

# **Centrelink and Commonwealth Director of Public Prosecutions**

REVIEW OF CIRCUMSTANCES LEADING  
TO A FRAUD CONVICTION

May 2010

Report by the Acting Commonwealth Ombudsman,  
Ron Brent, under the *Ombudsman Act 1976*

REPORT NO. **07|2010**

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## PART 1—BACKGROUND

1.1 In August 2007 Ms Z, a woman in her early 50s, was convicted of a charge pursuant to s 135.2(1) of the Criminal Code, that between February 2004 and October 2005 she intentionally obtained financial advantage for herself from Centrelink, knowing or believing she was not entitled to that financial advantage. Ms Z was sentenced to a 12-month good behaviour order with a self surety of \$1,000.

1.2 The conviction related to Ms Z's failure to declare earnings from work she had done on a 'commission only basis' as a sales representative while receiving a disability support pension (DSP).

1.3 In November 2007, a Centrelink review of Ms Z's circumstances found that she had failed to notify Centrelink that she had lent \$3,033 to a private company set up for her by her accountant for self-employment purposes in November 1987. The company had ceased trading in 2000–2001 and held no assets or bank accounts. The review resulted in Centrelink raising a further debt of \$200.87 against Ms Z from February 2004.

1.4 In March 2008, Ms Z approached the Ombudsman's office about several matters. One issue she raised was that Centrelink was unable to resolve a missing pension payment she was due to receive in December 2007. Ms Z also claimed that Centrelink regarded her as a 'high-risk' customer, which meant they frequently reviewed her circumstances.

1.5 Ms Z was distressed that she had not been able to find out if she would face further prosecution over the 2004 error (and the consequent \$200.87 debt in 2007). Although Ms Z had declared her involvement in her private company, completed the appropriate forms and provided copies of the relevant tax returns and company details to Centrelink, she had forgotten about the loan. Ms Z indicated to the Ombudsman's office that she felt threatened because, under the terms of her conviction, another mistake would require her to serve a term of imprisonment.

1.6 This report principally concerns the August 2007 conviction. Ms Z was adamant that she had declared the employment on her DSP claim form in 2004, but Centrelink had been unable at the time to decide how she should declare her earnings because it was not clear if she should be regarded as 'self-employed'. Ms Z said she had expected the assessor to get back to her with that information. She had never received any fortnightly reporting forms from Centrelink or instructions about how she should report those earnings.

1.7 Ms Z never disputed the debt. She repaid it in full in October 2006, before she was notified that prosecution action was being taken.

1.8 Ms Z indicated that she was stunned when she learned that prosecution action was being taken against her, but was confident that it would amount to nothing. Later, she stated, she was equally shocked that she had been convicted because she believed she had done nothing wrong.

1.9 In November 2007, Ms Z sought copies of her records under the *Freedom of Information Act 1982* (FOI Act) as a means of checking up on the actions she believed she had taken to notify Centrelink of her employment, but that had not been

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presented at the trial. In December 2007, Ms Z was sent an FOI decision letter and photocopies of the documents released.

1.10 Ms Z advised this office that she had not received documents that we noted had been 'batch-stored' rather than placed on the paper file, nor had she been advised of their existence, or why they had been excluded from the release to her as required under FOI legislation.

### **Initial Centrelink responses**

1.11 Centrelink responded promptly to the Ombudsman's office's enquiries. It advised that prosecution action was not being pursued in respect of the \$200.87 debt raised in November 2007. Centrelink also advised it had identified that Ms Z had not received a payment for December 2007 that was due to her, and issued the payment to her.

### **Other errors noted**

1.12 Our investigation noted from Centrelink's electronic records that a Complex Assessment Officer (CAO) had been involved in assessing Ms Z's interests in the private company and other assets.

1.13 We observed errors in Centrelink's records regarding several other small investments about which Ms Z had notified it. Based on discussions with Ms Z and our examination of the electronic records provided by Centrelink, we believe that Ms Z was cooperative and proactive in getting those investments recorded correctly.

## PART 2—OUR INVESTIGATION

### Work declared on DSP claim form

2.1 In the course of our enquiries we found that Ms Z had in fact notified Centrelink, on her DSP claim form, of the employment that resulted in her fraud conviction. She had reported the information in the wrong part of the form, rather than in the *Income and assets* section at Part H.

2.2 In response to the question on the claim form ‘Were you doing something not already covered here?’ Ms Z had declared she worked for ‘2 days per month for [employer name]’. This was reported in Part L, *Skills, experience and training*. In response to the next question, Ms Z again provided the employer’s name and phone number. She described her work as ‘sales rep—irregular casual’ and advised that the dates worked were from January 2002 to ‘current’. There was no provision in the question to advise the amount of earnings. Nor it seems did Centrelink follow up by seeking further details of the declared employment.

2.3 Ms Z claimed that she had difficulty identifying the correct question on the claim form in Part H against which to report her income. Her circumstances were unusual because she had given up full-time work due to her health, and had decided to continue doing the part-time sales work, which she could still manage.

2.4 Based on our examination of employment-related questions on the claim form that Ms Z completed, we concluded that it would have been difficult for an applicant who was self-employed to clearly identify the appropriate question under which to declare commissions.

2.5 Based on the instructions for completing the various questions, we did not consider it unreasonable for Ms Z to regard herself as, essentially, a self-employed sales representative who worked on a commission basis. We concluded that Ms Z’s error in recording this information in Part L rather than in Part H of the form was attributable, in part at least, to her difficulty in accurately recording her circumstances on the form. This might also explain her failure to record an income amount in Part H. Taking these matters into consideration, it is questionable whether Ms Z deliberately attempted to misrepresent her circumstances.

2.6 It should be noted that the current DSP claim form is substantially different from the version completed by Ms Z. Its revision, which specifically includes reference to self-employed work and is clearly numbered, has reduced the risk of similar errors occurring.

### Incomplete claim form provided to the Commonwealth Director of Public Prosecutions (CDPP)

2.7 Centrelink has advised this office that during the assessment of DSP claims, the medical section of the claim form (Parts K and L) is detached and processed separately from the rest of the form. This might explain why Centrelink did not follow up Ms Z’s declaration of her employment to establish the earnings from that employment, or how and when Ms Z should declare her commissions.

2.8 Centrelink did not make a decision about Ms Z’s DSP application until May 2004, more than three months after she lodged her claim. During that period, Centrelink wrote to Ms Z on three occasions (in February, March and April 2004) to

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follow up income-related information that was relevant to the DSP claim. There was no follow up concerning the employment information that she had provided on the form.

2.9 Centrelink's proposal to the CDPP to prosecute Ms Z for fraud included Ms Z's original DSP claim form, without Parts K and L. Those parts were not tendered as evidence in the trial either. In its response to a draft of this report, Centrelink indicated that it considered it was reasonable not to provide Parts K and L because those parts were intended for the DSP medical assessment, which was unrelated to the prosecution referral, which was based on the non-declaration of income.

2.10 Parts K and L of the form were held exclusively by Centrelink. In the Ombudsman's opinion, those parts were relevant to the question of Ms Z's intention to commit fraud. At the least, an argument could be made that a person who intended to fraudulently obtain additional payment by not disclosing employment income would not have revealed the details of the employment from which that income was to be derived. Indeed the Magistrate, in her judgment, expressly referred to the fact that the employment was not checked until 18 January 2007 when, in fact, Centrelink held documentary proof of a declaration in 2004.

2.11 In the Ombudsman's view, Centrelink had an obligation to provide this material to the CDPP, or at a minimum to advise the CDPP that the DSP claim form provided as evidence was incomplete—that it only included the parts that Centrelink considered to be relevant.

2.12 Centrelink has subsequently advised that a more thorough review of Ms Z's file might have identified that Parts K and L of the DSP claim contained potentially relevant information. Centrelink has also acknowledged that a more rigorous check of other documents would have been preferable.

2.13 Our review of the CDPP's prosecution file record of Ms Z's case suggested that a similar oversight occurred. Apparently, the CDPP did not notice in its examination of the evidence Centrelink provided to it that Parts K and L were missing from the claim form. If the CDPP did notice that parts of the form were missing, it did not attempt to find out if the missing information was relevant to its considerations about Ms Z's intent to misrepresent her circumstances. Nor was any other action taken by the CDPP to confirm with Centrelink that Ms Z had not notified her employment on the parts of the claim form not provided to it.

2.14 In its response to these issues, the CDPP advised that:

It is important to recognise that as a prosecuting agency the CDPP has no investigative function and does not investigate alleged criminal offences. It is necessarily the case that the CDPP relies on investigative agencies to provide the CDPP with the necessary evidentiary material to prosecute and to meet disclosure requirements. This includes all information against the defendant which has been gathered in the course of the investigation.

2.15 The CDPP acknowledged, however, that:

It appears that the prosecution proceeded on the understanding that Ms Z had not declared her employment with [employer name]. On the [CDPP] file there is a handwritten note 'Def. Participated in TROI—*stated she declared her employment on claim form—in fact she did*

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*not.* I understand 'TROI' to mean either 'Taped Record of Interview' or 'Transcribed Record of Interview'. [emphasis added]

2.16 It would seem from this statement that the prosecution proceeded on a misunderstanding. Ms Z had in fact declared her employment on the claim form, but the CDPP apparently had not seen the entire claim form.

2.17 This highlights the difficult issue the CDPP encounters in distinguishing between picking up the agency's fraud investigation role and its role in considering and assessing evidence. However, checking the veracity of the evidence provided to the CDPP at a most simple and basic level is part of the exercise of preparing a brief. In this instance, the Ombudsman considers that the delivery of only parts of key documents is a sufficiently obvious error, and that careful scrutiny of the prosecution materials should have revealed that the missing material should have been provided.

### Record keeping matters

2.18 In response to our draft report, Centrelink contended that the prosecution referral was based on Ms Z's failure to declare income over an extended period, not just on the claim form. This may be so, but it could equally be said that Centrelink failed on a number of occasions to elicit information that would have clarified Ms Z's employment and income.

2.19 Centrelink initially failed to act on the information provided on the claim form. If Centrelink had contacted Ms Z to clarify her employment situation, it is likely that she would have been provided with the *Reporting and Income Statements* normally issued to people to advise Centrelink of their income, if they have variable casual earnings. Alternatively, as explained in the section of this report called *Declaration of commissions (earnings)*, Centrelink could have advised Ms Z of how and when she was required to declare the commissions she received.

2.20 In August 2005, Centrelink selected Ms Z for a 'service update review'. This was a comprehensive review of her circumstances that included a lengthy interview. Ms Z was required to bring to the interview documentary proof of her identity and her current income and assets. She later claimed, at the fraud interview with Centrelink, that she provided a spreadsheet of her commission earnings at the service update review interview.

2.21 As part of this investigation, we asked Centrelink to provide all documentation related to the fraud investigation. There was no indication from the documents provided that follow up action had been taken by Centrelink after the service update review, or concerning the spreadsheet that Ms Z claimed to have provided to Centrelink. The electronic records provided by Centrelink indicated that Ms Z had attended the service update interview, some of her investment information had been updated (though no earnings information had been recorded), and correspondence had been placed on a batch file. However, the electronic records did not contain complete details of the documentation submitted by Ms Z, so it was not possible to confirm that she had provided a spreadsheet of information about her income. Centrelink has advised that it no longer has the batch-stored documents because they were culled in August 2008.

2.22 Ms Z's claims cannot be verified because the information gathered by Centrelink and the documentation provided by her at the interview were not placed on the customer file. However, it is clear that on 9 May 2006, when the fraud investigation commenced, this information should have been available and retrieved



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as part of the investigation. Any claim made by Ms Z during the fraud interview that she had produced figures about her earnings at the ‘financial reviews’ should have been followed up.

2.23 The Ombudsman’s office questions the basis for Centrelink’s decision to batch-store interview records of this kind, which are generally more comprehensive than the information collected on a claim form. Significant documents of this type should be stored on the customer file, where they would not be subject to destruction after 12 months.

2.24 During the prosecution proceedings, the Magistrate asked about an electronic record submitted as part of the prosecution’s evidence. The Centrelink witness described the service update review form (SA373) as being:

...a very comprehensive form and it will go through every detail about the customer. It’s almost like a brand new claim form.

2.25 As this was a fraud investigation with potentially grave consequences for the customer, we consider that all statements and claims made by Ms Z should have been thoroughly checked. Centrelink responded to this office that it preferred to rely on the accuracy of the electronic records it made of contacts with Ms Z. Centrelink was also of the view that, as it took no action at the time to update Ms Z’s records with information about earnings, it is unlikely that she provided the spreadsheets as later declared.

2.26 However, the Ombudsman’s office has noted that an electronic record made following another service update review of Ms Z’s case in January 2006 indicated she advised Centrelink that she had ceased working in August 2005. She stopped working because the advice she was given about how to calculate her commission payments for Centrelink was too confusing. This record adds weight to Ms Z’s claims that she discussed her employment with Centrelink at the August 2005 service update review and that no action was taken by Centrelink to follow up on that issue.

### **Declaration of commissions (earnings)**

2.27 In response to our draft report on this investigation, both Centrelink and the CDPP commented that there were several areas of evidence relevant to Ms Z’s intent to misrepresent her circumstances. These related to Ms Z’s alleged failure to declare her commissions during the 16-month period between when her pension was granted (20 May 2004) and when she ceased work (September 2005).

2.28 Although that evidence was accepted by the Court in recording a conviction, there are other considerations that were not before the Court. Together with the other matters mentioned in this report, they demonstrate the complexity of Ms Z’s situation and may help to explain her actions in not reporting her commission earnings each fortnight.

2.29 The CDPP case noted that Ms Z had declared employment earnings in 1999 for Newstart Allowance (NSA) purposes. Ms Z would have been issued an automatically-generated reporting form each fortnight which advised the period the form covered and when it had to be lodged.

2.30 However, the CDPP was not aware that Ms Z had also received an invalid pension (IP) briefly in 1983. At that time, unlike NSA, pension payments were based

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on an annualised, rather than fortnightly, income amount. The same applies today for particular types of income in assessing eligibility for DSP.

2.31 In the general experience of the Ombudsman's office, Centrelink customers in receipt of NSA or a pension can experience difficulty in accurately reporting their employment earnings if they work casual, irregular hours.

2.32 Commission earnings are more complicated than variable casual earnings. The reporting frequency is based to some extent on whether the person is regarded for social security purposes as being self-employed (such as an Avon consultant), an employee (such as a commission-only real estate sales person), or an employee who receives commission as a one-off lump sum payment. Depending on how Centrelink assesses the circumstances, the person's income could be averaged out over a 52-week period, or it might need to be reported fortnightly. Ms Z's circumstances could have placed her in one or other category.

2.33 One factor used to decide if a person is self-employed or an employee is whether superannuation payments are taken out of the gross commission. If they are, this could indicate that the person is an employee for social security purposes. We note that the payment history provided by Ms Z's employer referred only to tax and not superannuation being deducted from her gross monthly commission earnings.

2.34 Another variable to consider is that Ms Z's annual commissions might have been based on the amount she had declared on her tax return for the previous year. Alternatively, the correct figure could have been the commission she earned in the six-month (or even 12-week) period before she lodged a claim, and thus be reviewed and adjusted every six months or 12 weeks thereafter. The reporting obligation might also have been based on monthly or fortnightly reporting.

2.35 The complexity of the reporting arrangements for Ms Z was borne out by the point, noted earlier in this report, that she claimed to have ceased work in August 2005 because she was confused about how to calculate and advise her commission payments. This point was noted in Centrelink's records after it became aware of her commission-only based employment.

### **Fraud interview and investigation**

2.36 The Ombudsman's office is also of the view that the fraud investigation and interview with Ms Z was of poor quality. Centrelink has advised that the investigator leading the interview was new to fraud investigations. The investigator's adherence to the script resulted in a lack of flexibility in the line of questioning and the failure to seek further clarification from Ms Z about her claims.

2.37 Throughout the fraud investigation, Ms Z maintained that she had declared her employment on several occasions. She responded similarly during the fraud interview, but no attempt was made to explore this claim. Instead, the interviewer questioned Ms Z's knowledge of her notification obligations.

2.38 Based on our examination of the interview transcript and tapes, the Ombudsman's office considers that Ms Z's case could have been handled differently and better. There was inadequate exploration of some of the answers Ms Z provided in the interview, and no action was taken to follow up or locate batch-stored documents that could substantiate Ms Z's claims about the information she had provided to Centrelink.

## **Department of Veterans' Affairs (DVA) disability pension debt**

2.39 Ms Z was on a DVA disability pension (DP) when she applied for a DSP. As noted earlier, Ms Z declared this information on the DSP claim form. Her health had deteriorated, which had led to her having to give up full-time work and claim DSP. At that time, she also applied for a reassessment of her DVA disability pension.

2.40 In October 2004, DVA decided to increase Ms Z's disability pension from the date she had applied for reassessment. The backdated increase in DP meant that she was overpaid DSP and underpaid DP. As is the practice, DVA liaised with Centrelink to deduct the DSP overpayment from the arrears of the DVA disability pension. This was a seamless and routine adjustment organised between DVA and Centrelink, in which Ms Z played no part; for her, the two amounts cancelled each other out. The result was that she did not receive any money above her overall entitlement in relation to this Centrelink debt, which was about \$2,400.

2.41 This debt was not presented as evidence in the trial, but it was commented on in the prosecution submission prepared by Centrelink. The lingering impression was that Ms Z had been paid above her entitlement and owed money to Centrelink. In response to our draft report, Centrelink explained that the issue had been included in the prosecution submission because Ms Z had referred to it in a written statement she had prepared for Centrelink for the fraud interview. That may be so, but the way in which the matter was included in the prosecution submission possibly led to an incorrect assumption that there was an established pattern of fraudulent behaviour by Ms Z.

2.42 In our investigation of the CDPP file, we found a record of the CDPP legal officer contacting Centrelink about the significance of the DVA debt in July 2007, a month before the scheduled court hearing and some months after the decision to prosecute was made (in February 2007). In its response to the draft report, the CDPP argued that the question asked (*Could you please clarify the situation with another overpayment she received relating to DVA—why was it raised and has it been repaid?*) was neutral. In the CDPP's view, its decision to proceed to prosecution was not inappropriately influenced by this matter.

2.43 The Ombudsman's office found that the matter was not explicitly discounted on the CDPP file as a relevant issue. Further, the Ombudsman considers that the question being raised after prosecution action had been initiated, regardless of its neutrality, indicates the question of the debt remained unresolved. Despite its neutrality, the question assumed wrongly that Ms Z was overpaid and that she owed money. This was not the case. Ms Z was entitled to what she received and the debt was simply a matter of the agencies resolving between themselves the correct source of the funds. In these circumstances, it cannot be ruled out that the prosecutor's conclusions about Ms Z were not incorrectly influenced by this debt.

## **Behaviour/conduct of fraud investigation**

2.44 The draft report, in commenting on the deficiencies identified during the Ombudsman's investigation, questioned whether the conduct of the officers involved in Centrelink's investigation of Ms Z's affairs met the standards required under the *Public Service Act 1999*. In response, Centrelink advised that at the time of the fraud investigation the lead investigator had been in Centrelink's employ for only four months and, therefore, was more dependent on the interview script and investigative guidelines than a more experienced investigator might have been. Centrelink was of

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the view that this, rather than any bias of the investigator towards achieving a conviction, affected the quality of the investigation.

2.45 Centrelink also indicated that the officers concerned no longer worked for Centrelink. Nevertheless, this brings into question the management of those staff and, consequently, the quality control measures employed by Centrelink to ensure proper oversight of its fraud investigations.

2.46 Centrelink further advised that there were limitations in the guidance that it provided to investigation officers at the time Ms Z's actions were investigated. Since then, Centrelink has implemented a more prescriptive and robust set of instructions for fraud investigators in its *Fraud Investigation Manual*, and through improved training and key decision point quality assurance reviews. The revised *Fraud Investigation Manual* was developed by Centrelink in collaboration with the Australian Federal Police (AFP) and other external stakeholders. It was implemented in April 2008.

### **Prosecution case**

2.47 The prosecution case was largely based on eight letters of advice sent by Centrelink to Ms Z during the period of debt accumulation. The prosecution argued that Ms Z had failed to advise Centrelink that her commission earnings had not been included in the amounts shown in the Centrelink statements.

2.48 Examination of the eight letters used as evidence showed that several terms were used to describe earnings from employment, such as 'income', 'earnings' and 'self-employment'. This would have added to Ms Z's confusion about whether her commissions from self-employment were included in Centrelink's assessment of her total income and earnings. Our examination of the file notes made by the CDPP revealed that the prosecution also had difficulty understanding the annualised income amounts shown on some of the advices.

2.49 The CDPP asked Centrelink to explain a large figure on one of the advices identified as annual income that was being taken into account at that time. We observed that Centrelink's response to the CDPP was only partly correct. Centrelink claimed it was the annualised DP paid by DVA. In fact, the figure also included a deemed amount of income from bank accounts and other investments, such as shares held by Ms Z.

2.50 To understand how Centrelink had arrived at the figure, Ms Z would have needed to know the value of her shares and the bank account balances at the time that Centrelink recorded them, as well as the deeming rates at that point in time used by Centrelink to calculate her deemed income from those investments.

2.51 We noted also a discrepancy in the CDPP records regarding the discovery of Ms Z's debt. The prosecution case seems to have been based on the debt having been detected through a data-matching program that compared Centrelink and Australian Tax Office (ATO) records. A Centrelink electronic record in May 2006 indicated that the data transfer information was received from the ATO in May 2006. The CDPP records were inconsistent. One CDPP record indicated the data transfer occurred on a date in late February 2006, another record stated that it occurred on a date in May 2006.

2.52 It is clear that, well before the data-match occurred, Ms Z had advised Centrelink of her work arrangements and Centrelink was aware of the overpayment

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debt. A Centrelink document recorded in January 2006 indicated that Ms Z had advised that she had ceased work in August 2005, but no details of her earnings were ever recorded. Again, Centrelink failed to record the overpayment debt and act on it.

2.53 The CDPP correctly argued that the incorrect data-matching information did not have an impact on the Court decision. However, the Ombudsman has no jurisdiction to investigate the decisions made by courts. This report focuses, appropriately, on the administrative actions of the agencies involved in preparing the prosecution case. The issue of the discrepancies about data-matching in the CDPP's records has been raised in relation to the impact that it might have had on the critical decision the CDPP made to prosecute, and in making a judgement about whether there was evidence of intent to defraud. The CDPP records indicated that it was under the impression that the debt had been detected through data-matching rather than through information provided by Ms Z.

2.54 The prosecution submitted as evidence bank records that showed Ms Z had her Centrelink payments paid into a different account from the account into which her commissions were paid. It is likely that this line of argument reinforced a perception of deception by Ms Z. A countervailing point, however, is that Ms Z had provided Centrelink with the full account details and balances on the DSP claim form—a copy of which Centrelink provided to the CDPP. It is not clear if this point was noted by the CDPP. In the Ombudsman's view, it was inappropriate to present the information about the separate accounts without also pointing out that Ms Z had provided her account details to Centrelink.

2.55 In summary, there were flaws in the submission prepared by Centrelink that were apparently not noticed by the CDPP. The information provided by Centrelink was not complete—the CDPP received an incomplete claim form and the electronic records indicated that Centrelink held other documents relevant to Ms Z's actions. Ms Z, in defending the prosecution, was in an unequal position because she did not hold the relevant documents or information. It is possible, therefore, that she was ill equipped to present a defence.

2.56 The CDPP's view, in response to the draft report, was that court provided the proper forum for the resolution of Ms Z's case. The Ombudsman does not disagree with this as a general statement of principle, particularly where an action has been defended and the person legally represented, as occurred in this case. However, in exceptional cases it is appropriate to examine the administrative steps that led to a prosecution and to highlight any flaws in the process. This is particularly so in cases like this one, where Ms Z might not have been fully aware of the documents held by Centrelink and provided to the CDPP, or of other information on Centrelink records that might have supported her defence.

### **Impact on Ms Z**

2.57 Ms Z has indicated to this office that the events leading to her conviction were stressful for her and had an adverse impact on her health. She suffers from a disorder that affects her nervous system, so the stress exacerbated the physical problems she suffers. She indicated that her pain medication and physiotherapy treatment had been increased as a result of the stress. Most of the costs she incurred were covered by her DVA Gold Card.

2.58 Ms Z said that she had been required to advise several community organisations that she was being prosecuted, and why. She indicated that she had

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offered to resign from official positions, which she held and performed on an unpaid basis (such as treasurer of a non-profit organisation). Apparently those offers of resignation were not accepted. However, Ms Z found the experience humiliating and stressful.

2.58 Ms Z indicated that she had incurred legal costs for her defence.

## PART 3—KEY FINDINGS, RECOMMENDATIONS AND AGENCY RESPONSES

### Key findings

3.1 This investigation reviewed the circumstances leading to the conviction of Ms Z for intentionally obtaining financial advantage from Centrelink without properly disclosing earnings that she had received on a commission basis. It is not for the Ombudsman to disagree with the decision reached by the Court. However, it is part of the Ombudsman's role to examine, upon receipt of a complaint from a member of the public, the administrative steps taken by a government agency in deciding to commence a prosecution, and the conduct of the prosecution.

3.2 The Ombudsman considers that the handling of this case by Centrelink and the CDPP was administratively deficient. Had the matter not been handled so poorly, it is possible that prosecution action would not have commenced. It is possible also, had other matters identified in this investigation been brought to the attention of the Court, that a conviction would not have been recorded.

3.3 However, the Ombudsman acknowledges that there were undisputed facts to support a conviction. In particular, Ms Z did not provide information to Centrelink to supplement or correct the income and assets advices and statements that were provided to her by Centrelink.

3.4 The Ombudsman considers that it is arguable that Ms Z correctly answered every question relating to income on her claim form because no question or information explained where to report commission earnings. It is also arguable that it would not necessarily have been apparent to Ms Z that Centrelink had not assessed her commissions. This is because Centrelink used inconsistent terminology in the claim form, advices and statements sent to Ms Z, particularly in relation to 'self-employment'. All these sources failed to address, or provide information about, whether the income from her commissions would be described as 'income', 'employment' or 'self-employment'.

3.5 The administrative deficiencies identified in this report include the following:

- The claim form completed by Ms Z was not provided in full to the CDPP or the Court. In the portion not provided, Ms Z had declared the employment from which she derived income that was not elsewhere declared on the claim form.
- There were other relevant items of evidence in Centrelink's records that were not brought to the attention of the CDPP or the Court. They included statements about Ms Z's employment and cessation of employment, and (possibly) a spreadsheet detailing her earnings.
- It was unclear where on the claim form completed by Ms Z that she should have declared commission earnings of the type she received.
- It was unclear whether Ms Z's earnings (sporadic and uneven commission payments) were subject to fortnightly reporting, and if she was given a clear direction to this effect.
- The account into which the commission earnings were paid was declared by Ms Z to Centrelink, but this was not made clear by Centrelink or the CDPP.

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- The interview conducted by Centrelink with Ms Z prior to it providing a prosecution brief to the CDPP was inadequate. Centrelink failed to clarify the nature of the employment that Ms Z had declared.
- It would have been difficult for Ms Z to clarify, in the income and assets statement provided to her by Centrelink, whether the amounts stated included the commission earnings she had received.
- Information provided by Centrelink to the CDPP suggesting that Ms Z had a previous overpayment debt was misleading, and did not explain an off-setting amount that was payable to her by DVA.

3.6 In her complaint to this office, Ms Z sought a written apology (as a minimum outcome) and removal from the high-risk category of Centrelink customers who are subject to frequent and comprehensive review of their circumstances. Ms Z expressed concern about the ongoing embarrassment she would face each time she had to declare her conviction—such as if she wanted to travel overseas to visit relatives. She indicated that she would gain comfort, and that her stress would be reduced, if she could provide a copy of a written apology from Centrelink in such situations.

### Centrelink response

3.7 In its overall comments on a draft version of this report, Centrelink accepted a number of the inadequacies in its fraud investigation identified by the Ombudsman. For example, Centrelink accepted as inadequate its failure to include in the evidence provided to the CDPP parts of the claim form completed by Ms Z. Centrelink also accepted it had been deficient in not examining batch-stored documents relating to the service update interview conducted on 12 August 2005 as part of the fraud investigation.

3.8 Centrelink disagreed with the Ombudsman's findings that its administration of the following matters was deficient:

- It was not clear where on the DSP claim form Ms Z should have declared her commission earnings.
- Ms Z should have been given clear instructions (before DSP was granted) about how and when to declare her commission payments. Centrelink contended that Ms Z should have reported any changes to her income within 14 days of the event occurring.
- It would have been difficult for Ms Z to identify if the income and assets statement issued on 27 May 2004 included the commissions she received. Centrelink indicated that the statement included details of income and assets recorded, as well as categories of income and assets against which no details had been recorded, such as *real estate and business income; earnings; and other income*. Centrelink also pointed to the following request included on the statement: *Please advise us within 14 days if these details are incorrect.*
- That the briefing prepared for the CDPP should have explained that the DVA debt was irrelevant and that Ms Z had not contributed to that debt in any way.



## **Recommendations**

3.9 As a result of this investigation, I have made the following recommendations to Centrelink and the CDPP.

### ***Remedy for the complainant***

#### **Recommendation 1**

Centrelink should:

- provide a written apology to Ms Z concerning the conduct of this investigation and the referral of the matter to the CDPP
- confirm in writing to Ms Z that she is not considered a high-risk customer
- invite Ms Z to lodge an application for compensation under the Scheme for Compensation for Detriment Caused by Defective Administration.

#### **Centrelink response:**

Centrelink has advised that:

- it will consider any relevant advice or action taken by the CDPP before agreeing to any remedial action to ensure that the scope of the action is consistent with the CDPP's views
- it will write to Ms Z to clarify that she is not considered a high-risk customer
- 'the option to claim Compensation for Detriment caused by Defective Administration (CDDA) is currently available to Ms Z or any individual that considers Centrelink has made an error, causing a financial loss. However, consideration of any claim could also take into account any relevant action or advice of the CDPP'.

#### **Recommendation 2**

Centrelink should:

- confer with the CDPP to identify what action should be taken to have Ms Z's conviction reviewed in the context of the evidence that should have been provided to the CDPP or the Court, but was not, and has subsequently been destroyed by Centrelink
- provide assistance to Ms Z in pursuing the action/s identified
- advise Ms Z of the outcome of any further consideration of this matter by Centrelink and the CDPP.

#### **Centrelink response:**

Centrelink has advised that it 'will confer with the CDPP and provide additional information and assistance if required; the extent of action taken by Centrelink will depend on advice or action from the CDPP'.

### Recommendation 3

The CDPP should:

- reconsider its position in relation to Ms Z in view of all the evidence to which it now has access, including information about the errors Centrelink made in its fraud investigation process and in its assessment of the information provided by Ms Z
- provide Ms Z (through Centrelink if necessary) with an early indication of whether an appeal would be an appropriate course of action and whether it would continue to pursue the matter in the event of an appeal.

#### CDPP response:

The CDPP noted that should Ms Z seek leave to appeal against her conviction in court out of time and in circumstances in which fresh evidence came to light, it would be unlikely that the CDPP would oppose any such application.

However, the CDPP advised that should Ms Z proceed to lodge an appeal to challenge her conviction, it would consider all of the evidentiary material at that point as well as any representations that were made on Ms Z's behalf in accordance with the *Prosecution Policy of the Commonwealth*.

In light of this reference we have added a further recommendation.

### Recommendation 4

The CDPP should:

- undertake a reconsideration of Ms Z's case immediately so that if the outcome is that a decision at an appeal would not be contested, this advice could be provided to Ms Z and Centrelink.

### ***Review of administration procedures and practices***

### Recommendation 5

Centrelink should review its procedures for monitoring fraud investigations to ensure that problems of the kind identified in this investigation do not recur.

#### Centrelink response:

Centrelink has advised that since 2006 it has undertaken extensive changes to its business processes and practices and that it has implemented more prescriptive policy governance for fraud investigators, including:

- investing significant resources into a review of its investigation processes so that they are in accordance with best practice as detailed in the *Australian Government Investigations Standards*.

The process included consultation with the AFP, the CDPP and other agencies such as the Department of Education, Employment and Workplace Relations. This resulted in the development and implementation of the *Fraud Investigation Manual* in April 2008. The Manual is a unique point of reference

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or 'workbench' for the entire fraud investigation process and enhances national focus on consistent and professional investigation activities. It contains all intelligence and investigation policy, procedure and process.

The *Fraud Investigation Manual* also includes enhanced assurance measures through critical decision and quality control points.

- implementing a Quality Assurance Review (QAR) program for fraud investigations. The QAR program is designed to measure investigators' compliance with the *Australian Government Investigation Standards*, the *Fraud Investigation Manual*, policy and legislation. The QAR program is also used to identify training needs and enhancements to business processes.

## ABBREVIATIONS AND ACRONYMS

AFP	Australian Federal Police
ATO	Australian Taxation Office
CAO	Complex Assessment Officer
CDDA	Compensation for Detriment Caused by Defective Administration
CDPP	Commonwealth Director of Public Prosecutions
DP	DVA disability pension
DSP	Disability Support Pension
DVA	Department of Veterans' Affairs
FOI	Freedom of Information
IP	invalid pension
NSA	Newstart Allowance
QAR	Quality assurance review