



Report

**JUSTICE
FOR ROBODEBT**

Royal Commission into the Robodebt Scheme



Report

ROYAL COMMISSIONS ACT 1902 (Cth)

SECTION 1A

Power to issue Royal Commission

Without in any way prejudicing, limiting, or derogating from the power of the King, or of the Governor-General, to make or authorise any inquiry, or to issue any commission to make any inquiry, it is hereby enacted and declared that the Governor-General may, by Letters Patent in the name of the King, issue such commissions, directed to such person or persons, as he or she thinks fit, requiring or authorising him or her or them or any of them to make inquiry into and report upon any matter specified in the Letters Patent, and which relates to or is connected with the peace, order, and good government of the Commonwealth, or any public purpose or any power of the Commonwealth.

Royal Commission into the Robodebt Scheme

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth

TO

Ms Catherine Ena Holmes AC SC

GREETING

ACKNOWLEDGING the harm caused to affected members of the Australian community by the debt assessment and recovery scheme known as Robodebt (the *Robodebt scheme*) which reportedly comprised, from 1 July 2015, the PAYG Manual Compliance Intervention program, including associated pilot programs from early 2015 to 30 June 2015, and the following iterations of this program:

- (a) Online Compliance Intervention, which applied to assessments initiated in the period from on or around 1 July 2016 to on or around 10 February 2017;
- (b) Employment Income Confirmation, which applied to assessments initiated in the period from on or around 11 February 2017 to on or around 30 September 2018;
- (c) Check and Update Past Income, which applied to assessments initiated after on or around 30 September 2018.

AND that:

- (d) in November 2019 the Federal Court of Australia declared, with the consent of the Australian Government, that a demand for payment of an alleged debt under the Robodebt scheme was not validly made; and
- (e) the Australian Government had adopted the same or a similar approach in calculating and raising debts against hundreds of thousands of other individuals under the Robodebt scheme; and
- (f) the Australian Government subsequently announced that over 400,000 debts raised under the Robodebt scheme would be zeroed or repaid.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the

Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, appoint you to be a Commission of inquiry, and require and authorise you to inquire into the following matters:

- (g) the establishment, design and implementation of the Robodebt scheme, including:
 - (i) who was responsible for its design, development and establishment; and
 - (ii) why those who were responsible for its design, development and establishment considered the Robodebt scheme necessary or desirable; and
 - (iii) the advice, process or processes that informed its design and implementation; and
 - (iv) any concerns raised regarding the legality or fairness of the Robodebt scheme;
- (h) the use of third party debt collectors under the Robodebt scheme;
- (i) in relation to concerns raised about the Robodebt scheme following its implementation:
 - (i) how risks relating to the Robodebt scheme were identified, assessed and managed by the Australian Government in response to concerns raised by the Australian Taxation Office, other departments and agencies, affected individuals and other people and entities; and
 - (ii) the systems, processes and administrative arrangements that were in place to handle complaints about the Robodebt scheme from members of the public affected by the scheme, their representatives or government officials and staff; and
 - (iii) whether complaints were handled in accordance with those systems, processes and administrative arrangements, and, in any event, handled fairly; and
 - (iv) how the Australian Government responded to adverse decisions made by the Administrative Appeals Tribunal; and
 - (v) how the Australian Government responded to legal challenges or threatened legal challenges; and
 - (vi) approximately when the Australian Government knew or ought to have known that debts were not, or may not have been, validly raised; and

(vii) whether the Australian Government sought to prevent, inhibit or discourage scrutiny of the Robodebt scheme, whether by moving departmental or other officials or otherwise;

- (j) the intended and actual outcomes of the Robodebt scheme, in particular:
 - (i) the kinds of non-pecuniary impacts the scheme had on individuals, particularly vulnerable individuals, and their families; and
 - (ii) the approximate total cost of implementing, administering, suspending and winding back the Robodebt scheme, including costs incidental to those matters (such as obtaining external advice and legal costs);

AND We direct you to make any recommendations arising out of your inquiry that you consider appropriate, including measures needed to prevent a recurrence of any failures of public administration you identify.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to focus on decisions and actions taken, or not taken, by those in positions of seniority.

AND We further declare that you are not required by these Our Letters Patent to inquire, or to continue to inquire, into a particular matter to the extent that you are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.

AND We declare that you are a relevant Commission for the purposes of sections 4 and 5 of the *Royal Commissions Act 1902*.

AND We declare that you are a Royal Commission to which item 5 of the table in subsection 355-70(1) in Schedule 1 to the *Taxation Administration Act 1953* applies.

AND We:

- (k) require you to begin your inquiry as soon as practicable; and
- (l) require you to make your inquiry as expeditiously as possible; and
- (m) require you to ensure the inquiry is conducted in a professional, impartial, respectful and courteous manner, including appropriately managing any actual or perceived conflicts of interest; and

- (n) require you to submit to Our Governor-General any recommendations that you make before making them public; and
- (o) require you to submit to Our Governor-General a report of the results of your inquiry, and your recommendations, not later than 18 April 2023.

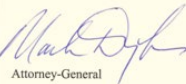
IN WITNESS, We have caused these Our Letters to be made Patent.

WITNESS General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia.

Dated 18 August 2022


Governor-General

By His Excellency's Command


Attorney-General

Royal Commission into the Robodebt Scheme



Royal Commission into the Robodebt Scheme

Contents

Letter of transmittal	
Introductory Section	i
Preface	iii
Introduction	v
List of recommendations	xiii
Overview	xxiii
Timeline of Robodebt	xxxii
Phases of Robodebt	xxxiii
1 Legal and historical context of the Scheme	1
Section 2. Chronology of the Robodebt scheme	21
2 Overview of the origins of Robodebt	23
3 2014 – Conceptual development	35
4 2015 – Articulation of the Scheme and the new policy proposal	55
5 2015 to 2016 – Implementation of the Scheme	119
6 2017, Part A – A crescendo of criticism	153
7 2017, Part B – Inquiries and investigations	205
8 2018 – The Scheme rolls on	257
9 2019 – The end of Robodebt	285
Section 3. Effects of the Scheme	323
10 Effects of Robodebt on individuals	325
11 The concept of vulnerability	347
12 The roles of advocacy groups and legal services	361
13 Experience of Human Services employees	383
14 Economic costs	399
15 Failures in the Budget process	421
Section 4. Automation and data matching	443
16 Data matching and exchanges	445
17 Automated decision making	469
Section 5. Debts	495
18 Debt recovery and debt collectors	497

Section 6. Checks and balances	515
19 Lawyers and legal services	517
20 The Administrative Appeals Tribunal	551
21 The Commonwealth Ombudsman	571
22 The Office of the Australian Information Commissioner	607
Section 7. The Australian Public Service	633
23 Improving the APS	635
Closing observations	655
Appendix	
1 Glossary	iii
2 Dramatis personae	xiii
3 Hearings witness schedule	xxiii
4 List of legislation	xxix
5 Summary of legal advices	xxxiii
6 Budget Measures Map	xlii
7 Submissions	xlvi
8 Letters to the AG	lxv
9 Review of AAT Decisions	lxix
10 RRC Staff List	ccxxxix

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Re: new compliance measure [DLM=Sensitive]

From: "Withnell, Mark" <mark.withnell@humanservices.gov.au>
To: "Bailey, Jan" [REDACTED]
Cc: "Sandison, Barry" [REDACTED] "Withnell, Mark"
Date: Wed, 12 Nov 2014 11:20:13 +1100

A slight amendment - in the last para I suspect the PAYG measure will need to offset against itself. I doubt that it figures in the DSS calculations. We could leave it open for DHS to use as an offset - the savings over 4 years will likely approach \$1b.
Mark

Sent from my iPhone

On 12 Nov 2014, at 11:14 am, "Bailey, Jan" <Jan.Bailey@humanservices.gov.au> wrote:

Barry

The two possible new measures we have been discussing with DSS are:

[REDACTED]

Streamlined PAYG reviews: This measure is a broad scale cleanup of the PAYG reviews in preparation for One Touch Payroll due to roll out in 2016. It is proposed to introduce a new method of review that includes an automated debt calculation based on the information received from the ATO without verification from employers. The measure is dependent on a variation to the policy on the treatment of earned income under the income test for welfare payments. It is proposed that income treatment for earned income include an option to annualise income rather than use the point of earnings calculation. Each year DHS receives far more PAYG matches (260,000 customers for 2013/14 financial year) than we can process with the traditional method of review that requires verification from the employer and/or the customer. The department currently has the resources to process approximately 30,000 of the highest risk reviews this year under the traditional method. The new streamlined method of review would allow the department to review customers not captured in the high risk pool. The method of review would remain unchanged for the highest risk reviews.

The costs of these measures will be offset from the broader savings under the DSS proposals. The PAYG measure requires a policy change and DSS are yet to advise if this change is supported.

Jan

[REDACTED]

From: Withnell, Mark
Sent: Tuesday, 11 November 2014 5:22 PM
To: Sandison, Barry
Cc: Withnell, Mark; Bozman, Cindy; Bailey, Jan
Subject: Re: new compliance measure [SEC=UNOFFICIAL]

Barry

There are 2 possibles:

[REDACTED]

A clean up of PAYG matches - this is less certain a depends on policy advice treatment of income.

I will get Jan to out together a couple of dot points

Mark

Sent from my iPhone

On 11 Nov 2014, at 3:54 pm, "Sandison, Barry" <Barry.Sandison@humanservices.gov.au> wrote:

Mark

Did you mention that DSS want a new compliance measure?

If you have details, can we add it in as a 2-3 liner for the next key points for Kathryn's mtg with Finn. Kathryn is interested in what they might be looking at.

Barry

BARRY SANDISON

Deputy Secretary – Health, Compliance and Information

Department of Human Services
Louisa Lawson Bld. Greenway, ACT 2610

[REDACTED]

www.dhs.gov.au

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Barry

There are 2 possibles:

REDACTED
Privileged

A clean up of PAYG matches - this is less certain a depends on policy advice treatment of income.

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Sent from my iPhone

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Barry

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DIS - Catherine

- Compliance / ISA ^{check} going to interview
- 350 people - mostly in house, not field
- Mark Widdell → AFP
 - engaged
 - non-engaged
- Mark Brown

* Compliance plans + controls

• IIT

Contractors - 30 yrs (used to be
ISIS
- batch system)

links to Malware - 1.6b give 7 yrs
- pay of within 4 yrs

Child support - fairly internally over
telecommunications system

Medicine system - private sector?
- testing to see if could
be done - high volume
low value.

links to children
Challenges

Non-compliance ← Genes
Volume against staff

Quality - reliance on
payment; entitlement
based.

Most excited

- Myloos website - more everyone asking
- Reduce person touch.

700 researchers
34,000 people staff

Integrity packages
IT systems
Dashboarding

Most excited

- Hylooo website - more everyone asking
- Reduce power touch.

700 researchers
34,000 people staff

Integrity pathway
IT systems
Dashboarding

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**For your reading pleasure - DO NOT FORWARD
[DLM=Sensitive]**

From: "Withnell, Mark" [REDACTED]
To: "Bailey, Jan" [REDACTED] "Brown, Mark"
[REDACTED] "Morris, Rhonda"
[REDACTED] "Jerrim, Mary"
[REDACTED] "Britton, Scott"
[REDACTED]
Date: Fri, 09 Jan 2015 14:18:37 +1100
Attachments: Min Morrison brief.docx (39.45 kB)

All

Here is my first full draft of the draft for Min Morrison. It is highly sensitive at this time so it is not to be shared. I will be seeking comments on Monday if not this afternoon.

Regards

Mark

Mark Withnell
General Manager, Business Integrity
Department of Human Services
[REDACTED]

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Report

Key Points:

1. Following your recent meeting between the department's Secretary, Ms Kathryn Campbell, the department was asked to prepare a brief outlining:
 - a. The department's current approach to protecting the integrity of the welfare system outlays and options for strengthening these arrangements;

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13.01.2015

Secretary -

Meeting 2015 - Exec | Sec.

- Org structure - making room for UPIT
- ? individual & prob. M&A
- ? recruitment ? Digital Transf. Officer(s)
- .. Training ?

NOIA - IT : puf'd rdn ? DHS providing .
 ? Auth board - of relevant securities
 Property - have right to combine
 Copy of letter re property from 24/12
 (Rebecca Cross) - Sternberg v. Ken,
 commencement is 01/07/2016 .

- Budget comeback - service delivery cheaper? letter still outstanding.
- Medicare market testing? Status of?
- Meeting - next week.
- Smart Centres
- Child Support Debt - app \$10m
- " " CoA - ??

Mans - SH'ded report -> Mon.

UPIT 2nd Pass Business Case - timing of going to market -> after budget (limiting ability to visit SAP sites etc).

Staff - Domain replacement.
Monitor Monitor - compliance;
Focus on integrity of system & integrity of outlays;

NPP Compliance row | options for further? Employment | Social Services interaction

Staff - General Counsel, new Proj + Part Manager. Vicki Parker.

MacFarlane - Toowoomba.
Parnematte - management team

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Monitor Monitor - compliance;
Focus on integrity of system &
integrity of outlays;

NPP Compliance row | options for further?
Employment | Social Services interaction

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Report

16. The traditional compliance reviews are a manual staff intensive verification process involving obtaining information from customers and third parties often going back over a number of years. The ability to change the process is limited due to legislative and policy constraints on the need to apply income fortnightly to determine overpayments even if they occurred over several months or years and even if income data is only available on an annual basis (for example, income is determined annually by the Australian Tax Office so is therefore only available on an annual basis).

Potential Priority New Policy Proposals

1. PAYG clean-up

- a. The proposal will introduce a digital approach to interventions with customers when historical information from the ATO indicates the customer may have incorrectly declared income from employment.
- b. Interventions will be undertaken in a digital environment using the myGov portal. The customer will be presented, via their online account, with the information obtained from the ATO and an assessment of their correct welfare entitlement based on this information. The assessment will use an income smoothing methodology to apportion the customer's income over the time of employment (rather than the current cumbersome process whereby the department has to determine and apply income on a fortnightly basis). The customer will have an opportunity to update the information prior to it being applied to their Centrelink record.
- c. The proposal removes the need for the department to be dependent on customer and business information as the default and instead relies on the use of data already collected by the ATO as the default unless customers want to, and are able to, provide information that varies the outcome. The digital process will enable the department to undertake a much greater number of compliance reviews.
- d. The proposal will provide for a four year measure to undertake 866,857 interventions for customers at risk of undeclared or under declared income from employment. It is anticipated that this would result in an estimated \$1.2 billion gross savings and debt due to returned outlays.
- e. There would need to be a change of policy to enable the application of income smoothing to assess a customer's income. It may also need change to legislation. As a result, we have been working with DSS on developing this proposal and will continue to do so.

Pursue / Do not pursue / Please discuss

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- e. There would need to be a change of policy to enable the application of income smoothing to assess a customer's income. It may also need change to legislation. As a result, we have been working with DSS on developing this proposal and will continue to do so.



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Justin Greggery KC
Senior Counsel Assisting

09:53:49 AEST

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THE EXECUTIVE MINUTE

The Executive Minute described the DHS proposal in a series of dot points. Those dot points:

- retained the original features of the DHS proposal:
 - the application of PAYG data from 2010-13 to 866,857 customers via an online process
 - the transfer of the obligation on the recipient to ensure the record is correct by providing evidence to support their claim
 - the use of the ATO data as the trusted source/primary evidence not just the trigger for a compliance review
 - the estimated gross savings of \$1.2 billion (to be agreed with DSS)
- recognised that the application of the PAYG data to calculate fortnightly income and hence entitlement could not be relied on to produce accurate results by observing that:

It [the use of the PAYG data] still provides a customer the opportunity to provide evidence to correct the calculation of entitlement should they choose to...

conveyed the effect of the 2014 DSS legal advice with the words “DSS has also advised that legislative change would also be needed to implement this initiative”
- concluded with the statement, “As a result, we have been working with DSS on developing this proposal and will continue to do so.”

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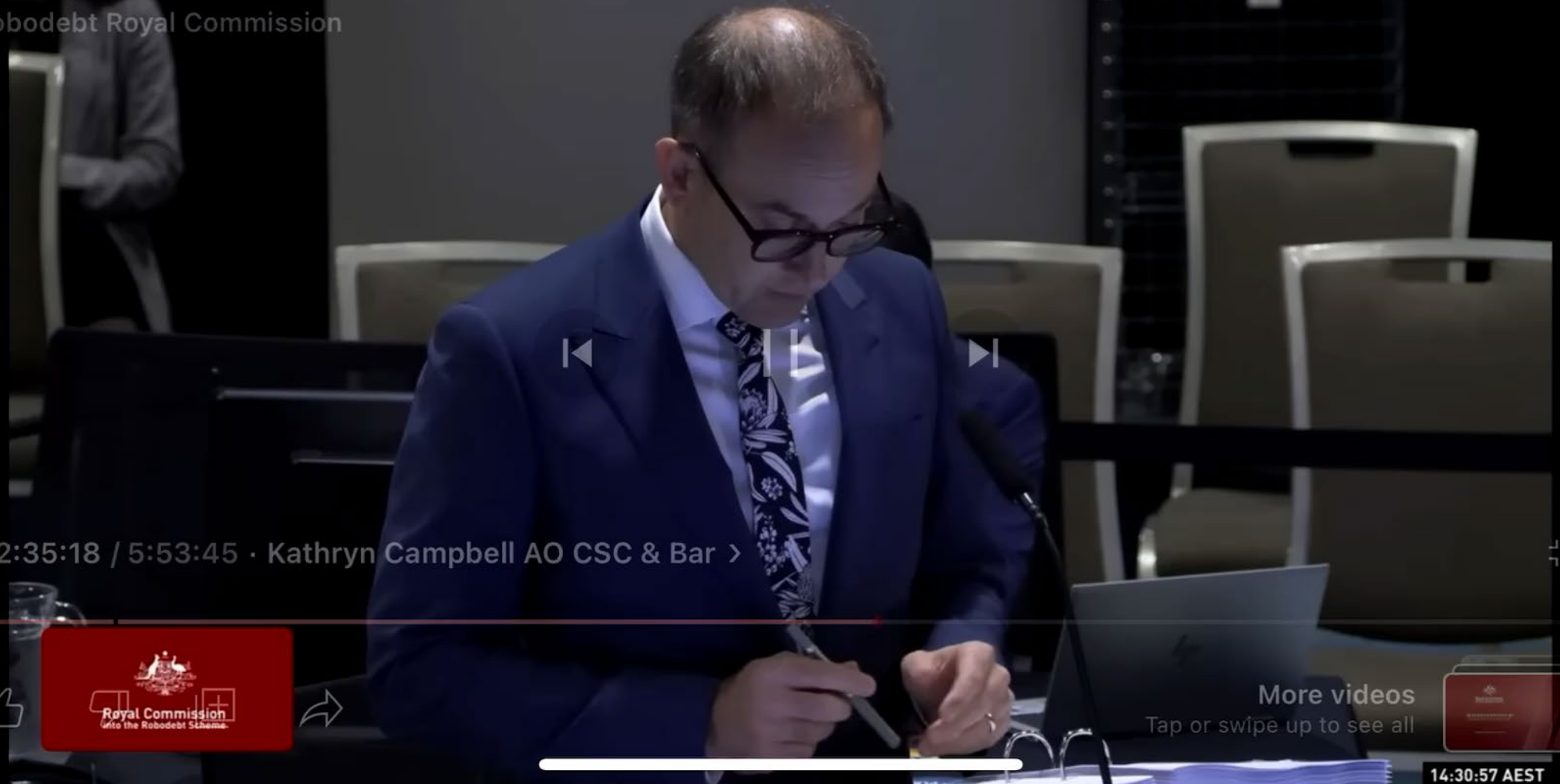
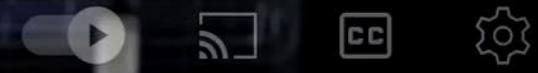
Report

The new approach will not change how income is assessed or overpayments calculated, is assessment will be based on the fortnightly attribution of the income advised by the ATO, equally distributed over the duration of employment for the period the customer was on payment. but it will enable the department to undertake a significant clean-up of potential incorrect payments for 866,857 customers for the 2010-13 financial years. The PAYG clean-up addresses historical non-compliance and will not be impacted by Single Touch Payroll.

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Robodebt Royal Commission Day 43 - 7 March 2023 >

Robodebt Royal Commission



-2:35:18 / 5:53:45 · Kathryn Campbell AO CSC & Bar >



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14:30:57 AEST

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Kathryn Campbell

DEPARTMENT OF HUMAN SERVICES

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Parliamentary Privileges Act 1987 (Cth)

Section 16(3)

- (3) In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of:
- (a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;
 - (b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or
 - (c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament.

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Documents that are not subject to a non-publication order will be published on the Royal Commission website.



Angus Scott
Counsel Assisting

12:38:51 AEST

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ADMINISTRATIVE LAW AND WELFARE RIGHTS: A 40-YEAR STORY FROM *GREEN V DANIELS* TO 'ROBOT DEBT RECOVERY'

*Peter Hanks**

I want to ask a simple question: can administrative law (through its principles and processes) be deployed to vindicate the rights of the members of our community who, from time to time, depend on social security payments for their income? How can administrative law ensure that those rights are not ignored or overridden by politicians, senior officials and decision-makers driven by concern about 'welfare cheats' or demands for expenditure savings — in outlays on transfer payments and in the employment costs involved in administering those payments?

To attempt to answer that question, I will look at two episodes, 40 years apart, where the department responsible for administering social security payments adopted initiatives designed to achieve those ends — initiatives that arguably twisted or ignored the requirements of the governing legislation.

The first initiative was adopted by the Department of Social Services in 1976–77 and was aimed at a common scapegoat: young people — in this case, 'school leavers', who were alleged to be engaged as a class in abusing their entitlement to unemployment benefits.

The second initiative was adopted by the Department of Human Services (DHS) in 2016–17 and was aimed at another favourite scapegoat: social security 'cheats' — people who, it was alleged, had received social security payments beyond their entitlements.¹

In the first example, the Department's initiative (denying unemployment benefits to all school leavers for up to three months) was found, in a judicial review proceeding brought in the High Court, to flout the Department's obligation to administer the governing legislation — s 107 of the *Social Security Act 1947* (Cth).

The second example is still being played out. It involves assuming that data from the Australian Taxation Office (ATO) on 'customers' taxable income is a reliable gauge for the income test under the *Social Security Act 1991* (Cth) and demanding that 'customers' prove that the assumed hypothetical debt (based on the ATO data) is incorrect.²

On the (as yet untested) assumption that the second example also represents a failure by the department to administer the governing legislation — especially ss 1222A and 1223 of the *Social Security Act 1991* (Cth) — my question is: can administrative law protect the interests of the so-called 'customers' who are being told they have to prove that they do not have an assumed hypothetical debt to the Commonwealth? What are the possible mechanisms for vindicating those interests; and how effective are those mechanisms likely to be?

* *Peter Hanks is a barrister of Owen Dixon Chambers West, Melbourne. This is an edited version of the National Lecture on Administrative Law presented at the Australian Institute of Administrative Law National Conference, Canberra, ACT, 21 July 2017.*

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Royal Commission into the Robodebt Scheme



Report

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Royal Commission into the Robodebt Scheme