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NEWS

Despite the findings of the robodebt royal commission, the government is yet to put a time limit on the pursuit of historic welfare debts. By *Rick Morton*.

The federal government's failure to deliver on welfare debt reform

Senator Penny Allman-Payne. CREDIT: AAP IMAGE / DARREN ENGLAND

Almost two years after the release of the final report of the Royal Commission into the Robodebt Scheme, the federal government has done no substantial work on a key recommendation to reinstate a six-year limit on welfare debt recovery. Instead, it finds itself defending a Federal Court appeal on a related case.

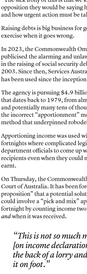
As the first term of the Albanese government draws to a close, the Department of Social Services returned a written answer to a question from Greens Senator Penny Allman-Payne about the critical recommendation from then commissioner Catherine Holmes.

"There is no obvious reason that social security recipients with debts to the Commonwealth should be on any different footing from other debtors," Holmes found in her report.

"To the contrary, as a cohort more likely to be in financial difficulty, there is every reason not to pursue ancient debts against them."

Coalition ministers Christian Porter and Alan Tudge were behind the move, which formed part of a suite of policy changes introduced from January 2017 to turbocharge recovery of what some government officials knew to be false or vastly inflated and illegal debts.

The changes also allowed a general interest charge of 10 per cent to be applied to social security debts held by former recipients, unless a payment plan was in place, and the issuing of departure prohibition orders, which ban the debtors from leaving Australia. This second measure particularly affected migrant communities and was designed to force people to pay back alleged debts before being given permission to leave the country.



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In its response to the royal commission report, the Commonwealth agreed "in principle" with the recommendation to repeal the various pieces of legislation but has since not acted in any meaningful way to do so.

The Saturday Paper understands no instructions to draft such a repeal were ever issued.

In its response to Senator Allman-Payne, the Department of Social Services was unable to point to any work it had done to advance the implementation of Holmes's recommendation. It was written in the future tense.

"The government will improve social security debt arrangements and is committed to ensuring debt raising and recovery is undertaken in a timely, fair and respectful manner," the response says.

"Any reform to the approach of raising and recovering social security debts should be undertaken in a systematic way, with careful consideration of the unique circumstances of social security debtors.

"The government will carefully consider options for legislative reform, including appropriate statutory limitation periods for the raising and recovery of social security debts to comprehensively address the issues identified by the Royal Commission."

Allman-Payne, social services spokeswoman for the Australian Greens, tells *The Saturday Paper* Labor had gone from "roaring lions in opposition to mewling kittens in government" in support of marginalised welfare recipients.

"Labor's go-slow on reform demonstrates that the party sees its role as simply to maintain the status quo," she says.

"They're more concerned about avoiding a Murdoch beat-up than they are with repairing debt recovery and employment services systems that continue to cause suffering, pain and death to this very day.

"The sick irony of this is that we know that if Labor were still in opposition they would be saying how unacceptable this situation was and how urgent action must be taken."

Raising debts is big business for government, and an expensive exercise when it goes wrong.

In 2023, the Commonwealth Ombudsman released a report that publicised the alarming and unlawful use of "income apportionment" in the raising of social security debts going back, it said at the time, to 2003. Since then, Services Australia has clarified the bogus method that was brought in at the inception of the Social Security Act in 1991.

The agency is pursuing $4.9 billion in historic debts, including one that dates back to 1979, from almost 830,000 people. At least some, and potentially many tens of thousands of these, involve the use of the incorrect "apportionment" method – separate but similar to the method that underpinned robodebt.

Apportioning income was used within and across some Centrelink fortnights where complicated legislation appeared to require department officials to come up with an earnings figure for welfare recipients even when they could not be certain when income was earned.

On Thursday, the Commonwealth was brought before the full Federal Court of Australia. It has been forced to answer for its "very brave proposition" that a potential solution to this decades-old problem could involve a "pick and mix" approach in the same Centrelink fortnight by counting income two different ways: when it was earned *and* when it was received.

> *"This is not so much moving the goalposts [on income declaration] as putting them on the back of a lorry and asking people to chase it on foot."*

What the court finds in this case will have profound consequences for officials and people who have used and will use the welfare system. Already Services Australia has spent about $17.6 million on staff costs alone as it assembled a dedicated team of 150 public servants to attend to "apportionment matters, including case work", the Senate heard.

Matthew Chaplin challenged his apportionment debt in the then Administrative Appeals Tribunal, which delivered, ironically, a mixed outcome that counted as a partial loss for both parties and would have allowed Services Australia to deploy its "hybrid" calculation solution.

Chaplin's case, which would have ramifications for millions of others with potential historic debts dating back to 1991, argues that the tribunal got it half right but erred in allowing what amounts to guesswork to solve part of the problem in establishing earnings.

"Mr Chaplin contends that the pay slips enabled the tribunal to do nothing more than identify the minimum and the maximum amounts that Mr Chaplin could possibly, as a statement of possibility, have earned in each fortnight and, critically, that range of possibilities is quite large," his counsel, Katerina O'Gorman, SC, said during the hearing before justices Lisa Hespe, Geoffrey Kennett and Thomas Thawley.

In fact, the guesswork on days that were uncertain put his income between $126.84 and more than $1100 in a single fortnight, she said.

La Trobe University administrative law expert Darren O'Donovan told *The Saturday Paper* the department never asked for income to be declared in the way it now sought to calculate it, and many people would never have had a debt if they had.

"This is not so much moving the goalposts as putting them on the back of a lorry and asking people to chase it on foot," he said.

The chief executive of Economic Justice Australia, Kate Alligham, said it was "shocking" that the country is again having a court case to shed light on unlawful government decision-making.

"The legality of a government measure that determines people's social security is being called into question, which should be a huge scandal by any metric – but it is coming off the back of robodebt, of countless 'IT glitches', of any number of issues with government systems that have been proven to be insufficient at best and, in some cases, outright illegal," she said.

Alligham said it was "impossible for the public to have any trust in the government" when the systems it put in place to protect people have been "found to be deficient" and have been allowed to run unlawfully without any apparent checks and balances.

Alligham was referring to another Coalition-era welfare innovation, known as the Targeted Compliance Framework, which created a "traffic light" system of penalty zones in order to compel jobseekers and people assessed as having a partial capacity to work to complete mutual obligations in return for income support.

The system malfunctioned almost immediately due to incorrectly coded IT systems and Department of Employment officials failing to interpret subsequent amendments that gave delegates of its secretary the discretion to not cancel someone's welfare entitlement if they were facing financial hardship.

On February 28, the secretary of the Department of Employment and Workplace Relations, Natalie James, told a Senate estimates hearing she had "concerns about the alignment between the legal framework and the [compliance] system".

Allman-Payne asked if that was another way of saying the secretary wasn't sure if she was overseeing a legal system.

"Not sure," James conceded.

Her minister, Murray Watt, also said he could not "categorically" say whether the more than 1000 people who had their payments cancelled should ever have been put in that position. *The Saturday Paper* first revealed the government went to refund money to some of these people only to discover that 10 had died.

Neither the Department of Employment nor Services Australia have undertaken any investigation into how these particularly vulnerable people died and whether it was related to financial hardship, suicide or other consequences of their circumstances.

The Commonwealth Ombudsman is now investigating the entire matter.

"An apology from the employment department secretary in the context of the department's continued operation of the Targeted Compliance Framework while the lawfulness of its administration is in doubt is not adequate," Jay Coonan, the research and policy lead at the Antipoverty Centre, wrote in an email to Senator Watt this week.

"We demand an investigation into not only the deaths of those associated with administrative failures, but also the impacts for everyone affected by a payment reduction or cancellation. The administration of the system since 2018 is nothing short of a total disaster."

While Natalie James passed the automatic cancellation of welfare entitlements as soon as she learnt of potential legal issues – a cancelled payment takes at least four weeks to restate – there has been no hold on other financial penalties or suspensions.

Both James and Watt argued they could not just turn off the system.

The latest figures, for the September quarter last year, show 7.10 people had their jobseeker payments halved and another 2.70 were receiving a payment that was recorded as zero dollars.

"We struggle to see how the degree of financial hardship or other harm done to a person receiving a zero-dollar 'payment' is meaningfully different to that caused by a payment cancellation," Coonan said.

"While your department is under investigation by the Commonwealth Ombudsman, surely continuing to operate a system you cannot say is being lawfully administered is untenable.

"We do not understand how it is possible that there is no one in the government or employment department who is able to immediately pause compulsory requirements, given that this has been done many times, somewhat arbitrarily, and in far less dire circumstances than these."

Whatever happens with the employment services compliance framework, or the income apportionment case dealing with historic debts, the federal Labor government will end its first term in power in a legal quagmire.

Economic Justice Australia said the simplest and fairest way to deal with the compromised historic debts was to waive them, but the government has chosen not to.

Despite the imprimatur of its own royal commission, the legal and policy uncertainty around the status of welfare recipients in Australia remains. Where the government had the power to act, as with the robodebt recommendation, it has not.

This article was first published in the print edition of The Saturday Paper on March 8, 2025 as "Debt on the Re".

Rick Morton is *The Saturday Paper*'s senior reporter.

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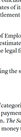

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