ if they do not engage in the compliance process in the manner preferred by Services Australia, provides an incentive for people to check and update their income information (or a disincentive for people not to do so).

3.111. As Services Australia has now acknowledged the ‘legal insufficiency’ of using averaged ATO income information to raise a debt, we are concerned that any engagement from individuals

³² This messaging is outlined in pages 10 to 16 of the Office’s April 2019 [report](#).

³³ Text extracted from Services Australia’s website, which was linked from EIC initiation letters, as referenced in the Office’s April 2019 [report](#) at paragraph 2.26.

³⁴ Text extracted from the CUPI online system, as referenced in the Office’s April 2019 [report](#) at paragraph 2.48.

may therefore have been, or continue to be, influenced by Services Australia's previous statement that income averaging may be used to raise the debt.

- 3.112. Services Australia advised our Office that in some instances, it is appropriate to 'close out' an in-flight review without further action. It also advised that where it continues an individual's in-flight review, it would write to the individual and work closely with them to finalise the review.
- 3.113. In circumstances where Services Australia continues an in-flight review, we consider it should include in its written communication clear advice on the changes to the IC Program since the initial correspondence, including where statements in the initial correspondence are no longer accurate. This is particularly important given that individuals within this cohort may be less likely than others impacted by the IC Program to have received information about significant changes and related issues.

Recommendation 8

In circumstances where Services Australia continues an individual's income compliance in-flight review and where the individual had previously been contacted about an income discrepancy, Services Australia should include in its written communication a correction to any information provided in the initial correspondence that is no longer accurate.

At a minimum, the correspondence should note that Services Australia made changes to the IC Program in November 2019, and that it will no longer raise debts relying solely on estimating the person's income by 'averaging' ATO income information over multiple fortnights.

Approach to debts raised using income averaging prior to 2015

- 3.114. According to Services Australia, averaging of ATO income information to calculate overpayments has been used for many years. It previously informed us that the methodology has been used since the early 1980s.³⁵ More recently, the Secretary of the Department of Social Services noted that:

*It would appear that income averaging has been used for many years. We've been able to find evidence of income averaging being used back in the 1990s. I have spoken to long-term officers who believe it existed before then as well.*³⁶

- 3.115. Services Australia advised that it had analysed a 'small sample' of income compliance activity in relation to the use of ATO averaging in 2009 and 2011. It found 17 per cent of this activity in 2009, and 24 per cent in 2011, led to debts raised wholly or partially in reliance on averaged ATO income information.
- 3.116. Services Australia did not provide information about the methodology it used to identify or analyse the sample. As such, it is not clear if the sample was representative of the entire population of people who had debts raised during the relevant years, whether the percentages are statistically significant, or exactly how income averaging might have been used in the cases identified.

³⁵ That advice was provided to the Office on 3 February 2017 and is referenced on page 42 of the Office's 2017 [report](#).

³⁶ Senate Community Affairs References Committee, *Inquiry into Centrelink's compliance program*, Hansard, 17 August 2020, Ms Kathryn Campbell AO CSC, page 24.

- 3.117. Despite its acknowledgement that there were debts raised in reliance on averaged ATO income information prior to the commencement of the IC Program, Services Australia advised that the Australian Government decision to refund individuals applies only to debts raised under the IC Program since 1 July 2015. It did note anyone can seek a review of a social security debt decision at any time.
- 3.118. While we acknowledge a person can request a review of debts incurred prior to 1 July 2015, we consider Services Australia needs to put further processes in place to ensure such a review considers whether income averaging was used. It should also put in place processes to refund or reduce to zero the relevant portion of any debts in which it identifies that income averaging was used.

Recommendation 9

Whenever Services Australia is requested by an individual to review a debt raised pre-2015 it should explicitly consider whether income averaging was used, following the same manual process it undertook for the refund process for the IC Program. If it identifies that income averaging was used as the sole basis for any portion of the debt, it should reduce that portion of the debt to zero, regardless of when that debt was raised. If the individual has repaid that debt and has no other debt owing to Services Australia, that payment should be refunded.

Services Australia should ensure its website clearly identifies the availability of this process, how a person can request it, and the person's options for further review should they be dissatisfied with the initial decision.

**APPENDIX A: SUPPLEMENTARY SUBMISSION TO THE
COMMITTEE INQUIRY INTO THE INCOME COMPLIANCE
PROGRAM**



**Supplementary submission by the
Commonwealth Ombudsman**

**Inquiry into Centrelink's compliance
program**

Submission by the Commonwealth Ombudsman, Michael Manthorpe PSM

15 September 2020

1. Introduction

- 1.1. In September 2019, the Office of the Commonwealth Ombudsman (the Office) made a submission in response to this Inquiry, which documented our previous and ongoing interest in Centrelink’s Income Compliance Program (the program). In the submission, the Office broadly summarised the findings of its 2017 and 2019 own motion investigations, which identified issues in a range of areas, including accuracy of decision-making, communication and transparency, complaint handling and service delivery.
- 1.2. On 19 November 2019, Services Australia (formerly the Department of Human Services) announced that it would be making changes to the program.³⁷ In particular, it stated that it would no longer raise debts for current or former social security recipients by using averaged income information received from the Australian Taxation Office (ATO). It further advised that it would make contact with individuals for whom Services Australia had used ‘only income averaging’ in its assessment and would provide advice to those individuals about ‘freezing’ repayment arrangements while it reassessed debts.
- 1.3. This announcement was closely followed by consent orders on 27 November 2019 in the matter of *Amato v The Commonwealth of Australia (VID611/2019)* (Amato),³⁸ in which the Federal Court of Australia declared, among other things, that averaged ATO income information was not capable of satisfying a decision-maker, that Ms Amato owed a debt within the scope of ss 1222A(a) and 1223(1) of the *Social Security Act 1991*.
- 1.4. The *Amato* case has provided greater clarity about the legality of some aspects of the program, while other aspects continue to be the subject of ongoing legal action, in particular, the ‘Robodebt’ (Social Security Debt Collection) Class Action (VID1252/2019) (the class action). We do not intend to duplicate or prejudice those legal proceedings by investigating those issues, or comment on those issues in this submission.
- 1.5. However, the Office has and will continue to, actively monitor relevant complaints, and engage regularly with Services Australia to seek assurance that the process of identifying and remediating debts raised using averaged income information from the ATO is fair and transparent. Following the government’s announcement³⁹ on 29 May 2020 that it would refund and/or reduce to zero 470,000 debts based wholly or partially on income averaging, the focus of our work has been on the implementation of that process.
- 1.6. We welcome the opportunity to provide a supplementary submission to the Senate Community Affairs References Committee for the purpose of outlining some ongoing issues that have been brought to our attention by impacted individuals and other matters we are continuing to examine.

³⁷ This announcement was published on Services Australia’s [website](#).

³⁸ The Federal Court consent orders are accessible from <https://www.comcourts.gov.au/file/Federal/P/VID611/2019/3859485/event/30114114/document/1513665>.

³⁹ Minister for Government Services, [Media release: Changes to the Income Compliance Program](#), 29 May 2020.

- 1.7. This submission addresses Services Australia’s progress in implementing changes to the program since November 2019 and the impact that these changes have had on individuals. It is informed by complaints made to our Office and investigations we have conducted.

2. Complaints to the Office

- 2.1. Despite the changes announced by Services Australia on 19 November 2019, the Office has continued to receive complaints from individuals who have had debts raised under the program. Between 19 November 2019 and 31 August 2020 we received 302 complaints from individuals that were recorded as ‘automated data matching’ complaints. This represents a decrease in complaints compared to earlier periods, consistent with Services Australia pausing its debt recovery and compliance activity for various reasons, including the *Amato* case, the bushfires and the COVID-19 pandemic.
- 2.2. We have briefly summarised some of the common complaint issues raised with the Office in relation to the program since the November 2019 announcement below. These complaints provided the Office with useful insights into the experience of individuals who have been directly impacted by the program.
- 2.3. Common complaint issues can be usefully summarised into the following categories: communication; accuracy and reviews; and financial impact.

Communication

- 2.4. Individuals reported that Services Australia has not responded to their correspondence (complaints, review requests and other communication).

Case study 1

An individual reported that the AAT had set aside their debt and remitted it back to Services Australia to contact their employers and obtain payslip information in order to recalculate the debt. The individual advised that they had not received any communication from Services Australia about whether it was taking any steps to implement the AAT’s decision. They had complained to Services Australia two months prior, but had not received a response. The individual’s records confirmed that although Services Australia had taken steps to implement the AAT decision, it had not communicated that information to the individual and had closed their complaint without contacting them.

- 2.5. Individuals have reported that they have not received clear and timely explanations for why and how their debt has been raised, despite making attempts to obtain this information. Some have advised that they have received inconsistent or conflicting information from multiple officers.

Case study 2

An individual reported that they had requested that Services Australia review their income compliance debt and provide details of the debt. In response, Services Australia provided copies of debt notification letters that the individual had already received. The individual felt that this response was not sufficient to enable them to understand how their debt was raised. Services Australia advised that it had not actioned the request for review and was unable to

contact the individual because they were part of the class action. Services Australia has since advised that it is progressing the individual's review.

2.6. Individuals have reported confusion about why, or for how long, their debt has been 'frozen'.

Case study 3

An individual advised that, during a recent contact they made to Services Australia to request a review of their income compliance debt, they had discovered a freeze had been placed on the debt. The individual expressed concerns that they would not have known about the freeze, including why the debt had been frozen or what it meant for them, had they not taken proactive steps to contact Services Australia.

Accuracy and Reviews

2.7. Individuals have had concerns about the accuracy of information used to calculate their debts, and requested debt decisions be changed.

Case study 4

An individual contacted the Office in early 2020 about a debt which was raised using averaged income information. They advised they were dissatisfied with the explanation for how the debt arose. The individual reported to us that they asked Services Australia to provide information about the details of the debt. Debt information is available to individuals as part of informal personal information releases. However, the individual advised the Office that Services Australia would not provide them with their debt information at that time.

Services Australia subsequently reassessed the debt. The individual informed us that they considered the result of the reassessment was not accurate and lodged a further appeal.

2.8. Individuals have expressed concern that they received confirmation from Services Australia that their debt has been raised using averaged ATO income information but that their debt had not been refunded or reduced to zero. In particular, they reported concern that Services Australia was seeking additional information to verify their debt, rather than proceeding with a review.

Case study 5

An individual advised the Office that, despite having been informed by Services Australia that the income compliance debt was 'based on income averaging of ATO data', Services Australia was seeking additional information from their former employers, rather than removing the debt or proceeding with the review. Services Australia confirmed it contacted the individual's former employers to seek additional income information and the review was pending receipt of the information sought.

Services Australia subsequently advised the Office the individual has been sent a refund notification letter for the entire debt.

2.9. Individuals reported that Services Australia had not acknowledged or acted on requests for review.

Case study 6

An individual informed the Office that they contacted Services Australia to request a review of their income compliance debt on three separate occasions, over a period of seven months. At the time of their complaint, it had been approximately 10 months since their initial request, without resolution. Services Australia confirmed that it had failed to initiate a review in response to any of the individual's contacts. Services Australia has since advised that it has registered a 'priority' review of the individual's debt.

2.10. Individuals reported that reviews have taken significantly longer than expected (when compared to Services Australia's published service standards or other advice) or did not appear to be progressing at all.

Case study 7

An individual reported that they had requested a review of an income compliance debt and that the debt be frozen pending the outcome of the review. However, Services Australia had subsequently applied an interest charge to the debt on the basis that it had not been paid 'in full'. The individual's records confirmed that Services Australia had not registered the review for a period of two months and only following further contact from the individual was it reviewed. Services Australia has since advised that the decision to raise the debt and the interest charge has been set aside following review.

Financial impact

2.11. A number of individuals reported that they have been unable to obtain an advance payment due to their income compliance debt, even in circumstances where Services Australia confirmed their debt was raised using averaging of ATO income information.

Case study 8

An individual informed the Office that they received an offer of employment but did not have the financial capacity to travel to their place of work. They attempted on multiple occasions to claim an advance payment to purchase petrol for this purpose, but were told each time by Services Australia staff they were ineligible due to their income compliance debt. Services Australia has since advised the debt was raised using income averaging and the individual has since received a refund of their debt repayments.

2.12. Individuals reported that Services Australia continued to recover debt repayments from them, even in circumstances where they believe, or have been notified that, recovery of their debt has been frozen. This has particularly arisen when individuals have multiple debts, some arising under the income compliance program and others not.

Case study 9

An individual raised concerns with Services Australia that their income compliance debt remained in place despite the changes to the program announced in November 2019. They noted that Services Australia continued to recover amounts from their income support payments, despite having committed to freeze debts raised in reliance on averaged income information from the ATO. The individual's records indicated while Services Australia applied a

‘debt freeze’ due to ‘income averaging’, it continued to withhold amounts from their income support payments.

Services Australia advised the individual had two debts, one arising from the income compliance program, and one not. A withholding arrangement had been applied to pay off the non-income compliance debt. However, once the non-income compliance debt was fully paid off, the remaining amount from the withholding arrangement payment automatically applied to pay off a portion of the income compliance debt, despite the fact that Services Australia had frozen that debt, rather than being returned to the individual.

- 2.13. We are concerned about the impact these issues had on affected individuals within the Australian community, particularly given the impact of the 2019-20 bushfires and the ongoing COVID-19 pandemic.

3. Investigation of Services Australia’s actions

- 3.1. In February 2020, the Ombudsman commenced an own motion investigation, pursuant to s 5(1)(b) of the *Ombudsman Act 1976*, into Services Australia’s actions to identify and remediate debts impacted by averaging of ATO income information. We continued this investigation focussing on Services Australia’s implementation of the May 2020 announcement that 470,000 debts would be refunded and/or reduced to zero.
- 3.2. The manner in which Services Australia is implementing changes to the program and the impact that these changes have on individuals are the primary focus of our investigation.
- 3.3. While our investigation is ongoing, we have identified some issues to Services Australia that had a direct impact on affected individuals and required consideration, namely communication, ongoing repayment of debts, and advance payments. These issues, along with Services Australia’s responses to those issues, are outlined below.

Communication

- 3.4. In the six months between Services Australia’s 19 November 2019 announcement and the government’s announcement on 29 May 2020 that 470,000 debts would be refunded, Services Australia did not provide substantive communication about its actions to impacted individuals. We consider it likely this has contributed to some of the uncertainty and confusion that individuals reported. When we raised concerns about the extent to which it had communicated with impacted individuals, Services Australia advised that it has had to carefully manage communication with individuals in light of the ongoing class action.
- 3.5. Services Australia has now published updates on its website⁴⁰ and commenced communication with impacted individuals. Services Australia advised this messaging has been informed by user testing and assisted by engagement with representatives from a range of stakeholder groups and community organisations. We welcome the steps Services

⁴⁰ <https://www.servicesaustralia.gov.au/individuals/subjects/information-about-refunds-incomecompliance-program>

Australia has now taken to engage with individuals, including both current and former customers.

- 3.6 We acknowledge there are factors that may have impeded Services Australia’s ability to communicate with individuals whose debts were raised as a result of income averaging, including the class action, as well as competing priorities associated with the 2019-20 bushfire crisis and subsequently the COVID-19 pandemic. Notwithstanding these factors, we are of the view that Services Australia should have communicated in a more transparent manner with impacted individuals in the months following its November 2019 announcement and prior to the further announcement in May 2020.
- 3.7 On several occasions between November 2019 and June 2020, Services Australia provided the Office with the opportunity to comment on communication products it developed for the purpose of updating impacted individuals on the identification and refunding of income compliance debts. On each occasion, the Office provided feedback relating to the clarity, transparency and accessibility of those letters. Services Australia made some adjustments to the correspondence in response to our observations, which we hope will go some way to improving the experience of the intended recipients.
- 3.8 The Office continues to seek assurance that the ‘customer experience’, of which clear and timely communication is a central aspect, is a priority for Services Australia as it continues to undertake the refund process.

Ongoing repayments of debts

- 3.9. Despite the work Services Australia has undertaken to investigate, identify and freeze income compliance debts since its 19 November 2019 announcement, some individuals with debts raised wholly or partially on the basis of income averaging have remained subject to ongoing debt recovery. The Office has been concerned about two known cohorts for whom debt recovery has continued up to, and indeed past, the government’s announcement of 29 May 2020.
- 3.10. First, a small cohort of individuals continued their existing direct-debit debt arrangements to make repayments towards income compliance debts that would have otherwise been frozen.
- 3.11. We have expressed concern to Services Australia about the appropriateness of accepting repayments for affected debts that have been identified as having been raised in reliance on averaged income information from the ATO.
- 3.12. Services Australia advised that it cannot stop a payment arrangement that an individual independently initiated. While we acknowledge this, our view is this made it all the more important for Services Australia to quickly identify and contact people in these circumstances, to advise people they could cease their payment arrangements.
- 3.13. Secondly, the information the Office received from Services Australia indicates that it did not freeze recovery of debts raised on the basis of income averaging where there was

‘clear evidence’ on an individual’s record they ‘agreed’ the ATO data reflected their earnings.

3.14. We also conveyed concerns about this approach, due to potential problems associated with accepting an individual’s ‘agreement’ to averaged income amounts. For example, an individual may have agreed that pay information provided by the ATO would be accurate, without understanding (and therefore without agreeing) that the pay information would be averaged over a series of pay periods. Similarly, ‘agreement’ may have been influenced by the likelihood of penalties potentially being imposed if individuals did not fully cooperate with the process.

3.15. Services Australia subsequently advised that debts raised in reliance on an individual’s ‘agreement’ to averaged income information would be refunded in accordance with the government’s May 2020 announcement. While this may now have occurred for some, it is unclear whether those people who are still awaiting refunds have had their debts frozen in the meantime.

Advance payments

3.16. The Office has expressed concern to Services Australia about its practice of rejecting individuals’ requests for lump sum advance payments due to their income compliance debt. In response to those concerns, Services Australia advised that, under social security law, an individual is not eligible for an advance payment if they owe a debt (including an income compliance debt) to the Commonwealth, recoverable by deductions from their social welfare payment. Services Australia further advised this remains the case even where it exercised operational discretion to freeze debt recovery.

3.17. Accordingly, while debt recovery action was paused for most people since November 2019, people were still unable to access advance payments. This is despite the validity of many income compliance debts being in question since the Federal Court issued consent orders in the *Amato* case.

3.18. In response to our investigations, Services Australia suggested options other than advance payments for impacted individuals, including repaying the debt in full or requesting an urgent payment. Services Australia also referenced that individuals may accept a referral to a Services Australia social worker. We do not consider these options to be an appropriate substitute for an advance payment for many people. For example, an urgent payment is only payable to an individual in exceptional and unforeseen circumstances.⁴¹ In contrast, individuals seeking an advance payment do not need to be in hardship to apply, but it can provide a useful lump sum to cover irregular expenses, such as school uniforms or other supplies.

3.19. We suggested to Services Australia that if the process of identifying and refunding affected individuals was likely to take an extended period of time, it would be preferable for individuals who are seeking an advance payment to be prioritised, rather than waiting for the large-scale refund process to unfold. In response, Services Australia confirmed while the majority of refunds for current customers (i.e. those who will be impacted by the

⁴¹ <https://guides.dss.gov.au/guide-social-security-law/8/4/2/10>

inability to claim advance payments) will be processed by mid-August 2020, it decided to implement a triage process for individuals requiring prioritisation for the purpose of claiming an advance payment.

- 3.20. While we welcome Services Australia’s decision to prioritise the refund process for those individuals, we remain concerned some individuals were prevented from receiving advance payments on the basis of debts of questionable validity during the many months since the *Amato* case.

4. Ongoing investigation

- 4.1. Services Australia has advised the Office that it has been taking steps to refund relevant debts in accordance with the Government’s 29 May 2020 announcement as quickly as possible. It advised as at 3 September 2020, the debts of around 356,570 people had been zeroed and relevant refunds processed, equating to approximately \$620.4 million refunded. Services Australia advised this means, as at 3 September 2020, it has completed 86% of refunds.

- 4.2. While we welcome these actions, the Office continues to monitor and investigate Services Australia’s implementation of the government’s announcement in May 2020 to refund and/or reduce debts to zero and the impact upon individuals in our community.

- 4.3. Issues of particular interest to the Office include:

- The steps Services Australia takes to address the three issues above regarding communication, ongoing repayments and advance payments.
- The procedures that Services Australia implemented to ensure that it can identify all debts that were raised in reliance on averaged ATO income information that the government has committed to removing and/or refunding.
- How Services Australia will minimise inconvenience, disruption and disadvantage to individuals during the refund process.
- How Services Australia will communicate with those individuals whose debts are not eligible for refund and/or reduction to zero.

APPENDIX B: GLOSSARY

Australian Taxation Office (ATO)	The Australian Taxation Office is the principal revenue collection agency of the Australian Government. The agency provides income information to Services Australia for the purposes of its income compliance activities, including the Income Compliance Program.
Administrative Appeals Tribunal (AAT)	Legal body that reviews administrative decisions by Australian Government ministers, departments and agencies and, in limited circumstances, decisions made by state government and non-government bodies.
Authorised Review Officer (ARO)	Services Australia officer who has been authorised to conduct internal (formal) reviews of decisions. The Authorised Review Officer is someone who has not been involved in the original decision and can change the decision if it is not correct.
Check and Update Past Income system (CUPI)	An updated version of the employment income confirmation system, released in October 2018.
Class action	<p>A court proceeding where one or a small number of named representatives bring a claim on behalf of a larger group or ‘class’ of persons.</p> <p>A class action against the IC Program was commenced on 20 November 2019 in the Federal Court (<i>Katherine Prygodicz & Ors V Commonwealth of Australia</i>, VID1252/2019).</p>
Employment Income Confirmation system (EIC)	An enhanced version of the original online compliance intervention system, released iteratively from February 2017, with no new iterations released after September 2018.
Discrepancy	Where the income information reported to Services Australia by an individual does not match the income information obtained by Services Australia from the ATO.
Income averaging	The process undertaken by Services Australia to average an individual’s annual income information obtained from the ATO, over each fortnight in a relevant period, in order to calculate the individual’s fortnightly income. In November 2019, the Australian Government announced that Services Australia would no longer solely rely on income averaging to raise debts under the IC Program.
Income Compliance Program (IC Program)	A scheme developed to identify welfare overpayments through an online system.

Commonwealth Ombudsman—Services Australia: Income Compliance Program

Income Compliance reviews	The reviews conducted by Services Australia under the IC Program to examine a discrepancy in individuals' income information and determine whether there was an overpayment, resulting in a debt being owed to Services Australia. More than one debt could arise out of one income compliance review.
May 2020 announcement	Announcement on 29 May 2020 of the Australian Government's decision that it would refund repayments made on debts based wholly or partially on income averaging of ATO data.
November 2019 announcement	Announcement on 19 November 2019 of the Australian Government's decision that Services Australia would no longer use ATO income without other proof points to raise debts under the IC Program.
Online Compliance Intervention system (OCI)	Original online system released for the IC Program in July 2016. Individuals engaged with Services Australia in relation to the IC Program through this system.
Proof point	Information relied upon by Services Australia to determine an individual's income for the purposes of determining whether to raise a debt. Proof points may include payslips, bank statements or information from employers. Services Australia may obtain this information from the individual, third parties such as the individual's employers, or agencies such as the ATO.
Senate Committee inquiry	On 31 July 2019, the Senate referred an inquiry into Centrelink's income compliance program to the Senate Community Affairs References Committee.
Services Australia	The agency responsible for administering the income compliance program. It commenced operation as an Executive Agency on 1 February 2020, before which it was the Department of Human Services.
Subject Matter Expert (SME)	Services Australia officer who has specialist knowledge of particular payments or programs. Subject matter experts can conduct informal reviews of decisions prior to a formal review being undertaken by an authorised review officer, and can change the decision if it is not correct.
Commonwealth Ombudsman 2017 report	Report published by the Commonwealth Ombudsman in April 2017 about the IC Program: <i>Centrelink's automated debt raising and recovery system report.</i>
Commonwealth Ombudsman 2019 report	Report published by the Commonwealth Ombudsman in April 2019 about the IC Program: <i>Centrelink's automated debt raising and recovery system: Implementation report.</i> The report reviewed Services Australia's implementation of the recommendations made in the 2017 report.

APPENDIX C: SERVICES AUSTRALIA'S RESPONSE



Australian Government

Services Australia

Your Ref: A2131759
Our Ref: EC21-000354

Chief Executive Officer
Rebecca Skinner

Mr Michael Manthorpe PSM
Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

Dear Mr ~~Manthorpe~~ *Michael*

Draft report into Services Australia's income compliance program

Thank you for your letter of 11 February 2021 providing the opportunity to respond to your report, *Services Australia's Income Compliance Program – A report about Services Australia's implementation of changes to the program in 2019 and 2020* (the Report).

Services Australia's (the agency) response to the Report and recommendations is provided in the context of the Prime Minister's announcement on 29 May 2019, that the former Department of Human Services (a Department of State within its own portfolio) would transition to Services Australia, an Executive Agency within the Social Services Portfolio, from 1 February 2020. Prior to this transition, the former Department of Human Services had implementation oversight for the Income Compliance Program (ICP), including the revisions to the program announced by the Government on 19 November 2019.

The agency accepts recommendations 1, 4, 5, 6, 7, 8, and 9 in the Report, and notes recommendations 2 and 3, as outlined at Attachment A.

As an agency we strive to continually improve our processes and note the seven comments pertaining to the agency's actions between the Government's announced changes to the program on 19 November 2019 and 29 May 2020.

I appreciate the considerable time and effort taken by members of your Office in conducting this investigation and their willingness to engage with agency staff on this Report. I look forward to the ongoing cooperation and collaboration between our agencies.

Yours sincerely



Rebecca Skinner

26 February 2021

2021 OMBUDSMAN OWN MOTION REPORT: SERVICES AUSTRALIA'S INCOME COMPLIANCE PROGRAM – A REPORT ABOUT SERVICES AUSTRALIA'S IMPLEMENTATION OF CHANGES TO THE PROGRAM IN 2019 AND 2020

SERVICES AUSTRALIA RESPONSE

RECOMMENDATIONS

Recommendation 1

As soon as it has completed identifying all individuals who are and are not eligible for a refund, and without duplicating communication that may be required as a result of legal proceedings, Services Australia should communicate directly with individuals who have had debts raised under the IC Program and who have not been assessed as eligible for a refund or removal of their debt. That communication should be in writing and include clear advice about the individuals' review rights.

Services Australia response: Accepted

The agency is writing to many individuals covered by this recommendation as part of the class action settlement process. Details of planned communication for this group are outlined on the agency's website [Implementation Plan for Settlement Distribution Scheme - Services Australia](#) and this communication includes details on their rights of dispute under that process. The agency will separately write to customers who are not eligible for a refund and have opted out of the class action, and this communication will include information about those customers' review rights.

The agency has communicated consistently that customers are able to seek further information on their debts, and can request a review of past or current debts, at any time. Since the Government's announcement on 29 May 2020, individuals have been able to contact the agency on a dedicated 1800 number to query if they are eligible for a refund or check their debt through the Income Compliance refund query tool. This information is also available on the agency's website and includes details about an individual's rights of review.

Recommendation 2

If it is anticipated that Services Australia may re-raise debts that have been refunded, it should, at the earliest opportunity, publish general information on its website to enable individuals to understand that the Australian Government's decision to refund eligible debts does not preclude Services Australia from raising another debt for the same debt period without relying solely on income averaged information.

Services Australia response: Noted

Recommendation 3

In circumstances where Services Australia decides to revisit and potentially re-raise refunded debts it should, at the earliest opportunity, write to affected individuals and provide information to enable them to understand the impact of its decision. This information should include:

- a) the basis on which any decision to revisit and re-raise debts will be made
- b) an assurance that income averaging alone will not be used to re-raise debts, and
- c) information about individuals' review rights.

Alternatively, if Services Australia does not intend to revisit and potentially re-raise debts which have been the subject of refunds, it should confirm this publicly at the earliest opportunity.

Services Australia response: Noted

Recommendation 4

Services Australia should continue to identify options to resolve the issue of individuals' debts having been affirmed by the AAT with income averaging in the final decision, ideally with a view to refunding those debts which would otherwise have been eligible for refund as soon as possible.

Services Australia response: Accepted

Services Australia is working with the Department of Social Services and its legal advisers in relation to this matter.

The agency notes its ability to refund debts affirmed by the AAT based on averaged ATO income data is complex and will ultimately be subject to legal authority.

Recommendation 5

Services Australia should review its guidance to staff, including all relevant policies, procedures and training materials, to ensure it aligns with Services Australia's stated position that where an individual requests a formal or ARO review, their request is referred directly to an ARO.

Services Australia response: Accepted

The agency's internal review process aims to ensure customers are provided with explanations of decisions and are given opportunities to have reassessments without the requirement to apply for a formal review.

The agency is working to implement a new Review Operating Model, whereby customers can progress directly to an Authorised Review Officer review if they wish. Guidance for staff, as well as training, will be updated ahead of implementing the new operating model.

Recommendation 6

In circumstances where Services Australia is unable to obtain income information from the individual or third parties for the purposes of an SME review, it should finalise the review based on evidence other than averaged ATO information on hand and provide a decision to the individual.

Services Australia response: Accepted

The agency is seeking to finalise outstanding Subject Matter Expert reviews of ICP debts using evidence other than averaged ATO income data.

Where the available information on a customer's record is insufficient to enable a decision-maker to form a revised or more accurate decision, the agency will engage with customers and/or third parties to seek additional information to undertake a recalculation of the customer's debt.

Recommendation 7

Services Australia should only rely on 'net to gross converted income information' from bank statements in income compliance activity, in the absence of other proof points, with express confirmation from individuals that the grossed up amount accurately represents their fortnightly earnings for the relevant period.

Services Australia response: Accepted

Information from bank statements is just one of the additional proof points that can be used by a decision-maker to determine a debt. The agency can also refer to other relevant supporting information and documents such as payslips, letters from a person's employer, amended payment summary information from the ATO, other information from the customer, and third-party information.

Recommendation 8

In circumstances where Services Australia continues an individual's income compliance in-flight review, and where the individual had previously been contacted about an income discrepancy, Services Australia should include in its written communication a correction to any information provided in the initial correspondence that is no longer accurate.

At a minimum, the correspondence should note that Services Australia made changes to the IC Program in November 2019, and that it will no longer raise debts relying solely on estimating the person's income by 'averaging' ATO income information over multiple fortnights.

Services Australia response: Accepted

The agency is considering in what circumstances it would continue in-flight ICP reviews. In some instances, it may not be appropriate to close out an in-flight ICP review without further action.

In the event a review will not be progressed and we had received engagement from a customer, the agency will write to the customer to inform them that the review has now been closed. Where the review may continue, the agency will work closely with customers and consider the most appropriate communications option to resolve and finalise the review.

Recommendation 9

Whenever Services Australia is requested by an individual to review a debt raised pre-2015, it should explicitly consider whether income averaging was used, following the same manual process it undertook for the refund process for the IC Program. If it identifies that income averaging was used as the sole basis for any portion of the debt, it should reduce that portion of the debt to zero, regardless of when the debt was raised. If the individual has repaid that debt and has no other debt owing to Services Australia, that payment should be refunded.

Services Australia should ensure its website clearly identifies the availability of this process, how a person can request it, and the person's options for further review should they be dissatisfied with the initial decision.

Services Australia response: Accepted

When requested by an individual to review a debt, and the review identifies averaged ATO data was the sole basis for a portion of a debt, the agency will set aside that aspect of the debt and recalculate using additional information from customers and/or third parties.

When requested by an individual to review a debt raised pre-2015, the Agency will review the debt to determine if averaged ATO data was the sole basis for any portion of the debt, and if so, reduce that portion to zero.

The agency will also consider whether any additional information is available from customers and/or third parties sufficient to recalculate the debt. If after this review, there is no debt owing, then any amounts already repaid will be refunded.