

## Ensuring Robodebt never happens again – required policy and legislative changes

“The Robodebt Scheme was a gross betrayal and a human tragedy. It pursued debt recovery against Australians who in many cases had no debt to pay. It was wrong, it was illegal, it should never have happened and it should never happen again.”<sup>1</sup>

**The Robodebt scheme was based on an application of social security law which was found to be unlawful. While the core of the scheme was contrary to law, many legitimate aspects of the legislation encouraged and supported this situation arising and going unsolved for years. Legislative change is needed to prevent Robodebt from ever happening again, and to support and encourage quick identification and resolution of similar issues in the future.**

EJA acknowledges the efforts of Government, and particularly the cultural changes within Services Australia. However, future-proofing of these changes is necessary with additional reform outstanding.

EJA’s legislative reform agenda is outlined below under each relevant recommendation.

### **Recommendation 10.1- Design policies and processes with emphasis on the people they are meant to serve.**

1. Recommendation 10.1 needs to be inserted into legislation. This will be best achieved either through the creation of a statutory duty, or the modification of section 8 of *Social Security (Administration) Act 1999* (Cth) as a positive duty. Services Australia should be required under this section to actively assist people to engage with them while making claims for payments and managing payments to ensure people are receiving their entitlements and debts are minimised. The RRC Report provides important context to recommendation 10.1 requiring that:

Services Australia design its policies with a primary emphasis on the recipients it is meant to serve. That should entail:

- avoiding language and conduct which reinforces feelings of stigma and shame associated with the receipt of government support when it is needed
- facilitating easy and efficient engagement with options of online, in person and telephone communication which is sensitive to the particular circumstances of the customer cohort, including itinerant lifestyles, lack of access to technology, lack of digital literacy and the particular difficulties [of] rural and remote living
- explaining processes in clear terms and plain language in communication to customers, and
- acting with sensitivity to financial and other forms of stress experienced by the customer cohort and taking all practicable steps to avoid the possibility that interactions with the government might exacerbate those stresses or introduce new ones.

### **Recommendation 11.2 – Identification of circumstances affecting the capacity to engage with compliance activity.**

2. Law and policy must be amended to recognise that low rates of unemployment payments undermine recipients' capacity to engage with compliance activities. Changes that must be made

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<sup>1</sup> Prime Minister Albanese, 7 July 2023, <<https://www.pm.gov.au/media/press-conference-canberra-3>>.

to mitigate this, as well as provide a better social security safety net for the most vulnerable, include:

- a. Increasing the maximum rates of unemployment and related income support payments from \$55 to at least \$80 a day (the same level as the pension plus pension supplement) and indexing them to wages as well as prices.
  - b. Increasing the “income free area” and amending the tapering rates of certain working age social security payments, including Special Benefit, to bring them in line with that of the Aged Pension.
  - c. Increasing Commonwealth Rent Assistance by 60% (for a total 110% increase) as recommended by ACOSS.
  - d. Introducing or increasing supplements for particular cohorts of people who experience higher cost of living, including people living disability, single parents, people living in remote areas, and people with digital access issues.
3. Periodic systems review of compliance activities should be mandated by law. This should include analysis and review of trends in non-compliance with a view to identifying and addressing systemic issues. All such reviews should have to be made public.

#### **Recommendation 17.1 - Reform of legislation and implementation of regulation – Automated Decision Making**

4. Social security law should mandate human oversight of debt raising decisions where the alleged overpayment is caused by a person failing to comply with their obligations under social security law (e.g. reporting income). No debt should be raised for non-compliance solely as a result of automated decision making.
5. Social security law should mandate human oversight of payment cancellation decisions. No payment should be cancelled solely as a result of automated decision making.
6. Social security law should mandate human oversight of payment suspension decisions where suspension is caused by a person failing to comply with their obligations under social security law (e.g. reporting income). No payment should be suspended for non-compliance solely as a result of automated decision making.
7. Where a decision has been made using automated decision making, social security law should require notification of that decision to state this, and include details of how the decision was automated, what data was used (for example, data matching with the ATO), and how a person can challenge the decision.

#### **Recommendation 18.1 Comprehensive debt recovery policy for Services Australia**

8. In addition to developing a comprehensive debt recovery policy for Services Australia, legislative reform is needed to make the raising, recovery and review of Centrelink debts fairer and more consistent with the beneficial nature of the social security system, noting section 1.3.1 of the *Social Security Guide*. These changes should include the following:
  - a. Changes should be made to *Social Security Act 1991* (Cth) s 1237A, *A New Tax System (Family Assistance) Act 1999* (Cth) s 97, and *Student Assistance Act 1973* (Cth) s 43B to ensure individuals are able to have debts waived in full where overpayment was wholly or partly the result of a data matching error, or the result of incorrect information generated and presented by Services Australia to the individual, whether directly or via a third party.

In the case of family assistance payments, waiver should be available whether or not the person is experiencing financial hardship.

- b. *Social Security Act 1991* (Cth) s 1237AAD, *A New Tax System (Family Assistance) Act 1999* (Cth) s 101, and *Student Assistance Act 1973* (Cth) s 43F should be amended to enable debt waiver where a person's debt resulted from another person knowingly providing false information. A person should not be barred from accessing debt waiver only because someone else has knowingly given Centrelink false or misleading information.
- c. *Social Security Act 1991* (Cth) s 1237AAD, *A New Tax System (Family Assistance) Act 1999* (Cth) s 101, and *Student Assistance Act 1973* (Cth) s 43F should be amended to ensure that a false statement or misrepresentation etc, made as a result of coercion or duress or in circumstances of family violence, does not preclude access special circumstances waiver provisions. Other formulations for identifying the intent of the debtor need to be considered, for example, amending to 'knowingly and willingly', to provide this limitation.

### **Recommendation 18.2: Reinstate the limitation of six years on debt recovery**

9. Repeal of the statute of limitation on social security debts in 2016 speaks volumes about the low regard in which the Coalition Government held social security recipients, including people on Age Pension, Disability Support Pension, Carer Payment, Parenting Payment, Family Tax Benefit, JobSeeker Payment, etc. The singling out of social security debts is particularly egregious, making them the only Commonwealth debt without statutory limitation. This recommendation should be implemented in full, by repealing *Social Security Act 1991* (Cth) s 1234B.