



THE SENATE

STANDING COMMITTEE ON COMMUNITY AFFAIRS
References Committee

6 April 2020

The Hon Stuart Robert MP
Minister for Government Services
Parliament House
Canberra ACT 2600

By email: stuart.robert.mp@aph.gov.au

Dear Minister

Further consideration of public interest immunity claim – legal advice

As you will be aware, on 11 February 2020 the Senate Community Affairs References Committee (committee) reported to the Senate its rejection of your claim of public interest immunity dated 24 January 2020 in relation to questions taken on notice for the inquiry into Centrelink's compliance program.

The committee reported that it considered your claim did not adequately explain how the provision of information regarding legal advice and Centrelink's compliance program would cause harm to the public interest. The committee resolved that your claim did not sufficiently justify withholding the requested information and maintains that this information is essential to the conduct of its inquiry.

The Senate adopted the recommendation of that interim report, requiring answers to all questions placed on notice relating to these legal matters to be provided by 24 February 2020.

Responses to these questions were duly provided on that date. However, the committee has concerns that:

- several responses provided make direct reference to the claim for public interest immunity which was rejected by the committee; and
- two of the responses provided note that it 'is not appropriate' for Services Australia to comment on matters before the court, which appears to be an indirect reference to the claim for public interest immunity.

Further, the committee notes that responses provided for additional written questions placed on notice on 21 February 2020, following the tabling of the committee's interim report, and answered on 27 March 2020 also make reference to the claim for public interest immunity.

In light of these concerns, the committee is seeking to clarify whether it was your intention, or the intention of Services Australia, to provide answers to questions on notice which continue to rely upon the claim for public interest immunity which has been rejected.

The committee also wishes to grant an opportunity for you and Services Australia to revise those answers to questions on notice, attached for reference, if the content of those responses was provided in error.

The committee requests that your response and updated answers to questions on notice be provided by Friday, 17 April 2020.

Please contact the committee secretariat by email at community.affairs.sen@aph.gov.au if you require any further information.

Yours sincerely,

Senator Rachel Siewert
Committee Chair

Senate Standing Committee on Community Affairs

INQUIRY INTO CENTRELINK'S COMPLIANCE PROGRAM

PUBLIC HEARING 16 DECEMBER 2019

Services Australia

Topic: Legal Advice

Question reference number: QoN 14

Member: Siewert

Type of question: Hansard pages 27-29

Date set by the committee for the return of answer: 7 February 2020

Number of pages: 2

Question:

a) CHAIR: I want to go to the legal side of this and the legal advice that various departments have sought. How many times has either the DHS or the Department of Social Services sought legal advice on the legality of the online compliance process?

Dr Baxter: Senator, you would be aware that this is a large and complex program which has had several iterations. We have had from time to time advice that relates to various aspects of the program. I can assure you and the committee that the department has always acted in good faith and on its best understanding of the law at the time. But I certainly don't have an answer as to how many times legal advice has been sought.

CHAIR: Can you take on notice how many times legal advice has been sought and the last time you sought advice? Dr Baxter: I'm sure you understand we do have Federal Court litigation on foot at the moment in relation to these matters. We also have a very well publicised class action that we're undertaking, which goes in part to issues of good faith and absence or presence of negligence. In that context, it's not appropriate for me to take questions about the nature of the legal advice we received—

CHAIR: I didn't ask you about the nature.

Dr Baxter: the timing of it or what we did with it.

CHAIR: I don't see why you can't answer how many times you sought legal advice or when the last time you sought legal advice was.

Dr Baxter: I think what I've indicated to you is that the Federal Court matter that's on foot and, in particular, the class action absolutely go to matters of how the department acted, its understanding of the law at the time, the timing of any legal advice, whether or not negligence was present and if we acted in good faith. For that reason, I think any questions that go to the timing of legal advice, the amount of legal advice, issues we may have sought legal advice on are probably appropriately matters for the subject of a public interest immunity claim. So I would have to take any of those questions on notice to discussion with the minister.

Senator O'NEILL: Are you claiming public interest immunity?

Dr Baxter: What I'm saying to you is that I think they are matters which are appropriately the subject of a public interest immunity claim and I would need to take them on notice and discuss with the minister whether he would be prepared to make a public interest immunity claim in that regard.

b) Dr Baxter: I think the only detail I'm able to provide you there is that we have had legal advice from time to time and that any specific questions you may want to ask us—did we get advice at a particular instance in response to a particular part of the program? What did that advice go to? What was the timing of that advice?—reflect the answer I gave a moment ago, where I said that, given the class action we have on foot, these are matters

Senator O'NEILL: Was there legal advice provided at the commencement of the OCI phase?

Dr Baxter: The first phase?

Senator O'NEILL: Yes.

that properly go to the subject of a public interest immunity claim. I would need to take that on notice and discuss that with the minister.

Answer:

The Minister has made a public interest immunity claim with respect to any legal advice obtained in relation to the income compliance programme and to the circumstances surrounding any legal advice obtained in relation to the income compliance programme.

Senate Standing Committee on Community Affairs

INQUIRY INTO CENTRELINK'S COMPLIANCE PROGRAM

ANSWER TO QUESTION ON NOTICE

Services Australia

Topic: Quality of net-to-gross calculated income data

Question reference number: QoN 6

Type of question: Written

Date set by the committee for the return of answer: 7 February 2020

Number of pages: 1

Question:

Is the department satisfied that its net-to-gross calculations provide a legal basis for raising a debt?

Answer:

The Minister has made a public interest immunity claim with respect to any legal advice obtained in relation to the income compliance programme and to the circumstances surrounding any legal advice obtained in relation to the income compliance programme.

Senate Standing Committee on Community Affairs

INQUIRY INTO CENTRELINK'S COMPLIANCE PROGRAM

ANSWER TO QUESTION ON NOTICE

Services Australia

Topic: Legal advice

Question reference number: QoN 9

Type of question: Written

Date set by the committee for the return of answer: 7 February 2020

Number of pages: 1

Question:

Since the establishment of the current Senate Committee inquiry into Centrelink's Online Compliance Program has the department received internal or external legal advice relating to the legal basis for garnisheeing debtors tax returns?

Answer:

The Minister has made a public interest immunity claim with respect to any legal advice obtained in relation to the income compliance programme and to the circumstances surrounding any legal advice obtained in relation to the income compliance programme.

Senate Standing Committee on Community Affairs

INQUIRY INTO CENTRELINK'S COMPLIANCE PROGRAM

ANSWER TO QUESTION ON NOTICE

Services Australia

Topic: Ministerial Briefings

Question reference number: QoN 43

Member: O'Neill

Type of question: Written

Date set by the committee for the return of answer: 7 February 2020

Number of pages: 1

Question:

Could details be provided of any meetings and/or briefings between the Minister for Government Services, Services Australia, or the Department of Human Services in relation to:

- a) Amato v The Commonwealth
- b) Masterton v The Commonwealth
- c) the Gordon Legal class action.

Answer:

The Minister has made a public interest immunity claim with respect to any legal advice obtained in relation to the income compliance programme and to the circumstances surrounding any legal advice obtained in relation to the income compliance programme.

Senate Standing Committee on Community Affairs

INQUIRY INTO CENTRELINK'S COMPLIANCE PROGRAM

ANSWER TO QUESTION ON NOTICE

Services Australia

Topic: Legal Advice – Solicitor General

Question reference number: QoN 53

Member: O'Neill

Type of question: Written

Date set by the committee for the return of answer: 7 February 2020

Number of pages: 1

Question:

Since 1 July 2015 how many times has the Department obtained legal advice from the Solicitor-General in relation to:

- a) any aspect of the compliance program; and
- b) specifically, whether a debt or debt component is able to be founded on extrapolations from Australian Tax Office record?

In respect of each occasion, please provide the date of the advice.

Answer:

The Minister has made a public interest immunity claim with respect to any legal advice obtained in relation to the income compliance programme and to the circumstances surrounding any legal advice obtained in relation to the income compliance programme.

Senate Standing Committee on Community Affairs

INQUIRY INTO CENTRELINK'S COMPLIANCE PROGRAM

ANSWER TO QUESTION ON NOTICE

Services Australia

Topic: Legal Advice – Australian Government Solicitor

Question reference number: QoN 54

Member: O'Neill

Type of question: Written

Date set by the committee for the return of answer: 7 February 2020

Number of pages: 1

Question:

Since 1 July 2015, how many times has the Department obtained legal advice from the Australian Government Solicitor in relation to:

- a) any aspect of the compliance program; and
- b) specifically, whether a debt or debt component is able to be founded on extrapolations from Australian Tax Office records?

In respect of each occasion, please provide the date of the advice.

Answer:

The Minister has made a public interest immunity claim with respect to any legal advice obtained in relation to the income compliance programme and to the circumstances surrounding any legal advice obtained in relation to the income compliance programme.

Senate Standing Committee on Community Affairs

INQUIRY INTO CENTRELINK'S COMPLIANCE PROGRAM

ANSWER TO QUESTION ON NOTICE

Services Australia

Topic: Legal Advice – External Counsel

Question reference number: QoN 55

Member: O'Neill

Type of question: Written

Date set by the committee for the return of answer: 7 February 2020

Number of pages: 1

Question:

Since 1 July 2015, how many times has the Department obtained legal advice from external counsel (i.e. non-Commonwealth counsel) in relation to:

- a) any aspect of the compliance program; and
- b) specifically, whether a debt or debt component is able to be founded on extrapolations from Australian Tax Office record?

In respect of each occasion, please provide the date of the advice.

Answer:

The Minister has made a public interest immunity claim with respect to any legal advice obtained in relation to the income compliance programme and to the circumstances surrounding any legal advice obtained in relation to the income compliance programme.

Senate Standing Committee on Community Affairs

INQUIRY INTO CENTRELINK'S COMPLIANCE PROGRAM

ANSWER TO QUESTION ON NOTICE

Services Australia

Topic: Legal Advice – External Solicitors

Question reference number: QoN 56

Member: O'Neill

Type of question: Written

Date set by the committee for the return of answer: 7 February 2020

Number of pages: 1

Question:

Since 1 July 2015, how many times has the Department obtained legal advice from external solicitors (i.e. non-Commonwealth solicitors) in relation to:

- a) any aspect of the compliance program; and
- b) specifically, whether a debt or debt component is able to be founded on extrapolations from Australian Tax Office record?

In respect of each occasion, please provide the date of the advice.

Answer:

The Minister has made a public interest immunity claim with respect to any legal advice obtained in relation to the income compliance programme and to the circumstances surrounding any legal advice obtained in relation to the income compliance programme.

Senate Standing Committee on Community Affairs

INQUIRY INTO CENTRELINK'S COMPLIANCE PROGRAM

ANSWER TO QUESTION ON NOTICE

Services Australia

Topic: Legal Advice – Departmental Lawyers

Question reference number: QoN 57

Member: O'Neill

Type of question: Written

Date set by the committee for the return of answer: 7 February 2020

Number of pages: 1

Question:

Since 1 July 2015, how many times has the Department obtained legal advice from departmental lawyers in relation to:

- a) any aspect of the compliance program; and
- b) specifically, whether a debt or debt component is able to be founded on extrapolations from Australian Tax Office record?

In respect of each occasion, please provide the date of the advice.

Answer:

The Minister has made a public interest immunity claim with respect to any legal advice obtained in relation to the income compliance programme and to the circumstances surrounding any legal advice obtained in relation to the income compliance programme.

Senate Standing Committee on Community Affairs

INQUIRY INTO CENTRELINK'S COMPLIANCE PROGRAM

ANSWER TO QUESTION ON NOTICE

Services Australia

Topic: Legal Advice – Compliance Program

Question reference number: QoN 58

Member: O'Neill

Type of question: Written

Date set by the committee for the return of answer: 7 February 2020

Number of pages: 1

Question:

Since 1 July 2015, how much has the Department spent on obtaining legal advice in relation to the compliance program?

Answer:

The Minister has made a public interest immunity claim with respect to any legal advice obtained in relation to the income compliance programme and to the circumstances surrounding any legal advice obtained in relation to the income compliance programme.

Senate Standing Committee on Community Affairs

INQUIRY INTO CENTRELINK'S COMPLIANCE PROGRAM

ANSWER TO QUESTION ON NOTICE

Services Australia

Topic: Legal Advice – Australian Tax Office Records

Question reference number: QoN 59

Member: O'Neill

Type of question: Written

Date set by the committee for the return of answer: 7 February 2020

Number of pages: 1

Question:

Has the Department ever received legal advice that states that it is clearly lawful to found a debt or a debt component solely on the basis of extrapolations from Australian Tax Office records? If so, when and from whom?

Answer:

The Minister has made a public interest immunity claim with respect to any legal advice obtained in relation to the income compliance programme and to the circumstances surrounding any legal advice obtained in relation to the income compliance programme.

Senate Standing Committee on Community Affairs

INQUIRY INTO CENTRELINK'S COMPLIANCE PROGRAM

ANSWER TO QUESTION ON NOTICE

Services Australia

Topic: Legal Advice – Australian Tax Office Records

Question reference number: QoN 60

Member: O'Neill

Type of question: Written

Date set by the committee for the return of answer: 7 February 2020

Number of pages: 1

Question:

Has the Department ever received legal advice that states that it is highly likely to be lawful to found a debt or a debt component solely on the basis of extrapolations from Australian Tax Office records? If so, when and from whom?

Answer:

The Minister has made a public interest immunity claim with respect to any legal advice obtained in relation to the income compliance programme and to the circumstances surrounding any legal advice obtained in relation to the income compliance programme.

Senate Standing Committee on Community Affairs

INQUIRY INTO CENTRELINK'S COMPLIANCE PROGRAM

ANSWER TO QUESTION ON NOTICE

Services Australia

Topic: Legal Advice – Liability

Question reference number: QoN 61

Member: O'Neill

Type of question: Written

Date set by the committee for the return of answer: 7 February 2020

Number of pages: 1

Question:

Since 1 July 2016, has the Department ever sought legal advice to determine whether it – or any Commonwealth agency or Minister – may be liable for the death of any Australian who received a debt notice under the compliance program? If so, when and from whom?

Answer:

The Minister has made a public interest immunity claim with respect to any legal advice obtained in relation to the income compliance programme and to the circumstances surrounding any legal advice obtained in relation to the income compliance programme.

Senate Standing Committee on Community Affairs

INQUIRY INTO CENTRELINK'S COMPLIANCE PROGRAM

ANSWER TO QUESTION ON NOTICE

Services Australia

Topic: Potential legal obligations

Question reference number: QoN 10

Type of question: Written

Date set by the committee for the return of answer: 7 February 2020

Number of pages: 1

Question:

What is the department's strategy for meeting any potential obligations that could come from current or future legal action from individuals who have had debts raised using averaged income data?

Answer:

As there are current matters before the courts, it is not appropriate for Services Australia to comment on these or related matters.

Senate Standing Committee on Community Affairs

INQUIRY INTO CENTRELINK'S COMPLIANCE PROGRAM

ANSWER TO QUESTION ON NOTICE

Services Australia

Topic: Administrative Appeals Tribunal – Decisions

Question reference number: QoN 62

Member: O'Neill

Type of question: Written

Date set by the committee for the return of answer: 7 February 2020

Number of pages: 1

Question:

Since 1 July 2016, how many times has the Administrative Appeals Tribunal (AAT) found that no debt or debt component is able to be founded on extrapolations from Australian Tax Office records? In respect of each occasion, please provide:

- a) the date of the relevant AAT decision;
- b) a copy of the relevant AAT decision (with any appropriate redactions to protect private information); and
- c) an explanation as to why the Department did not appeal the relevant AAT decision.

Answer:

a) and c) The information requested is not readily available. Preparation of this information would require manual investigation, which would constitute an unreasonable diversion of agency resources. Further, aspects of the program are currently before the courts and therefore not appropriate to comment.

b) In light of the above, Services Australia is not in a position to provide copies of relevant AAT court decisions or advise of the dates on which they were made.

Senate Standing Committee on Community Affairs

INQUIRY INTO CENTRELINK'S COMPLIANCE PROGRAM

ANSWER TO QUESTION ON NOTICE

Services Australia

Topic: AAT Decision – 25 August 2017

Question reference number: QoN 73

Member: McCarthy

Type of question: Written

Date set by the committee for the return of answer: 6 March 2020

Number of pages: 1

Question:

In relation to the AAT decision with review number 2017/M113469 made on Friday 25 August 2017 in which the AAT set aside a decision of Centrelink to raise and recover an overpayment debt of Newstart Allowance in the amount of \$815 for the period 25 August 2010 to 12 June 2011:

- a) Why didn't Centrelink appeal that decision?
- b) Did Centrelink re-determine the matter in light of the AAT's directions?
If not, why not?
- c) If so, what was the amount of the overpayment debt once it was recalculated in accordance with the AAT's direction?
- d) Did Centrelink over-recover any monies from the applicant in this matter? If so:
 - i. How much was over-recovered?
 - ii. How much was repaid?

Answer:

- a) The Minister for Government Services has made a public interest immunity claim with respect to any legal advice obtained in relation to the income compliance programme and to the circumstances surrounding any legal advice obtained in relation to the income compliance programme.
- b)-c) The decision of the AAT was accepted and implemented. On the basis of additional information, the debt was recalculated to \$508.28.
- d) (i) – (ii) Not applicable.

Senate Standing Committee on Community Affairs

INQUIRY INTO CENTRELINK'S COMPLIANCE PROGRAM

ANSWER TO QUESTION ON NOTICE

Services Australia

Topic: AAT Decision – 7 September 2017

Question reference number: QoN 74

Member: McCarthy

Type of question: Written

Date set by the committee for the return of answer: 6 March 2020

Number of pages: 1

Question:

In relation to the AAT decision with review number 2017/S112884 made on Thursday 7 September 2017 in which the AAT set aside a decision of Centrelink to raise and recover an overpayment debt of Newstart Allowance in the amounts of \$6,863.59 for the period 24 March 2012 to 5 March 2013; (ii) \$636.74 for the period 8 August 2013 to 18 September 2013; and (iii) \$1,841.67 for the period 8 March 2014:

- a) Why didn't Centrelink appeal that decision?
- b) Did Centrelink re-determine the matter in light of the AAT's directions? If not, why not?
- c) If so, what was the amount of the overpayment debt once it was recalculated in accordance with the AAT's direction?
- d) Did Centrelink over-recover any monies from the applicant in this matter? If so:
 - i. How much was over-recovered?
 - ii. How much was repaid?

Answer:

- a) The Minister for Government Services has made a public interest immunity claim with respect to any legal advice obtained in relation to the income compliance programme and to the circumstances surrounding any legal advice obtained in relation to the income compliance programme.
- b)-c) The decision of the AAT was accepted and implemented. On the basis of additional information, the debts were recalculated to zero.
- d) (i) – (ii) \$6,282.00 was repaid to the customer.

Senate Standing Committee on Community Affairs

INQUIRY INTO CENTRELINK'S COMPLIANCE PROGRAM

ANSWER TO QUESTION ON NOTICE

Services Australia

Topic: AAT Decision – 7 September 2017

Question reference number: QoN 75

Member: McCarthy

Type of question: Written

Date set by the committee for the return of answer: 6 March 2020

Number of pages: 1

Question:

In relation to the AAT decision with review numbers 2017/ M112147 & M112302 made on Thursday 7 September 2017 in which the AAT set aside a decision of Centrelink to raise and recover an overpayment debt of Newstart Allowance in the amounts of \$1,848.97 for the period 20 July 2010 to 9 May 2011 and \$7,682.26 for the period 26 March 2012 to 2 November 2012:

- a) Why didn't Centrelink appeal that decision?
- b) Did Centrelink re-determine the matter in light of the AAT's directions? If not, why not?
- c) If so, what was the amount of the overpayment debt once it was recalculated in accordance with the AAT's direction?
- d) Did Centrelink over-recover any monies from the applicant in this matter? If so:
 - i. How much was over-recovered?
 - ii. How much was repaid?

Answer:

- a) The Minister for Government Services has made a public interest immunity claim with respect to any legal advice obtained in relation to the income compliance programme and to the circumstances surrounding any legal advice obtained in relation to the income compliance programme.
- b)-c) The decision of the AAT was accepted and implemented. On the basis of additional information, the debts were recalculated to \$1,646.64 and \$3,721.59 respectively, however recovery was waived as directed by the AAT.
- d) (i) – (ii) \$1,422.76 was repaid to the customer.

Senate Standing Committee on Community Affairs

INQUIRY INTO CENTRELINK'S COMPLIANCE PROGRAM

ANSWER TO QUESTION ON NOTICE

Services Australia

Topic: AAT Decision – 8 March 2017

Question reference number: QoN 76

Member: McCarthy

Type of question: Written

Date set by the committee for the return of answer: 6 March 2020

Number of pages: 1

Question:

In relation to the AAT decision with review number 2016/S104681 made on Wednesday 8 March 2017 in which the AAT set aside a decision of Centrelink to raise and recover an overpayment debt of Youth Allowance in the amount of \$7,452.76 for the period 8 July 2010 to 6 June 2012:

- a) Why didn't Centrelink appeal that decision?
- b) Did Centrelink re-determine the matter in light of the AAT's directions? If not, why not?
- c) If so, what was the amount of the overpayment debt once it was recalculated in accordance with the AAT's direction?
- d) Did Centrelink over-recover any monies from the applicant in this matter? If so:
 - i. How much was over-recovered?
 - ii. How much was repaid?

Answer:

- a) The Minister for Government Services has made a public interest immunity claim with respect to any legal advice obtained in relation to the income compliance programme and to the circumstances surrounding any legal advice obtained in relation to the income compliance programme.
- b)-c) The decision of the AAT was accepted and implemented. On the basis of additional information, the debt was recalculated to \$5,325.65.
- d) (i) – (ii) Not applicable.

Senate Standing Committee on Community Affairs

INQUIRY INTO CENTRELINK'S COMPLIANCE PROGRAM

ANSWER TO QUESTION ON NOTICE

Services Australia

Topic: AAT Decision – 20 April 2017

Question reference number: QoN 77

Member: McCarthy

Type of question: Written

Date set by the committee for the return of answer: 6 March 2020

Number of pages: 1

Question:

In relation to the AAT decision with review number 2016/S104394 made on Thursday 20 April 2017 in which the AAT set aside a decision of Centrelink to raise and recover an overpayment debt of Newstart Allowance in the revised amount of \$16,124.57 for the period 29 September 2010 to 30 June 2015:

- a) Why didn't Centrelink appeal that decision?
- b) Did Centrelink re-determine the matter in light of the AAT's directions? If not, why not?
- c) If so, what was the amount of the overpayment debt once it was recalculated in accordance with the AAT's direction?
- d) Did Centrelink over-recover any monies from the applicant in this matter? If so:
 - i. How much was over-recovered?
 - ii. How much was repaid?

Answer:

- a) The Minister for Government Services has made a public interest immunity claim with respect to any legal advice obtained in relation to the income compliance programme and to the circumstances surrounding any legal advice obtained in relation to the income compliance programme.
- b)-c) The decision of the AAT was accepted and implemented. On the basis of additional information, the debt was recalculated to \$3,209.04.
- d) (i) – (ii) Not applicable.