Design, scope, cost-benefit analysis, contracts awarded and implementation associated with the Better Management of the Social Welfare System initiative

Senate Community Affairs References Committee

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Written requests should be directed to Victoria Legal Aid, Research and Communications, 570 Bourke Street, Melbourne Vic 3000.

Contents

[About Victoria Legal Aid 1](#_Toc479316946)

[Executive summary 2](#_Toc479316947)

[Summary of recommendations 3](#_Toc479316948)

[Lawfulness and accuracy of debts raised through data matching alone (TOR (a), (e), (g), (h) and (k)) 5](#_Toc479316949)

[Overview 5](#_Toc479316950)

[Asking questions about lawfulness 5](#_Toc479316951)

[Strong policy considerations against the Initiative 7](#_Toc479316952)

[Personal and financial consequences for individuals subject to automated debt notices (TOR (a), (b), (c), (d), (g), (h), (j)) 10](#_Toc479316953)

[Overview 10](#_Toc479316954)

[The cost of shifting the burden of responsible government to individuals 11](#_Toc479316955)

[Centrelink’s engagement with clients seeking to discharge the onus of proof 12](#_Toc479316956)

[Burden on clients with mental health conditions 13](#_Toc479316957)

[Lack of transparency in data matching and the raising of specific debts in individual cases (TOR (a), (b), (g), (i)) 15](#_Toc479316958)

[Overview 15](#_Toc479316959)

[Lack of access to policies and principles regarding the Initiative 15](#_Toc479316960)

[Lack of specificity about the legal basis for data-matching 17](#_Toc479316961)

[Lack of transparency, clarity and specificity about the way the debt is calculated 18](#_Toc479316962)

[The lawfulness and purported justification of the public disclosure of social security information in response to public criticism (TOR (h), (k)) 20](#_Toc479316963)

[Lawfulness 20](#_Toc479316964)

[Appropriateness 21](#_Toc479316965)

[Appendix 1: NEIDM Project Gazette Notice 23](#_Toc479316966)

# About Victoria Legal Aid

Victoria Legal Aid (VLA) is a major provider of legal advocacy, advice and assistance to socially and economically disadvantaged Victorians. Our organisation works to improve access to justice and pursues innovative ways of providing assistance to reduce the prevalence of legal problems in the community. We assist people with their legal problems at courts and tribunals, including the Administrative Appeals Tribunal, as well as in our 14 offices across Victoria. We also deliver early intervention programs, including community legal education, and assist more than 100,000 people each year through Legal Help, our free telephone advice service.

VLA is the leading provider of legal advice and advocacy to people seeking assistance with social security matters in Victoria. Through our Commonwealth Entitlements Program we have one of the two largest advice and advocacy social security practices in Australia. To date, in the 2016/2017 year, we have provided legal advice to 2257 clients on social security issues and appeared in more than 150 cases in Australian courts and administrative tribunals.

Since the commencement of the Better Management of the Social Welfare System Initiative (the Initiative), VLA has been a necessarily engaged, active and consistent part of the response by legal service and support providers to the needs of adversely affected Victorians. Our staff were engaged with clients attempting to respond to debt notices over the Christmas and New Year period. In the first seven working days of this year, we took the same number of calls from people seeking legal advice as we did in all of January last year.

As the intensity and implications of the Initiative became apparent to VLA, we extended our in-person, telephone and online legal service to meet the increased legal need. For example:

* Since 20 January 2017, we have published online (and in paper form) a package of easy to use advice sheets and instructions for members of the public to follow when attempting to challenge the automated or ‘robo’ debts generated by Centrelink as part of the Initiative. Over 2,000 people have accessed our online fact sheets and template letters since 20 January 2017.
* Since 20 January 2017, we have engaged members of the public through social media. To date, over 60,000 people have viewed our feed regarding their legal rights following social media posting.
* Since 1 February 2017, we have provided a dedicated telephone advice line, taking calls across Victoria in relation to debts raised under the Initiative – many from vulnerable, distressed people, including people with mental health issues.

In addition, VLA also continues to see clients affected by the Initiative through our existing advice services, Administrative Appeals Tribunal case work and in-house practice.

In providing legal advice to clients affected by the Initiative, we have been exposed to the important technical legal issues raised by the Initiative alongside its very real and continuing financial and human costs for our clients.

# Executive summary

In our view, the Initiative is a disquieting and ill-advised legal and policy development.

VLA supports efficiency and expediency as hallmarks of good government decision-making and administration. We also support the intelligent, lawful and valuable application by government of technology, including to manage government funds. Accordingly, VLA has not been critical of previous earlier automated compliance and decision-making policies and laws enacted by the Department of Human Services (the Department) and Centrelink.

However, in our experience, the Initiative undermines key tenets of proper and lawful government action. Critically, in its design and operation, the Initiative has effectively shifted the burden of responsible administration of government funds from the Commonwealth to individuals. At the same time, in practice, key elements of the design and application of the Initiative fundamentally impede Centrelink customers’ abilities to understand, question or challenge an automated debt. The cumulative impact will damage the overall integrity of the Centrelink system.

Through our case work, we have witnessed the translation of a lack of responsible government action under the Initiative into real financial and personal harm for clients. This is especially the case for those who were already vulnerable and receiving a social security payment because of their vulnerabilities.

As a legal practice, we are confronted by a lack of transparency in respect of the data matching processes under the Initiative, as well as an absence of a justification for specific debts in individual cases. Inadequate transparency within the Initiative hampers access to justice, client certainty about their best legal options (including whether to accept the correctness of an alleged debt) and the effective supervision by the Courts and Tribunals of decisions made under the Initiative. Further, we consider that the disclosure by the Department of otherwise protected social security information in response to public criticism is jarring and concerning: both in terms of its lawfulness and its purported justification.

In response to the Committee’s terms of reference (TOR), we highlight that:

1. Real questions arise as to lawfulness, accuracy and policy justification for debts raised through data matching alone (or effectively alone) (TOR (a), (e), (g), (h) and (k)).
2. The personal and financial consequences for individuals required to disprove an alleged discrepancy or debt or accept its validity are unjustifiably high. The costs of the scheme to individuals have been exacerbated by: (a) the inability of Centrelink’s systems and frontline staff to satisfactorily engage with the individuals; and (b) the paucity of information provided to Centrelink clients to help them understand the debt, their appeal rights or the merit of pursuing a particular course of action (TOR (a), (b), (c), (d), (g), (h), (j)).
3. The Initiative has been marked by a lack of transparency, both in relation to the broad basis for the data matching and the specific debt in individual cases (TOR (a), (b), (d), (g), (i)).
4. We have serious concerns about the legality and purported justification of the public disclosure of social security information in response to public criticism (TOR (h), (k)).

We address each of these issues in this [Summary of recommendations](#_Summary_of_recommendations).

# Summary of recommendations

## To ensure responsible, lawful, government decision-making and action

**Recommendation 1**:The Initiative should be suspended.

**Recommendation 2**: The Social Security Law and related legislation (eg the Family Assistance Legislation) should be amended to expressly preclude debt recovery systems akin to the Initiative.

**Recommendation 3:** Decisions to investigate or raise debts should retain a residual element of human oversight to mitigate the unavoidable risk of inaccurate data-matching and to ensure that there is active consideration, at the time of the communication, of the relevant hardship factors at play and the proper method of engaging in communication and negotiation with Centrelink customers.

**Recommendation 4:** Centrelink should not place an unreasonable onus on people to ‘prove’ their prior entitlement to payments, eg, by a requirement to provide payslips from employment in prior financial years in circumstances where Centrelink had advised they were unnecessary to retain.

**Recommendation 5:** The Department must make public the rate at which decisions to raise debts that are challenged are being modified on merits or internal review, including by providing information about the numbers of merits review and internal review applications which have been made.

**Recommendation 6:** Debts should not be raised in effective reliance on data-matching unless the accuracy of the process is able to be demonstrated. This means that if data-matching is intended to be material to the raising of a debt, it must accurately reflect the complex combination of the specific requirements of social security law to an individual case and information previously provided by a person to Centrelink.

## To ensure responsible engagement with Centrelink customers

**Recommendation 7**: Centrelink must actively reduce the current financial burden experienced by customers, including by contacting all customers who are the subject of involuntary repayments where their case is under review and alert those clients to the option to discontinue the payments. Where a client elects to discontinue payments the amounts already deducted should also be repaid.

**Recommendation 8:** Centrelink must work with service providers and consumer groups to establish a best-practice model for service delivery, including evaluating publicly whether its actions in the design and roll out of the Initiative are consistent with its commitments following the 2010 Ombudsman report *Falling through the cracks* in relation to engaging with customers with a mental illness.

**Recommendation 9**: All letters to Centrelink customers in relation to discrepancies or alleged debts must set out the basis for the alleged discrepancy, the specific provision under which the Department asserts that the debt has been raised and include the timeframes, contact details and detailed, relevant, information on the methods for a person to seek review of or appeal a decision to raise a debt.

## To ensure transparency and access to Departmental operational information

**Recommendation 10:** The Department must publish online and make promptly available in paper format, all of the policies, procedures and protocols which are relevant to or inform the Initiative, including the relevant Program Protocol/s completed in respect of its data-matching projects.

**Recommendation 11:** Every letter sent to a Centrelink customer asserting a discrepancy or debt which has relied on some form of data-matching should state clearly in the body of the letter (a) the specific legal authority relied on to conduct the relevant data-match and (b) the available public information setting out the data-matching exercise.

**Recommendation 12**: Centrelink staff must be in a position to understand and explain to its customers how an alleged debt has been calculated, the first time that an inquiry is made.

## To ensure responsible handling of social security information

**Recommendation 13**: The Department or Minister (whichever is the true client of the advice) should release, publicly, its advice stating that the disclosures were authorised.

**Recommendation 14**: The Department should cease disclosing protected social security information in purported reliance on s. 204 of the *Social Security (Administration) Act 1999* (Cth)(SSA Act) or s. 164 of the *New Tax System (Family Assistance) Administration Act 1999* (Cth) (FAA Act). All purported ‘public interest’ disclosures must accord with the specific provisions and Guidelines for public interest disclosures already established under s. 208 of the SSA Act and s. 168 of the FAA Act.

**Recommendation 15**: Any future disclosure of information by the Department under the formal public interest disclosure regime should be effected only by a media statement issued by the Department disclosing the bare facts necessary to correct the record.

# Lawfulness and accuracy of debts raised through data matching alone (TOR (a), (e), (g), (h) and (k))

## Overview

VLA has strong concerns about the lawfulness, policy merit and accuracy of the Department and Centrelink’s method of raising purported debts under the Initiative. Specifically, in our view, the Initiative raises serious questions about how a debt raised on the basis of the current data-matching exercise alone (referred to within this submission as a ‘robo-debt’) can be responsibly and lawfully treated as ‘a debt to the Commonwealth’ under the *Social Security Act 1991* (Cth) (SS Act).

Further, if the Initiative is lawful, we consider that steps, including legislative reform, should be immediately taken to prevent the continuation of the Initiative and any future analogous scheme. While VLA supports the intelligent, lawful and efficient application by government of technology, including to manage government funds, the Initiative does not have these features. In addition, the Initiative is markedly out of step with the legal and policy settings which are applied in respect of debt recovery and compliance monitoring for other recipients of government funds, such as war veterans.

Moreover, as is demonstrated by a large body of literature in relation to compliance in the Australian taxation system, despite the Initiative possessing an ostensible ‘integrity’ motive, by neglecting to provide its customers with procedural justice and respect, it is far more likely to produce a long term weakening of the integrity of the welfare system.

## Asking questions about lawfulness

While the method of debt recovery under the Initiative shares some key features with Centrelink’s previous automated compliance interventions, it is distinct in a fundamental sense. Under the Initiative, we understand that:[[1]](#footnote-1)

* yearly income contained in tax returns is averaged into fortnightly payments (or, alternatively income across a part of a year is averaged into fortnightly payments)
* income data of this kind is used as the preferred basis for calculating a fortnightly amount of a particular Centrelink payment which is deemed to be owed
* this income data is then automatically compared with Centrelink’s data about the payments received by a person across the relevant period
* if a discrepancy arises between the amount said, under the data matching equation, to be owed in a fortnight and the amount paid by Centrelink, a letter is automatically generated advising an individual of a ‘suspected overpayment’. A person is given a short, specified, period to engage with Centrelink in relation to the data
* a failure to engage, a failure to provide detailed historical information such as payslips, or an acquiescence in respect of the data, will lead to the formal raising of a debt.

Critically, under the Initiative, in those circumstances:

* there is no process for initial human consideration of the data match before the initial discrepancy letter is issued
* there is no requirement that a human critically engage with the correctness of the premises behind the data-match before a formal debt is raised. Instead, Centrelink has routinely stated in its initial discrepancy letters to individuals that:

… if you do not confirm your employment income online … we will update your details using the enclosed employment income information (ie where the employment income information has been generated by the data-match).

In these circumstances, VLA has significant concerns that where a ‘robo-debt’ has been raised it may not be sufficiently certain or accurate to satisfy the requirements for raising a debt under the SS Act. This is because, under the relevant provisions of the SS Act[[2]](#footnote-2) a debt is only recoverable by Centrelink or the Department if, among other things, it is ‘owed to the Commonwealth’[[3]](#footnote-3) and ‘a person who obtains the benefit of the payment was **not** entitled for a reason to obtain that benefit’.[[4]](#footnote-4) Each of these requirements connote that there is reasonable and sufficient certainty on the part of an officer that such a debt does exist or that a person was not entitled to a payment. Moreover, in our recent experience, acting in an application for merits review of a robo-debt in the Administrative Appeals Tribunal (AAT), the ‘averaging’ which the data-match employs appear to fall outside the circumstances in which, under the SS Act or the Guide to Social Security Law, income is permitted to be averaged over a year.[[5]](#footnote-5)

In the case of a robo-debt, it is unclear how an officer could possess any certainty that the purported discrepancy generated by the data-match is correct. This is especially the case given that:

* Centrelink and the Department are aware that the error rate in raising alleged debts under the Initiative is materially high (despite being unable to quantify the rate)[[6]](#footnote-6)
* under the Department’s own operational document titled *Acceptable documents for verifying income when investigating debts*,*[[7]](#footnote-7)* it states that:

If employment is for a part of the year only, averaging over 12 months will not result in a correct result if the customer should have received a full rate at other times of the year.

If income varied greatly during the year, the result may be incorrect.

As we discuss in more detail, under the Initiative, when a debt is raised, Centrelink is not required to set out the basis for coming to any degree of certainty about the quantum or existence of a debt; nor articulate its purported basis under the SS Act for raising the debt.

## Strong policy considerations against the Initiative

Even if the Initiative is lawful, in our view, it should not be.

### Irresponsible to rely on a blunt and error-prone tool

At a high level, we consider that raising of debts under the Initiative has been and continues to be irresponsible. First, this is because the discrepancy letters issued and the subsequent debts raised are a form of speculation. Whereas a data-match may be an entirely appropriate first step in investigating overpayments, the Department’s own acknowledgment that averaging may be incorrect and should be reviewed, means that it is too blunt and error-prone a tool to apply to establish a debt. It is also a mechanism which is literally unable to take into account the specific factors which may be affecting a Centrelink customer (including hardship factors) at the time the purported discrepancy is flagged by the data-match.

This much was recently recognised by the Department of Veterans’ Affairs and the Senate Foreign Affairs, Defence and Trade Committee during the Committee’s inquiry into the Veterans’ Affairs’ Legislation Amendment (Digital Readiness and Other Measures) Bill 2016. In marked contrast to the Department and Centrelink’s approach, the Department of Veterans’ Affairs highlighted that, in respect of payments to war veterans:

… debt management and collection will remain a matter where the specific circumstances of the individual and the value of the debt are considered in what action is taken and how it is communicated.

### Risk that many individuals will pay erroneous debts

Second, given the anticipated high error rate and that averaging in the context of variable incomes will produce incorrect data, we consider it is irresponsible to make that data match the predominating (if not the only) factor in Centrelink’s decision making about the existence of a debt. The risk that individuals will pay an incorrectly raised debt is more than hypothetical, especially given that social science research regarding regulatory compliance (including in the analogous context of payment of taxation assessment notices) confirms that, in ordinary circumstances, the vast majority of people will comply with a request for payment.[[8]](#footnote-8)

### Outsourcing a fundamental government function to vulnerable people

Third, as we outline separately, the Initiative has resulted in individuals, many of whom are vulnerable, bearing the greatest burden in managing government funds. By casting the burden out to individuals to ‘correct the record’, the Initiative has effectively outsourced its own responsibility to ensure that only money which is permitted to be paid out of consolidated revenue is released.[[9]](#footnote-9) This is a fundamental government duty; not an obligation which should be imposed by default on individuals.

### Outsourcing the obligation to ‘get it right’ to legal service providers and the Courts and Tribunals

Fourth, the Initiative has also passed the burden of ‘getting it right’ – without consultation or warning – to legal services and other entities in the Court and Tribunal system. In our experience, the Initiative has had a marked impact on demand for legal services, especially during a period (the Christmas to New Year period) where most legal services and Tribunals operate on a light staff load. Clients we have had engagement with, have been told not to expect to hear from the AAT for months while it attempts to manage an increase in workload. Similarly, at VLA, we took more calls in the first seven days of January than for the entire month in the previous year. Again, in our view, it is an inefficient and unjustifiable policy decision to outsource the burden of ‘getting it right the first time’ to legal services and Tribunals ‘to get it right on review’.

### Undermining public confidence and voluntary compliance

Fifth, despite the Initiative’s integrity motive, it appears to us that it is much more likely to ultimately lead to reduced integrity across the welfare system. As has been established in international and domestic literature,[[10]](#footnote-10) where a regulator treats citizens without procedural justice and respect, the rates of voluntary compliance with the regulatory system decline. Many of the elements of the Initiative, including poor accountability, poor communication in letters and by staff, lack of transparency, high error rates, insensitive timing, lack of attention to personal hardship, and disclosing social security information to counter dissent, contravene fundamental legal, procedural and social norms which underpin the continuing compliance by citizens with the demands of government (including, for example, to honestly report cash income to Centrelink or repay debts). As Professor Valerie Braithwaite and the Centre for Tax Integrity found during a five-year research project, ensuring continued voluntary compliance requires a regulator (like Centrelink) to:

* be open to hearing and mitigating hardship
* deliver procedural justice to regulatees by treating individuals with respect, ensuring procedures are clear and transparent, and provide a reasonable and fair hearing
* engage constructively with dissenting voices
* engage with dissent in terms of social justice: Do the outcomes of the regulation benefit everyone? Are the costs and benefits of regulation born disproportionately?
* engage with dissent on moral grounds: Is it right to change the flow of events in this way?[[11]](#footnote-11)

We also draw the Committee’s attention to the specific integrity issues experienced by the Australian Taxation Office following its well-publicised ‘crackdown’ on mass marketed scheme participants in the 1990s, including by sending opaque letters to alleged debtors in the weeks before Christmas.[[12]](#footnote-12) We note the ATO subsequently went ‘to great lengths to improve the quality and information contained within its letters to investors’,[[13]](#footnote-13) including ensuring that notice letters now outline possible payment plans and provide the name of a case manager who an investor can speak to.

Against the background of these specific issues, we make the following recommendations.

**Recommendation 1:** The Initiative should be suspended.

**Recommendation 2:** The Social Security Law and related legislation (eg the Family Assistance Legislation) should be amended to expressly preclude debt recovery systems akin to the Initiative.

**Recommendation 3:** Decisions to investigate or raise debts should retain a residual element of human oversight to mitigate the unavoidable risk of inaccurate data-matching and to ensure that there is active consideration, at the time of the communication, of the relevant hardship factors at play and the proper method of engaging in communication and negotiation with Centrelink customers.

**Recommendation 4:** Centrelink should not place an unreasonable onus on people to ‘prove’ their prior entitlement to payments, eg, by a requirement to provide payslips from employment in prior financial years in circumstances where Centrelink had advised they were unnecessary to retain.

**Recommendation 5:** The Department must make public the rate at which decisions to raise debts that are challenged are being modified on merits or internal review, including by providing information about the numbers of merits review and internal review applications which have been made.

**Recommendation 6:** Debts should not be raised in effective reliance on data-matching unless the accuracy of the process is able to be demonstrated. This means that if data-matching is intended to be material to the raising of a debt, it must accurately reflect the complex combination of the specific requirements of social security law to an individual case and information previously provided by a person to Centrelink.

# Personal and financial consequences for individuals subject to automated debt notices (TOR (a), (b), (c), (d), (g), (h), (j))

## Overview

Through VLA’s case work, we have witnessed the translation of a lack of responsible government action under the Initiative into real financial and personal harm for clients. This is especially the case for those who were already vulnerable and typically receiving a social security payment because of those vulnerabilities.

We set out two case studies drawn from specific client stories recounted in legal advice sessions since the Initiative commenced:

**Case study 1: June’s story**

June is an Aboriginal woman living in regional Victoria. She has five children, including children at school. She is a single mother receiving the Single Parenting Payment. She has been diagnosed with Post-Traumatic Stress Disorder, anxiety and depression.

In early 2017, June received a letter from Centrelink alleging that data-matching had detected a discrepancy in her reporting while completing a traineeship over five years earlier. While undertaking the traineeship she made regular fortnightly reports of her variable income.

In response to the letter, June contacted the training organisation she had attended so that she could obtain payslips to support her earlier fortnightly reporting. However, because of the length of time which had passed since her attendance there, June was told that it no longer held her pay records.

June contacted Centrelink to try to explain her predicament. She was told by a Centrelink staff member that it was ‘up to her to correct the record’. But, without the payslips requested by Centrelink, she couldn’t.

June subsequently received a debt notice for over $2,000.

When June sought legal advice from a VLA duty lawyer, Centrelink had commenced deducting repayments from her Parenting Payment. At the same time, because of the alleged debt, June is also now ineligible for a Centrelink loan which she had hoped to rely on to make the large ‘start of year’ outlay for her childrens’ school uniforms and fees.

As she attempted to meet her basic financial commitments and the additional start up costs of the school year, June fell into serious financial hardship. June did not know how to make an application for an authorised review of her alleged debt and had not been provided with this information prior to receiving legal advice.

**Case study 2: Jan’s story**

Jan is a recipient of the disability support pension. She was diagnosed with PTSD following a workplace injury in 2011.

In 2011, during her absence from work, Jan received a social security payment from Centrelink while she attempted to obtain income protection under her insurance policy. Ultimately Jan received a lump sum from her insurer, which she and her lawyer had foreshadowed with Centrelink and contacted Centrelink promptly to report. At the time, Centrelink requested that she provide detailed breakdowns of how she had spent each dollar of the lump sum. Jan provided that detail in a process which was itself highly distressing to her. Centrelink ultimately informed Jan that no further action was required.

In early 2017, Jan received a letter from Centrelink stating that she owed a debt of over $20,000. When she received the letter Jan ‘felt as if her world had come crashing down’ even though she knew she had ‘done everything she could’ during 2011 to keep Centrelink informed of her financial situation. This was the first contact she reports that she received from Centrelink in relation to any discrepancy.

After receiving the letter, Jan promptly contacted Centrelink. She spoke with a woman who ‘talked to [her] like she didn’t believe me’ and responded to her explanation of the events in 2011 by saying ‘well, you know you can’t have it both ways don’t you’. In Jan’s experience, it was ‘just like she [the Centrelink employee] didn’t want to hear it’. Jan explained that the Centrelink employee moved quickly to telling her how the alleged debt would be repaid out of her current payments.

After contacting VLA for telephone advice, Jan sought a review of the decision to raise the debt. She spent hours on the phone attempting to speak again to Centrelink, spending at least three hours on hold to Centrelink in this time. She spent time on the phone speaking with the Australian Tax Office in an attempt to obtain the previous seven years of her tax records in order to understand how the debt may have been raised, because none of the documents or advice from telephone staff could set that out. At a cost to her health, Jan reopened and retraced her correspondence in relation to her workplace injury, her income protection matter and her correspondence with Centrelink in 2011 to try to show her diligent reporting through that period.

Very recently, Jan received a telephone call from an Authorised Review Officer (ARO) who apologised for his delay in Centrelink being in contact with her. The ARO explained that he had reviewed her file including a letter from her lawyer during 2011 setting out her receipt of a lump sum payment and her detailed reporting in this period. **The $20,000 debt decision was set aside in its entirety.**

During the six weeks before the decision was set aside, Jan describes herself as being an ‘emotional and physical wreck’. The symptoms of her PTSD were heightened, her mood was affected, she cried frequently and daily and ‘didn’t want to get up to face the day’ as she considered how she was going to pay back the debt.

## The cost of shifting the burden of responsible government to individuals

Elements of each of these case studies exemplify our contact with clients. In our view, the personal and financial consequences for individuals required to either disprove an alleged discrepancy generated by the data-match or accept a debt raised are unjustifiably high and disproportionately costly.

For the reasons already set out, the Initiative, by design and in practice, does effectively mean, as ‘June’ was told bluntly by Centrelink staff, that it is ‘up to [its customers] to correct the record’. In circumstances where the Department and Centrelink:

* are aware that the original debt amount is likely to be in error (as discussed)
* have not built in any minimum level of human oversight of the original debt raising, and
* have not undertaken any hardship or waiver analysis in relation to the debt.

it is not justifiable to place financial pressure on and cause personal harm by way of designating that individual as responsible for carrying the burden of disproving the debt.

The immediate costs of the Initiative which clients have recounted in the course of legal advice sessions include:

* clients experiencing heightened symptoms of mental health conditions while trying to resolve or understand the basis for an alleged debt
* clients experiencing heightened symptoms of physical disabilities in response to the stress of attempting to engage with the Initiative to understand its implications and discharge the burden of proof
* immediate financial disadvantage to clients who are confronted with potentially erroneous debts leading to severe financial hardship, including the inaccessibility of the Centrelink loan scheme and immediate and involuntary deductions from their current Centrelink payments to repay the alleged debt
* significant compromises to work and study commitments as clients: (a) spend large amounts of time travelling to and from Centrelink offices, waiting on hold with Centrelink and other entities in an attempt to resolve issues or obtain further information about a debt; (b) locate and pursue multiple employers for historical payslips or seek further information from the Australian Taxation Office (ATO); and (c) attempt to seek legal advice and provide documentary evidence for analysis
* large time outlays (eg hours each day for a month) as individuals attempt to unpack, by themselves, the basis for the alleged debt, to disprove it.

Of course we are also concerned about the financial cost carried by individuals who will have paid a debt or entered into a payment plan without the resources to consider their options, or on the assumption that ‘it must be right’ or ‘they should just pay it’.

## Centrelink’s engagement with clients seeking to discharge the onus of proof

The costs of the scheme to individuals have been exacerbated by the apparent inability of Centrelink’s systems and frontline staff to satisfactorily engage with the individuals attempting to ‘correct the record’. As one client remarked: ‘there must be a gentler way to get the point across’.

In our view, the existing systems surrounding the raising and recovery of debts under the Initiative are grossly ill-adapted to meet the distress, dismay, anger and disadvantage which is often part of the context in which people receive debt notices of any initial discrepancy letter (if they have received one).

Clients recount that they have:

* been practically unable to access the necessary online portal to upload information both because they could not navigate the system, but also because they did not possess the necessary log-in details
* been treated with condescension when they attempt to speak with Centrelink staff about their refusal to accept the debt
* discovered that following a telephone conversation in which they have disputed the amount of an alleged discrepancy, a debt has been raised
* been spoken to insensitively and spoken over when they try to explain their situation on the telephone and in person to Centrelink staff
* received conflicting advice from Centrelink staff about the nature of their debt, and
* received conflicting advice from Centrelink staff about whether the noted ‘discrepancy’ has progressed to being a debt.

Further, the lack of transparency which has accompanied the Initiative has both (a) increased the intensity of the burden placed on people to disprove a debt and (b) heightened the distress experienced by individuals who seek to discharge the burden.

## Burden on clients with mental health conditions

VLA is particularly concerned that, in its design and application, the Initiative undermines the Department and Centrelink’s previous commitments to tailor their communication to the needs of people experiencing mental health conditions.

As the Commonwealth Ombudsman concluded in his 2010 report *Falling through the Cracks: Centrelink, DEEWR and FAHCSIA*:[[14]](#footnote-14)

When we examined Centrelink’s debt recovery procedures we were unable to identify any advice to staff to consider a customer’s personal circumstances, including whether they have a mental illness, before proceeding to notify them of a debt or commencing recovery.

Anecdotal evidence suggests that customers who are experiencing symptoms of mental illness may:

* have difficulty understanding the reason for the debt
* have difficulty understanding, or pursuing, the options available to them for seeking a review or negotiating repayment
* refuse to accept the debt is valid and/or refuse to discuss repayment.

These difficulties could result in the customer:

* experiencing heightened symptoms of anxiety or paranoia
* committing to repayment terms they are unable to meet
* refusing to cooperate and being subjected to rigorous recovery arrangements that do not consider their true financial circumstances.[[15]](#footnote-15)

The Ombudsman’s report suggested that the existing debt recovery procedures be expanded to require staff to consider thoroughly the implications of a customer’s mental illness and associated communication or servicing arrangements, including before proceeding to negotiate repayment. The recommendations were aimed at attaining fairness and correctness in the debt recovery process.[[16]](#footnote-16)

Centrelink, at that time, agreed with the Ombudsman’s recommendations.[[17]](#footnote-17) However, in our work, we have not observed a tailored consideration under the Initiative of needs of people experiencing mental illness. For example, in both ‘Jan’ and ‘June’s’ stories (see [Case study 1](#June) and [Case study 2](#Jan)), there does not appear to have been any consideration given by Centrelink staff to their mental health diagnoses. Other clients, including those who receive the Disability Support Pension **for mental health conditions** have also been subject to the standard automated letters asserting a debt and requiring repayment.

We anticipate that the Initiative has heightened the undeniable challenge Centrelink faces to identify individuals who will experience difficulties in navigating the specific debt recovery process. This is because, under the Initiative:

* debt notices are generated and sent to individuals if they fail to respond to the initial ‘discrepancy letter’ in the short, specified, period. This appears to occur without any contemporaneous human consideration whether or not the person may have a vulnerability which would merit a different type of approach
* a person who is no longer a recipient of a Centrelink payment or who has not had cause to connect with Centrelink in any intensive way for **years** is contemplated to be the subject of the blanket discrepancy letters and debt notices. As a result, Centrelink will be necessarily unable to evaluate vulnerabilities before they embark on the standard format of automated, written, communication.

**Recommendation 7:** Centrelink must actively reduce the current financial burden experienced by customers, including by contacting all customers who are the subject of involuntary repayments where their case is under review and alert those clients to the option to discontinue the payments. Where a client elects to discontinue payments the amounts already deducted should also be repaid.

**Recommendation 8:** Centrelink must work with service providers and consumer groups to establish a best-practice model for service delivery, including evaluating publicly whether its actions in the design and roll out of the Initiative are consistent with its commitments following the 2010 Ombudsman report *Falling through the cracks* in relation to engaging with customers with a mental illness.

**Recommendation 9:** All letters to Centrelink customers in relation to discrepancies or alleged debts must set out the basis for the alleged discrepancy, the specific provision under which the Department asserts that the debt has been raised and include the timeframes, contact details and detailed, relevant, information on the methods for a person to seek review of or appeal a decision to raise a debt.

# Lack of transparency in data matching and the raising of specific debts in individual cases (TOR (a), (b), (g), (i))

## Overview

In our experience, the Initiative has been marked by a lack of transparency and specificity about:

* the broad principles and algorithms on which the data-matching project underlying the Initiative is based
* the legal basis for the data-matching which has occurred, and
* the way any particular discrepancy or default automated debt has been generated.

Transparency and specificity are critical to enabling public confidence in, and accountability for, the Initiative or any future automated compliance system.

The Department’s lack of public disclosure of the program protocol for the data-matching project also raises real questions about its compliance with the Office of the Australian Information Commission *Guidelines on Data Matching in Australian Government Administration* and its obligations under the *Freedom of Information Act 1978* (Cth) (FOI Act).

Further, the lack of transparency about these matters, especially in the context of an incredibly complex social security system, has had immediate consequences for:

* individuals affected by the automated debt collection process who, as described, are (a) distressed when they cannot comprehend the specific basis for the debt but are responsible for disproving it; and (b) unable to make decisions about their best legal options without clarity about whether the debt is accurate and which provision of the SS Act has empowered the Centrelink to raise the debt
* legal service providers who, acting on the instructions of their clients, are unable to understand from Centrelink’s official decisions to raise the debt or any other publicly available document, how the debt in the figure specified has been arrived at. The lack of transparency here has resulted in gross inefficiency, including by causing lawyers to make application for access to a client’s documents held by Centrelink, and to any information in relation to the debt, under the FOI Act.

## Lack of access to policies and principles regarding the Initiative

At a high level, VLA is concerned by the lack of publication by the Department of the Program Protocol which describes the Data Matching Project being undertaken by the Department to support the Initiative.

### Data-matching program protocol is not publicly available as required by the Data-matching guidelines

While the official documents sent to a person in respect of a debt or an alleged discrepancy do not specify the Department’s authority to conduct data matching in their case, we anticipate that the Initiative relies on the ‘Non-Employment Data Matching project’ (the NEIDM Project) which was announced on 19 August 2016.

We refer the Committee to the ‘Notice of a Data Matching Project between Department of Human Services and Australian Taxation Office’ published in the Australian Government Notices Gazette on 19 August 2016 (the Gazette notice**,** see [Appendix 1](#_Appendix_1:_NEIDM)). Relevantly, the Gazette notice describes that, in accordance with the Office of Australian Information Commission Guidelines on data-matching (OAIC Data-matching Guidelines), a Program Protocol has been developed for the NEIDM Project. In purported bare compliance[[18]](#footnote-18) with Guideline 3 of the OAIC Data-matching Guidelines which requires the lead agency to make the Program Protocol publicly available, the Gazette notice states that:

Copies of the Program Protocol are available from:

Case Selection Section  
Level 2  
Louisa Lawson Building  
25 Cowlishaw Street  
Greenway ACT 2900.

However, copies of the Program Protocol are not available from this location. Level 2 of the Louisa Lawson Building is not accessible to the public, nor is it possible to request access to Level 2 from the Ground Floor of the Building. Moreover, when legal services have attended the building to request access to the Program Protocol they were turned away by staff of the Case Selection Section after being advised that:

* there was no one available who could authoriseaccess to the document
* only the Director of the Section could authorise access to the document and the Director was not available, and
* someone would be in contact within the week to confirm whether access would or would not be granted.

There was no subsequent communication from any staff of the Department regarding access to the Program Protocol.[[19]](#footnote-19)

The Department’s active refusal to provide public access to the Program Protocol is deeply concerning. First, it is contrary to Guideline 3 of the OAIC Data-matching Guidelines because the Program Protocol is not publicly available. Second, it is contrary to the Department’s own public statements in purported compliance with the OAIC Data-matching Guidelines in the Australian Government Gazette. Third, by not publishing the document, the Department appears to be failing to comply with its obligation under Part II of the FOI Act to publish its ‘operational information’ (which includes, relevantly, ‘information held by the agency to assist it to exercise its functions or powers in making decisions or recommendations affecting members of the public’).[[20]](#footnote-20)

Moreover, the lack of transparency regarding the policies behind the Initiative has had immediate, practical ramifications. In particular, it inhibits legal analysis or entirely appropriate public scrutiny of the data-matching project and the information sharing and privacy-related arrangements underlying the Initiative. In our view, the Commonwealth Government has acted in a way which is contrary to its legal obligations, and which is poor government administration.

**Recommendation 10:** The Department must publish online and make promptly available in paper format, each of the policies, procedures and protocols which are relevant to or inform the Initiative, including the relevant Program Protocol/s completed in respect of its data-matching projects.

## Lack of specificity about the legal basis for data-matching

In our experience, Centrelink’s outgoing communications do not specify the particular legal basis for the data-matching exercised in an individual’s case. Rather, they often cite a range of general powers under which data-matching may occur without specifying what, in fact, occurred.

We speak with clients who have been unable, from the correspondence or information provided to them by Centrelink, to appreciate the legal basis for the sharing of their personal information. For example, we have been provided with letters that state, by way of explanation to clients:

**Data matching initiatives**

The Department of Human Services undertakes regular data-matching activities in line with the Data-matching Program (Assistance and Tax) Act 1990 and the Office of the Australian Information Commissioner’s Guidelines on Data Matching in Australian Government Administration and social security law.

This includes matching with the:

* Australian Securities and Investments Commission
* Australian Taxation Office
* ComSuper
* Department of Employment
* Department of Health
* Department of Social Services
* Department of Immigration and Border Protection
* Defence Housing Authority
* Department of Corrective Services in each state and territory
* Registrar of Births, Deaths and Marriages in each state and territory
* Public and Private education provider in each state and territory.

It is not possible for a client to discern from a statement (like [Data matching initiatives](#datamatchinginitiatives)) what lawful means of data-matching has occurred (or, potentially, has not occurred) in an individual case. Accordingly, we have spoken with clients who, as a result of not being able to understand *how* the data-matching is legal or *how* it worked in their case, express feelings of deep vulnerability and anger in response to their perceived loss of privacy. In addition, lack of information inhibits a client’s ability to responsibly and legitimately consider a legal response to the matching of their data, including by concluding that they wish to take no action because the data-match was lawful. This is inefficient and necessarily whittles away public trust in data-matching and automated compliance systems generally.

It also not possible for a lawyer attempting to assist a client, to discern from a statement (like [Data matching initiatives](#datamatchinginitiatives)) what the lawful authority the Commonwealth had for the relevant data-match. From a legal perspective, the poor transparency in correspondence with individual Centrelink customers about their debts is also an impediment to the proper scrutiny of the Department’s compliance with privacy and data-matching law in executing the Initiative in an individual case.

**Recommendation 11:** Every letter sent to a Centrelink customer asserting a discrepancy or debt which has relied on some form of data-matching should state clearly in the body of the letter (a) the specific legal authority relied on to conduct the relevant data-match and (b) the available public information setting out the data-matching exercise.

## Lack of transparency, clarity and specificity about the way the debt is calculated

In an overwhelming number of cases, clients describe a paucity of information provided to them by Centrelink about the way in which their particular alleged debt was calculated. Often, when our clients have called Centrelink, the person they speak with has been simply unable or unwilling to discuss the basis for the debt. In addition to ‘June’ (see [Case Study 1](#June)) who was simply told it was ‘up to her to correct the record’, we have often spoken with clients who have received conflicting advice about how the debt was generated. Terry’s story represents many of the client stories we have heard:

**Case study 3: Terry’s story**

During 2014, Terry received the Newstart Allowance. She reported fortnightly. Where she was able to, Terry took casual work in the period and was concerned to work with Centrelink in this period to ‘get things right’ so that she wasn’t paid more than she was entitled. Terry now receives the aged pension.

In late 2016, just before the Christmas period, Terry received a letter from Centrelink alleging that the data-match had identified a discrepancy leading to an overpayment of over $10,000 in respect of her Newstart payments. This amount reflected, as far as she understood, more than the entirety of her payments in this period. She was shocked.

When Terry received the letter, she contacted Centrelink because she was confused about how she could have a debt for every dollar paid to her in the period. The person she spoke with ‘talked over her’ and Terry had the impression that ‘she didn’t seem to think she had to give me an explanation for [the alleged discrepancy]’. Despite the fact Terry said she didn’t accept the amount of the debt, she later learnt (when attending a Centrelink office to attempt to upload her payslips from that period) that she had been recorded by that officer as accepting the debt. She also later learned a penalty had also been automatically imposed on her, increasing the debt. Centrelink commenced deducting a portion of the alleged debt from Terry’s current aged pension.

During her contact with Centrelink, she continually asked the staff to tell her what the amount owing ‘was made up of’. One Centrelink staff member said to her ‘I don’t know’. In subsequent contact with Centrelink, Terry was given conflicting information about the amount of the debt and the relevant dates. Terry spent ‘just about every day’ between December and February attempting to understand the basis for the debt and how she could show she did not owe it. It was, for her, like ‘trying to take a stab in the dark’.

Ultimately, when she set out for a Centrelink officer why the amounts which were being suggested as wrongly reported were themselves wrong, the officer replied ‘yeah, but it’s close enough’.

Terry’s debt was recently recalculated by Centrelink (upon human consideration of her file) to be under $900. She continues to dispute the remaining amount.

The lack of capacity or inclination within Centrelink to explain the debts raised under the Initiative is in our view, unjustifiable. Critically, in our experience, it:

* impedes an individual’s ability to ‘correct the record’ in circumstances where the Initiative effectively requires it
* impedes an individual’s ability to seek legal advice about their best options, given that there is little basis for unpacking why the debt has been raised
* enlarges the personal burden imposed on individuals who seek to understand the debt and whether or not it is legitimate
* creates inefficient and unnecessary work for legal services who, faced with a dearth of necessary facts will need to make requests under the FOI Act for their clients’ own files from Centrelink to try to unpack the basis for the debt
* has produced, and will continue to produce, delay in the system as people who may otherwise accept a properly justified debt seek a recalculation, authorised review or merits review (in the AAT) of the alleged debt in order to bring about a proper, human, consideration of their case and some justification for it.

**Recommendation 12:** Centrelink staff must be in a position to understand and explain to its customers how an alleged debt has been calculated, the first time that an inquiry is made.

# The lawfulness and purported justification of the public disclosure of social security information in response to public criticism (TOR (h), (k))

VLA has serious concerns regarding the lawfulness and appropriateness of the release by officers of the Department of individuals’ social security information in response to public criticism by people adversely affected by the Initiative.

## Lawfulness

Under s. 204 of the *Social Security (Administration) Act 1999* (Cth) (SSA Act) and s. 164 of the *New Tax System (Family Assistance) Administration 1999* (Cth) (FAA Act), it is an offence to disclose protected information. Relevantly, ‘protected information’ is defined to include ‘information about a person that was obtained by an officer under social security law’ [[21]](#footnote-21) or ‘under the family assistance law’.[[22]](#footnote-22)

We consider it very likely that when an officer of the Department disclosed select information about the individual circumstances of a former Centrelink customer it disclosed protected information. It appears uncontroversial that this information was available to the officer because it had been ‘obtained under social security law’.

We understand that, at the time of the disclosures, they were justified as a necessary measure to correct (so-called) ‘unfounded allegations’ in order to (a) enhance public confidence; or (b) avoid staff being ‘taken away from dealing with other claims’.

Both the SSA and FAA Acts provide a specific, legislated, and appropriately regulated pathway for the Secretary of the Department to make disclosures of protected information to correct facts to protect the system’s integrity **if** a number of factors (including necessity) are satisfied.[[23]](#footnote-23) The exercise of the Secretary’s power is subject to mandatory Guidelines,[[24]](#footnote-24) which must be satisfied before the Secretary is permitted to issue a ‘public interest certificate’. Each of these steps provide for and require a measure of restraint, caution and accountability before a disclosure can be made. This is entirely appropriate.

That the purpose of these provisions is to provide exactly that restraint and accountability was recently relied on by both the Department of Veterans’ Affairs and the Senate Foreign Affairs, Defence and Trade Committee (subject to additional comments by Labor Senators). It was these key restraint, accountability and transparency features which led to the endorsement of the amendment of a number of pieces of comparable veterans’ affairs legislation to include a materially identical provision to the public interest disclosure provisions in the SSA and FFA Acts.[[25]](#footnote-25)

The disclosure of information by an officer of the Department in response to public criticism of the Initiative did not comply with this specific, targeted and publicly recognised mechanism for making necessary corrections to mistakes of fact in public discourse under the SSA Act. The Secretary had not turned her mind to the matters under s. 208 of the SSA Act or to the Guidelines. No public interest certificate was issued, nor was the Secretary required to consider whether, in her view, the Guidelines were satisfied. Further, the Secretary, in this case did not, in fact, authorise the disclosure at all.

Instead, the Department and the Minister for Human Services assert that the SSA Act (and presumably, given its identical phrasing, the FAA Act) *also* authorise the disclosure of protected information to correct public information in the public interest **without**complying with the public interest disclosure regime. It is now asserted that these types of disclosure also fall within the general authority an officer of the Department possesses to disclose protected information ‘for the purpose of social security law’ or ‘family assistance law’. [[26]](#footnote-26)

This ‘new basis’ for disclosing protected information is, at best, weak. It is:

* reliant on an exceptionally flexible and broad interpretation of the meaning of ‘for the purpose of social security law’
* at odds with fundamental legal principle and High Court authority regarding the proper interpretation of legislation which contains a specific regime for exercising government power which provides that:

Where the legislature explicitly gives a power by a particular provision which prescribes the mode in which it shall be exercised and the conditions and restrictions which must be observed, it excludes the operation of general expressions in the same instrument which might otherwise have been relied upon for the same power.[[27]](#footnote-27)

* contrary entirely to the Department’s previous conduct which has been to properly comply with the Public Interest provisions under the relevant Acts, if it wishes to correct facts in public discourse[[28]](#footnote-28)
* contrary to the submissions of the Commonwealth on 25 January 2017 this year in support of the Veterans’ Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016[[29]](#footnote-29)
* unsupported by any case law within our knowledge.

## Appropriateness

In addition to our concerns regarding the lawfulness of the Department’s disclosures, we consider that it is wholly inappropriate that the Department make ‘public interest’ disclosures outside the specified public interest disclosures regime.

In particular, we are concerned that the Department, by side-stepping the public interest disclosure regime, has avoided the recognised, essential, specific safeguards set out in the SSA Act to protect social security information held by the Department. Taken to its logical conclusion, if the Department is permitted to continue this practice, it will permit the disclosure of protected information in circumstances where the Secretary has **refused** to issue a public interest disclosure (but where another officer has a different view about whether the information should be released).

Further, contrary to the Department’s current actions, we consider that if a disclosure is **necessary,** the disclosure itself must be completed in a responsible and respectful way. If the aim is simply to ‘correct the record’, it appears to us that the disclosure could be properly made via a Departmental media release, rather than by select provision of information to a selected journalist.

Moreover, the timing and acuteness of the Department’s actions in releasing protected information, has, in our experience, had a real impact on the preparedness of some individuals adversely affected by the Initiate to freely speak about their experiences. We are concerned about the chilling effect that the perceived rapid and aggressive disclosure of information will have on vulnerable individuals seeking to challenge an alleged debt, including through formal appeal avenues.

**Recommendation 13:** The Department or Minister (whichever is the true client of the advice) should release, publicly, its advice stating that the disclosures were authorised.

**Recommendation 14:** The Department should cease disclosing protected social security information in purported reliance on s. 204 of the *Social Security (Administration) Act 1999* (Cth) (SSA Act) or s. 164 of the *New Tax System (Family Assistance) Administration Act 1999* (Cth) (FAA Act). All purported ‘public interest’ disclosures must accord with the specific provisions and Guidelines for public interest disclosures already established under s. 208 of the SSA Act and s. 168 of the FAA Act.

**Recommendation 15:** Any future disclosure of information by the Department under the formal public interest disclosure regime should be effected only by a media statement issued by the Department disclosing the bare facts necessary to correct the record.

# Appendix 1: NEIDM Project Gazette Notice

To read the Gazette Notice of Data Matching Project, see the [Federal Register of Legislation](https://www.legislation.gov.au/Details/C2016G01112) website.

1. Please see our concerns in relation to transparency around the data-matching exercise set out in detail below. [↑](#footnote-ref-1)
2. See Chapter 5 of the SS Act. [↑](#footnote-ref-2)
3. See, s. 1222A of the SSA Act. [↑](#footnote-ref-3)
4. Given that we understand the data-matching and debt recovery processes in relation to ‘robo-debt’ were **not** undertaken by way of the *Data-matching Program (Assistance and Tax) Act 1990* (Cth) we do not discuss it here. [↑](#footnote-ref-4)
5. See, ss 1068 and 1073 of the SS Act. [↑](#footnote-ref-5)
6. While we are not able to quantify the error rate, we refer the Committee to public commentary which deduces that the error rate must be upwards of 20%. See, eg, Peter Martin, ‘How the Centrelink debt debacle failure rate is much worse than we all thought’, *Sydney Morning Herald*, 25 January 2017. [↑](#footnote-ref-6)
7. Available online at: http://operational.humanservices.gov.au/public/Pages/debts/107-02040020-01.html. [↑](#footnote-ref-7)
8. See, for example, Valerie Braithwaite, ‘Closing the gap between regulation and the community’ in Peter Drahos (ed) *Regulatory Theory* (2017, ANU Press) at 34 (**Closing the gap between regulation the community**); TR Tyler, *Why People Obey the Law* (2006, Princeton University Press) (**Why People Obey the Law**). [↑](#footnote-ref-8)
9. See, *Auckland Harbour Board v The King* [1924] AC 318 at 326; *Commonwealth v Burns* [1971] VR 825. [↑](#footnote-ref-9)
10. See, for example, Why People Obey the Law; Closing the gap between regulation and the community, Kristina Murphy, ‘Procedural justice and its role in promoting voluntary compliance’ in Peter Drahos (ed) *Regulatory Theory* (2017, ANU Press) at 43; Kristina Murphy, ‘Procedural Justice and the Australian Taxation Office: A study of scheme investors’ *Centre for Tax System Integrity Working Paper No 35* (October 2002) (**Murphy working paper no 35**). See generally, the voluminous work of the Centre for Tax System Integrity (a joint research centre established by the Australian National University and the Australian Taxation Office) at http://www.ctsi.org.au/index.html. [↑](#footnote-ref-10)
11. See, Valerie Braithwaite, ‘Ten things you need to know about regulation and never wanted to ask’ in *Australian Law Librarian* (2006) 14(3) at 10. [↑](#footnote-ref-11)
12. See, eg, Murphy working paper no 35, esp at 15-19. [↑](#footnote-ref-12)
13. Ibid at 17, fn 12. [↑](#footnote-ref-13)
14. See, Commonwealth Ombudsman, *Falling through the Cracks: Centrelink DEEWR and FAHCSIA – Engaging with customers with a mental illness in the social security system* (September 2010). [↑](#footnote-ref-14)
15. Ibid at 16. [↑](#footnote-ref-15)
16. See Recommendations 1, 3 and 6. [↑](#footnote-ref-16)
17. Ibid at 25. [↑](#footnote-ref-17)
18. Ordinarily, and as suggested by Guideline 3.7 of the OAIC Guidelines, these documents are published online to provide easy public access. [↑](#footnote-ref-18)
19. VLA’s requests for copies of the relevant policies and protocol to the Initiative for the purpose of advising our clients from the Honourable Minister Tudge (on 25 January 2017) and the Secretary of the Department of Human Services (on 29 March 2017) have also had no reply. [↑](#footnote-ref-19)
20. See, ss 8(2)(j) and 8A of the FOI Act. [↑](#footnote-ref-20)
21. See, s. 3 of the SSA Act and s. 23 of the *Social Security Act 1991* (Cth). [↑](#footnote-ref-21)
22. See, s. 3 of the FAA Act. [↑](#footnote-ref-22)
23. See, s. 208 of the SSA Act and 168 of the FAA Act. [↑](#footnote-ref-23)
24. See, ‘A New Tax System (Family Assistance) (Administration) (Public Interest Certificate Guidelines) (DEEWR) Determination 2010, dated 12 December 2010; Social Security (Administration) (Public Interest Certificate Guidelines) (DEEWR) Determination 2013, dated 5 August 2013. [↑](#footnote-ref-24)
25. See, Department of Veterans’ Affairs, Submission 2, Veterans’ Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016 [provisions] (**Department of Veterans’ Affairs Submission** **to Digital Readiness Inquiry**) at p 9-10; Senate Standing Committee on Foreign Affairs and Trade, *Report re Veterans’ Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016 [Provisions]* (February 2016) (**Senate Committee Digital Readiness Report**) at p 13-15; 18. [↑](#footnote-ref-25)
26. Specifically, s. 202(2)(d) of the SSA Act and s. 162(2)(dab) of the FAA Act. [↑](#footnote-ref-26)
27. *Anthony Horden and Sons v Amalgamated Clothing and Allied Trades Union* (1932) 47 CLR 1 at 7. [↑](#footnote-ref-27)
28. See, most recently, Senate Committee Digital Readiness Report at 18. [↑](#footnote-ref-28)
29. See, Department of Veterans’ Affairs Submission to Digital Readiness Inquiry at 9. [↑](#footnote-ref-29)