



# Debt by Design: the Anatomy of a Social Policy Fiasco (or is it something worse?)

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# Outline

- Robodebt – a (disjointed) chronology
- What went wrong
- Policy failures, blunders, fiascos, disasters and catastrophes
- Why did it go wrong?

## How it started:

Election 2016: Crackdown on welfare payments cornerstone of Coalition's final budget costings



**PHOTO:** Treasurer Scott Morrison says the Commonwealth was owed around \$3.5 billion in welfare debt due to fraud and overpayments. (AAP Image: Adrian Muscat)

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## How its going:

Murphy, J. 11 June, 2021

<https://www.judgments.fedcourt.gov.au/judgment/s/Judgments/fca/single/2021/2021fca0634>

- 4. In the course of the proceeding the Commonwealth admitted that it did not have a proper legal basis to raise, demand or recover asserted debts which were based on income averaging from ATO data. ...
- 5 The proceeding has exposed a shameful chapter in the administration of the Commonwealth social security system and a massive failure of public administration. It should have been obvious to the senior public servants charged with overseeing the Robodebt system and to the responsible Minister at different points that many social security recipients do not earn a stable or constant income,

# Robodebt: The beginning

- DHS has investigated ATO data-match income discrepancies since 1991. (Both an integrity measure and used to increase take-up of family payments.) Since 2010-2011 DHS has had the capacity to store its matched data, so it holds records of discrepancies from that year onwards.
- “The Government will achieve savings of \$1.7 billion over five years by enhancing the Department of Human Services (DHS) fraud prevention and debt recovery capability, and improving assessment processes. ...The savings from this measure will be redirected by the Government to repair the Budget and fund policy priorities.”  
[https://archive.budget.gov.au/2015-16/bp2/BP2\\_consolidated.pdf](https://archive.budget.gov.au/2015-16/bp2/BP2_consolidated.pdf) p116
- July 2016 – launch of Online Compliance Intervention (OCI) – later Employment Information Confirmation (EIC) Programme, then Check and Update Past Information (CUPI) Programme.
- From 2016, new interest charge on debts, removal of 6 year limitation on debt recovery and International Departure Prohibition Orders.

# Why “Robodebt”?

- “The OCI matches the earnings recorded on a customer’s Centrelink record with historical employer-reported income data from the Australian Taxation Office (ATO). Parts of the debt raising process previously done manually by compliance officers within DHS are now done using this automated process. Customers are asked to confirm or update their income using the online system. If the customer does not engage with DHS either online or in person, or if there are gaps in the information provided by the customer, the system will fill the gaps with a fortnightly income figure derived from the ATO income data for the relevant employment period (‘averaged’ data).”  
(Commonwealth Ombudsman, 2017, p.1)

# Why “Robodebt”?

- Reverse onus of proof – previously checking done by Centrelink officers. Now, former claimants had to provide records of wages or bank transactions to substantiate payments - allowed massive scaling-up of debt recovery.
- Prior to the introduction of the OCI, resourcing considerations meant DHS manually investigated around 20,000 income data-match discrepancies per year. The OCI generated approximately 20,000 letters per week and DHS expected to undertake around 783,000 assessments in the 2016-2017 year.

# Robodebt – the early and middle years

- Late 2016, members of public started raising concerns about debt letters from the Department of Human Services (DHS).
- Shadow Minister requested Auditor-General to investigate.
- @not\_my\_debt Twitter (from January 2017): Collating case stories & resources for people receiving Centrelink debts. Use [#notmydebt](https://twitter.com/not_my_debt) to share with us. Website [notmydebt.com.au/stories](http://notmydebt.com.au/stories)
- April 2017. Ombudsman's Report [https://www.ombudsman.gov.au/data/assets/pdf\\_file/0024/48813/AL-OCI-Speech-and-Paper.pdf](https://www.ombudsman.gov.au/data/assets/pdf_file/0024/48813/AL-OCI-Speech-and-Paper.pdf)
- Senate Community Affairs Committee Inquiry – reported June 2017. [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/SocialWelfareSystem](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/SocialWelfareSystem)

# Robodebt – the later years

- May 2019 – DHS completely dropped debt against an individual (Masterton), which, if tested in a court of competent Commonwealth jurisdiction, may have led to the procedures being found to be unlawful. <https://www.theguardian.com/australia-news/2019/may/05/centrelink-drops-womans-robodebt-aftershe-mounts-court-challenge>
- July 2019 – Senate votes for second Inquiry – now to report by August 2020 - [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Centrelinkcompliance](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Centrelinkcompliance)
- September 2019 – Former Opposition Leader endorsed private class action against “Robodebt” - - ["the proposed action would allege the federal government financially benefited through the robodebt scheme when it wrongfully collected and banked money that legitimately belonged to recipients"](#)

# The Amato case

<https://www.legalaid.vic.gov.au/search?query=deanna+amato>

- 33-year-old local government employee Deanna Amato found out about her alleged robo-debt when her full tax return was taken, in January 2019. Centrelink claimed she owed a debt of \$2754 for Austudy she was paid while studying a diploma in 2012.
- “Centrelink added a 10% penalty fee for “failure to engage”
- “Failure to engage”: Centrelink sent eight letters to an address Deanna no longer lived at and never spoke to her before they raised a debt of \$2,754 against her. As she was no longer receiving social security she had no obligation to update her contact details.
- After the litigation was commenced Centrelink gathered information from her employers to determine that the debt should be reduced to \$1.48. In September 2019 the DHS completely dropped the Amato debt but refused to pay interest, so the test case continued.
- FOI later revealed she had been underpaid by \$480.

# Robodebt – the later years

- 19 November 2019, media reports DHS would stop using income averaging as the basis of raising a debt without obtaining further evidence to ensure an overpayment amount is accurate.
- 27 November 2019 – Federal Court of Victoria concludes Amato Case – income averaging unlawful.
- 16 December 2019 MYEFO “Contingent liabilities — unquantifiable” “a refinement to the Income Compliance Programme. ... A subset of debts which have been raised to date under the Programme are in-scope for reassessment. The effect on the identified debt, total value and return or recovery will not be quantifiable until reassessments are completed. [https://budget.gov.au/2019-20/content/myefo/download/06\\_Part\\_6.pdf](https://budget.gov.au/2019-20/content/myefo/download/06_Part_6.pdf) Page 11.

# Robodebt – not yet the ending?

- March 27 2020, [Robodebt: government admits it will be forced to refund more than \\$500m](#)
- November 2020, Robodebt class action bought by Gordon Legal settled at a cost to the government of around \$1.2 billion. According to Labor frontbencher Bill Shorten, this was the [biggest class action](#) in Australian legal history.
- The proposed settlement [was approved by the Federal Court](#) on 11 June 2021, but the cost now more than \$1.8 billion, including interest payments of \$112 million, refunds and debt cancellation..
- Justice Murphy of the Federal Court condemned the Government's actions in the clearest terms: “The proceeding has exposed a shameful chapter in the administration of the commonwealth social security system and a massive failure of public administration.”
- Around 680 people who objected to the settlement will be allowed to opt-out - and may pursue further claims.

# Robodebt – not yet the ending?

- Calls for a Royal Commission.
- 21-24 June 2021 AAT hears appeal for release of business plans and related documents under FOI.
- Possible appeals to Federal Court?
- Further Senate Inquiry to be finalised by November 2021.

# Who was affected?

- Between 2016 and 2019 there were nearly 687 thousand reviews resulting in a “debt”.
  - Fifty-two per cent of the reviews involved people who were no longer recipients of any payments;
  - Women accounted for 55 per cent of those affected;
  - Nearly 60 per cent of the reviews affected people under the age of 35, whereas on average over this period just under 39 per cent of payment recipients were in this age group;
  - 28 per cent of those reviewed had received Youth Allowance compared to an average of 12.7 per cent of recipients, and
  - 47 per cent of reviews affected Newstart recipients, who on average accounted for 30.5 per cent of recipients over the period.

Source: Services Australia’s Submission to the second Senate Inquiry (2019)

# What was unlawful? 1. Averaging

- Income reported to the Australian Tax Office is total income received in the financial year from 1 July to 30 June.
- Social Security payments are made fortnightly and the level of entitlement is based on the financial and personal circumstances applying during the fortnightly reporting period for which the payment is made.
- People receiving a payment have their employment income assessed in the instalment period in which it is earned, derived, or received, based on whichever event occurs first, usually when people earn the money.

## What was unlawful? 2. Onus of proof

- The existence of a debt has to be proved by government, not disproved by recipient
- Terry Carney (2018): “the failure of a person to disprove the possibility of a debt is not a legal foundation for a debt”.
- “it breaches principles of ethical administration regarding avoidance of oppression of vulnerable and uninformed citizens, and is a clear breach of the Commonwealth's ‘model litigant’ policy”.

## What was unlawful? 3. Other consequences

- Seizing tax returns and penalties consequently unlawful
- Red Tape Reduction policy?
- Overpayment of past income tax?

# Policy Issues

- Administrative failure or policy design? A fiasco is something that is foreseeable.
- Working patterns in a changing labour market -  
<https://theconversation.com/note-to-centrelink-australian-workers-lives-have-changed-70946>
- Payment integrity: The principle – that people should not receive public money payments to which they are not entitled – is sound and most people would agree with it.  
<https://www.austaxpolicy.com/timing-it-wrong-part-two-universal-credit-inherits-overpayments-from-tax-credits/>
  - How responsive to income changes should a social security system be? (See <https://researchportal.bath.ac.uk/en/publications/timing-it-right-or-timing-it-wrong-how-should-income-tested-benef> )

# Issues

- Administrative burden *Administrative Burden: Policymaking by Other Means*, By Pamela Herd, Donald P. Moynihan,  
<https://www.russellsage.org/publications/administrative-burden>
- The politics of austerity, the politics of the deficit (Australian variant), “Them” and “Us”
- Digital decision making

## Was it foreseeable?

- First media reports from 2016
- AAT decisions April to September 2017
  - Professor Carney not reappointed to AAT in September 2017
- Peter Hanks QC speech to Administrative Law National Conference, July 2017
- Around 70 AAT adverse judgements
- Masterton Case, May 2019 and Amato Case, November 2019

# Payment integrity

- “The Government is committed to strengthening the integrity of the welfare system by cracking down on fraud and overpayments to ensure taxpayers’ money only goes to those who genuinely need a helping hand.” Human services minister Alan Tudge, November 2016, <https://www.alantudge.com.au/latest-news/taskforce-integrity-uncovers-2-7-million-welfare-debt-in-adelaide/>
- “We’ll find you, we’ll track you down and you will have to repay those debts and you may end up in prison,” Human services minister Alan Tudge, December 2016, <https://www.theguardian.com/australia-news/2016/dec/07/acoss-criticises-governments-appalling-jail-threats-to-welfare-recipients> .
- Taskforce Integrity: “Services Australia and the Australian Federal Police (AFP) work together to prevent, detect and investigate those who try to exploit the welfare system.”  
<https://www.servicesaustralia.gov.au/organisations/about-us/taskforce-integrity>

# Payment integrity

- June 2017: *Christian Porter defiant on Centrelink's 'robodebt' flaws*
- “This is not a matter for apology,” Porter told the ABC. “What we have is a responsibility to the taxpayer to make sure that we are paying people exactly what it is that they dutifully required to receive and no more and no less. “There are a massive amount of overpayments that occur in the system, now we are actually tackling that problem. That’s not a matter that we would apologise for, there have been a whole range of refinements to the debt recovery system.”
- <https://www.theguardian.com/australia-news/2017/jun/22/christian-porter-defiant-on-centrelinks-robodebt-flaws-this-is-not-a-matter-for-apology>

# Payment integrity

- “The Government is committed to maintaining a strong social welfare safety net. This requires that there be integrity in the welfare system. **Each person should receive exactly what they are entitled to, no more and no less** (emphasis added). This principle has been in place under successive Governments and has not changed.” (Commonwealth of Australia, 2017, p.5)
- “The department conducts activities to ensure that it consistently pays the right person the right amount through the right program at the right time.” Services Australia, Annual Report 2018-19 , page 158 <https://www.servicesaustralia.gov.au/organisations/about-us/annual-reports/annual-report-2018-19>
- Services Australia Submission to 2<sup>nd</sup> Senate Inquiry refers to “protecting the integrity of the social welfare system” 7 times in 16 pages.

# Assigning responsibility

- Identification of individuals requires a Royal Commission
- Individuals decided to introduce an unlawful scheme – but also a failure of internal checks and scrutiny
- While the policy decisions leading to Robodebt were made by individuals, they were made within a layered context of precedents, established processes, and social, economic and political environments that structure the choices these individuals made

# The deeper environment

- The most important aspects of this deeper political environment include
  - the strong commitment of Australian political parties at the time to achieve a balanced Budget,
  - the formal and informal Budgetary rules about spending and savings,
  - the size of social security and welfare spending (around 35% of total Commonwealth spending),
  - the highly targeted nature of the social security system, and
  - political and popular judgements about social security recipients and their “deservingness”.
  - An emerging aspect is the development of digital benefit delivery and reporting, and the growing role of automatic decision making.
  - Further issues related to independence of public service.

# Welfare stereotypes

- “A visitor to Britain learning about our society and the problems facing us from newspapers and television might think that the issues are straightforward. ... It’s skivers against strivers; dishonest scroungers against honest taxpayers; families where three generations have never worked against hard-working families; people with their curtains still drawn mid-morning against alarm-clock Britain; ... undeserving and deserving. It’s them against us” (John Hills 2014, p. 1).
- Makers against Takers
- Lifters against Leaners

# Daily Telegraph, May 2014, “Slackers & Slouch Hats” (Also see 2011, “Work shy vs war wounded”)



# Reasons to be cheerful?

- Administrative Appeals procedures
- Parliamentary scrutiny
- Community mobilisation and social media
- Mainstream media attention
- Legal aid centres
- The court system
- BUT ...

# A policy failure in multiple ways

- Achieving Budgetary savings
- Individuals decided to do something unlawful
- The scrutiny mechanisms of government did not stop this
- The human cost

# Further reading

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- Carney, T. (2019a), “Robo-debt illegality: The seven veils of failed guarantees of the rule of law?” *Alternative Law Journal*, 44 (1), 4–10.  
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<https://theconversation.com/danger-election-2016-delivered-us-robodebt-promises-can-have-consequences-117191>
- Carney, T. (2020), “[Government to repay 470,000 unlawful robodebts in what might be Australia’s biggest-ever financial backdown](https://theconversation.com/government-to-repay-470-000-unlawful-robodebts-in-what-might-be-australias-biggest-ever-financial-backdown-139668)”, *The Conversation*, May 29 2020, <https://theconversation.com/government-to-repay-470-000-unlawful-robodebts-in-what-might-be-australias-biggest-ever-financial-backdown-139668>
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Availability:  
[https://search.informit.com.au/documentSummary;dn=048190568490292;res=IELAPA\\_ISSN: 1322-9869](https://search.informit.com.au/documentSummary;dn=048190568490292;res=IELAPA_ISSN: 1322-9869).

# Further reading

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<https://doi.org/10.1177/0952076714561505>
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- Whiteford, P. (2021), “Debt by design: The anatomy of a social policy fiasco – Or was it something worse? *Australian Journal of Public Administration*, First published: 14 April 2021, <https://doi.org/10.1111/1467-8500.12479>

# Digital dystopia?

- Automation and digital technology can be used to police and punish the poor (Eubanks, 2017) <https://us.macmillan.com/books/9781250074317>
- “*Digital dystopia: how algorithms punish the poor* (Pilkington, 2019): “In an exclusive global series, the Guardian lays bare the tech revolution transforming the welfare system worldwide – while penalising the most vulnerable.”  
<https://www.theguardian.com/technology/2019/oct/14/automating-poverty-algorithms-punish-poor> Examples from India, the United Kingdom, the United States as well as Australia, including Robodebt.
- Busuioc (2021) - impact of digital technologies on the public sector is recognized as transformative; (AI) set to significantly accelerate such processes, not only in terms of how services are structured. These technologies will influence public service values, the exercise of administrative discretion and professional judgment.
- The essence of the policy was the removal or deliberate weakening of human oversight that appeared to enable the dramatic ramping up of identification of anomalies from 20,000 a year to 20,000 a week.