



Welfare

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Prosecutors pause dozens of criminal cases after Services Australia miscalculated debts

Commonwealth DPP reveals 32 criminal cases affected by ‘income apportionment’ adjourned while reviewed

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Prosecutors have paused 32 criminal cases and are investigating possible wrongful convictions due to Services Australia relying on an **incorrect understanding of welfare law** which the commonwealth ombudsman found led to unlawful debts.

The commonwealth director of public prosecutions (CDPP) revealed the 32 cases, which are all affected by “income apportionment”, have been adjourned while it reviews these and an unknown number of historical cases.

In a report released last week, the ombudsman warned that “unlawfully apportioning” welfare recipients’ income “may affect historic and future prosecutions associated with debts”.

The welfare law expert Chris Rudge said incorrect debt calculation could affect convictions for offences related to overpayment including [obtaining financial advantage](#), which is punishable by up to a year in prison.

Guardian Australia [first reported the issue in November 2020](#) after complaints from then senator Rex Patrick based on a finding of the administrative appeals tribunal that a \$1,600 debt issued to one of his constituents had “not been proved”.

In some cases the payslips relied on by Services Australia to calculate welfare debts don't align with the fortnightly income reporting periods. In these situations, the agency created a “daily” average.

The ombudsman found that under the process of “apportionment”, welfare recipients' employment income was spread across two or more fortnightly periods, which are used to calculate entitlement to Centrelink payments such as jobseeker.

The ombudsman found this was “not permitted” by the Social Security Act as it was in force before 7 December 2020.

The report said Services Australia and the Department of Social Services did not yet have a “clear strategy ... about how criminal prosecutions could be affected”. It called on the agencies to do so, allowing the CDPP to warn the court and individuals affected of “significant changes” to their case.

A spokesperson for the CDPP said it was working with Services Australia and the department to address the issue of income apportionment.

“Services Australia has identified prosecutions before the courts affected by income apportionment which may affect the amount of the financial advantage alleged.

“At this stage the CDPP is considering the circumstances of each prosecution with a view to allowing the income apportionment issue to be addressed.

“The CDPP has taken or is taking steps in relation to these matters to ensure these defendants/courts are advised.”

The spokesperson said that 32 defendants currently before courts had been identified by Services Australia as affected by income apportionment, and all of their matters had been adjourned.

The ombudsman found that income apportionment was the result of a “genuinely” held belief their method was accurate, unlike robodebt.

But Rudge said the issue was “interwoven” with robodebt, because many debts used both income averaging and income apportionment.

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“This is part of the robodebt story,” he said, citing administrative appeals tribunal decisions published in the royal commission report identifying both problems.

Rudge said it was “not enough” for the CDPP and Services Australia to rely on people who believe they may have been wrongfully convicted to come forward for a review of their case.

“The CDPP should develop a strategy with the agencies to identify those previously subject to a conviction or a prosecution [for which] the brief of evidence contained apportioned income.”

Once identified, a “special judicial review” should be set up to re-decide the cases “on the papers” without requiring each to appeal separately, he said.

Australian Council of Social Services chief executive, Cassandra Goldie, said it was “very concerning Services Australia has, yet again, implemented flawed and unlawful policy that’s only been picked up after it’s adversely affected the most vulnerable people in our community”.

In a joint statement the department and Services Australia said the issue was “complex” and they were working “to resolve this matter and implement the ombudsman’s recommendations”.

“Income apportionment is a historical issue that applied to income prior to December 2020 ... We’ve paused potential debt raising and internal reviews that may be related to income apportionment prior to 7 December 2020.”

The agencies said they “can’t comment further” while a “clear legal and policy position is developed”, and while the ombudsman undertakes the second half of its investigation.

“Once the legal issues are resolved, the secretary of DSS will finalise a remediation strategy for historic cases and the general instructions will be refreshed, as required, to reflect this strategy.

“We acknowledge this has taken longer than we would have wanted but we are determined to get it right.”

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