

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.¹ 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),² 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 announcement³ 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.
- 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.

¹ This announcement was published on Services Australia's [website](#).

² The Federal Court consent orders are accessible from <https://www.comcourts.gov.au/file/Federal/P/VID611/2019/3859485/event/30114114/document/1513665>.

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

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 website⁴ 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 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.

⁴ <https://www.servicesaustralia.gov.au/individuals/subjects/information-about-refunds-income-compliance-program>

- 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.⁵ 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 inability to claim advance payments) will be processed by mid-August 2020, it decided to implement a

⁵ <https://guides.dss.gov.au/guide-social-security-law/8/4/2/10>

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.