

Accountability in Action: identifying, owning and fixing errors

**Services Australia and the Department of Social Services'
Response to addressing the impacts of
unlawful income apportionment**

**Report by the Commonwealth Ombudsman,
Iain Anderson, under the *Ombudsman Act 1976***

Highlights



WHY DID WE INVESTIGATE?

- In February 2023, Services Australia and the Department of Social Services (DSS) (the agencies) told our Office there was an issue with how Services Australia had been apportioning income to calculate social security payment rates before 7 December 2020, when the law changed.
 - The Ombudsman decided to conduct two investigations into income apportionment.
 - On 2 August 2023 the Ombudsman published a statement on the lawfulness of the agencies' approach to income apportionment.
 - This investigation looked at the agencies' administration of income apportionment decisions, communication with customers, and handling of complaints, internal reviews and AAT appeals.
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WHAT DID WE FIND?

- Services Australia (and its predecessor Department of Human Services (DHS)) unlawfully apportioned income between at least 2003 and December 2020.
 - The agencies have known about this issue since October 2020.
 - The agencies are still unable to advise how many people were affected or how much payment rates are affected – that is, how much payments went up or down because of unlawful calculations.
 - The agencies are settling a final legal position about how to lawfully calculate employment income before they recommence assessing cases.
 - Whilst this occurs, Services Australia has paused approximately 20,000 debt reviews and requests for explanations of debts and identified approximately 87,000 other files that may become debts.
 - Services Australia and DSS did not act promptly to address this issue – in the 3 years the agencies have known about this issue, we expected more action to have been taken to address it.
 - Specifically, the agencies have not taken appropriate steps to:
 - assess the potential impact unlawful income apportionment had on payment rates between 2003 and 2020.
 - develop a remediation strategy for affected customers.
 - develop systems to manage paused debt reviews consistently and appropriately.
 - develop a communication plan and products to appropriately explain the issue to affected customers.
 - ensure they are capturing and reporting on complaints about income apportionment decisions and communications.
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WHAT DID WE RECOMMEND?

- We made 3 recommendations aimed at strengthening the agencies' responses to historic unlawful decisions, including developing remediation strategies and ensuring paused debts are managed fairly and consistently.
 - We made 5 recommendations aimed at improving the agencies' communication with customers, procedural guidance for staff and approaches to complaint handling.
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LESSONS FOR ALL AGENCIES

- When errors happen, agencies owe it to the public to act promptly to assess the impact of the error and develop and implement fair and proportionate remedies.
 - Agencies should acknowledge errors and, where appropriate, apologise. Being transparent and accountable can help to build and maintain public trust in agency decision-making.
 - Agencies should provide transparent, simple, timely and clear communication to people about actions and decisions that affect them.
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NEXT STEPS

- Services Australia and DSS accepted all 8 recommendations.
- We will continue to monitor the agencies' actions to address historic unlawful income apportionment decisions and the implementation of our recommendations.

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EXECUTIVE SUMMARY

In October 2020, Services Australia and the Department of Social Services (DSS) became aware there was a problem with how Services Australia, and its predecessor the Department of Human Services (DHS),¹ had been apportioning income to calculate social security payment rates.

Our Office first became aware of this in February 2023, when the agencies advised they had been working on the issue since 2021 and they had paused customer-requested reviews of debts incurred prior to 7 December 2020. At that time, Services Australia had identified approximately 100,000 cases that were potentially affected by unlawful income apportionment.

Given the scale, significance and potential impact on a considerable number of people, the Ombudsman decided to conduct two own motion investigations into the lawfulness of income apportionment and the administration of the resulting response to the past use of income apportionment.

The first investigation, *Lessons in Lawfulness*, was finalised in July 2023. In the published statement of our findings, we identified that Services Australia unlawfully apportioned income from around 2003, and potentially earlier, until 7 December 2020 when the law changed, and that there were significant unresolved legal issues.

This report sets out the findings of our second investigation, focussing on the remediation of cases affected (or potentially affected) by income apportionment. We wanted to understand what action Services Australia and DSS have taken to:

- identify and assess the impact unlawful income apportionment calculations had on historical decisions
- develop a remediation strategy
- communicate with impacted customers, and
- assess the effectiveness of their complaint handling framework.

What we found

Given the substantial time Services Australia and DSS have known about this issue and the number of people potentially affected, we expected that, by now, they would have taken more action to identify, and assess, the impact of unlawful income apportionment and develop a fair and reasonable remedial strategy for affected people.

Although identifying and analysing the impact of unlawful income apportionment in every case will be administratively burdensome and may not be possible to quantify in many cases due to an absence of detailed payroll records, this alone cannot justify the limited scoping, sampling and remediation planning the agencies had engaged in by the time of this investigation.

¹ For simplicity, all references below to Services Australia encompass actions taken by DHS.

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Services Australia and DSS advise that they have advanced their sampling efforts since we ceased gathering information for this investigation. We welcome this advice but have not inspected those efforts, given that the advice is that the initial sampling only finished on 10 October 2023 and a follow-up exercise is still underway.

Services Australia and DSS have a responsibility to identify and assess, in a timely way, the impact historic unlawful calculations had on customers, and develop a fair and reasonable remediation strategy that considers all possible options, so that Services Australia and DSS customers are not unduly disadvantaged by the agencies' mistakes.

Given the scale of income apportionment and the length of time involved, Services Australia and DSS should also be considering as one of those options whether the most appropriate as well as fairest way forward to remediate the impacts on customers with unlawful debts might be an approach involving large-scale waiver of debts, combined with clear communications to customers, rather than seeking to re-calculate over 100,000 individual debts. The reason this would need to be combined with clear communications to customers about review rights or other remedies they may have is because only waiving debts would not offer any remedy to those customers who have repaid unlawful debts or who were underpaid social security benefits. Excluding those two groups from any form of remedy would also not be fair.

Services Australia and DSS have a responsibility to let people know how they may be affected by income apportionment, such as where people are repaying historic debts, and where Services Australia has paused processing requests for explanations of debt decisions or debt reviews. Clear, accurate and timely communication with the public can help build and improve trust between government agencies and the public we serve.

If agencies make a mistake that impacts people, they should acknowledge it and develop a fair way to address the mistake. They should also clearly explain what the mistake was and what they intend to do to fix it. The public deserve no less.

Recommendations and lessons for all agencies

While the recommendations in this report are directed at Services Australia and DSS, our report includes lessons for all agencies. In particular, if an agency identifies systemic errors in its historic decision-making, it should:

- take timely action to assess the scale and the impact of the error
- develop a timely, fair and reasonable remediation strategy which considers all potential options to fix historic decision-making errors
- provide decision-makers with good policies and procedural guidance to support reasonable, appropriate and consistent decision-making
- support staff to communicate with people affected by the errors, and clearly explain any delays caused by resolving the errors
- support staff to identify and capture complaints about the implementation of remediation strategies, and report on complaint trends and outcomes to the agency's executive.

Recommendations

Recommendation 1 – Develop a strategy for sampling potentially affected historic debts, underpayments, AAT decisions and CDPP referred debts

We recommend Services Australia, in consultation with DSS, develop a strategy to assess a sample of historic debts, underpayments, AAT decisions and debts referred to the CDPP for prosecution that were potentially affected by unlawful income apportionment.

The sample should be statistically significant in size, provide a high rate of confidence, and include a range of payments across a range of years between 2003 to 2020.

The strategy should outline the timing, resourcing and sampling methodology involved for all potentially affected payments.

Services Australia and DSS joint response: ACCEPTED

Recommendation 2 – Develop an overarching remediation strategy for income apportionment affected decisions

We recommend Services Australia and DSS develop an overarching strategy to manage remedies for customers affected or potentially affected by unlawful income apportionment decisions.

The strategy should be based on evidence and include:

- the agencies' policy position, with a clear rationale, for which customers or classes of customers will receive a remedy
- what remedies are available to customers or classes of customers
- regular evaluation milestones to ensure remedial actions are successfully meeting the strategy's objective and goals.

The strategy should be clearly communicated to potentially affected customers and shared with the CDPP and the AAT.

Services Australia and DSS joint response: ACCEPTED

Recommendation 3 — Develop strategy for managing income apportionment-affected reviews

We recommend Services Australia, in consultation with DSS, develops and implements a strategy for managing income apportionment-affected reviews and debt recovery pauses.

The strategy should include the policy position on:

- the resourcing and timeframes it will dedicate to assessing the backlog of paused reviews
- identifying and assessing priority reviews and recording reasons for prioritisation
- how it will manage debt recovery pauses and pause extensions.

The strategy should be accompanied by clear procedural guidance for staff on how to identify, record and assess reviews and debt recovery pauses consistently and appropriately.

Services Australia and DSS joint response: ACCEPTED

Recommendation 4 – Update decision-making procedures

We recommend Services Australia updates its procedures for recalculating income apportionment affected decisions following a settled legal position on how to lawfully calculate its decisions.

Services Australia should also update its procedural guidance after DSS makes any updates to the General Instructions following our Investigation 1 recommendations, and after the agencies develop their remediation strategy.

Services Australia and DSS joint response: ACCEPTED

Recommendation 5 – Develop communication plan

We recommend Services Australia develop a comprehensive communication plan to manage all aspects of communication with customers affected, or potentially affected, by historic unlawful income apportionment.

Services Australia should provide copies of its approved communication plan with DSS, the CDPP and the AAT.

Services Australia and DSS joint response: ACCEPTED

Recommendation 6 – Amend communications

We recommend Services Australia amends all relevant communications, including its decision letters, staff telephone guidance and website information to include:

- a clear and simple explanation of income apportionment, and how unlawful practices impacted historic decisions and review delays (including specific information to individuals who had their payments unlawfully calculated)
- an apology for decision delays, and for historic unlawful calculations
- information about what Services Australia is doing to address historic unlawful income apportionment decisions.

Services Australia and DSS joint response: ACCEPTED

Recommendation 7 – Develop and implement a policy to capture all income apportionment complaints

We recommend Services Australia develops and implements a policy to capture complaints about income apportionment-affected decisions, reviews, communications and related issues at all complaint levels.

The policy should be supported by guidance for all staff to support them to identify and respond to complaints related to income apportionment.

Services Australia and DSS joint response: ACCEPTED

Recommendation 8 – Develop regular complaint reporting requirements

We recommend Services Australia and DSS provide regular reports to each other on income apportionment complaints and complaint issues arising from agency actions to remedy historic income apportionment issues.

At a minimum, reports should include complaint volumes and trends – such as data about complaint issues, causes and outcomes, and systemic issues.

Services Australia and DSS joint response: ACCEPTED

Part 1. INTRODUCTION AND OVERVIEW

1.1. We examined the appropriateness of Services Australia’s and DSS’s administrative framework for managing decisions affected by unlawful income apportionment calculations. This included the policies and procedures Services Australia and DSS have in place to assist staff to make decisions and process reviews, communicate with affected customers and handle related complaints.

How did we investigate?

1.2. Having commenced an own motion investigation under section 8, we used section 9 of the *Ombudsman Act 1976* to require Services Australia and DSS to provide information and documents for this investigation.

1.3. We conducted a point-in-time desktop investigation, examining all written responses, procedures and documents the agencies provided on or before 29 August 2023. Our focus was on determining whether Services Australia and DSS:

- have taken appropriate action to resolve, monitor and report on their management of income apportionment decisions and reviews
- have appropriate policy and procedural frameworks for managing income apportionment decisions and reviews
- are communicating appropriately with customers affected, or potentially affected, by unlawful income apportionment calculations
- are appropriately managing complaints about income apportionment decisions and related actions.

1.4. On 25 October 2023, the Ombudsman provided the Chief Executive Officer (CEO) of Services Australia and the Secretary of the Department of Social Services (DSS) with an un-editable version of the draft report, inviting them to identify any apparent errors of fact or omission and provide a formal response to the proposed findings and recommendations. The agencies’ joint response is attached to this report at **Appendix A**.

1.5. The Office thanks the Services Australia and DSS staff who provided information to assist this investigation.

What is income apportionment?

1.6. Income apportionment relates to the practice Services Australia adopted to calculate income and social security payment rates between at least 2003 and 7 December 2020 (when the law was amended). A detailed explanation of income apportionment is set out on pages 10 and 11 of our 2 August 2023 public statement, *Lessons in Lawfulness*.²

1.7. In summary, customers of Services Australia sometimes found it difficult to determine when a customer earned income, for example, where a payslip did not show hours or days worked, or where a working period did not align with a Centrelink reporting

² Commonwealth Ombudsman, [‘Lessons in Lawfulness’](#), 2023.

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fortnight. Where this happened, Services Australia used section 1073B of the *Social Security Act 1991* (Social Security Act) to apportion (or spread out) income across multiple Centrelink fortnights to calculate a person's rate of social security entitlement.

1.8. This practice is now known to be unlawful. The law allowed Services Australia to apportion income within the Centrelink fortnight it was earned, derived or received, but not across multiple Centrelink fortnights.

1.9. Apportioning income across multiple Centrelink fortnights caused problems with calculations, as customers could potentially be over- or underpaid under the law if employment income were apportioned into Centrelink fortnights when it was not earned, derived or received.

1.10. This may have led Services Australia to raise social security debts, or refer customers for criminal prosecution for alleged fraud or obtaining financial advantage, based on unlawfully calculated social security payments. Services Australia has since advised the CDPD made it aware in mid-November 2023 that there were two people convicted for matters involving income apportionment who remain subject to current custodial sentences.

Current legal position and decision pauses

1.11. Both Services Australia and DSS agree it was unlawful to apportion income across two or more Centrelink fortnights using section 1073B of the Social Security Act. However, at the conclusion of our first investigation there remained unresolved legal questions regarding how to recalculate historic decisions which were calculated incorrectly. We made recommendations to the agencies aimed at resolving these questions.




1.12. At the time of writing, the agencies had engaged with legal professionals to further consider these questions but had not yet reached a settled position on how to lawfully calculate pre-7 December 2020 employment income for social security payments affected by income apportionment.

1.13. From July until September 2021, Services Australia paused assessing decisions and reviews which may have been impacted by unlawful income apportionment. This includes decisions for payments and debts which involved assessing employment income prior to 7 December 2020. An interim measure for managing priority formal reviews was introduced in September 2021. There is still a large number of requests for reviews of decisions, and explanations of decisions, which have been paused for over two years, while Services Australia and DSS determine the lawful way to approach these income assessments.

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1.14. While waiting for the legal issues to be settled about how to calculate pre-7 December 2020 employment income, the number of paused reviews, explanations of decisions and debts potentially affected by income apportionment had grown to approximately 108,000 as of 29 August 2023, comprising:

Figure 1 – identified debts and potential debts which may be impacted by unlawful income apportionment

14,879 requests for review of debt decision	6,654 requests for explanations of debt decisions	Approx. 87,000 potential debts – flagged for assessment by Centrelink
		

1.15. Services Australia confirmed that not all these cases necessarily involve income apportionment. Rather, they have been identified as potentially being affected because they involve employment income received before 7 December 2020.

Impact on customers and agency staff

1.16. The existence of a social security debt can have direct and indirect negative impacts on a person, such as:

- debt recovery action – customers with outstanding debts can be subject to coercive debt recovery measures, such as tax refund or income garnishing, or withholding money from ongoing social security payments
- preventing customers from accessing advance payments,³ which are particularly intended for people experiencing hardship
- emotional and mental distress
- potentially affecting a person’s ability to obtain a loan, or the amount a person may borrow
- in some circumstances, referral for criminal prosecution, which is traumatic in itself, and in the event of a conviction have serious consequences and repercussions for individuals.

1.17. Delays in actioning reviews and explanations of decisions can exacerbate customer frustration and distress. More than that, it may significantly affect the ability of people to plan for the future if they have apparent debts hanging over their heads. It may affect them,

³ DSS, ‘[Qualification for certain benefits & PPS advance payments](#)’, Social Security Guide, 2022, accessed 1 November 2023, and DSS, ‘[Qualification for certain pension advance payments](#)’, Social Security Guide, 2022, accessed 1 November 2023.

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as well as potentially their family if they are a carer. Further, ineffective communication about delays can increase these impacts and erode trust in government.

1.18. In complaints to our Office, people told us they had contacted Services Australia multiple times to enquire about the status of their debt reviews, which had been paused. One complainant told us that they had been trying to dispute a social security debt since approximately early 2021, and *‘Every time I contact them (via phone as I currently work during business hours) I am on hold for hours and thrown around to different departments whom say nothing more than [sic] it’s being reviewed.’*

1.19. Another complainant told us their debt review was paused for over 2 years and that *‘there have been so many contradictions ... I cannot keep track of both the amount of times I have called over the approx. 2 years.’* The complainant told us that Services Australia initially advised her it *‘cannot give an outcome or an estimated range of time for an outcome’* but during a subsequent contact said her review had been escalated and *‘I would receive a response within 21 business days’*, which did not occur. The complainant told us that Services Australia assured her multiple times that her review was being actioned, but that she had not received any updates after this. She expressed concern that, despite having *‘spoken to many, many different people’* and having *‘done everything that I can to get an outcome and achieve an outcome’*, she was still unsure of the status of the review.

1.20. Failing to appropriately manage delay and communicate about delay can also cause undue stress on agency staff and resources. Services Australia provided evidence which showed staff sometimes felt unsupported when they receive enquiries about income apportionment or review delays, and were often unsure what to tell customers who contacted about a delayed or deferred review. This can lead to frustration and staff disengagement and can increase an agency’s workload due to increased and repeated customer contacts or requests for progress updates. As the report of the *Royal Commission into the Robodebt Scheme* observed, Services Australia has *‘a responsibility to deal sensitively with those people relying on its services’*,⁴ and ought to consult with its staff (and consider potential detriment to them) when designing and implementing a program.⁵

1.21. In our view, it is reasonable for Services Australia not to progress affected decisions while there is uncertainty about how to legally calculate these debts and debt matters. Recalculating decisions on questionable legal grounds may cause more work to review or undo unlawful decisions in the future.

1.22. However, the significant time it is taking to develop strategies to assess the impact of, and remedies for, historic unlawful income apportionment decisions, communicate about delays and manage complaints is contributing to the negative impacts faced by affected customers. It is reasonable to suggest these gaps may also be affecting the staff of DSS and Services Australia.

⁴ C Holmes AC SC, [‘Report of the Royal Commission into the Robodebt Scheme’](#), The Royal Commission into the Robodebt Scheme, Australian Government, 2023, p 337.

⁵ C Holmes AC SC, [‘Report of the Royal Commission into the Robodebt Scheme’](#), p 337.

Part 2: IDENTIFYING THE IMPACT OF UNLAWFUL APPORTIONMENT AFFECTED HISTORIC DECISIONS

2.1. Services Australia has identified approximately 108,000 debt reviews and potential debts which may have been unlawfully calculated (discussed above at paragraph 1.14.). It is likely there are even more historic decisions which were affected by income apportionment outside of this identified cohort given that Services Australia unlawfully apportioned income between 2003 and 2020. Other historic decisions could include:

- social security benefits which may have been incorrectly reduced (underpaid) due to unlawful income apportionment.
- historic debts not currently subject to review or request for explanation, where customers unsuccessfully challenged the debts at internal review or at the AAT, or were referred for criminal prosecution.

2.2. Services Australia advised it cannot confirm which historic decisions are affected by unlawful income apportionment without manually checking each individual file and explained this process would be very resource-intensive for the agency. As of 29 August 2023, Services Australia had not provided a timeframe for how long it would take to check individual files.

2.3. We accept it would be administratively burdensome for Services Australia to undertake a manual assessment of all payments involving an income assessment between 2003 and 7 December 2020. However, considering the agencies were made aware of this issue in December 2020, we are concerned that Services Australia and DSS had not taken more action to plan whether and how it could examine a sample of historic debts and underpayments to assess whether (and how) they were impacted by unlawful income apportionment calculations. DSS and Services Australia advised in response to this report that they have since further advanced their sampling activities.

2.4. Sampling is a technique commonly used in research and statistical analysis. It involves selecting an appropriate smaller number of cases or files to represent a broader cohort or population of people. Analysing a sample of decisions, rather than all decisions, would provide a cost- and time-efficient way for Services Australia and DSS to assess the scale and impact unlawful income apportionment had on decisions and payment rates, including how much payment rates went up or down due to income apportionment. Provided Services Australia and DSS select a sufficient number of decisions across a number of years and payment types, assessing a sample of affected decisions should provide insights to assist them to make informed, evidence-based decisions about appropriate and proportionate remedies for decisions and customers affected by unlawful income apportionment.

2.5. Services Australia and DSS provided evidence they had commenced conversations about analysing a sample of historic debt decisions. On 14 July 2023, the DSS Secretary wrote to Services Australia requesting it conduct a sampling exercise for debts potentially affected by income apportionment to assess the extent of the issue and possible remediation actions. The Secretary nominated 1,000 –2,000 randomly selected debt records as a suitable sample size. Neither DSS nor Services Australia explained how this 1,000 – 2,000 sample size was calculated, or which payments or years would be included in this sample.

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2.6. Based on the information provided to our Office, as of 29 August 2023 Services Australia and DSS had not:

- commenced sampling and assessing historic debts
- developed a methodology for how they would resource the analysis of the sample of historic debts or other decisions potentially affected by unlawful income apportionment
- made any commitments to sample, or otherwise assess, the impact unlawful income apportionment calculations had on the following historic decisions:
 - potential underpayments
 - debt decisions heard by the AAT between 2003 and 2020
 - debts referred to the Commonwealth Director of Public Prosecutions (CDPP) (except for 69 debts where people had been referred for prosecution and which were still before the courts).

2.7. Services Australia advised it will not commence assessing (or reassessing) potential historic debts which are potentially affected by income apportionment before the agencies have a settled position on how to lawfully recalculate historic payments. While this may be reasonable in itself, given approximately three years have passed since the agencies became aware of this issue we consider it is also reasonable to expect that Services Australia and DSS would have agreed a strategy and methodology for a sampling exercise, including:

- an appropriate sample size (based on the total number of debts raised and payments made involving assessment of employment income)
- the payments they should consider
- the resourcing and timeframes involved in conducting sampling activities for potentially affected historic decisions.

2.8. Having such a strategy agreed would ensure that Services Australia can commence sampling activities as soon as possible after the legal position is settled.

2.9. The agencies' responses to our investigation indicated they were unwilling to consider sampling potential underpayments of benefits caused by unlawful income apportionment on the basis that *'arrears limitation provisions in the Social Security Act 1991 would limit the date of effect of a favourable rate determination where a review has not been requested.'*

2.10. Similarly, Services Australia and DSS stated they would not consider the impact of previous AAT decisions because there are barriers to revisiting decisions which have already been decided by the AAT. Services Australia advised *'if a customer has had a debt decision reviewed by the AAT, and the Secretary has not appealed that decision, the Secretary and the Agency are bound to give effect to that decision. Consistent with the principles of finality in administrative decision-making set out by the High Court in Makasa, and as noted in the report of the Royal Commission into the Robodebt Scheme, the original decision-maker (an Agency delegate exercising a delegation granted by the Secretary) is functus officio and may not re-review a debt that has been determined by the AAT.'*

2.11. We accept the Social Security Act limits the period for which arrears can be paid following a favourable review decision. We also accept there may be barriers to revisiting

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AAT decisions. However, there are ex-gratia compensation payment schemes which may be available to customers to remedy the financial effect of unlawful income apportionment decisions, such as the Scheme for Compensation for Detriment Caused by Defective Administration (CDDA) or Act of Grace payments. Government agencies can also seek policy or legislative changes to provide simplified remedy pathways for groups of people impacted by government decisions.

2.12. In our view, Services Australia and DSS should not summarily dismiss this cohort from any potential remedies, without first doing some work to identify and assess the impact that unlawful income apportionment may have had on people who were underpaid, or people who had debts reviewed at the AAT.

2.13. Sampling historic potential underpayments, AAT decisions and debts referred to the CDPP which may have involved unlawful income apportionment will assist Services Australia and DSS to form a better picture of the scale and impact unlawful income apportionment had on all customers and decide whether and how they will seek to address this for different groups.

2.14. Services Australia should, in consultation with DSS, develop a strategy to assess a suitable sample of historic potential underpayments, debts, AAT decisions and debts referred to the CDPP for prosecution which may have been affected by income apportionment. The strategy should include the timing, resourcing and methodology Services Australia will dedicate to assessing a sample of historic decisions.

2.15. We note, in conducting a sampling exercise, Services Australia may find overpayments where none had previously been identified, or previously raised debt amounts may increase. We acknowledge that social security legislation requires Services Australia to recover any overpayments. However, given that any such new debts or debt increases would only be identified due to Services Australia rectifying its original unlawful miscalculations, and would apply to customers who were following established rules in reporting income, we would encourage the agencies to consider whether it would be fair and reasonable to recover these debts. Services Australia should be mindful of this when developing a strategy for sampling historic debts, and we suggest the agency considers as one option exercising its power to waive these debts, whether under the Social Security Act or another arrangement.

Recommendation 1 – Develop a strategy for sampling potentially affected historic debts, underpayments, AAT decisions and CDPP referred debts

We recommend Services Australia, in consultation with DSS, develop a strategy to assess a sample of historic debts, underpayments, AAT decisions and debts referred to the CDPP for prosecution that were potentially affected by unlawful income apportionment.

The sample should be statistically significant in size, provide a high rate of confidence, and include a range of payments across a range of years between 2003 to 2020.

The strategy should outline the timing, resourcing and sampling methodology involved for all potentially affected payments.

Services Australia and DSS joint response: ACCEPTED

2.16. In response to this report, DSS and Services Australia have advised that the first phase of sampling commenced on 24 August 2023 and concluded on 30 October 2023, and that a second phase of sampling is currently underway that will consider underpayments and matters heard by the AAT.

Part 3: OWNING AND FIXING ERRORS

The need for an overarching remediation strategy

3.1. Where Australian government agencies make errors that impact people, they owe it to the public to develop and implement remedies that are fair, proportionate to the problem, and delivered in a timely way. This includes acknowledging when things go wrong and being transparent and accountable when delivering remedies. In addition to being good administrative practice, being transparent and accountable can help to build and maintain public trust in agency decision-making.

3.2. The General Instructions DSS developed for addressing income apportionment decisions have the effect that the agencies will only recalculate income apportionment affected decisions if a customer requests a review of a debt decision. The agencies have identified approximately 108,000 debts and debt matters which may be recalculated once a settled legal position is reached.

3.3. DSS and Services Australia do not have a strategy or policy which sets out how they will remedy other historic decisions affecting customers, including those who:

- had debts raised against them in the past and are unaware their payments were unlawfully and inaccurately calculated, or do not know to request a review
- were underpaid
- have already exhausted their review rights for historic debt decisions.

3.4. In our view, the current approach is both unfair and unreasonable for customers who may not be aware Services Australia calculated their payments unlawfully and inaccurately due to income apportionment. We agree that progressing the sizeable decision caseload of approximately 108,000 is essential. However, we consider DSS and Services Australia should not overlook the potential scale and scope of the unlawful income apportionment calculations, which likely spanned more than 17 years.

3.5. Additionally, because the agencies have not conducted sampling activities, the current approach is not supported by any considered evidence of the scale and scope of the impact unlawful income apportionment had on historic payment rates and debts.

3.6. In our view, DSS and Services Australia should, as soon as possible, develop a remediation strategy which provides fair and reasonable recourse for all customers potentially affected by unlawful income apportionment. Given the agencies have known about this issue since October 2020, it is disappointing they have not developed such a strategy.

3.7. In their responses to our investigation, both Services Australia and DSS noted there are legal obstacles to reviewing historic underpayments and AAT decisions. As stated in paragraph 2.11., while we accept that social security legislation may impose limits on

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reviewing underpayment decisions or AAT decisions, there are several other options available to the agencies to provide remedies for affected customers.

3.8. When developing a remediation strategy, Services Australia and DSS should consider a range of options, including:

- existing remedies available under social security legislation including, but not limited to the ‘debt waiver’ provisions under the Social Security Act – noting a large-scale waiver of debts may be a cost-effective option for the agencies and appropriate and fair for affected customers
- existing discretionary compensation mechanisms intended to ‘*address financial impacts of decisions of the Commonwealth that have an unintended, unfair, unreasonable or inappropriate impact*’, such as the CDDA scheme, waiver of debt mechanism and Act of Grace payments
- introducing policy or legislative change to provide new remedy pathways and compensation options.

3.9. Any developed strategy should be based on evidence derived from sampling and supported by regular and ongoing evaluation of the outcomes arising from actioning current and future caseloads of calculations of income apportionment-affected decisions. Both agencies should regularly report the outcomes of this evaluation to their executives.

Recommendation 2 – Develop an overarching remediation strategy for income apportionment affected decisions

We recommend Services Australia and DSS develop an overarching strategy to manage remedies for customers affected or potentially affected by unlawful income apportionment decisions.

The strategy should be based on evidence and include:

- the agencies’ policy position, with a clear rationale, for which customers or classes of customers will receive a remedy
- what remedies are available to customers or classes of customers
- regular evaluation milestones to ensure remedial actions are successfully meeting the strategy’s objective and goals.

The strategy should be clearly communicated to potentially affected customers and shared with the CDPP and the AAT.

Services Australia and DSS joint response: ACCEPTED

Strengthening approaches for paused reviews

3.10. Where a customer requests a review of a social security debt and is awaiting a decision, they can request Services Australia pause recovery of the debt.⁶ This means that the debt will still appear against a customer’s file, and they can make voluntary repayments,

⁶ Services Australia, ‘[How to pause your debt repayment](#)’, Services Australia website, 2023, accessed 6 October 2023.

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but Services Australia will not try to recover it.⁷ Recovery pauses are typically implemented for fixed periods of 3⁸ or 6 months.

3.11. Services Australia’s published target timeframe for processing customer requests for reviews of decisions is 49 days. Data provided to us in early September 2023 showed the average time for which income apportionment reviews had been on hand was 427 days. Delays of this magnitude can cause significant distress and frustration for customers.

3.12. Services Australia’s management of debt recovery pauses and review delays has been a theme in complaints to our Office since 2021. One complainant told us that agency staff advised them debt recovery was on hold until the end of the year, but the agency then garnished their tax return within that period without warning.

3.13. Another complainant expressed frustration that:

‘I have been in a review process for two years now. Every three months they make demands for repayment and I have to sit on a phone, during time I am supposed to be working, to get them to reinstate the pause on the review that is not happening’.

3.14. Some complainants told us that they were ‘in the dark’ as to why the reviews were taking so long and were frustrated at having to continually contact the agency to ask it to extend recovery pauses. One complainant told us:

‘I was under the impression that while an appeal process is in place that they wouldn’t contact me to begin proceedings against me. I have waited for 752 days to have this matter dealt with, and at no time has anyone at Centrelink given me any updates or told me how much longer it will be until the process is complete ... I would like to engage with Centrelink, but each time I ring, the customer service representative tells me they can only push the date forward for another six months.’

Current approach to reviews paused due to income apportionment

3.15. As discussed in paragraphs 1.13. and 1.14., Services Australia has paused work on 14,879 requests for review of a debt decision which involve pre-7 December 2020 income. As of December 2022, Services Australia had paused recovery for 7,341 of the debts under review which involved pre-7 December 2020 income. A further 2,392 debts from within this cohort had already been repaid. It is unclear whether (and how) Services Australia was recovering the other debts with paused reviews at that time.

3.16. Services Australia does not have a documented policy or process for managing debt recovery pauses associated with these income apportionment-affected debts. This has led to problems and inconsistencies in the way it is managing debt recovery for the approximately 14,000 affected decisions. This includes:

⁷Services Australia, [‘Centrelink debts and overpayments’](#), Services Australia website, 2023, accessed 6 October 2023.

⁸ Services Australia, [‘Reviews and appeal of a Centrelink decision’](#), Services Australia website, 2023, accessed 6 October 2023.

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- approximately 2,000 debts referred to third-party debt collection agencies, including 31 customers in respect of which Services Australia referred one or more debts to a collection agency *after* the review was paused⁹
- an issue with the auto-extension process which, in March 2023, caused Services Australia’s systems to issue an automated SMS to customers with paused reviews stating, incorrectly, that it would recommence collecting the money they owed.

3.17. Prior to December 2022, Services Australia required customers to contact them before the debt recovery pause expired to request the pause be extended. Services Australia advised that, from December 2022, for all customers with a paused review who already requested a debt recovery pause, it would automatically extend the recovery pause without the need for the customer to make contact.

3.18. Services Australia has a policy and procedure for determining which review requests warrant prioritisation. This includes where the customer is in crisis, extremely vulnerable, in severe financial hardship, or where there has been a referral from an internal area or external organisation. When a customer first requests review of a decision, the procedure prompts staff to consider whether the customer’s circumstances warrant their review being prioritised.

3.19. Services Australia developed a tracking document to record and monitor ‘priority’ reviews while awaiting a settled legal position. This shows that, of the approximately 14,000 paused reviews which involve income apportionment, it prioritised and finalised 216 reviews between approximately September 2021 and July 2023. While we acknowledge these actions were likely well-intentioned, based on the information provided, it was not clear to us how or why these reviews were prioritised, progressed and finalised when the agency’s legal position was not (and is still not) settled. Given this lack of clarity, we cannot be satisfied that it was fair and reasonable for Services Australia to progress these reviews over others.

3.20. In April 2023, Services Australia developed a plan which outlined 3 options for resourcing and timeframes to progress the paused reviews. The plan did not state which resourcing option and timeframes Services Australia intended to use to process all reviews, or when and how priority reviews would be assessed.

3.21. In May 2023, Services Australia intended to recommence assessing a small, trial number of reviews, but decided not to proceed with implementing this after our Office shared its preliminary view – formed during our first investigation – that further work may be needed to reach a settled legal opinion regarding the correct methodology for calculating decisions affected by unlawful income apportionment. Services Australia plans to commence assessing these paused reviews once there is a settled legal position.

⁹ Services Australia advised that, as a matter of practice, it stopped referring any debts to collection agencies from 1 April 2023 and, as of 16 June 2023, it had recalled all referred debts from collection agencies so they can be managed within Services Australia. In response to this report, Services Australia has further advised that from 30 October 2023 it commenced pausing debt recovery action for debts identified as potentially impacted by income apportionment.

Developing a debt review management strategy

3.22. In our view, Services Australia should, as soon as possible, develop and implement a strategy for managing paused reviews of debts affected by income apportionment. This would ensure the agency is prepared to start actioning reviews as soon as possible once there is a settled legal position.

3.23. The strategy should apply to Services Australia’s management of the 14,879 currently paused debt review decisions, and also apply to any future requests for reviews of income apportionment affected decisions.

3.24. Developing this strategy may assist Services Australia to minimise customer stress and confusion associated with stop-start debt recovery pauses. Other benefits may include reducing the agency’s workload due to fewer contacts from customers seeking updates and reducing related complaints to the agencies and oversight bodies including our Office.

3.25. The strategy should include:

- a clear policy position on when the agency will and will not extend recovery pauses, and how decisions about recovery pauses should be recorded
- clear criteria for which reviews will and will not be considered a priority, and guidance on how to record these prioritisation assessments and decisions – criteria may include factors like customer vulnerability, the length of time a review has been paused, and the complexity of the review
- a clear decision on what resourcing and timeframes Services Australia will dedicate to assessing income apportionment-affected reviews.

3.26. Services Australia should also develop accompanying guidance to assist staff to implement the strategy and approach review priority decisions and debt recovery pause decisions consistently, appropriately and fairly.

3.27. The agencies should regularly monitor and evaluate the implementation of the strategy while Services Australia progresses the backlog of paused reviews. This will assist Services Australia to provide assurance that all debt pauses are administered appropriately and consistently, noting it will likely take several years for all affected matters to be finalised.

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3.28. Given the length of time matters have already been paused, it may be appropriate to recommend waiver of the affected debts, rather than embarking upon a process of reviewing each individual matter if that will take several years further, as well as requiring considerable resourcing from Services Australia to carry out the reviews. However, we note this would not address all historic decisions affected by income apportionment – including potential underpayments and debts which have already been repaid. Excluding those two groups from any form of remedy would also not be fair.

Recommendation 3 – Develop strategy for managing income apportionment-affected reviews

We recommend Services Australia, in consultation with DSS, develops and implements a strategy for managing income apportionment-affected reviews and debt recovery pauses.

The strategy should include the policy position on:

- the resourcing and timeframes it will dedicate to assessing the backlog of paused reviews
- identifying and assessing priority reviews and recording reasons for prioritisation
- how it will manage debt recovery pauses and pause extensions.

The strategy should be accompanied by clear procedural guidance for staff on how to identify, record and assess reviews and debt recovery pauses consistently and appropriately.

Services Australia and DSS joint response: ACCEPTED

Strengthening staff procedures

3.29. In Investigation 1, we recommended DSS, in consultation with Services Australia, amend the General Instructions to ensure delegates are not inhibited from exercising discretion to review historical debts, and develop a new policy position on the Secretary's obligation to initiate a review of decisions affected by income apportionment errors. The recommendation stated the new policy position should be consistent with legal advice and include consideration of debts accrued in periods prior to 7 December 2020, as well as potential historic underpayments.

3.30. DSS and Services Australia partially accepted this recommendation. The agencies advised the General Instructions are being reviewed to ensure consistency with legal advice and may be updated when new, relevant legal advice is obtained.

3.31. DSS, as the policy owner, is responsible for developing and maintaining the General Instructions. Services Australia is responsible for 'operationalising' the General Instructions, which involves developing and maintaining procedural guidance, scripts, and templates for Services Australia decision-makers to assist them to calculate and communicate about historic decisions involving income apportionment.

3.32. We reviewed the procedural guidance Services Australia developed in May 2023. The guidance provides step-by-step instructions for staff on how to process decisions involving pre-7 December 2020 employment income and is aligned with the General Instructions which DSS updated in March 2023. Services Australia committed to, if necessary, updating this guidance once the agencies have a settled legal position on how to

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lawfully calculate these amounts. It also confirmed it will not use the May 2023 guidance unless or until there is a settled legal position that aligns with it.

3.33. Given DSS committed to amending the General Instructions in response to our Investigation 1 recommendations, Services Australia will likely need to amend its current procedural guidance to align with these amendments. Additional procedural amendments may be required after Services Australia and DSS develop a remediation strategy for all historic income apportionment-affected decisions.

Recommendation 4 – Update decision-making procedures

We recommend Services Australia updates its procedures for recalculating income apportionment affected decisions following a settled legal position on how to lawfully calculate its decisions.

Services Australia should also update its procedural guidance after DSS makes any updates to the General Instructions following our Investigation 1 recommendations, and after the agencies develop their remediation strategy.

Services Australia and DSS joint response: ACCEPTED

Strengthening customer communication

3.34. As outlined in our *Office’s Room for Improvement* publication, simple, clear and effective communication is essential: the public deserve no less. Providing accurate and timely information can help to build trust and strengthen the relationship between the APS and the public.¹⁰

3.35. DSS advised it does not hold any responsibility for the nature, form, or content of Services Australia’s communication products, which are delegated in full to Services Australia.

3.36. We considered communication materials Services Australia provided, including to assess whether it is communicating appropriately with customers affected by review delays due to income apportionment. We also considered what action Services Australia has taken to develop communication plans and materials for staff to use once a settled legal position is available. The communication materials we reviewed included:

- letters – including templated draft letters, and examples of real decision letters to customers affected by income apportionment decisions and re-calculations
- published website messaging about income apportionment¹¹ and review delays¹²
- telephone guidance material to assist staff to respond to telephone queries from customers with a pre-7 December 2020 debt.

¹⁰ Commonwealth Ombudsman, ‘[Room for improvement: Observations from the Ombudsman](#)’, 2023.

¹¹ Services Australia, ‘[Information about Income Apportionment](#)’, Services Australia website, 2023, accessed 20 September 2023.

¹² Services Australia, ‘[Reviews and Appeals of a Centrelink Decision](#)’, Services Australia website, 2023, accessed 20 September 2023.

Developing comprehensive communication plan

3.37. In early 2023, Services Australia commenced developing a customer communication plan for the rollout of its revised income apportionment-related debt methodology. The plan included information about customer messaging channels and a proposed timeline for the rollout of communication materials.

3.38. As with its pause on decisions and reviews, Services Australia elected to pause the rollout of the communication plan, letters and telephone guidance in May 2023. This was also after our Office shared its preliminary view – formed during the first investigation into this topic – that further work may be needed to reach a settled legal opinion regarding the correct methodology for calculating decisions affected by unlawful income apportionment.

3.39. In our view, the communication plan Services Australia developed is not sufficient. It is currently limited to five pages of a longer slideshow developed by the agency to address the 108,000 identified income apportionment-affected potential debts. It is not clear from the document whether the communication plan has been approved or whether is available to relevant Services Australia staff.

3.40. Considering the agency has been aware of this issue since late 2020, it is disappointing it has not made more progress towards developing a comprehensive communication plan. Without a plan, Services Australia is not well-placed to provide the public with up-to-date information when its strategy to address income apportionment decisions progresses.

3.41. Services Australia should develop a comprehensive, standalone communication plan, which clearly outlines how it will communicate with customers affected (or potentially affected) by historic unlawful income apportionment calculations. The communication plan should include the elements of its current plan listed in paragraph 3.37, such as customer messaging channels (letter, online, telephone) and a timeline. It should also:

- outline what information Services Australia will share with affected, and potentially affected, customers about its historic unlawful income apportionment practices, and any avenues for redress – including clear information to customers about their rights to seek review of decisions or other remedies.
- include a clear strategy for communicating with all customers potentially affected, right back to 2003
- be approved by Services Australia’s executive
- include regular evaluation and review steps to ensure communication products include the most up-to-date information.

3.42. Services Australia’s plan should also include the agency’s position on proactively informing people who have not sought reviews of affected historic decisions – including those who are repaying debts which may have been based on unlawful income apportionment calculations – about historic income apportionment practices. Otherwise, customers may not think to exercise their review and appeal rights, or may not understand that previous decisions about whether to pursue their review rights may have been based on incomplete information.

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3.43. The approved communication plan should be shared with relevant Services Australia internal staff. Services Australia should also share copies of its approved communication plan externally with DSS, the CDPP and the AAT. This may assist these agencies to make informed decisions about their respective approaches to communicating with people affected by historic unlawful income apportionment calculations.

Recommendation 5 – Develop communication plan

We recommend Services Australia develop a comprehensive communication plan to manage all aspects of communication with customers affected, or potentially affected, by historic unlawful income apportionment.

Services Australia should provide copies of its approved communication plan with DSS, the CDPP and the AAT.

Services Australia and DSS joint response: ACCEPTED

Strengthening communication products

3.44. We also identified gaps and limitations in Services Australia’s current and draft products for communicating with customers about income apportionment and review delays, including decision letters, website messaging and telephone guidance for staff.

3.45. We found that while some products explain Services Australia’s delay in processing reviews and apologise for the delay, they do not include clear and accurate information about historic unlawful income apportionment practices or why and how this is affecting the timeliness of current reviews.

3.46. As an example, we found issues with Services Australia’s current telephone guidance for staff on income apportionment-related delays. The guidance contains messages to support conversations, suggested wording, and references to relevant internal procedures and guidance documents. The scripts include prompts for staff to apologise for delays and ask customers about their individual situation and needs, to assist the agency to identify customers who are in crisis, vulnerable or may otherwise need additional help.

3.47. Disappointingly, the telephone guidance does not prompt staff to acknowledge the agency’s former calculation methodology was unlawful or explain the income apportionment issue and how and why it is affecting debts or other historic decisions. Instead, guidance prompts staff to refer to the income apportionment issue as a ‘policy change’ or to refer to the 7 December 2020 legislation change as a reason for the recalculation. We consider that framing explanations in this way is disingenuous, lacks transparency and fails to provide customers with all the information they are entitled to receive.

3.48. We also found limitations in Services Australia’s template letters. None of the template letters Services Australia provided include appropriate explanations of income apportionment, either as a general concept or as it applies to the customer’s own circumstances. The letters also do not contain any information about the agency’s prior unlawful income apportionment practices which led to decision-making delays or may lead to new debt calculations.

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3.49. We found that Services Australia is not including sufficient information in its decision letters to individual customers about the impact that unlawful income apportionment had on their debt amount. We assessed a review decision letter Services Australia provided to a customer whose debt was recalculated and reduced using the General Instructions methodology. The decision letter included the new and former debt amount but did not clearly explain how or why the debt was recalculated. Importantly, it also did not explain to the customer that Services Australia previously calculated the debt in an unlawful way, or even that Services Australia's previous calculation had been in error.

3.50. In our view, omitting information in decision letters about how and why a debt has been recalculated, and whether it relates to historic unlawful income apportionment practices, is unreasonable and inappropriate. Providing a simple but clear statement of the reasons, evidence and facts for a decision is a fundamental aspect of good public administration.

3.51. Customers have a right to fully understand the financial decisions that affect them, and government decisions about payments and debts can deeply impact people both economically and emotionally. Without sufficient information, individuals cannot make informed decisions about whether to exercise their further review or appeal rights.¹³ It is also generally good administrative practice for an agency to provide an apology where it has made an incorrect or unlawful decision.

3.52. Due to these identified gaps and inconsistencies, we conclude that since the pause on debt decisions in July 2021, Services Australia staff have not had appropriate materials to support them to communicate effectively with customers who contact the agency about income apportionment related debt reviews which have been paused. In particular, the communications products do not contain enough information to support staff to provide customers a full picture of why their individual review is on hold.

3.53. In our view, Services Australia should amend its template letters, internal scripts for staff and website messaging to include clear and accurate information about historic unlawful income apportionment practices, and why and how this is affecting current review delays and decisions.

3.54. At a minimum, these products should:

- clearly and simply explain income apportionment and how its unlawful application impacted historic decisions and review delays (including specific information to individuals who had their payments unlawfully calculated)
- include an apology for decision delays and historic unlawful calculations
- provide information about what Services Australia is doing to address the impact of historic unlawful income apportionment decisions – and information about review rights or other remedies for affected customers.

¹³ Administrative Review Council, '[Decision Making: Reasons, Administrative Best Practice Guides](#)', Attorney-General's Department, 2007.

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3.55. Implementing our identified improvements to communication products will assist Services Australia to provide increased assurance to its customers, and improved information to the public about how this issue could affect them. It will also support staff to communicate effectively with the public throughout the period it takes Services Australia to address these historic unlawful calculations.

Recommendation 6 – Amend communications

We recommend Services Australia amends all relevant communications, including its decision letters, staff telephone guidance and website information to include:

- a clear and simple explanation of income apportionment, and how unlawful practices impacted historic decisions and review delays (including specific information to individuals who had their payments unlawfully calculated)
- an apology for decision delays, and for historic unlawful calculations
- information about what Services Australia is doing to address historic unlawful income apportionment decisions.

Services Australia and DSS joint response: ACCEPTED

Strengthening complaint handling

3.56. Complaints are a valuable resource for agencies, as data obtained from complaint handling can provide insights into program weaknesses, systemic administration issues and opportunities to improve business practices. Complaint data can also highlight issues with policy implementation and settings that can be considered by policy makers.¹⁴

3.57. Complaint handling systems should be supported by clear step-by-step guidance to help staff identify, receive, manage, resolve and record complaints. It is better practice for complaint systems to include regular reporting to agency executives about complaint volumes and trends, including data about complaint issues, possible causes and outcomes.

3.58. Our investigation considered Services Australia’s and DSS’s complaint handling policies and procedures to assess whether the agencies have appropriate frameworks to support effective management of complaints about income apportionment-related issues.

3.59. We focussed on two aspects of Services Australia’s and DSS’s complaint handling:

- whether staff are appropriately supported to identify and record income apportionment complaints
- whether there are appropriate reporting mechanisms between the agencies for income apportionment complaints.

Identifying and recording complaints about income apportionment

3.60. DSS advised it receives very few complaints relating to debts or debt decisions administered by Services Australia. Where DSS receives a complaint about income apportionment decisions, explanations or review delay, it refers this complaint to Services Australia, as the service delivery agency. DSS advised it is responsible for managing

¹⁴ Commonwealth Ombudsman, [‘Better Practice Complaint Handling Guide’](#), 2020, p 5.

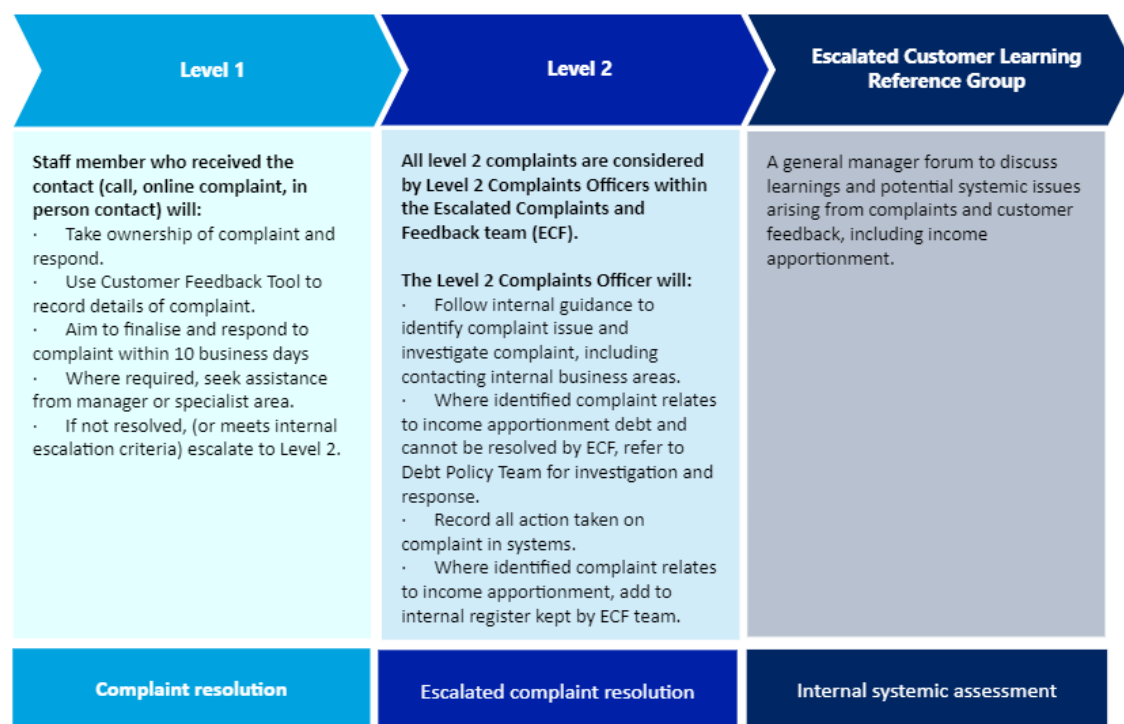
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complaints made about social security policy and refers these internally to the relevant DSS policy area for response.

3.61. Services Australia has a two-tier system it uses to handle all complaints. For the first stage (Level 1 complaints) the staff member who first receives the complaint from a customer must take ownership of the complaint, including recording and responding to the complaint.

3.62. Where a complaint cannot be resolved at Level 1 or there is another reason for escalation, the complaint is escalated to Level 2 and referred to the Escalated Complaints and Feedback Team, a specialised team of complaint officers.

Figure 2 – Services Australia’s income apportionment complaint process



3.63. In approximately April 2023, the agency released internal guidance to assist complaints staff in the Escalated Complaints and Feedback team to identify complaints about income apportionment-related decisions, reviews or communications. However, information provided to our investigation did not identify any equivalent guidance available to all staff – any of whom may be responsible for receiving and responding to income apportionment-related complaints at Level 1.

3.64. Additionally, information provided to our investigation indicated that, at Level 1, Services Australia staff are not required to record information about the payment type, or whether a complaint relates to income apportionment. Staff are required to complete a Customer Feedback Tool, which prompts staff to enter details of the service (such as phone service, claim or application, etc) and issue/s complained about (such as waited too long or disagree with decision).

3.65. More specific complaint information (such as the payment type to which the complaint relates) is only captured when the complaint is escalated to Level 2. From August 2022, the Escalated Complaints and Feedback team began to manually maintain a register of

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Level 2 complaints it received about review delays associated with income apportionment. As of 14 July 2023, 374 complaints about income apportionment were recorded on the register.

3.66. Services Australia advised it may discuss escalated complaints related to review delays or income apportionment with the agency's Escalated Customer Learning Reference Group' (ECLRG), in which agency managers can internally share learnings and systemic issues arising from complaints and customer feedback. Records indicate the ECLRG met to discuss the income apportionment issue in approximately February 2023, but it is unclear whether – or how frequently – the group has discussed, or intends to discuss income apportionment.

3.67. The income apportionment complaints register and the ECLRG are positive initiatives and may assist Services Australia to identify systemic issues and trends in complaints. Additionally, when the agency recommences assessing income apportionment affected decisions, capturing and discussing information about income apportionment complaints may assist Services Australia to identify and address issues in program rollout and design which may not have been otherwise identified.

3.68. We consider that Services Australia should develop a policy, and accompanying guidance to support all staff to identify, record and respond to income apportionment complaints, including at Level 1.

3.69. Services Australia should also develop a system to record complaints about income apportionment at Level 1. Without an ability to capture this information at Level 1, Services Australia is missing crucial feedback about the rollout of its plan to address historic unlawfully calculated income apportionment decisions. Data is only as good as the information that is collected and the way it is analysed.

Recommendation 7 – Develop and implement a policy to capture all income apportionment complaints

We recommend Services Australia develops and implements a policy to capture complaints about income apportionment-affected decisions, reviews, communications and related issues at all complaint levels.

The policy should be supported by guidance for all staff to support them to identify and respond to complaints related to income apportionment.

Services Australia and DSS joint response: ACCEPTED

3.70. In response to this report, Services Australia advised that it has published internal guidance to all staff on recording that complaints are about income apportionment.

DSS's and Services Australia's complaint reporting

3.71. Good complaint handling systems include regular reporting to an agency's executive. At a minimum the executive should receive reports about complaint volumes and trends including data about complaint issues, causes and outcomes, systemic issues and complainants (for example, geographic, demographic, cohort information). During implementation of new policies and services, it is better practice for complaints analysis and reporting to occur more frequently.¹⁵ This can assist an agency's executive to make informed

¹⁵ Commonwealth Ombudsman, '[Better Practice Complaint Handling Guide](#)', 2020, p 33.

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and evidence-based decisions about decision-making policy and programs and feed into timely adjustments or improvements.

3.72. As stated above, Services Australia is responsible for handling and reporting to its executive on complaints about the administration of social security payments. DSS manages policy related complaints and refers complaints about individual debts to Services Australia. While the agencies advise they meet regularly about income apportionment issues, the agencies do not currently regularly share data or information about related complaints.

3.73. DSS advised it monitors its own complaints and may further examine complaints more intensively in circumstances where there is an unusual pattern or volume of complaints about an issue. DSS also advised that it does not hold or collect data on Services Australia's complaint outcomes, and Services Australia is responsible for reporting systemic issues to DSS.

3.74. Services Australia outlined that it may share information about systemic issues with DSS when required. However, from the information provided it was not clear what might trigger Services Australia to report a systemic issue to DSS. Neither agency provided evidence it had shared information about income apportionment complaints with the other agency. Additionally, based on the information they provided to us, the agencies do not have a documented responsibility to regularly report to one another regarding income apportionment complaints data.

3.75. The DSS and Services Australia Bilateral Management Arrangement head agreement provided to our Office outlines that the agencies have a commitment to co-design policy and share data, knowledge and customer experience insights. Without a clear requirement to regularly share complaint information, DSS and Services Australia may find it difficult to provide assurance that their shared commitments under these administrative arrangements are supported by timely feedback about policy implementation.

3.76. Our conclusions in this area are similar to those in the Australian National Audit Office (ANAO)'s recent audit into the accuracy and timeliness of welfare payments.¹⁶ The ANAO found Services Australia's and DSS's data collection does not adequately support continuous improvement and the current bilateral agreement does not adequately support oversight of payment accuracy and timeliness.

3.77. DSS has delegated service delivery responsibilities to Services Australia but remains accountable for these delivery outcomes. Any bilateral agreement must effectively enable DSS to oversee the functions it has delegated. We agree with the ANAO's findings that agreements between the agencies should *'incorporate robust processes to provide independent and objective assurance on the delivery of agreed outcomes, and facilitate strategic consideration of shared risks. Where one entity has identified gaps or risks with business processes or assurance processes, there should be mechanisms in place to promptly communicate these issues to the other entity.'*¹⁷

3.78. DSS advised it is developing a Memorandum of Understanding with Services Australia to facilitate the agencies to discuss complaints more broadly and provide a facility to refer complaints between the two agencies. In our view, this is a positive initiative and

¹⁶Australian National Audit Office, ['Accuracy and Timeliness of Welfare Payments'](#), 2023.

¹⁷ANAO, ['Accuracy and Timeliness of Welfare Payments'](#), 2023, p 15.

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may assist the agencies to identify opportunities to improve social security policy and practices for which they are jointly responsible.¹⁸

3.79. Since it is likely the agencies will be taking action to address unlawful income apportionment practices for years to come, we consider Services Australia and DSS should develop a system to regularly report to one another about complaints either receives about income apportionment decisions, communications and other actions associated with remedying historic unlawful income apportionment practices. This will assist the agencies to have appropriate visibility of functions for which they are independently or jointly responsible.

Recommendation 8 – Develop regular complaint reporting requirements

We recommend Services Australia and DSS provide regular reports to each other on income apportionment complaints and complaint issues arising from agency actions to remedy historic income apportionment issues.

At a minimum, reports should include complaint volumes and trends – such as data about complaint issues, causes and outcomes, and systemic issues.

Services Australia and DSS joint response: ACCEPTED

¹⁸ Commonwealth Ombudsman, '[Better Practice Complaint Handling Guide](#)', 2020, p 5.

Appendix A – Joint Response from Department of Social Services and Services Australia



Australian Government
Department of Social Services



Australian Government



Services
Australia

Your reference: A2372481
Our references: Department of Social Services: EC23-002707
Services Australia: LEX: 8798

Mr Iain Anderson
Commonwealth Ombudsman
By email: Iain.Anderson@ombudsman.gov.au

Dear Mr Anderson *Iain,*

Second Draft report into Income Apportionment – Department of Social Services and Services Australia

Thank you for your letter of 25 October 2023 providing a draft of your second report into Income Apportionment.

We appreciate the opportunity you have provided the Department of Social Services (Department) and Services Australia (Agency) to:

- identify errors of fact in the draft report; and
- provide a response to your recommendations, including any implementation underway or planned and indicative timeframes.

The Department and the Agency have taken the opportunity offered by you to develop a joint response to the proposed recommendations (Attachment A), and to provide details of factual errors, together with observations, on certain aspects of the draft report (Attachment B).

While the Department and the Agency acknowledge that the time this has taken to resolve this issue is less than optimal, the draft report does not acknowledge the ongoing work, including actions we have previously advised are already well-advanced. For example, your Office has been advised about:

- the significant sampling exercise already completed to date;
- progress in resolving outstanding legal issues;
- the implementation of a pause of the recovery of income apportioned debts, including the engagement with your office about customer communication material before it was issued; and
- the withdrawal of criminal prosecutions and the content of communication material provided by the Commonwealth Director of Public Prosecutions for affected individuals.

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We consider the draft report does not adequately reflect the information provided to your Office by the Department and the Agency in response to the section 9 notice and in ongoing engagement with your Office.

Further, given the size and scale of the issue, it is highly likely the Government will ultimately need to make the decision on appropriate remediation, informed by policy, legal and service delivery advice provided to it by the Department and the Agency.

The agencies are acutely aware of the need to find an appropriate way forward in order to provide certainty to customers who may be impacted by income apportionment. We are working closely with our legal services providers and others to expedite the development of options which we can provide to Government.

We will continue to update your Office on our progress, including on the implementation of your recommendations.

If you wish to discuss any aspect of the response, please do not hesitate to contact us directly.

Yours sincerely



Ray Griggs
Secretary
Department of Social Services

Date: 15 NOV 23



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Acting CEO
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Date: 15 NOV 23

**Joint Response from the Department of Social Services (the Department) and Services Australia (the Agency)
Ombudsman Draft Report: *Accountability in Action: Identifying, Owning And Fixing Errors* –
15 November 2023**

RECOMMENDATION 1: Develop a strategy for sampling potentially affected historic debts, underpayments, AAT decisions and CDPP referred debts

We recommend Services Australia, in consultation with DSS, develop a strategy to assess a sample of historic debts, underpayments, AAT decisions and debts referred to the CDPP for prosecution that were potentially affected by unlawful income apportionment.

The sample should be statistically significant in size, provide a high rate of confidence, and include a range of payments across a range of years between 2003 to 2020.

The strategy should outline the timing, resourcing and sampling methodology involved for all potentially affected payments.

Joint response: ACCEPTED (PARTIALLY ACTIONED)

Action to address this Recommendation has commenced. From 24 August 2023 to 10 October 2023, the Agency, in consultation with the Department, undertook an initial sampling exercise to assist in understanding the extent of income apportionment in relation to the calculation of debts.

This initial sampling included 2,202 randomly identified undetermined and determined debt records across the 2010 to 2020 financial years where the debt period was prior to 7 December 2020, and the record related to employment income debt matters. The sample included 1,999 undetermined debt records, with a further 203 determined debt records relating to priority formal reviews and/or debts that were the basis of a prosecution conducted by the CDPP. Of the records sampled, only 328 contained enough information for the debt to be recalculated. Recalculation activities to date have confirmed that without income apportionment, a debt would still exist in approximately 99 percent of cases, however the amount of the overpayment may increase or decrease (with the number of debts increasing or decreasing being relatively even) based on individual circumstances.

Consideration of the sample size was informed by information provided by the Australian Bureau of Statistics (ABS) to the Department in early July 2023.

The findings from the ABS report on the sample size were included in the Secretary's letter to the Agency of 14 July 2023, requesting that sampling be undertaken. We understand this letter was provided to the Ombudsman on 8 August 2023.

Given it was necessary to have a calculation methodology for the sampling, the calculation methodology for the sampling reflects the General Guidance (previously called General Instructions), noting this methodology has been accepted in a number of recent AAT2 decisions.

The Agency, in consultation with the Department, is now progressing a further sampling activity with a focus on historically determined debts (prior to 2010), underpayments and AAT decisions. This further sampling activity is expected to be completed early in 2024. The further sampling will improve the sample size and robustness of the results.

RECOMMENDATION 2: Develop an overarching remediation strategy for income apportionment affected decisions

We recommend Services Australia and DSS develop an overarching strategy to manage remedies for customers affected or potentially affected by unlawful income apportionment decisions.

The strategy should be based on evidence and include:

- *the agencies' policy position, with a clear rationale, for which customers or classes of customers will receive a remedy*
- *what remedies are available to customers or classes of customers*
- *regular evaluation milestones to ensure remedial actions are successfully meeting the strategy's objective and goals.*

The strategy should be clearly communicated to potentially affected customers and shared with the CDPP and the AAT.

Joint response: ACCEPTED

Development of a remediation strategy will be informed by clarification of the legal position, including by the Solicitor-General. Once this is resolved, the Department will present potential options for Government on a way forward. The Agency would be responsible for implementation of any options once a Government decision is made.

In preparation, the Agency is currently undertaking activities to support the identification of affected customer cohorts that may require remedy. The Agency, in consultation with the Department, is also regularly engaged with the CDPP in relation to historic, current, and future criminal prosecutions associated with income apportionment affected debts. The CDPP advised that it is reliant on the Agency to identify affected criminal prosecutions.

The legal and policy position and the Government's decision on remediation options will, once settled, further inform a strategy for engagement with customers.

The timeframe for completion of this engagement strategy is dependent on what options the Government takes forward. Once complete, the strategy will be shared with the CDPP and AAT.

RECOMMENDATION 3: Develop strategy for managing income apportionment-affected reviews

We recommend Services Australia, in consultation with DSS, develops and implements a strategy for managing income apportionment-affected reviews and debt recovery pauses.

The strategy should include its policy position on:

- *the resourcing and timeframes it will dedicate to assessing the backlog of paused reviews*
- *identifying and assessing priority reviews and recording reasons for prioritisation*
- *how it will manage debt recovery pauses and pause extensions.*

The strategy should be accompanied by clear procedural guidance for staff on how to identify, record and assess reviews and debt recovery pauses consistently and appropriately.

Joint response: ACCEPTED

The Department and the Agency agree a strategy should be developed and implemented. The development of this strategy is linked to the issues discussed in the response to Recommendation 2 and forms part of the broader remediation strategy.

The Agency is currently unable to determine required resourcing and timeframes to assess income apportionment affected reviews until Government has made a decision on remediation options based on advice from the Department. The sampling activities outlined in Recommendation 1, will assist the Agency in modelling an effective resourcing approach.

Commonwealth Ombudsman—Services Australia and the Department of Social Services: Income Apportionment Administration

Once Government has made a decision on remediation, the Agency, in consultation with the Department, will develop and implement a strategy to manage income apportionment affected reviews including a clear framework of the identification and prioritisation of reviews for vulnerable and at-risk customers.

The management and extension of debt recovery pauses for income apportionment debts under review will be addressed as the Agency develops a broader debt management strategy inclusive of management of debt pauses in agreement with policy partner agencies.

The timeframe for completion of this strategy is dependent on a decision by Government on remediation more broadly.

RECOMMENDATION 4: Update decision-making procedures

We recommend Services Australia updates its procedures for recalculating income apportionment affected decisions following a settled legal position on how to lawfully calculate its decisions.

Services Australia should also update its procedural guidance after DSS makes any updates to the General Instructions following our Investigation 1 recommendations, and after the agencies develop their remediation strategy.

Joint response: ACCEPTED

The Agency will, in consultation with the Department, update procedures and guidance for the recalculating of income apportionment affected decisions once Government has made a decision on remediation options.

The Agency has existing processes in place to review and update procedures and training materials to ensure staff are appropriately trained and supported in the processing of activities.

In anticipation of the legal and policy position being settled, and Government's decision on remediation options, the Agency is establishing a central coordination team to ensure effective governance, strategies and procedures are in place to make the required changes, when known, and to support the implementation of resolution for affected customers.

The timeframe for completion of this response is dependent on the Government's decision on remediation options.

RECOMMENDATION 5: Develop a communications plan

We recommend Services Australia develop a comprehensive communications plan to manage all aspects of communication with customers affected, or potentially affected, by historic unlawful income apportionment.

Services Australia should provide copies of its approved communication plan to DSS, the CDPP and the AAT.

Joint response: ACCEPTED (PARTIALLY ACTIONED)

The Agency, in consultation with the Department, has developed a communications approach to provide customers with information and to support staff to provide information in relation to income apportionment matters.

In October 2023, communication materials were prepared to support the commencement of direct customer engagement in relation to the pause on debt recovery (via SMS and letters).

This included plain English explanations on the Services Australia website of what the Agency is doing, the action customers need to take and how they can get support if required.

Commonwealth Ombudsman—Services Australia and the Department of Social Services: Income Apportionment Administration

The Agency first published information about income apportionment on its website on 11 August 2023. The website was further updated on 30 October 2023 to include information about the debt recovery pause and the correspondence being sent to customers.

The Agency has also been working closely with the CDPP to ensure it is aware of the communications being provided to individuals.

Once the Government has made a decision, and the subsequent actions have been agreed with relevant stakeholders, the Agency will update the communication products to ensure that all affected customers and relevant stakeholders understand how they are impacted and any future action to be taken.

Any additional communication activities would leverage existing communication strategies maintained by the Agency which support critical communications to customers and third parties relating to all Agency business.

The Agency will continue to work with the Department and the CDPP on updated communications plans and will share approved communications plans with the Department, the CDPP and the AAT. On 23 October 2023, the CDPP, in accordance with their disclosure obligations, commenced notifying individuals prosecuted in the last 5 years and who remain subject to a current court order. The CDPP advised these individuals of the Commonwealth Ombudsman's report and that the overpayments alleged in their prosecutions involved an incorrect calculation due to the method of income apportionment, referring customers to contact the Agency with further queries.

RECOMMENDATION 6: Amend communications

We recommend Services Australia amends all relevant communications, including its decision letters, staff telephone guidance and website information to include:

- *A clear and simple explanation of income apportionment, and how unlawful practices impacted historic decisions and review delays (including specific information to individuals that their payments unlawfully calculated)*
- *Apology for decision delays, and for historic unlawful calculations*
- *Information about what Services Australia is doing to address historic unlawful income apportionment decisions.*

Joint response: ACCEPTED (PARTIALLY ACTIONED)

Similar to the response provided above to Recommendation 5, the Agency will continually revise its communications products as the Government's position is settled and subsequent actions are agreed.

The Agency has already updated communications materials on its website to provide an explanation of income apportionment, and further information for customers relating to paused activities. This includes information on the telephony Interactive Voice Response service, and letters being issued to customers who have had debts paused.

The Agency will continue to update its customer correspondence products and procedural guidance (which includes staff telephone guidance) over time, in line with the Government's decision on remediation options.

On 6 November 2023, the Agency commenced the distribution of letters to affected customers regarding the pause on debt recovery. These letters included an explanation of income apportionment, together with information on where to go for more information on the Services Australia website. The Agency used its customer and staff insights capability to test these letters with customers.

The Agency will include an explanation of income apportionment in all review decision letters for affected debts, together with an apology for the resulting delay in completing the review.

RECOMMENDATION 7: Develop and implement a policy to capture all income apportionment complaints

We recommend Services Australia develops and implements a policy to capture complaints about income apportionment-affected decisions, reviews, communications and related issues at all complaint levels.

The policy should be supported by guidance for all staff to support them to identify and respond to complaints related to income apportionment.

Joint response: ACCEPTED (and ACTIONED)

The Agency has developed and implemented processes to capture complaints about income apportionment-affected decisions, reviews, communications and related issues at all complaint levels.

Between April and August 2023, progressive action has been undertaken to support all staff to identify and record income apportionment related complaints.

On 20 May 2023, the Agency published internal guidance (an operational message) available to all staff relating to reviews involving employment income earned before 7 December 2020.

On 2 August 2023, the Customer Complaints and Feedback Index was updated to include instructions for all staff managing complaints (both Level 1 and Level 2) on how to identify and record complaints about debts relating to employment income and income apportionment before 7 December 2020 in the Customer Feedback Tool. This tool also captures the payment and service the feedback is about.

On 2 August 2023, the Agency updated the operational message available to all staff to include instructions on how to capture the payment type for complaints received at Level 1 and 2.

RECOMMENDATION 8: Develop regular complaint reporting requirements

We recommend Services Australia and DSS provide regular reports to each other on income apportionment complaints and complaint issues arising from agency actions to remedy historic income apportionment issues.

At a minimum, reports should include complaint volumes and trends – such as data about complaint volumes and trends – such as data about complaint issues, causes and outcomes, and systemic issues.

Joint response: ACCEPTED (PARTIALLY ACTIONED)

The Department and the Agency accept Recommendation 8. Regular reporting on complaints related to income apportionment already occurs.

The Department has established monthly meetings with the Agency to discuss all complaint matters relating to policy held by the Department and delivered by the Agency. This meeting provides a platform and mechanism for both parties to present and share reporting information, including income apportionment issues

The Bilateral Management Agreement between the Department and the Agency, currently being finalised, will include complaint handling, referral and reporting obligations. This will formalise the approach noted above.