Submission to the Senate Community Affairs Committee Inquiry on Centrelink's compliance program

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About Anglicare Australia

Anglicare Australia is a network of independent local, state, national and international organisations that are linked to the Anglican Church and are joined by values of service, innovation, leadership and the Christian faith that every individual has intrinsic value. With a combined expenditure of $1.82 billion, and a workforce of 20,500 staff and 9,000 volunteers, the Anglicare Australia Network contributes to more than 50 service areas in the Australian community. Our services are delivered to 450,000 people each year, reaching over 1.33 million Australians in total. Our services are delivered in partnership with people, the communities in which they live, and other like-minded organisations in those areas.

As part of its mission, Anglicare Australia "partners with people, families and communities to build resilience, inclusion and justice." Our first strategic goal charges us with reaching this by influencing "social and economic policy across Australia with a strong prophetic voice; informed by research and the practical experience of the Network."

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Contents

Introduction

Anglicare Australia appreciates the opportunity to make a submission to this important inquiry. From its inception, Centrelink's automated debt recovery system (also known as Robodebt) carelessly levied false debts on the most vulnerable Australians. Countless organisations, reviews, and legal processes implored the government to suspend the program. It should not have taken a class action to force the government to act on countless recommendations to overhaul the system. This inquiry is a critical opportunity to reflect on how the government was able to levy debts with full knowledge that many were inflated or entirely false; and then persist with the practice knowing it to be illegal.

In 2019, Anglicare Australia made a comprehensive submission to this Inquiry exploring the harms the Robodebt scheme caused to our clients, the improper data-matching system, and failures in the appeals process. This was accompanied by a collection of client and staff stories. We do not intend to repeat those points. Instead this submission focuses on the lessons the Robodebt scheme offers for the future, including:

- The importance of human oversight in raising debts;
- Issues in how Centrelink pursues debts, including its use of debt collection agencies; and
- Accountability to Centrelink's mission and the government's model litigant policy.

Some new case studies are included in this submission. However, we ask that the Committee re-examine the cache of case studies appended to our previous submission in light of the Scheme's illegality.

We recommend that the Robodebt scheme be replaced with a compliance regime that has been assessed for errors, tested, and includes human oversight to mitigate the risk of error. Such a system would be more likely to achieve Centrelink's stated mission of delivering "easy and convenient access to high quality government and community services that improve the lives of Australians, their families and communities."

System design and governance

According to Government spokespeople, the design of the Robodebt scheme was underpinned by the principle that it has a responsibility to the taxpayer to pursue any possible overpayment. Ironically, the Government itself raised millions of dollars through wrongly issued debts as part of this system and only refunded them when it was forced to do so. Anglicare Australia argues that the Government has a duty to ensure that it is levying debts accurately, that it is conducting due diligence, and that it provides its citizens the opportunity for human oversight, consideration and review.

We believe the high number of wrongly issued debts under the scheme could be traced to three factors. The first was its reliance on averages calculated from annual tax records instead of actual fortnightly earnings – a technique at odds with how Centrelink itself calculates payments, and with modern payment methods. We explored this in depth in our previous submission. We acknowledge that the government has now ended its reliance on this improper data-matching process, however, we urge the Committee to remember that this was only one aspect of the scheme's failure.

The second factor was the removal of the requirement that Centrelink manually check this information with employers. Anglicare Australia notes that the automated debt recovery system was first implemented in 2011, but was initially accompanied by human oversight. Under this model, a Centrelink Officer would conduct an initial investigation before issuing a request for further information. In 2015, Centrelink began relying solely on improper income averaging before contacting its clients. From this point onwards, the number of inflated or entirely false debts grew prodigiously.

The Robodebt program has shown human oversight and investigation to be critical to the accuracy of the debts raised by Centrelink. It has also underscored the need for Centrelink to ensure that its automated systems more broadly are always accompanied by human oversight. This was highlighted by the Anglicare Australia Network's *Paying the Price of Welfare Reform* research,[i] which explored the impact of Centrelink automation on Anglicare Australia member agencies and clients.

The final factor was placing the responsibility on individuals to prove that they did *not* owe a debt. In addition to the ethical and administrative issues this presents, this practice may itself be illegal. Anglicare Australia notes that Professor Terry Carney, a long-serving member of the Administrative Appeals Tribunal, has argued that Centrelink lacks legal authority for raising debts based on a 'reverse onus' methodology. It must instead rely on its own information gathering powers. We explore this issue in greater detail below.

Recommendation 1: Principles underpinning Centrelink compliance

Anglicare Australia recommends that the Robodebt system be replaced with a regime that:

- Draws on data-matching techniques that are consistent with how Centrelink calculates payments;
- Ensures any future data-matching techniques are accompanied by oversight and investigation; and
- Ensures that Centrelink remains responsible for investigating and proving any debts it levies.

As the Committee itself has acknowledged in its interim report, the system must be redesigned. The only way to accurately monitor compliance is with a properly resourced engagement, governance and design process that includes stakeholders to ensure potential issues are addressed before any redesigned program is launched. A new compliance system would need to be tested, and a risk assessment of the program must be conducted before launching. The results of these processes should be made public.

Finally, the Government and the Department must ensure there is human oversight of the administration of social security payments to mitigate the risk of error. The complexity of the social security system, as recognised by the Department, itself necessitates the involvement of qualified Centrelink staff to ensure it is complying with social security law.

Recommendation 2: Designing an accurate compliance system
Anglicare Australia recommends that a redesigned compliance system is assessed for errors, tested collaboratively with Centrelink clients, and inclusive of human oversight in its administration.

Responsibility for debt and payment accuracy lies with Centrelink

In the course of engaging with this Committee, Anglicare Australia and other organisations were often met with denials that the Robodebt system shifted the onus of proof onto clients. The nature of the letters sent to clients and Centrelink's pursuit of them were later reframed as requests for information, although this was at odds with how they were seen by the overwhelming majority of individuals, lawyers, and assisting organisations. To avoid further semantic disputes, Anglicare Australia's position is that it is Centrelink's responsibility to:

- pay clients accurately based on the information they provide;
- investigate any discrepancies in the information it has;
- prove any debt that it levies using its own investigative powers; and
- communicate clearly with people about this process at every stage. This includes revising its communications if it is clear that they are widely misunderstood outside the Department.

Centrelink clients are already navigating the most compliance-heavy social security regime in the developed world.[ii] They report fortnightly to Centrelink, absorb an enormous amount of administration that has been automated away from Centrelink staff, and can now be monitored in real-time through electronic payroll. Put simply, Centrelink has ample information, legal power, and resources to conduct its own investigations. If it cannot prove a debt using its own extensive powers and information, then no debt should be raised.

Under the Robodebt model, the responsibility was placed on individuals to correct automated errors in order to avoid incurring a debt. In Committee hearings in 2019, Anglicare Australia was assured by Senators that people were being supported by Centrelink to get bank records if they were attempting to disprove a debt. In the year since, Anglicare Australia was not able to find a single case from our Network of a client who was able to get this help.

In one case, a client was eventually able to find bank statements on his own only to be told they were not sufficient to challenge the discrepancy generated by the algorithm. This is because the bank statements only show net income, whereas eligibility for payments is determined using gross income and other factors. This could be a major source of frustration. As one staff member from Anglicare Victoria told us:

> *"A major problem is the ability to prove net rather than gross earnings for those with any employment. I am aware of one case where the debt is twelve years old. The client had been working in their gap year before commencing full-time study. He has not been furnished with any information to substantiate the debt, yet his family's Family Tax Benefit reconciliation payment was taken and applied to a debt."*

Discrepancies become even harder to explain when multiple sources of income are involved or a great deal of time has gone by, and this was a common pattern. As the case studies submitted by Anglicare Australia in 2019 show, the allegation of debt was often many years older than the requirements to keep tax records advised by the Australian Tax Office. One client we spoke to after the 2019 hearings was levied a debt that was nine years old. Historical bank statements alone were not able to capture the complexity of her case, yet payslips and other documents were no longer available. She opted not to challenge the discrepancy and reported finding the process overwhelming. Speaking about this pattern, one staff member from Anglicare Tasmania told us:

> *"My clients just seem to accept the debt and try and fit it in with all of their other debts."*

Another, from the Samaritans Foundation, said:

> *"People are not fighting their debts. I ask them and they say 'I don't have the evidence to fight the debt," and just want to organise a repayment plan they can afford.' "*

These experiences are at odds with the reframing of letters as 'requests for information.' It is also at odds with assurances that people were being supported to avoid wrongly incurring debts. We were not able to find any instances of people successfully getting support to track down documents. Even if this support were granted more freely, it would have been unlikely to have a major impact. In at least three cases we are aware of, Centrelink made it clear that historical bank statements were not sufficient to challenge a debt – and people cannot be supported to recover additional supporting documents if they no longer exist.

Recommendation 3: Centrelink's responsibility for raising debts

Anglicare Australia recommends a framework to ensure all future debts are:

- Raised using the information and powers Centrelink already has. If further information is required to make an accurate payment, Centrelink must seek it contemporaneously.
- Raised within five years of overpayment. This would allow for paperwork to be recovered and create time for a review or appeal process.
- Accompanied by an explanation of the information and documents needed to challenge the debt.

Legal responsibility and accountability

Anglicare Australia's previous submission to this Committee focused on how the government was able to levy debts with full knowledge that many were inflated or entirely false. It is now critical to understand how long the government was able to persist with this practice while also knowing it to be illegal.

We note the Committee's efforts to discover when the government first received advice on the illegality of the program. We believe these efforts are crucial to this Inquiry. If the government did indeed wait to act on this advice, or if it operated the program for long periods while knowing it to be illegal, it would be a major abuse of power.

Professor Terry Carney has argued that a minimum, the program was operated in the knowledge that Administrative Appeals Tribunal rulings made the system invalid. The system continued, in part, because advocacy bodies and pro bono legal services have been starved of resources and undermined, making them less likely to challenge the illegality of the system. It also continued because the Department of Human Services itself rarely defended these cases as they escalated through the legal process, preventing more powerful precedents from being established that could have seen the system struck down much sooner.

Anglicare Australia points to the legal directive on the Commonwealth's obligation to act as a model litigant. According to this legal directive, "the obligation to act as a model litigant requires that the Commonwealth and Commonwealth agencies act honestly and fairly in handling claims and litigation brought by or against the Commonwealth or a Commonwealth agency." [iii] In particular, we note that the directive:

- Requires an early assessment of its potential liability in claims; and
- Specifies that the other party should *not* be required to prove a matter which the Commonwealth or the agency knows to be true.

The existence of advice, especially early advice, on the legality of the system would not only mean that the system was operated in spite of its illegality, but that that the legal system itself was abused in order to keep the program operational. The model litigant policy exists in part to safeguard against this practice.

Recommendation 4: Implications of the Scheme's illegality

Anglicare Australia recommends that:

- The Committee continues to investigate when the government first learned the scheme to be illegal;
- The final Inquiry report explores the legal and ethical implications of the scheme's operation after the Administrative Appeals Tribunal rulings and government legal advice; and
- An independent body, such as the Human Rights Commission or the Australian Law Reform Commission, reviews the Government's compliance with its model litigant policy. This public review should provide advice on how to ensure enforceability of the policy.

Correcting the record: assertion vs fact

In the year since our first submission and our appearance before the Committee, Anglicare Australia has found several instances where the experiences of our staff and clients did not align with assurances given about how the Robodebt system should work. These discrepancies ranged from evidence collection practices through to the process involved in challenging or paying a debt. When public assurances are contradicted by people's experiences, as was seen throughout the Robodebt saga, accountability becomes difficult or even impossible.

For example, Anglicare Australia sought feedback from our Network on the garnishing of tax returns and its impact on clients. Although the Department has publicly said that clients were contacted before this was done, our staff reported several instances of people learning that their tax return has been garnished after the fact. One staff member told us:

> *"The majority of clients have reported that this has caused them significant financial distress. In these cases clients have often told me that they await the reconciliation payment as a means of retiring debt. They are shocked when the payment is offset against the debt."*

Although it was possible to be exempt from this process on the grounds of hardship, the definition was opaque and subjective. Despite working with highly vulnerable clients, including people experiencing homelessness, family violence, or bereavement, we have not been able to find a client who had a garnished tax return returned due to hardship. One financial counsellor told us that this process was not transparent:

> *"In mid-June this year, Centrelink announced that they would be taking the Family Tax Benefit supplements in July for any other outstanding debt, even if the person was already on a repayment plan. They also required affected clients to apply by the end of the financial year if losing their supplements or tax returns was going to cause 'undue hardship'.*
>
> *They never clarified what constituted 'undue hardship' and we never found out. It certainly sounded discretionary upon Centrelink. Needless to say that losing some or all of these payments was devastating for clients with young families who rely on those annual amounts for essential annual bills."*

In any case, people were not given the opportunity to demonstrate hardship because they were not informed that their payments would be garnished in advance. We hope that the Committee will investigate the discrepancy between the experiences of clients and claims that no action was taken without their knowledge.

Anglicare Australia also notes that a spokesperson for the Department of Human Services told the ABC that "we only take this action [garnishing tax returns] when other attempts to recover money owed have failed." However, after the hearing, we learned of several clients who had their tax returns garnished in spite of having repayment plans and having made repayments. We hope that the Committee will look into these practices. Involuntary garnishing has implications for any kind of debt collection undertaken by the Department, well beyond the Robodebt system.

A factor that may contribute to these discrepancies is the use of private debt collection agencies. Several of our clients reported being harassed by debt collectors using aggressive tactics to secure repayment, even where the client was challenging the debt.

For example, discrepancies between Department policies and private debt collection practices were exposed by the Government's repeated assurances that targets were not used when raising or recouping debts. Multiple journalists disproved this, investigating the practices of the debt collection agencies and finding their work to be target-driven.

The Robodebt saga has exposed the issues surrounding the use of private debt collection agencies. It is clear that these agencies cannot guarantee compliance with government policies, and cannot be held accountable to them. If this cannot be corrected, the Department must stop selling debts to these agencies.

Recommendation 5: Discrepancies between assurances and reality

Anglicare Australia recommends that:

- The Committee catalogues examples of discrepancies between official assurances and lived experiences of how the system;
- The causes of these discrepancies are identified, including the contribution of private debt collection agencies; and
- Debts are only sold to private agencies if those agencies can comply with stated government policies – and be held accountable to them.

Other issues

Anglicare Australia believes that it is not a sufficient goal merely to retrieve possible overpayments, or correct inaccuracies in the payment and reporting system. In reflecting on the failure of the Robodebt system, the objective of this Inquiry must be to design of a better, more responsive income support system.

The purpose of income support is to ensure people have enough to live on, whatever their employment status or life circumstances. In part that is to allow people to contribute to and be an active part of their communities, whether they are employed or not, and whether they are wealthy or not. It is also to make the finding and keeping of work easier, not harder.

Most fundamentally, it demonstrates the value we accord all citizens. There can be no doubt that income support in Australia is inadequate, most starkly for those who find themselves reliant on the Jobseeker and Youth Allowance payments. The Department of Human Services, and the Government more broadly, has a wealth of information about the struggles people have in trying to get by relying on a safety net that is poorly designed and underfunded.

Anglicare Australia asks the Committee to explore how the information available to the Department from its compliance regime is being to redesign and improve its services.

Recommendation 6: Building a better, more responsive safety net
Anglicare Australia recommends that Centrelink strengthen and extend its mechanisms to better identify, track and support vulnerable clients. It must also commit to collecting and using detailed feedback to improve policy, service design and implementation.

Conclusion

Australians expect the Government to act on the best and most accurate information. The public also expects the Government to take all necessary steps to ensure the accuracy of its data. The Government takes this responsibility seriously in most aspects of its work, but has targeted Centrelink users for unusual, unfair, and arbitrary treatment. Anglicare Australia notes the evidence of widespread Medicare fraud by private health insurers, and fraud across Jobactive and Community Development Program providers, has not sparked the same draconian response. These areas are ripe for recouping far greater savings. It is difficult not to conclude that the most vulnerable Australians were targeted through the Robodebt program because they were the least able to challenge a debt notice, or, to fulfil an ideological assumption about those in need of support.

Even now that the Robodebt system has been abandoned, many people are falling foul of reporting requirements. The system simply assumes the worst of them. As the Committee will have heard, Centrelink's customers often aren't inclined to resolve inaccuracies because the system makes things worse rather than better. Robodebt was an example of these systems at their worst, but its abolition has not completely resolved the issues. Any new compliance regime must extend respect and due process to Centrelink's clients, and it must be designed with proportionality and fairness in mind.

Anglicare Australia notes that many parts of the public service are familiar with, and are champions of, co-design. In stepping back from the failed automated debt collection project, the Government should take the opportunity to co-design an income support system which interfaces fairly with the complex realities of the work, education, and care.

We would welcome the opportunity to further discuss these recommendations with the Committee, or to elaborate on the case studies we've provided.

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[i] Hinton, T. (2018) Paying the Price of Welfare Reform.

[ii] Wilcock, S. (2016) Policing Welfare: Risk, Gender and Criminality. IJCJ&SD, 5(1): 113-130.

[iii] Commonwealth of Australia (2017) Legal services directions: The Commonwealth's obligation to act as a model litigant.