

5 May 2017

Committee Secretary
Senate Community Affairs References Committee
By email: community.affairs.sen@aph.gov.au

Dear Committee Secretary

NSSRN supplementary submission to the inquiry into the Better Management of the Social Welfare System initiative

Overview

1. Thank you for the opportunity to make this supplementary submission about the National Social Security Rights Network (NSSRN) response to the Commonwealth Ombudsman's report about the Department of Human Services (DHS) online compliance intervention (OCI) system, *Centrelink's automated debt raising and recovery system – A report about the Department of Human Services' Online Compliance Intervention System for Debt Raising and Recovery* (the Ombudsman's report).¹
2. The NSSRN supports the eight recommendations made in the Ombudsman's report, which will improve the online compliance intervention system. It welcomes DHS' agreement to implement those recommendations.
3. However, in our view, these recommendations do not go far enough. While they improve the procedural fairness and service delivery of the OCI system, they do not fully address the fundamental issues of principle at stake with this system. Importantly, they do not address the legality and fairness of using automated computer systems to make complex or discretionary decisions, such as the decision to impose a 10% penalty on certain debts.
4. The Ombudsman's recommendations also do not reach to the critically important issues of principle for public administration raised by the use of an automated decision-making process which may raise debts on the basis of incomplete or inaccurate factual information in certain instances and shifts the burden onto individuals to establish that the decision is wrong through reassessment or appeal. As explained in our submission to this inquiry,² the decision to use the OCI system to raise and recover debts based on historical data files going back to 2010 without adequate warning or preparation was unfair and creates the risk that current and former social security recipients will repay money they do not owe. It has caused distress, anxiety and frustration to many people, some already very vulnerable.
5. These are issues with wider significance for government decision-making and public administration that need to be properly considered and addressed. There is a risk that if the OCI system becomes accepted, this will not occur.

¹ Report No. 02/2017 (April 2017).

² Submission 107.

6. In light of this, the NSSRN believes that even if the Ombudsman’s recommendations are implemented, the OCI system remains fundamentally flawed and should be abandoned.

7. In the event the OCI system continues, the NSSRN also believes that there is scope to go further than the Ombudsman’s recommendations in certain respects. We have organised our comments below according to the headings used in the Ombudsman’s report to help highlight where we believe more should be done. We highlight in particular our opposition to:

- The use of the OCI system to automatically apply the 10% penalty in any circumstances, and
- The use of the OCI system for historical data files from the Australian Taxation Office (ATO).

Accuracy of debts raised by the OCI system

8. Although not a formal recommendation, the Ombudsman’s report suggests that DHS test a sample of debts raised by the OCI to determine their degree of accuracy.

9. The NSSRN supports this suggestion, which is consistent with our recommendations concerning the need for a range of information to be made public about the operation of the OCI system.³ There remains considerable concern that some people may repay debts they do not owe, or repay more than they owe. There is a significant public interest in understanding the extent to which this may be occurring. One way to help assess this is to model the debts raised by the OCI system, where incomplete information is used (ie. ATO data only). The outcome of this modelling should be publicly available.

Ten per cent recovery fee

10. The Ombudsman’s report recommends that DHS reassess certain debts already raised by the OCI, where the recovery fee was automatically applied.⁴ DHS has agreed to this recommendation. We welcome DHS’ further commitment to write to all recipients concerning their review rights, including in relation to the recovery fee.⁵

11. According to the Ombudsman’s Report, DHS have modified the OCI system so that the recovery fee is no longer automatically applied to people who “engage” with the OCI system. The new OCI process advises people who progress through it and agree to the outcome that no recovery fee will apply because it is accepted that the person has a good reason for any changes to the information they previously provided.⁶

12. The Ombudsman’s report explains that there have also been improvements to the information provided to people about the recovery fee and their rights in relation to it in letters and the OCI system itself.⁷

13. This does not go far enough. These changes improve the transparency and procedural fairness of the OCI process. But this does not cure the basic problem we identified in our submission – the serious concern that automation of the discretion to apply the recovery fee is unlawful.⁸ This is an important and basic issue of principle which should be addressed by this Committee.

³ Submission 107, at 17.

⁴ Recommendation 1,

⁵ At 47.

⁶ At 43, 102.

⁷ At 8,9.

⁸ Submission 107, at 8

14. In our view, the capacity to apply the recovery fee should be removed from the OCI system entirely, whether the person “engages” with the system or not. As insufficient information is obtained through the OCI process to determine whether to apply the recovery fee fairly and reasonably, it should only be applied if there is a manual process involving a DHS officer to support the determination.

Transparency and usability of the OCI system (initial letters and usability of the online system)

15. We support the Ombudsman’s recommendations to improve the initial contact letter and the messaging within the OCI system.⁹ We welcome DHS’ agreement to these recommendations, and improvements it has made to the OCI platform.

16. These recommendation are consistent with our recommendations concerning the need to improve the transparency and usability of the OCI system.¹⁰ However, as we recommended, there must be improved transparency at each point of the OCI process from end to end, so similar changes to those proposed by the Ombudsman should also be made to:

- debt notices
- debt recovery processes, and
- authorised review officer decision letters and letters sent following reassessment of a debt.

Problems gathering employment income evidence

17. The NSSRN supports the Ombudsman’s recommendation concerning the role of DHS to assist people to obtain evidence in certain circumstances.¹¹ It is consistent with the concerns raised by our clients and the recommendations we made in our submission.¹²

Service delivery – the adequacy of DHS’ communication to customers and staff

18. The issues raised by the Ombudsman’s report under this heading are consistent with and validate the experiences of our clients. It is clear to us that, although formally speaking there were options for manual intervention by DHS staff, this alternative process was overwhelmed by the strength of the messaging to staff to direct people online. As a result, people who were clearly not coping with the new process did not receive appropriate help when they called a Centrelink phone line or attended a Centrelink office.

19. We therefore support the recommendations in relation to improved communication to customers and staff.¹³ They are consistent with our recommendation that there be clear guidelines and support for DHS officers to intervene manually if they assess that a person is vulnerable (even if they do not fit one of the automatic categories).

Assistance for vulnerable customers

20. We support the Ombudsman’s recommendations to expand the categories of customers recognised as vulnerable and to enhance the alternative process for vulnerable customers.¹⁴

⁹ Recommendations 2 and 3.

¹⁰ Submission 107, at 14-15.

¹¹ Recommendation 4.

¹² Submission 107, at 10-11, 16.

¹³ Recommendation 5.

¹⁴ Recommendations 6 and 7.

21. As the Ombudsman's report recognises, there will inevitably be people who do not fit these categories but who are significantly impacted by the new process and therefore should be provided with additional assistance.¹⁵ This makes the improvements in messaging and training for DHS staff to identify and respond appropriately to people who need manual assistance (discussed in the previous section) crucial.

Future implementation of the OCI

22. We agree with the Ombudsman's recommendation for evaluation of the OCI system before further roll out and that further roll out be incremental.¹⁶

23. However, more is needed than the improved processes of design, assessment and implementation recommended by the Ombudsman.

24. One key issue is the use of the OCI for historical data files going back to 2010. This Committee should recommend a substantive time limit for any further roll out of the OCI system to other data files. In our view the OCI system should:

- not be used to follow up historical data files
- apply only to the current financial year, 2016-2017, and future years, and
- only be rolled out after a comprehensive communication and digital strategy to advise people of the records they need to keep for current and future years and how the OCI process might impact on them.

Contacts for this submission

Genevieve Bolton OAM
Chair
National Social Security Rights Network Inc
T: 02 6218 7900
E: gbolton@canberracommunitylaw.org.au

Matthew Butt
Executive officer
National Social Security Rights Network Inc
T: 0448 007 201
E: eo@nssrn.org.au

¹⁵ At 3.45 – 3.46.

¹⁶ Recommendation 8.