

Debt by design: The anatomy of a social policy fiasco – Or was it something worse?

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Abstract

‘Robodebt’ is the label applied to an Australian government initiative designed to increase recoveries of ‘overpayments’ made to social security recipients. Following complaints from many of those affected, there have been multiple investigations and inquiries, and a Federal Court Case which ruled the policy unlawful. The government is in the process of paying back more than \$1000 million to more than 400,000 people after conceding the largest class action settlement in Australian history, and faces calls for a Royal Commission. Robodebt resembles a ‘policy fiasco’, as the outcomes could have been foreseen at the inception of the initiative. But it differs from other examples of policy failures in that it was intentional, and not the result of mistakes in design or implementation. The initiative not only failed to achieve the Budgetary savings anticipated, it has undermined rather than protected the integrity of the social security system. It poses serious questions about the quality of Australian public administration. The objective of this article is to clarify exactly how this fiasco occurred and identify the similarities and differences between this case study and other policy failures.

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1 | INTRODUCTION

'Robodebt' is the label applied to an Australian government initiative starting in 2016 designed to increase recoveries of 'overpayments' made to social security recipients, retrospectively dating back to 2010. The original objective was to recover \$1.7 billion over 5 years from 'overpayments' to current and former social security recipients, but it evolved over time to aim for greater debt recoveries covering further years. Robodebt involved data-matching historic records of benefit payments made to individuals with past income tax returns, identifying discrepancies between these records. It reduced human investigation of the discrepancies, with the automatic calculation of overpayments for many individuals based on a simple algorithm that averaged earnings over the relevant year, followed by raising of a debt against those individuals. This led to the initiative being labelled on social media and in the mainstream media as 'Robodebt'. This system ignored when earnings were paid and their amount even though Social Security payments are calculated fortnightly based on the earnings for that fortnight. Robodebt also involved shifting the burden of proof that there had 'not' been an overpayment onto the individuals affected, where previously the government had collected detailed records from employers.

Following extensive complaints from affected individuals and negative media reporting, there have been two reports by the Commonwealth Ombudsman and two Parliamentary Inquiries (one ongoing). In November 2019, the Federal Court concluded that central features of the programme were unlawful. The Federal Opposition facilitated a class action in September 2019, and in preparing for this, the Government conceded in May 2020 that it would refund \$720 million to more than 400,000 individuals whose debts were not lawful. In November 2020, a settlement was reached in the Federal Court in which the Commonwealth agreed to repay the \$720 million in debts already collected, to drop further claims of \$398 million and to pay \$112 million in compensation to approximately 400,000 eligible individual Group Members, including legal costs (Gordon Legal, 2021). Although this settlement is reported as being the largest class action settlement in Australian history, this may not be the full cost as it does not include the administrative costs involved in the recalculation of 'debts'.

The process may also not yet be complete – the proposed settlement is subject to the approval of the Federal Court at a hearing scheduled for May 2021, and there have been media reports (Sadler, 2020) that members of the class action are dissatisfied with the level of compensation and the failure to hold policymakers to account. There have been calls by Opposition parties for a Royal Commission into the programme. Submissions to Parliamentary Inquiries and media reporting document the personal suffering of people affected, including cases where families claimed that affected individuals committed suicide.

This article argues that even though the process of inquiry into Robodebt is not complete, it is clear the original objectives of the policy will never be achieved. There is also the question of whether it could ever have been a success (Seibel, 2020). Robodebt has been a classic 'policy fiasco' in many dimensions. It differs, however, from other failures in that its intention was fundamentally misguided to the extent that it could be considered a case of 'policy malfeasance'. This

interpretation is supported by evidence that the government ignored evidence that the programme was unlawful as early as 2017.

This article is structured as follows. The next section reviews the literature on policy failure relevant to this case study, arguing that Robodebt differs in important respects from policy failures identified in previous literature. This is followed by a more detailed account of the chronological unfolding of the fiasco. A notable aspect of the fiasco has been a lack of transparency in government responses to the developing criticism of the policy, and the purpose of this chronology is to assist in clarifying how and why the policy was unsound. The analytical approach used in this section primarily draws on Bovens and t'Hart (1996), who suggest four layers of questions to identify policy fiascos: the first is to identify what actually happened; the second is to identify the specific agents behind the failure; the third is to explain the causes and rationales that prompted the events at stake; and the fourth layer is to identify whether the events were avoidable. This framework is augmented from other perspectives including recent analyses of 'policy success', drawing on McConnell (2010), Compton et al. (2019), and Luetjens et al. (2019), as well as Seibel (2020) on 'points of intervention' that may have avoided this policy failure.

Following this approach, the article provides a chronological account of the development of the unfolding fiasco (Layer 1), and discusses what is known about the agents responsible for the failure (Layer 2). The subsequent section discusses the government rationale for the policy, through statements by relevant Ministers as well as from the submissions made by government agencies to the Senate Inquiries. This section analyses the factors that appear to have produced the fiasco – the shift to using automation to make case decisions, the transfer of administrative burdens from bureaucracy to members of the public, and the framing of social security recipients as burdens on taxpayers in the context of budgetary austerity (Layer 3). The article shows that the fiasco could easily have been avoided (Layer 4), and discusses the related issue of whether the policy could ever have been a 'success'. The article concludes with a discussion of approaches to reduce the risk of a policy fiasco of this sort recurring.

The evidence base for the article primarily involves the analysis of official publications and reports setting out the objectives and outcomes of the initiatives, including the annual Budget Papers and updates in the Mid-Year Economic and Fiscal Outlook papers (normally delivered in May and November annually), submissions by Government Departments to two Parliamentary Inquiries in the Senate, the Ombudsman's report, the official report of the first Senate Inquiry, and the dissenting report by Government members of the Committee, the Government Response to the first Inquiry Report, and Ministerial Media Releases and interview transcripts. Other major sources include the Annual Reports of the administering agency – the Department of Human Services (DHS). The extensive reporting on the policy in the mainstream media and on social media has been reviewed, as well as the more limited number of academic articles to date which have analysed the legal rather than the policy aspects of Robodebt (Carney, 2018, 2019a, 2019b; O'Donovan, 2020) and blog posts (Carney, 2019c; O'Donovan, 2019).

2 | DEFINING A SOCIAL POLICY FIASCO

There is an extensive literature on 'policy failure'. Broad ranging reviews are provided in a number of journal special issues, including *Public Policy and Administration* (Howlett et al., 2015), the *Journal of European Public Policy* (Oppermann & Spencer, 2016), and *Policy and Politics* (Dunlop, 2017). Dunlop (2017) points to the growth in analysis of policy failures as following the advent of policy evaluation from the 1970s onwards. Well-known examples of public policy failures in this

literature range from cost overruns in constructing the Sydney Opera House and the Bay Area Rapid Transit Scheme in the 1970s (Hall, 1980), the poll tax in Great Britain in the 1980s (Butler et al., 1994), the Child Support Agency in the same country in the 1990s (Dunleavy, 1995; King & Crewe, 2013), and more recently the implementation of the American Patient and Affordable Care Act – or Obamacare – between 2010 and 2014 (May, 2015) as well as the introduction of Universal Credit in the United Kingdom, from 2010 and still ongoing (Timmins, 2016).

The dimensions and scope of policy failures can vary widely. A number of terms have been used, including ‘failure’, ‘mistake’, ‘fiasco’, ‘crisis’, ‘disaster’, ‘blunder’, and even ‘catastrophe’ (Opperman & Spencer, 2016). This suggests a hierarchy of failure; for example the terms failure, mistake, and blunder imply a possibly well-meaning initiative that unfortunately went wrong, with crisis, disaster, and catastrophe clearly being at the other end of a spectrum of seriousness. McConnell (2010), in contrast, suggests a hierarchy of success along process, program, and political dimensions, including success, resilient success, conflicted and precarious success, and failure.

One question this case study raises is around intention. As shown below, it appears that policy makers were aware quite early in the process (the first half of 2017) that the policy was unlawful, yet it continued until 2019, with the final concession requiring two court cases, where in both the government was clearly aware that they would lose the cases in advance. Despite this, policy makers chose to continue the programme, raising serious questions about whether Robodebt could ever be considered a well-intended initiative that unfortunately went wrong. Are policy failures more serious when governments choose to behave unlawfully?

Dunleavy (1995, p. 52) defines policy disasters as ‘significant and substantially costly policy failures of commission or omission by government’. Identifying policy failures can be difficult, and according to Dunleavy (1995) it can only be done with hindsight and can be controversial for many years. Bovens and t’Hart (1996) also question understandings of policy failure, reframing the question from why have policy failures become more common to why have we become more inclined to view some policy episodes as fiascos (p. 16). They point to rising social expectations and political ideology, ambiguity, and indeterminacy, concluding that policy analysts should recognise their own biases and subjectivity.

Dunleavy (1995) points to five factors resulting in policy failures in the United Kingdom; ‘scale aggregation’ – a problem being larger when it applies over a larger jurisdiction, overly speedy legislation and policy making, political hyperactivism, the arrogance of Whitehall, and ineffective executive checks and balances. King and Crewe (2013) point to various forms of disconnection – both operational disconnection between policy makers and implementers, as well as between policy makers and the public; they also point to the problem of Ministers as policy activists. In discussing regulatory failures, Black (2014) identifies six contributory causes: incentives on individuals or groups; organizational dynamics; weaknesses in regulatory strategies adopted; misunderstanding of the problem and the potential solutions; communication problems or conflicting messages; and trust and accountability structures. Hudson et al. (2019) identify four contributing factors, including overly optimistic expectations, dispersed governance (where practice on the ground varies from legislative intention), inadequate collaboration between implementation actors and policy designers, and the vagaries of the political cycle.

Bovens and t’Hart (1996) claim that a policy fiasco ‘only refers to situations of: a) significant social damage that b) are highly politicised’ (p. 15). Alternatively, what separates a ‘fiasco’ from other forms of policy failure is that it is commonly regarded as being reasonably foreseeable – that is the failure should or could have been avoided with foresight. This contrasts with Dunleavy’s (1995) assessment that a policy disaster can only be assessed in hindsight.

It is notable that a number of policy failures analysed in this literature refer to unsuccessful social policies, including the U.K. child support agency, reform of the U.K. social security system in the 1980s allowing people to opt out of the State Earnings Related Pension scheme (SERPS) (Dunleavy, 1995), and the introduction of Universal Credit from 2010 onwards (Dunlop, 2017; Millar & Whiteford, 2020). Other notable examples of social policy failure include the debts that accompanied the introduction of tax credits in the United Kingdom in the early 2000s and the similar problems that arose slightly earlier in Australia (Whiteford et al., 2003).

What is most striking about Robodebt is how it differs from earlier examples in the literature of policy failure. Much of the earlier literature focuses on problems of implementation, for example cost overruns, delays in finalizing projects, and outcomes that do not match intended objectives. In contrast, it can be argued that the Robodebt fiasco is not fundamentally related to implementation.

Essentially the Robodebt fiasco arises from the very formulation of the policy. From the beginning, central features of the programme were unlawful. The unlawfulness does not relate to a legal technicality or a mistake in drafting, but involved the government attempting to achieve an outcome that the primary legislation (the Social Security Act) does not allow. In brief, the ‘overpayments’ the government recovered using income averaging were not overpayments. Moreover, the Social Security Act requires the government to prove that a debt exists, whereas the Robodebt procedures essentially required individuals to disprove the existence of these debts. No one who understood the social security system and its governing legislation could have realistically thought that these debts were valid (Hanks, 2017); indeed according to Carney, ‘It was kind of kindergarten law it was so open and shut’ (quoted in Henriques-Gomes, 2020a).

3 | ROBODEBT – (LAYER 1) WHAT HAPPENED?

The ‘Robodebt’ story started in May, 2015 with an announcement as part of the 2015–2016 Budget on ‘Enhanced Welfare Payment Integrity’ that the Government would save \$1.7 billion over 5 years by enhancing the DHS fraud prevention and debt recovery capability, ‘through an integrated package of compliance and process improvement initiatives including improved automation and targeted strategies for fraud prevention in areas of high risk’ (Department of the Treasury, 2015). Initially the data-matching applied for the period 2010–2011 to 2012–2013. Further details of the measure were spelled out in the Mid-Year Economic and Fiscal Outlook Papers published by the Australian Government in November 2015, which extended the retrospective data-matching to include 2013–2014 and 2014–2015.

Data-matching with the Australian Tax Office had been started in 1991 by the then Labor government, with the automation of the system being increased in 2011. As a result of this change, ‘Since 2010–2011 DHS has had the capacity to store its matched data, so it holds records of discrepancies from that year onwards. In early 2015 DHS proposed a new online approach to compliance which would allow it to review all discrepancies from 2010–2011’ (Commonwealth Ombudsman, 2017, p. 5). The most important change, however, was that the 2015 measures reduced detailed human oversight once discrepancies between income reported to the ATO and income reported to the DHS were identified. Previously, officers had scrutinized each discrepancy on a case by case basis before deciding whether an overpayment should be raised. In addition, although previously the DHS collected verifying information from employers, the new system shifted responsibility for providing information on to the individuals concerned, reversing the ‘onus of proof’.

The 2016 Omnibus Budget Bill (supported by the Opposition) further introduced an interest charge on the debts of former welfare recipients who were unwilling to enter repayment

arrangements, brought in international Departure Prohibition Orders for people not in repayment arrangements, and removed the 6-year limitation on debt recovery for all social welfare debt.

Table 1 sets out a chronology of the main developments of the programme. The initial name of the measure was the Online Compliance Intervention (OCI) Programme, later replaced by the Employment Information Confirmation (EIC) Programme, and then renamed the Check and Update Past Information (CUPI) Programme. Although these name changes were accompanied by administrative and technical refinements, the essence of the programme remained the same – the shifting of the burden of the onus of proof onto individuals identified as potentially having debts, and the use of averaging to calculate overpayments and debts when individuals were not able to provide proof their original reporting was accurate.

The OCI Programme first became active in July 2016. By late 2016, members of the public were raising concerns about letters from DHS advising that they owed the Government significant debts for past income support payments received. The controversy escalated: the shadow human services minister requested the Auditor General to investigate, and an independent MP asked the Commonwealth Ombudsman to investigate after receiving more than 100 complaints. In January 2017, an internet site (<https://www.notmydebt.com.au/>), now sharing more than 1200 personal accounts, a Facebook Account, and a Twitter account with the hashtag *#notmydebt* were all set up to record contested debts. A number of other individuals and journalists consistently highlighted the issue on social and mainstream media.

The Senate Community Affairs Reference Committee launched an inquiry, which reported that between November 2016 and March 2017 at least 200,000 people were affected, with 20,000 debt letters being sent each week. In total, the number of ‘debt interventions’ increased from 20,000 in 2015–2016 to nearly 800,000 in 2016–2017 (Senate Community Affairs Reference Committee, 2017). The DHS Annual Reports show a near doubling of debts raised from around \$362 million in 2014–2015 to \$695 million in 2015–2016.

The Senate Committee report specifically noted that ‘Three key changes have occurred under the OCI system. Firstly, the responsibility for checking and clarifying income information has shifted from the department to current and former recipients of Centrelink payments. Secondly, recipients are directed to an online portal to check the information and provide supporting evidence of their fortnightly income, dating back to 2010 for some people. And third, the significant reduction in workload for the department by this outsourcing, has allowed for a huge increase in the number of income discrepancy investigations that the department initiates ...’ (Senate Community Affairs Reference Committee, 2017, paragraph 2.21, emphasis added).

4 | THE PROBLEM WITH AVERAGING

The central cause of the fiasco arises from the nature of the discrepancies identified between income reported to Centrelink and income reported to the Australian Tax Office. The 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.

TABLE 1 Robodebt: A chronology

Dates	Events
May 2015	2015–16 Budget announcing ‘Strengthening the Integrity of Welfare Payments’ with data matching from 2010–2011 to 2012–2013. Spending \$240.4 million, with net savings of \$1.7 billion over 5 years.
November 2015	2015–2016 Mid-Year Economic and Fiscal Outlook announcing details of enhanced debt collection, with data matching for 2013–2014 and 2014–2015.
May 2016	2016–2017 Budget ‘Better Management of the Social Welfare System’.
July 2016	Launch of Online Compliance Intervention (OCI).
November 2016	2016–2017 MYEFO with savings of \$4.35 billion from 2017–2018, offset by expenses of \$530.7 million and capital expenses of \$75.1 million, to give net savings of \$3.7 billion.
December 2016	First adverse media reports. Independent MP Andrew Wilkie raises individual complaints.
January 2017	Notmydebt twitter account and website set up. Website recounts 1231 stories of Robodebts.
February 2017	OCI replaced by Employment Income Confirmation (EIC), improved letters, language, functionality of online system, explanation, and communication.
8 February 2017	Senate referred the following matter to the Senate Community Affairs References Committee for inquiry and report: <i>The design, scope, cost–benefit analysis, contracts awarded and implementation associated with the Better Management of the Social Welfare System initiative.</i>
April 2017	Ombudsman’s first report on Centrelink’s Automated Debt Raising and Recovery System.
May 2017	Social Welfare Debt Recovery measures in 2017–2018 Budget extended data matching until June 2022, saving \$299.3 million over 3 years from 2019–2020.
April to September 2017	Professor Terry Carney delivers five judgements in the Administrative Appeals Tribunal that Centrelink could not enforce a debt where it relied solely on a person’s annual income to allege a person had been overpaid in a specific, shorter period.
21 June 2017	First Senate Report published.
July 2017	Speech by Peter Hanks QC to Australian Institute of Administrative Law National Conference highlighting unlawful features of the OCI system.
September 2017	Professor Terry Carney’s membership of the Administrative Appeals Tribunal not renewed.
Mid-2018 to mid-2019	Check and Update Past Information (CUPI) enhanced online system replaced EIC.
April 2019	Second Ombudsman’s report on Centrelink’s Automated Debt Raising and Recovery System Implementation Report.
May 2019	DHS drops debt against individual rather than let court decide whether procedures were lawful (Masterton case).
May 2019	2019–2020 Budget ‘Changing the Social Security Income Assessment Mode’, with automatic reporting of employment income through Single Touch Payroll, with savings of \$2.1 billion over 5 years from 2018–2019. Postponed from July 2020 due to Covid-19 pandemic.
July 2019	Senate votes to set up second Inquiry into Robodebt.

(Continues)

TABLE 1 (Continued)

Dates	Events
September 2019	Opposition Shadow Minister facilitates class action to be taken against government.
19 November 2019	Internal Services Australia memo reported ending of sole reliance on income averaging.
27 November 2019	Federal court decision on Amato Case rules income averaging and penalty fines unlawful.
16 December 2019	2019–2020 Mid-Year Economic and Fiscal Outlook announcing refinement to the Income Compliances programme as an ‘unquantifiable contingent liability’.
27 March 2020	Guardian article reporting government to settle class action and refund \$555 million to 450,000 people.
May 2020	Federal Court requires Services Australia to advise clients if they wish to opt-out of joining class action.
June 2020	Australian Greens call for a Royal Commission and subsequently Australian Labor Party also calls for RC and commits to a Royal Commission if elected to government.
September 2020	Third Interim Report of Second Senate Inquiry Report published.
16 November 2020	Announcement of settlement of class action with costs totalling \$1.2 billion, comprising refunds of \$721 million to 373,000 people, \$112 million in compensation and \$398 million in cancelled debts.
May 2021	Court to decide whether to accept settlement.
November 2021	Senate Inquiry Report due to be finalised.

The payment rate to which a person is entitled can vary from fortnight to fortnight, depending on the hours of work undertaken in the reporting period and the wage rate paid. An individual could theoretically be entitled to payments in one fortnight, zero payments the next fortnight, and positive payments in the following fortnight. It is possible to receive a ‘nil rate’ for up to six consecutive fortnights. That is although the person’s employment income is sufficiently high to reduce their payment to zero, they remain active in the payment system and do not have to re-apply for benefits should their work cease or reduce during this period. The Australian Government’s Guide to Social Security Law notes: ‘The employment income nil rate period policy provides incentives for recipients to take up work, particularly substantial part-time or irregular casual work. It acknowledges the increasing casual nature of jobs and the lack of job security in some occupations, and enables recipients to get back onto payment easily during a nil rate period’ (Department of Social Services, 2021).

The central problem was that in an initially unknown number of cases, discrepancies were identified by comparing fortnightly income reported to Centrelink with the average income for the financial year – that is annual earnings divided by 26. Apart from people who actually reported equal earnings across the period, averaging was applied when after being initially contacted by DHS, individuals did not respond with their information or did not ‘engage’ with the Department, when the individual ‘accepted’ averaging of earnings, and when the individual accepted dates provided by the Tax Office and did not provide further detailed breakdown. The Government acknowledged early in this fiasco that the system did equally apportion employment income in the absence of further information from the recipient (Department of Human Services, 2017, p. 9).

Averaging will only work correctly if individuals receive exactly the same income each fortnight. This is clearly not the case for people who receive payments for part of the financial year, for example tertiary students whose study year is likely to run from March to November. Australia also has a comparatively high share of part-time workers and a high share of workers whose earnings and hours are variable. In 2018, around one quarter of all employees had pay varying from one pay period to the next (excluding overtime); for casual workers (those without paid leave), the share was 51%. Around 38% of casual employees and 21% of all employees did not usually work the same hours each week (Australian Bureau of Statistics, 2019).

In addition, people move on and off benefits all the time, either because of job loss or other adverse risks or job gains. In the case of Newstart – the main benefit for unemployed Australians – between 2001 and 2016, the average stock of recipients in June each year varied between 400,000 and 800,000, but the annual flow of separate recipients was between 800,000 and 1.2 million, with the flow varying between 1.5 and 2 times the stock; over the whole period, 4.4 million separate individuals received this payment (Bowman et al., 2020).

The income test for payments is designed to encourage part-time work. This has been an objective of policy since the 1980s and reflected concerns about ‘unemployment traps’ and ‘poverty traps’ inherent in the previously more tightly income-tested system (Podger et al., 1980). The objective of encouraging part-time work appears to be successful. Around 20% of people receiving unemployment payments in 2019 were in part-time work and 35% of those receiving student assistance (Department of Social Services, 2019). At a point in time, individuals combining income support and part-time work constitute about 12% of all part-time workers in Australia (Whiteford & Heron, 2018). It is highly likely that most social security recipients in part-time work are also casual workers, likely to have fluctuating pay.

This overlap between benefit receipt and work – either at a point in time or over the course of a financial year – is a major factor contributing to the development of the Robodebt fiasco, with policymakers appearing to have lost sight of the broader policy objective pursued over the previous four decades.

Services Australia's (2019) submission to the second Senate Inquiry provides details of the characteristics of people affected by reviews completed between 2016 and 2019 that had resulted in a ‘debt’. Over that period, there were nearly 687,000 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% of those affected. Nearly 60% of the reviews affected people under the age of 35, whereas on average over this period just under 39% of payment recipients were in this age group. Similarly, 28% of those reviewed had received Youth Allowance compared to an average of 12.7% of recipients, and 47% of reviews affected Newstart recipients, who on average accounted for 30.5% of recipients over the period.

A recurring feature of the early discussion of Robodebt was a lack of transparency about the use of averaging procedures and the extent of mistakes leading to ‘over-recovery’. It was reported that many people simply paid debts rather than disputing them, partly because they could not access their past wage records. People also failed to ‘engage’ with Centrelink, because they were no longer receiving payments and therefore had not updated their addresses. In an answer to a Senate Question on Notice in 2019, the DHS said that the number of people for whom income was averaged to calculate debts ‘was not readily available’ (Senate Community Affairs Legislation Committee, Additional Estimates, 2019). The Commonwealth Ombudsman's (2017) report also noted that the DHS had not undertaken any modelling of ‘over-recovery’ of debts. It has recently been revealed that nearly 70% of debts raised involved either full or partial averaging.

5 | THE UNRAVELLING

Robodebt unravelled in 2019 and 2020. Victoria Legal Aid (VLA) had experienced a very large spike in calls for legal help with Robodebt issues from 2016 (Victoria Legal aid, 2019; Browne & Brumby-Rendell, 2020). In 2018, Centrelink raised a debt of over \$3700 against a former student (the Masterton case) and in February 2019 VLA filed an application for judicial review; within a week, the debt was reduced to around \$600. At the first case management hearing, Centrelink accepted the individual's original declared income, with the result that there was no debt and the Commonwealth argued that there was no longer a justiciable matter, so there was no legal ruling on the issue.

The second case raised by VLA was subsequently listed for final hearing. This Amato case also involved a former student who only became aware that a debt of just over \$3200 had been raised against her, plus a penalty of 10% for 'not engaging', when her income tax refund of around \$1700 was taken as a repayment. After the litigation was commenced, Centrelink gathered information from her employers to determine that the debt should be reduced to \$1.48.

In July 2019, the Federal Opposition called for the Robodebt programme to be dropped (whereas they had previously called for it to be suspended), and in July 2019 the Senate voted for a second Inquiry into the scheme. In September 2019, the Opposition announced that it was supporting a class action against the programme: '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' (Murphy, 2019).

In September 2019, the DHS completely dropped the Amato debt but refused to pay interest, so the test case continued, with the result in November 2019 that averaging was ruled unlawful – a conclusion that the government conceded a week before the case came to trial. The Federal Court ruled that the conclusion that a debt had arisen was irrational, in the requisite legal sense. This also meant that the decision to impose penalties was also unlawful. As a by-product, the garnishing of tax returns by the Australian Tax Office was also unlawful.

This ruling required the government to have more than 500,000 individual debts manually recalculated. As a result, in December 2019, the Mid-Year Economic and Fiscal Outlook – which updates the economic and fiscal estimates from the May budget – identified an 'unquantifiable contingent liability', labelled 'Welfare Integrity ... The effect on the identified debt, total value and return or recovery will not be quantifiable until reassessments are completed' (Department of the Treasury, 2019, p. 97).

In November 2020, the settlement of class action was announced with costs totalling \$1.2 billion, comprising refunds of \$721 million to 373,000 people, \$112 million in compensation and \$398 million in cancelled debts. This was the largest class action settlement in Australian history. Moreover, this does not take into account any administrative costs incurred in recalculating overpayments, when a significant component of the original cost savings was to shift this administrative burden onto members of the public.

6 | ROBODEBT – (LAYER 2) WHO WAS RESPONSIBLE?

Identifying the individual decision-makers responsible for Robodebt would seem to require the establishment of a Royal Commission. However, a number of observations can be made. Responsibility for policy development for the social security systems rests with the Minister for Social

Services. Responsibility for the administration of the system rests with the Minister for Government Services, previously known as the Minister for Human Services, who is a more junior Minister within the Social Services portfolio. The DHS is now known as Services Australia and administers the social security system through Centrelink, a statutory agency established in 1997 to deliver services on behalf of other government Departments, similar in some respects to a 'purchaser-provider split'.

A feature of this relationship is that savings in spending on social security outlays often require additional spending on the administration of benefits. For example the original 2015–2016 package of 'Strengthening the Integrity of Welfare Payments' involved additional spending of \$240 million to achieve net savings of \$1.7 billion. The 'Better Management of the Social Welfare System' package in 2016–2017 involved social security savings of \$4.35 billion, minus expenses of \$530.7 million and capital expenses of \$75.1 million, to give net savings of \$3.7 billion. In all these cases, the additional spending went primarily to the DHS to improve infrastructure such as the upgrade of computer systems and to increase staff numbers for the extra administrative work involved.

The 2015–2016 Budget also involved the upgrade and modernization of Centrelink's computer systems. This programme of work is estimated to have cost more than \$1 billion since 2015–2016 (Hendry, 2021). Notably, the 2015–2016 Budget stated that 'the cost of this measure [WPIT] will be offset from existing resources within the Social Services Portfolio' (Department of the Treasury, 2015). That is arguably Robodebt can be viewed as part of the way of paying for the needed upgrade to Centrelink's ICT system.

Quite apart from these Budgetary incentives, generally speaking, one would expect that a proposal like Robodebt – a 'streamlining' of debt raising procedures by Centrelink – would originate from within the DHS, with comments by the Department of Social Services, including in relation to any legal issues, before proceeding to be considered as part of the annual Budget. Australia has long-established procedures for the consideration of Budget proposals before they are approved. The Expenditure Review Committee (ERC) is a committee of Cabinet responsible for examining all proposals in light of the Government's overall fiscal strategy, advising Cabinet on Budget spending priorities, and initiating reviews of individual ongoing programmes. Membership of the ERC consists of the Prime Minister, Treasurer, and the Minister for Finance, along with other selected portfolio ministers. Any Budget initiative of this size would be approved by ERC, sometimes with comments from the Attorney-General's Department if there are any legal issues to be addressed. Given these well-established procedures for scrutinizing Budget proposals, the policy fiasco in this case becomes even more puzzling.

It is worth noting that the Minister for Human Services (Marise Payne) at the time of the original Budget proposal was subsequently promoted to Minister for Defence and is now Minister for Foreign Affairs. The then Minister for Social Services (Scott Morrison) became Treasurer and since 2018 has been Prime Minister. The subsequent Minister for Social Services (Christian Porter) between 2015 and 2017 is currently the Attorney-General. The current Ministers were not part of this earlier process.

The policy decisions leading to Robodebt were made by individuals, but 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 most important aspects of this deeper political environment included the strong commitment of Australian political parties to reduce Budget deficits and 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 of this deeper background is the development of digital benefit delivery and reporting, and the growing role of automatic decision-making (discussed below).

The confluence of these background factors could be thought of as producing a perverse ‘window of opportunity’ – similar to what Kingdon (1995) has described as the combination of contexts producing successful public policies, but in this instance responsible for an ill-intentioned policy bypassing established processes. Kingdon (1995) points to these windows opening at the moment when a problem is recognized, a solution is available, and the political conditions are favourable. In the case of Robodebt, although the problem was presented as the need to ensure integrity in the social security system, for government the problem was how to cut the Budget deficit. The solution was using a long-established system of data-matching, but one where data on historic debts were now more readily available and technological advances could be used as a screen to claim greater efficiency. The political conditions were favourable due to long-standing views by conservative political parties and many in the public that recipients of welfare payments are underserving and a burden on taxpayers (Whiteford, 2017b).

7 | WELFARE AUSTERITY, BUDGET REPAIR, AND THE POLITICS OF ‘THEM AND US’

Australia is a country with comparatively low levels of net public debt – estimated by the International Monetary Fund as the eighth lowest among advanced economies. In relative terms, Commonwealth net debt grew rapidly after the 2008 Financial Crisis, increasing from –3.4% of GDP in 2007–2008 to 3.7% of GDP in 2009–2010 (Department of the Treasury, 2019), increasing to peak at 19.2% of GDP in 2018–2019. Despite the comparatively low level of public debt, the level of debt and the Budget deficit are among the most observed economic and political indicators in Australia. The major political parties emphasise the Budget deficit as an indicator of responsible economic management. Hence, the commitment of the savings from Robodebt to ‘budget repair’.

It is notable that the projected savings from Robodebt are much more significant relative to the Budget deficit than the estimated overpayments were to social security spending. In 2019, before the government conceded that Robodebt was unlawful, the Budget Papers had boasted ‘The 2019–20 Budget delivers a surplus for the first time in over a decade’. The projected cash surplus in that year was wafer-thin at \$5 billion. The \$1.2 billion that the government has been required to pay is close to one-quarter of the projected surplus but less than 1% of annual spending on social security and welfare.

Although Australia also has a comparatively low level of spending on cash benefits – the fourth lowest in the OECD – ‘Social Security and Welfare’ (SSW) spending is the largest single item in the national Budget, generally accounting for 35% or more of total Federal government spending for the last decade (Department of the Treasury, 2019). Therefore, when governments seek to achieve ‘budget repair’, adjustments to social security spending are commonly considered. However, cutting social security spending in Australia poses complex trade-offs – because Australia relies on income-testing more than any other OECD country, the share of social security spending to low-income groups is the highest in the OECD (Whiteford, 2010). The corollary of this extreme level of targeting is that cuts in benefit levels disadvantage the poor and increase income inequality more than in any other advanced economy.

In this context, increased recovery of ‘overpayments’ seems like a relatively benign way of achieving Budget savings, because it only gets back money that individuals should never have received in the first place. As noted above, the 2016 legislation strengthening enforcement

procedures and extending backwards the period for which debts could be raised received bipartisan support. However, the politicisation of Robodebt started early, but has reversed itself in an interesting fashion. Following the first Senate Report in 2017, the then Human Services Minister argued 'This is a politically motivated and factually inaccurate report, reflecting the fact that Labor and the Greens don't support auditing of the welfare system' (Knaus, 2017). By 2019, a subsequent Human Services Minister was identifying a list of initiatives by previous Labor Governments that he claimed were the basis for Robodebt (Robert, 2019) – clearly an attempt at blame-shifting. The initiative that the Minister highlighted and government members emphasised in responding to the interim report of the second Senate Inquiry was the automation of the tax garnisheeing process for recovering identified debts. The initiative was projected to affect 65,000 people and raise \$71 million over 4 years, orders of magnitude less than originally envisaged under Robodebt.

8 | ONLINE SERVICES AND ALGORITHMS – AUTOMATING UNFAIRNESS?

The fact that this initiative has been popularly labelled 'Robodebt' appears to highlight the role of automated decision-making in this policy case. Increasing automation and associated developments can be viewed as part of the background environment in which the decision to launch the Online Compliance Scheme was made. As a starting point, in 2013, the Australian government launched its online service portal myGov as a secure way to access government services online with one login and one password. By 2018, 13 services were provided through the portal, including those from the Australian Taxation Office and Centrelink. In replying to a Senate Estimates Question on Notice, the DHS said that at October 31, 2018, there were 14.4 million myGov accounts (Barbaschow, 2018), which is roughly 70% of adult Australians. In 2016, at the commencement of Robodebt, it can be roughly calculated that coverage was closer to 40% of adult Australians, which may partly explain why individuals were not 'engaging' with requests to clarify their past earning patterns.

The initial announcement of the OCI in the 2015–2016 Budget stated that 'From 1 July 2015 DHS will implement an integrated package of compliance and process improvement initiatives including improved automation and targeted strategies for fraud prevention in areas of high risk' (Department of the Treasury, 2015). As noted, the initiative came after the 2015 announcement of the Welfare Payment Infrastructure Transformation (WPIT) programme. The government stated that this would offer better data analytics, real-time data sharing between agencies, and faster, cheaper implementation of policy changes. The then Minister for Human Services also noted, 'This means customers who fail to update their details with us will be less likely to have to repay large debts, and those who wilfully act to defraud taxpayers will be caught much more quickly' (Cowan & Coyne, 2015). (These initiatives also followed the introduction of new computer systems in the Tax Office, which introduced the Single Touch Payroll (STP) system, streamlining the way employers report payroll and superannuation information.)

The view of Robodebt as an example of how automation and digital technology can be used to police and punish the poor (Eubanks, 2017) was taken up in press and social media reporting, including in a global series in the Guardian (*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'. The series took examples from India, the United Kingdom, the United States as well as Australia, including Robodebt and other automated processes.

Busuioac (2021) notes that the impact of digital technologies on the public sector has been well recognized as transformative, and argues that artificial intelligence (AI) is set to significantly accelerate such processes, not only in terms of how services are structured. She emphasises that these technologies will influence public service values, the exercise of administrative discretion and professional judgment. Busuioac (2021) therefore emphasises the importance of oversight of AI algorithmic decision-making.

In many respects, however, situating Robodebt within this important, emerging policy literature is not appropriate. Although the government emphasised ‘improved automation’, the fundamentals of data-matching had commenced in the 1990s, and never previously caused the problems observed from 2016 on. The division of annual income by 26 scarcely qualifies as an algorithm, much less as a process involving machine learning.

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. It is worth noting that this astonishing increase in the number of detected anomalies should have been regarded as a warning signal, implying either that increases of this order of magnitude were spurious, or that the administration of the benefit system had previously been extremely weak.

The importance of oversight as recommended by Busuioac (2021) is certainly confirmed by the Robodebt case, but this was not the introduction of an algorithm without sufficient transparency and oversight, but the reverse – the deliberate weakening of existing procedures to verify that anomalies were real. The dramatic increase in the number of ‘overpayments’ only ‘worked’ because of the reversal of the onus of proof – the unlawful shifting of the requirement that the government prove that there had been an overpayment to the situation where hundreds of thousands of former recipients were effectively required to disprove something that had not actually happened. The weakening of existing mechanisms of oversight and review is also evident in the government’s failure to appeal unfavourable Administrative Appeals Tribunal (AAT) decisions and their actions in dropping debts rather than allowing the Federal Court to determine the lawfulness of the programme.

9 | ROBODEBT – (LAYER 3) WHAT WERE THE POLICY OBJECTIVES?

The Government response to the first Senate Community Affairs Committee Report stated:

‘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’ (Australian Government, 2017, p. 5).

The Services Australia Submission to the second Senate Inquiry also refers to protecting ‘the integrity of the welfare system’ seven times in 16 pages of text, concluding with the statement (just before 24 pages of Appendices) that ‘we continue to protect the integrity of the welfare system by ensuring that the right people receive the right amount of payment, at the right time’ (Services Australia, 2019, p. 16). As noted above, the most recent Treasury MYEFO also labelled its newly identified contingent liability as relating to ‘welfare integrity’.

The aim of maintaining the integrity of the social security system is widely supported – few would argue that deliberate fraud should not be penalised. However, virtually by definition the possibility of overpayments is inherent in any system of income-tested benefits (Millar & Whiteford, 2020). Nearly all of the framing advanced in official documents is that the recipients were at fault (cf. Dowding, 2020) in not correctly reporting their income at the time benefits were paid. Notably, however, Departmental documents generally did not label this as deliberate, but as common mistakes, such as reporting earnings after tax rather than before tax (see below).

A notable contrast to this was then Minister for Social Services (Christian Porter) who in responding to the first Senate Report in 2017 argued that ‘There are a massive amount of overpayments that occur in the system, now we are actually tackling that problem’ (Knaus, 2017). The Minister for Human Services (Alan Tudge) in December 2016 spoke about the online compliance system (and another program of welfare compliance) saying that people were cheating the welfare system. ‘We’ll find you, we’ll track you down, you will have to pay those debts and you may end up in prison’.

Although the objective of maintaining integrity may be widely agreed, it is difficult to see the processes described above as having integrity, given that key features of the process were unlawful from the start. O’Donovan (2019) notes the unfair impact of the combination of the reversal of onus of proof, income averaging, and the system’s lack of transparency:

‘The word “integrity” and “right payment to the right person” often get thrown around as justifying this programme. Firstly, the department has never published any analysis of whether debts are over or under calculated, despite an Ombudsman ‘suggestion’ it do so. Regardless of your political belief, debts should not be determined by a person’s capacity to contest and the financial and time resources available to them. But that is what we now have’.

The ‘right payment to the right person at the right time’ also has a very hollow ring given that the unlawfulness of income averaging means that in hundreds of thousands of cases there was never an overpayment in the first instance. Strikingly, in the Amato case, a Freedom of Information request revealed that she had actually been underpaid by \$480 for the period concerned. If the government were serious about ‘the right payment’, it would have sent the client a cheque, not a debt.

There is a further lack of reciprocity in determining from income tax returns whether a person has been overpaid. In the Services Australia Submission to the current Senate Inquiry (table 7, page 15), they give the example of an illustrative customer receiving Newstart Allowance in 2015–2016, who mistakenly reported net income after tax of \$16,522 to Centrelink, but who earned \$5000 more in gross income. This example meant that the individual had been overpaid \$3000 (60% of \$5000). The Submission states that reporting net income rather than gross income is one of the common misunderstandings of income test obligations. But Newstart Allowance is taxable income, so if Services Australia raises a debt of \$3000 this means that the taxable income the individual received in respect of the 2015–2016 tax year would be overstated by this amount, and he would have paid \$570 more in income tax than he should have, given that his taxable income has been retrospectively adjusted downwards. The time limit for amending a tax assessment is 2 years, but one of the features of Robodebt was to extend the period for which a social security debt could be raised to 7 years prior to the date of initiation of the customer letter. This means that even in cases where the debt was correctly calculated, a former recipient could be financially penalised, even though the reporting error was an honest mistake.

10 | ROBODEBT – (LAYER 4) WAS A POLICY FIASCO FORESEEABLE?

The current evidence strongly supports the conclusion that the outcome was foreseeable. Complaints started at the very beginning of the process in late 2016. Although not a comment on the lawfulness of the policy, in January 2017 Whiteford (2017a) noted that the complaints emerging about Robodebt reflected ‘an over-simplistic application of policy to the complexity of workers’ lives in a flexible labour market’, and pointed out that ‘the formula used by Centrelink can produce false estimates of debts by dividing by 26 the annual wages employers report paying. This approach will only work correctly if individuals receive exactly the same income each fortnight’.

In July 2017, Peter Hanks QC gave the National Lecture at the Australian Institute of Administrative Law National Conference in which he criticised the Commonwealth for its new method of raising and recovering what ‘Centrelink chose to describe as “debts”’ (Hanks, 2017) (i.e. they were not debts). Between April and September 2017, Professor Terry Carney – who served for nearly 40 years as a member of the Social Services and Child Support Division of the Administrative Appeals Tribunal and its predecessor the Social Security Appeals Tribunal – made five judgements that there was no debt where Centrelink calculated overpayments applying averaged annual income to specific shorter periods. The Department could have appealed these judgements to the next level of the Administrative Appeals Tribunal where rulings would have been published, but chose not to – suggesting that it was not confident of its position. In September 2017, the government chose not to reappoint Professor Carney to the AAT. In an article published in 2018, Professor Carney argued that the failure of a person to disprove the possibility of a debt is not a legal foundation for a debt (Carney, 2018). This was also pointed out by Hanks (2017), and was the conclusion reached by the Federal Court in 2019.

From the perspective of income-testing policy design, it should also have been clear from the outset that part-year recipients could not validly be assumed to have received the same average income each fortnight (Whiteford, 2017a). Carney has described this as a matter of ‘simple mathematics’ and a ‘kind of kindergarten law it was so open and shut’ (quoted in Henriques-Gomes, 2020a).

In the 2019–2020 class action, Gordon Legal revealed that there had been 76 unfavourable decisions in the Administrative Appeals Tribunal that had not been appealed, and that the Minister for Human Services had been briefed (Henriques-Gomes, 2020b) as early as 1 March 2017 that ‘33% of Robodebt-raised debts “were changed to \$0 on review/reassessment”’. The failure to appeal the unfavourable AAT decisions and the dropping of debts before the Masterton and Amato court cases strongly suggests that the Department was aware that the overpayments calculated were inaccurate, possibly since 2017.

If the problems with Robodebt were foreseeable, could it have been turned into a policy success (Compton et al., 2019; Luetjens et al., 2019; Mc Connell, 2010); indeed, was there ‘a point of intervention’ (Seibel, 2020) where the disastrous results could have been averted? Luetjens et al. (2019) provide around 20 case studies of policy successes in Australia and New Zealand in decades prior to Robodebt. These reinforce the observation that the Australian government is certainly capable of effectively carrying through worthwhile policy change of value to its citizens. Arguably, this capacity for positive government action only further highlights the unusual nature of this fiasco.

The overt problem that the initiative related to was benefit overpayments. There is no evidence, however, that these were growing in significance in the period leading up to the introduction of Robodebt. Rather the objective of ‘Budget repair’ was the real policy problem that the initiative

addressed. This confounding of surface objectives with less-emphasised underlying goals could be considered as contributing to making success less likely – to be successful may require clarity of objectives. As discussed earlier, it also seems likely that a technical proposal of this sort would have come from within the bureaucracy, but it could be expected to fall on receptive ears of Ministers prioritizing deficit reduction and seeing social security recipients as undeserving.

There are also possible points of intervention where the fiasco could have been avoided. The internal discussion between the DHS and the Department of Social Services should normally be expected to shoot down unlawful policy proposals. The Expenditure Review Committee Process should also provide an opportunity to identify fundamental flaws of this nature. The decisions of the AAT are also intended to provide a brake on errors of this sort. The fact that none of these well-established points of intervention were effective in this case only reinforces the impression that this was an intentional act of malfeasance.

11 | CONCLUSION

The Robodebt fiasco involves policy failures across numerous dimensions. The most obvious – and in many ways the least important failure – is that it failed to achieve the budgetary savings that were its main objective.

The unlawfulness of the policy meant there were related policy failures of an extensive and serious nature. The penalties applied to Robodebts became unlawful as a consequence of the unlawfulness of income averaging. The garnishing of wages by a separate government agency, the Australian Taxation Office (ATO), also necessarily became unlawful when the debts were unlawful. Arguably, the whole policy became inconsistent with the requirements of the government's Red Tape Agenda, because that provides that enforcement actions do not have to be offset or reported, but can enforcement be applied to characterize an unlawful policy?

There are other serious ethical issues. Carney (2019b) argues that Robodebt breached 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. Reversing the onus of proof raises the most serious ethical issues, given the disparity between the power of the government and the power of individuals. In terms of policy recommendations that a possible future Royal Commission could make, this is an obvious area for clearer guidelines.

More seriously, hundreds of thousands of members of the public were adversely affected. This human cost is very difficult to assess and involves much more than financial losses. Just over 2000 people who had received a Robodebt notice between July 2016 and October 2018 died during that period (Hickey, 2019), although in the absence of an official Coroner's report no cause can be attributed. It has been noted, however (Hickey, 2019), that from January 2017, Centrelink began tweeting the contact number for Lifeline, the national charity providing those experiencing a personal crisis with access to 24-hr crisis support and suicide prevention services.

In many aspects, 'Robodebt' represents a new form of policy fiasco. The budgetary and ethical disaster that the Australian government brought on itself is not the result of implementation failures. It does not bear the hallmarks of other policy disasters, such as dispersed governance or inadequate collaborations (Hudson et al., 2019). It does, however, reflect the approach discussed by Dowding in which governments blame citizens for policy problems. It was not over-ambitious in scope, and although it relied on the development of new IT systems, these did not fail.

In his analysis of the 2010 'Loveparade' disaster in Germany in which 21 people died and 652 were injured, Seibel (2020, p. 8) notes, 'The Loveparade catastrophe was a man-made disaster

in the classic sense. It did not happen by accident. Nor did it happen because of carelessness or lack of skill of those involved in planning and preparation. Neither was it the consequence of structural complexity of governance, bureaucratic inflexibility, “wicked problems”, or unsolvable managerial issues. It happened because key actors within the relevant municipality purposefully undermined and successfully circumvented the relevant security regulation’. These observations are equally relevant in the case of Robodebt.

There are some reasons to be cheerful. Although the checks on decision-making built into the appeals processes in the Australian social security system were initially brushed aside, the combination of community activism, journalistic investigation, political scrutiny, and the legal aid and court systems appears to have ultimately provided a remedy for this major policy malfeasance. There is clearly a need to strengthen these formal accountability and review structures, particularly the Administrative Appeals Tribunal. These lessons will become increasingly relevant as digital delivery of payments and automation of decision-making become more prevalent.

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ENDNOTES

- ¹ This does not mean that there were no overpayments correctly identified in the overall process; but it is not only that averaging is unlawful, but this method of calculation will inevitably produce false debts.
- ² This was not only used originally to identify overpayments, but also to identify underpayments and then advise families to claim, in order to increase take-up of benefits for children as part of the government’s commitment to ending child poverty (Whiteford et al., 2001).
- ³ Tracking debt trends is complex, as debts may be issued in one period, but not finalised until another.
- ⁴ An individual may be the subject of more than one review, so this is not necessarily the number of people affected.
- ⁵ The lack of transparency also led individuals to believe they were affected by Robodebt, when their debt was due to other factors and may have been correctly calculated, for example Age Pensioners who had benefited from lump sum inheritances and people with disability receiving compensation lump sums.
- ⁶ Each State and Territory has a government funded Legal Aid Agency which can provide free legal advice on certain issues.
- ⁷ However, this will obviously increase in 2019–2020 and later years, as a result of the Covid-19 pandemic.

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