COMMONWEALTH OMBUDSMAN

Following the law is not optional

An investigation into the actions of Services Australia and the Department of Social Services to address an ongoing issue of non-compliance with the law

Modified version for publication

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Contents

Foreword

In December 2025, the Office of the Commonwealth Ombudsman (the Office) finalised an investigation into the actions of Services Australia and the Department of Social Services (DSS) to address an ongoing issue of non-compliance with the law. The Ombudsman, Mr Iain Anderson, issued a formal report to both agencies and the Ministers for Government Services and Social Services, providing the full findings of the investigation and making 6 recommendations to Services Australia and DSS.

The agencies have accepted 5 of our 6 recommendations and accepted the remaining recommendation (Recommendation 2) in principle.

As that report contained material subject to legal professional privilege, the Ombudsman decided not to release the full report publicly. Instead, we are publishing a modified version of the report to provide visibility of the investigation's findings and recommendations.

The Department of Social Services released a public statement in relation to this issue on 26 November 2025. The Ombudsman welcomes this statement and considers that the statement goes towards implementing Recommendation 2 of this report, but it does not contain the detail required for our Office to consider this recommendation fully implemented.

Overview

The public looks to government to not only know the law that underpins their functions, but to follow that law. It is the responsibility of both policy and service delivery agencies to ensure that, where non-compliance with the law by their agency is identified, they take sufficient and timely steps to correct that. If the agency has a concern that the law, when properly implemented, will have a perverse or unintended impact, agencies should ensure that this is quickly drawn to the attention of senior decision-makers, with a view to either the law being changed or a decision that the unintended impact is accepted as the outcome of implementing the law.

While agencies are always required to follow the law, there is a clear distinction between a situation where an agency is not aware that it is not following the law, and a situation where an agency knows that it is not doing so. Knowingly and deliberately not complying with the law was at the heart of Robodebt. **It is not acceptable that an agency knows for years that it is not following the law and chooses to continue to not follow the law.** The rule of law and trust in government are dependent on agencies complying with the law. If the intention is that the law be retrospectively amended to correct an apparent defect in the law, that intention can be publicly announced, so that at least there is transparency about the decision to not comply with the law pending that retrospective amendment. If it takes significant time to change the law and to change complex systems involved in applying the law, and if the issue was created by an error in the policy development or legislative processes, it would be an option to offer compensation to those affected by the inadvertent consequences embedded in the legislation for the period while the law as it stands is applied, until the legislation is corrected.

On 12 June 2025, Services Australia proactively reported to our Office that it had identified its practice, that parents with less than 35% care of a child do not receive child support, conflicted with the law. What Services Australia described as a 'misalignment' means that there are some circumstances currently where one parent providing less than 35% care of a child is legally entitled to receive some child support from the other parent but is not paid it (or is not paid the correct amount). This issue was originally identified by Services Australia staff in 2019. The Department of Social Services (DSS) were made aware of the issue by Services Australia in February 2020.

The agencies planned to remediate the issue via legislative amendment. However, successive attempts to develop amending legislation did not progress to any meaningful stage. At the time of finalising this report, Services Australia remains knowingly non-compliant with the law, 6 years after the issue was first identified. Though DSS (which has policy responsibility for the child support legislation) advised Services Australia in 2020 that the law should be followed, the reply from Services Australia noted that it was not doing so and suggested that DSS should have the law changed. Though DSS later reiterated its position to Services Australia that the law should be followed, noting the ongoing engagement between the agencies on the issue over subsequent years we consider that DSS knew or should have known that Services Australia continued to not do so. People detrimentally affected by this do not know that the law is not being applied correctly and therefore cannot make an informed choice of whether to pursue internal or external review of the decision that is impacting them. Information provided to our Office by Services Australia showed that, as at the time of responding to our request for information, it was yet to brief the relevant Minister about its choice not to apply the law enacted by Parliament. (The Minister was subsequently sent a brief, on 30 September 2025.)

We commenced an investigation into Services Australia and DSS to consider whether the decision not to apply the law here was reasonable. What we found was that the action taken by Services Australia and DSS to remediate this issue has not been reasonable. Amending legislation requires ministerial, Cabinet and parliamentary approval: departments and agencies cannot themselves amend the law. The agencies have however failed to escalate the issue in an appropriate manner, and the remediation plan to obtain legislative amendment has not proceeded in a timely manner. It should have been clear to the agencies that the remediation strategy was not working and that a new or additional plan was needed.

In making our findings, we acknowledge that this is a difficult and unfortunate situation. Child Support legislation has since 2008 contained a clear provision that a parent providing more than 65% of the care for the children of the former relationship should have no obligation to pay child support to the other parent. A possible implication of this, underpinning Services Australia's practice, is that a parent providing less than 35% of the care should therefore not receive child support. In most circumstances, legislative provisions operate to support Services Australia's practice that a parent with less than 35% care is not entitled to child support. However, other legislative amendments introduced in 2008 and 2018 have enabled possible unintended scenarios where this this practice conflicts with the law: a parent providing less than 35% care may be entitled to receive child support if the other parent is providing 65% of the care or less.

Services Australia advised that, since becoming aware of these issues, it has not implemented the law due to concerns that doing so would result in child support outcomes that customers and stakeholders would likely perceive as 'unfair and nonsensical'. At one extreme, Services Australia have identified scenarios in which a person with 0% care of a child can be owed some child support by the other parent for a period. It is valid and proper that Services Australia should have concerns about those scenarios.

Child support is about children. We agree that it is extremely important that child support is directed to parents caring for children and is not instead directed away to parents who are not providing care for those children. In May 2025 we reported on ways in which the child support system can be weaponised to inflict abuse on former partners and children from former relationships. Legislative provisions that produce unintended consequences may also be able to be weaponised.

If an agency is concerned that the legislation is producing an unfair outcome, particularly with respect to a scheme such as the child support scheme, it should prioritise fixing the issue. The agency should take all steps possible to draw this to the attention of senior decision-makers, including Ministers, to seek to have a decision made whether to correct those unfair outcomes.

While it can take time to obtain a decision, and even longer to have legislation amended, there may also be interim steps an agency can take to inform those with the potential to be affected of any action they can take to reduce the likelihood of these unintended consequences occurring.

We acknowledge that social security legislation is complex and is often the subject of amendment. It is likely that at any given time there are many proposals for amendment competing for attention. This also means however that there can frequently be social security Bills available that other amendments could be attached to, to address an issue such as the issue the subject of this report.

It is our view that the lack of action by the agencies has only served to exacerbate the issue. Services Australia's valid concerns about the significant and potentially negative impact of applying the law on some customers should have prompted addressing the issue as a matter of urgency.

We make 6 recommendations to Services Australia and DSS as a result of our investigation.

Of concern, our Office notes that many of our findings in this report are similar to earlier findings made to Services Australia as set out in our August 2023 Making things right - Public statement regarding child support historic assessments. Agencies need to consider how lessons learnt from our investigation findings and recommendations can be applied more broadly to improve their administration.

Agency culture

Our investigation identified an apparent attitude held by at least some staff at Services Australia that agencies should not have to implement the law in circumstances where the law conflicts with the agency's preferred practice, or where application of the law may have unfair outcomes for some people. While this was in a context of some ongoing discussions with DSS about the desirability of the law being amended, this attitude appears to have contributed to Services Australia failing to take steps to appropriately escalate, prioritise and explore remediation options for the issue. A February 2021 internal email suggested that Services Australia:

> **applies the law the way it was intended. This will be contentious and contrary to the standing advice from DSS.**

In a March 2021 email, one Services Australia staff member noted that DSS had said the issue would be addressed in a draft Bill in the Winter Sitting of 2021 and referred to previous instances where legal non-compliance issues were resolved by legislative reform:

> **DSS has previously agreed to Services Australia implementing legislation as intended rather than legislation as it exists when DSS agreed the legislation does not achieve the intended outcome and are seeking to amend the law with retrospective effect. Importantly for both DSS and Services Australia, changing the law retrospectively justifies the decisions made by Services Australia for the period of the endorsed policy approach, before the legislation is amended.**

In the same email, the staff member states:

> **Should DSS hold their position and ask that we process these cases as per the legislation, we could simply 'deprioritise' this work until a legislative amendment was made as there is no real impact on customers while they are parked. Issues for customers occur when they are processed as per the current legislation**.

Some of Services Australia and DSS's responses to our Office's questions also raised concerns about a potential unwillingness to, or lack of awareness of the importance of, recording decisions not to escalate significant issues. Services Australia advised its staff had drafted a brief about the less than 35% care issue for escalation to a General

Manager (Senior Executive Service [SES] Band 2) in early 2021, and DSS advised that its staff had drafted briefs on the need to legislate the issue for its Deputy Secretary and Secretary on 3 November 2020 and to the Minister's Office on 22 March 2021.

In all cases, it appears the briefs did not progress past the SES Band 1 level. Neither Services Australia nor DSS provided information to assist the Office to understand why the briefs did not proceed, and they could not provide records of any decisions not to escalate the issue.

Much of the handling of this issue in Services Australia and DSS occurred prior to the Robodebt Royal Commission in 2023. Services Australia has since implemented a range of significant reforms intended to change how its staff engage with issues such as the legality of administrative practices, and the DSS Secretary at the time of the Royal Commission also communicated extensively with DSS staff about such issues following the Royal Commission. In 2024, Services Australia established the 'Legal Compliance and Remediation Program', which aims to centrally coordinate reporting and escalation of all matters involving legal non-compliance. The steps taken by the agency to establish the program are commendable, and we believe some of the guidance provided to staff in its Legal Compliance and Remediation Playbook (the Playbook) should go some way to addressing some of the concerns raised in this report. For example, the Playbook provides clear guidance to staff about escalating issues of legal non-compliance to senior staff on an urgent basis.

At the same time, the issue the subject of this report has still not been addressed. Time will tell if the Legal Compliance and Remediation Program is effective in achieving the significant shift in culture required to improve the agency's response to situations where its policies and practices are not compliant with the law. The Office will continue to monitor the development of this program.

Lessons for all agencies

In addition to our findings set out below, our investigation into Services Australia and DSS's actions in relation to this issue has identified some key principles for any agency in remediating an instance of legal non-compliance. This is by no means an exhaustive list.

- Service delivery and policy agencies need to engage properly with each other to remediate issues in a timely and effective way.

Here, Services Australia should have done more to escalate the issue with DSS when it was clear it was acting in opposition to DSS's policy advice and legislative amendment was not going to progress in a timely manner. DSS also should have done more to ensure Services Australia was acting in accordance with its policy advice while it was taking action to pursue legislative amendment.

- Agencies need to fully understand the financial and non-financial impacts on people to inform their remediation strategy: decisions should be evidence-based.

Services Australia did some work to understand the financial and non-financial impacts on people, but this largely occurred years after the issue became known.

- Agencies should be transparent with Government and the public – and they should seek Government approval of decisions not to apply the law.

In the Treasury portfolio, for example, it is not uncommon for Ministers to announce policy decisions to introduce a new measure that will operate retrospectively, once legislated, from the date of the announcement. This transparency enables potentially impacted parties to make or adjust plans in the knowledge that Parliament will be asked to retrospectively change the law in a specified manner.

Our recommendations

Recommendation 1

If they have not since done so, Services Australia and DSS should urgently brief the relevant Ministers, fully explain the significance and impacts of this issue and obtain time critical bill status for the legislative amendment.

Recommendation 2

Services Australia and DSS should, as a priority, propose to relevant Ministers a public statement of government intent to amend the legislation retrospectively. The public statement should communicate to the public:

- the importance of notifying any changes in care within 28 days
- the consequences under the law of late notifications, including a possible liability to pay child support to the other parent where they have less than 35% care of the child, and
- any options available to people to seek compensation from the agencies where the agency has deliberately incorrectly applied the legislative provisions, including the Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme).

Recommendation 3

In the absence of a government decision that the law should not be applied pending an attempt to retrospectively amend the legislation, Services Australia and DSS should take active steps to implement the legislation. If necessary, future legislative amendment can operate in a way to validate any decisions made in the interim.

Recommendation 4

Services Australia should ensure that all staff are aware and provided with a copy of the guidance contained in its July 2025 'Legal Compliance and Remediation Playbook' about escalating issues of non-compliance to senior staff in a timely manner.

DSS should also ensure their staff are aware of the need to escalate issues of legal non-compliance to senior staff in a timely manner.

Recommendation 5

Services Australia and DSS should ensure that their policies and procedures reflect the importance of seeking independent external legal advice early where serious and systemic issues such as the less than 35% care issue are identified.

This should include guidance for staff in relation to the circumstances in which external legal advice should be sought, including the risks involved with any planned remediation action and the potential impact on members of the public.

Recommendation 6

Services Australia and DSS should ensure their staff are aware of the duty to notify responsible Ministers of issues under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

This includes Services Australia and DSS ensuring that their policies and procedures include guidance for staff in relation to the circumstances in which an issue and its impact might be significant enough to require notification under the PGPA Act.

The 'less than 35% care' issue

In 2008, the *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006* (New Formula Act) introduced s 40C(b) of the *Child Support (Assessment) Act 1989* (Cth) (the Assessment Act), which provides that a parent with more than 65% care will have an *annual child support rate* of *nil* and will be under no obligation to pay child support to the other parent.

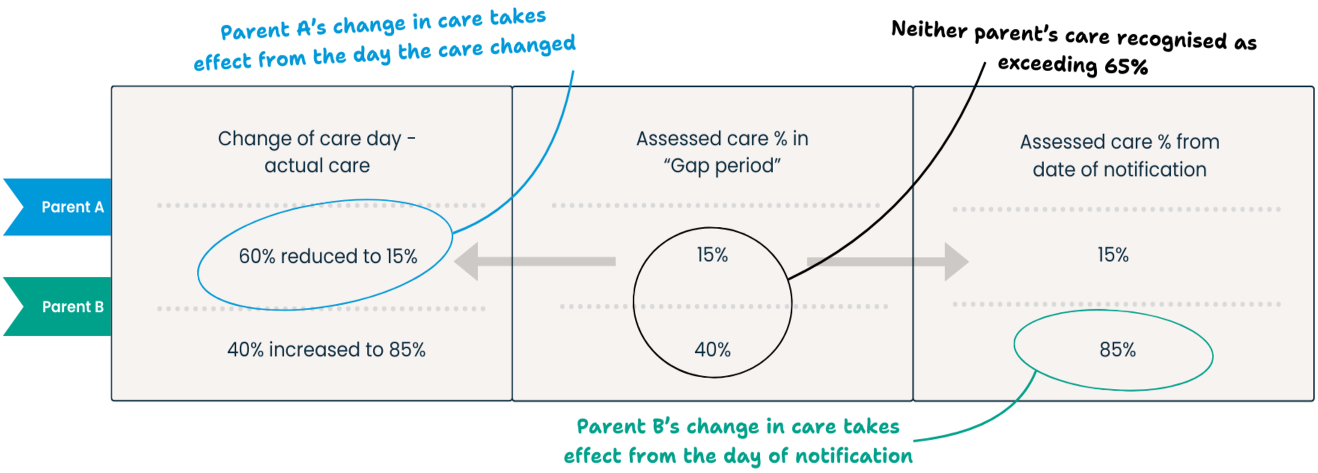
In most circumstances the provisions in the Assessment Act generally operate to ensure that the corresponding parent (with less than 35% care) will not be entitled to child support. This is consistent with Services Australia's practice that a parent with less than 35% care will never be recognised as having an entitlement to child support. Its system 'Cuba', which was introduced in 2002, assesses these parents as having no entitlement.

However, some of the provisions introduced in 2008 via the New Formula Act, and subsequent amendments to the Assessment Act introduced in 2018, the *Family Assistance and Child Support Legislation Amendment (Protecting Children) Act 2018* (Protecting Children Act), introduced scenarios where a parent with less than 35% care will be entitled to child support. Services Australia and DSS told our Office these were unintended outcomes of the amendments.

- **The 'gap period' scenario**: In 2018, Protecting Children Act introduced a change to how parents' percentage of care is recognised in circumstances where they delay notifying the Registrar of a change to the amount of time each parent provides care for the child.

  Under the new provisions, where parents delay notifying the Registrar of a change in care more than 28 days after the change occurred, the date the new determination takes effect is different for each parent depending on whether their care has increased or decreased. Where the parent's care has decreased, the new care percentage determination takes effect on the day the care changed. Where the parent's care has increased, the new care percentage determination takes effect on the day the change was notified.

  The period between the different dates of effect is known as the 'gap period'. Under the legislation, in some instances parents with less than 35% care during the gap period may be entitled to child support. This is because neither parent is recognised during this period as having a care percentage of more than 65% and so neither parent's obligation to pay to child support is removed under s 40C(b) of the Assessment Act.



- **The 'ineligible third-party carer' (ITPC) scenario:** On 30 April 2025, Services Australia received advice from DSS confirming a further unintended scenario where the law allows a person with less than 35% care to be paid child support. In this situation care of the child is shared across at least three parties (for example two parents and a grandparent) rather than two parents and can lead to situations where neither parent has more than 65% care of the child. This means that s 40C(b) of the Assessment Act will not operate to remove either parent's obligation. This 'misalignment' has existed since the current set of child support formulas came into force on 1 July 2008 via the amendments made by the New Formula Act.

Services Australia's practice, and its system, do not comply with the law in the 'gap period' scenario and the 'ITPC' scenario. Services Australia advised indicative data as at 1 March 2024 showed that approximately 16,600 parents in approximately 10,000 child support cases would be impacted by the 'gap period' scenario. An analysis on a sample of these cases suggested that recalculating child support in line with the law would result in an average case debt of approximately $560.

It advised there were difficulties obtaining accurate and complete data for those customers affected by the ITPC scenario. However, analysis conducted in early 2025 identified 4 child support cases impacted by the issue between 1 January 2023 and 30 September 2024. Services Australia advised that recalculating child support in line with the law would result in debts for all 4 cases, ranging from $60 to more than $10,000.

What we found

We found that the action taken by Services Australia and DSS to remediate this issue has not been proportionate or reasonable. The agencies have failed to escalate the issue in an appropriate manner and the remediation plan to seek legislative amendment has not proceeded in a timely manner. At the time of finalising this report, the issue has still not been fixed.

The decision not to apply the law for a period of 6 years is extremely concerning. It is not reasonable to hold off applying the law on the basis that there is a 'misalignment' with policy intent and that legislative amendments <u>may</u> be introduced, in the absence of any authority to do so. Despite Services Australia being aware of multiple failed attempts by DSS to progress seeking a legislative amendment over the 6-year period, the agencies continued to rely on legislative reform as the sole remediation strategy.

In our view, Services Australia and DSS failed to appropriately consider alternatives to remediating the issue and, in light of the impact, appropriately escalate the issue, seek external legal advice or brief the Minister.

TIMELINE OF KEY EVENTS

1989

Introduction of the ***Child Support (Assessment) Act 1989***.

2008

Commencement of the new formula from the **Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006**

2018

Introduction of the ***Family Assistance and Child Support Legislation Amendment (Protecting Children) Act 2018.***

2019

13 February – **Services Australia** identified the issue

May – **May 2019 federal election**, with government in caretaker for a period before and after the election.

2020

21 February – **Services Australia** advised **DSS** of the issue

6 March – **DSS** provided policy advice to Services Australia to implement the law & advised it would prioritise legislative amendment.

14 July – **Services Australia** email to DSS advising it was implementing the law 'as it was intended'. There is no record of DSS responding.

3 September – **Services Australia** sought confirmation from DSS on its policy position & timeframes for legislative amendment.

29 September – **DSS** confirmed policy position with Services Australia & advised it could not offer certain timeframes for legislative amendment.

December – **DSS** attempt #1 to progress amendment ahead of the 2021 Winter sitting. It is unclear whether an amendment was drafted. No bill was introduced to Parliament.

2022

22 March – **DSS** updated its *Child Support Guide* to remove reference to the requirement that a parent have at least 35% care of a child to receive child support.

May – **May 2022 federal election**, with government being in caretaker for a period before and after election

May–June – **DSS** attempt #2 to progress legislative amendment ahead of the 2022 Spring sitting. The Minister was not briefed, and no bill was introduced to Parliament.

2022

September

DSS attempt #3 to progress legislative amendment. An amendment to resolve the less than 35% care issue was not included when the bill was introduced to Parliament.

2023

17 May

Services Australia SES Band 1 internal email seeking advice on next steps.

18 May

Services Australia internal emails to SES Band 1 discussing options. It was agreed data would be requested to assist in decision.

2024

8 February

Services Australia internal data sampling completed (374 cases sampled).

2 August

Services Australia CEO wrote to Secretary DSS about progressing a legislative amendment to resolve the issue.

4 September

DSS commenced attempt #4 to progress legislative amendment ahead of the 2025 Spring sitting. As at finalising this report, a Bill has not been introduced to Parliament.

25 September

Meeting between **Services Australia** and **DSS**, during which DSS were again informed that Services Australia was not implementing the law.

10 October

DSS provided a ministerial submission to the Minister for Social Services that included a reference to a legislative amendment to resolve the issue.

2025

19 March
Services Australia CEO briefed on the issue, including the agency's legislative non-compliance.

7 April
Services Australia CEO wrote to Secretary DSS requesting urgent legislative amendment to resolve the issue.

30 April
Services Australia and **DSS** identified that the issue could impact the ineligible third-party carer cohort.

May
May 2025 federal election, with government in caretaker for a period before and after the election.

21 May
DSS provided a ministerial submission to the Minister for Social Services that included a reference to a legislative amendment to resolve the issue.

12 June
Services Australia notified our Office of the issue.

1 July
Machinery of Government Change moved Services Australia to the Finance Portfolio, reporting to the Minister for Government Services.

4 July
Services Australia provided a ministerial submission to the Minister for Government Services which included a reference to a legislative amendment to resolve the issue.

8 July
Our Office made preliminary inquiries to **Services Australia**.

26 August
Our Office commenced our investigation.

**Note this timeline does not include all action taken by the agencies in relation to this issue but draws out key events as relevant to our findings.*

Unreasonable reliance on remediation through legislative reform

Services Australia told us one of the reasons it has not implemented the law since first identifying the issue in 2019 is because it expected that legislative reform would 'progress quickly' to bring the legal position in line with its intended policy and practice.

As reflected in the timeline above, there had been 4 'attempts' to develop legislative amendments over the course of 6 years. When we asked DSS when it first notified the responsible Minister of this issue, it advised that the Minister signed a ministerial submission on 10 October 2024. This was after the first 3 'attempts' between 2021 and 2023. DSS subsequently advised, as part of the process for procedural fairness on the draft report of this investigation, that a ministerial submission in February 2021 had also included a reference to the less than 35% care issue. Overall, DSS did not provide sufficient information for us to understand how strenuous the first three 'attempts' at procuring an amendment actually were. As at finalisation of this report, no bills containing amendments to resolve the issue have been introduced to Parliament. In our view, the multiple failures to progress amendments over several years should have conveyed to Services Australia and DSS that legislative reform was not going to progress quickly and prompted them to revise their remediation strategy.

Legislative amendment seemed to have been determined as the remediation plan early after this issue was first identified. We acknowledge that, by the time of the 2022 failed 'attempt', Services Australia had undertaken some work to determine the number of assessments impacted by the issue (at least 9,865 assessment periods in 5,062 cases at the time) and the monetary value of child support payments that had been incorrectly calculated under the policy (approximately $3.7M at the time). It had concerns about the time, cost and resource burden required to implement the law either via an ICT update to Cuba, or by manually calculating and correcting impacted assessments. It had also raised with DSS concerns about what it believed would be perceived by customers and stakeholders to be 'unfair and nonsensical' outcomes of implementing the law, including that some parents with 0% care of a child could be entitled to child support for a period, as well as a 'likely' increase in overpayments and a 'reduction in compliance'.

Noting these significant concerns, we would expect that upon learning that the intended legislative reform would not be proceeding in June 2022 Services Australia would have undertaken further work to assess in detail the likely cost, timeframe and resources required to implement a system or manual fix, and to understand how frequently perceived unfair outcomes were likely to eventuate within the impacted cohort. This could have informed a strategy to implement the law while awaiting legislative reform, including any options to mitigate unfair outcomes for customers.

Our examination of the information provided by Services Australia suggests, however, that this did not occur. An earlier email in 2021 noted that the concerns about the significant time and cost associated with updating Cuba were evident 'without a comprehensive analysis by ICT', and that 'there is no data' on the time taken to correct assessments manually. It appears Services Australia did not undertake data sampling to understand the prevalence of unfair outcomes within the cohort until mid-2023, following a third unsuccessful attempt to progress an amendment.

After the mid-2023 failed attempt, Services Australia staff discussed potential options in lieu of legislative amendment. These options were described to a SES Band 1 officer at Services Australia at a high level as: applying the legislation as drafted via a system fix, applying the legislation as drafted via a manual fix, or take no action.

This appears to be the first time Services Australia documented consideration of the fact that the issue may not be resolved quickly via legislative reform. Services Australia advised us that the SES Band 1 officer requested more data to inform a decision. While the decision to obtain more data was appropriate, we were disappointed to see that it took 9 months to finalise the data and an additional 3 months for the SES Band 1 officer to approve it. For an issue of this significance, this work should have been prioritised.

We understand the data sampling included 358 'gap period' cases and showed that 130 of these would result in a parent with 0% care being entitled to child support for a period, though Services Australia staff noted challenges to extrapolating this to the full cohort. Despite the data supporting some of Services Australia's concerns about unfair outcomes, we could not see evidence of any further formal consideration of this information. In response to our request for information, Services Australia advised that *'no broader case sampling has been undertaken to determine the frequency of perceived unfair or perceived fair outcomes in relation to the less than 35% care issue'.* We also could not see evidence of a formal decision on the identified options to remediate this issue. Services Australia continued not to apply the law and pursue legislative amendment as its remediation strategy.

Services Australia also did not provide any evidence that it explored other strategies to mitigate impacts if the law was applied correctly, such as providing clear advice to parents to reduce likelihood of instances of 'gap period' and ITPC scenarios arising or supporting customers to seek compensation in situations where they believed application of the law resulted in unfair outcomes. In March 2020, DSS told Services Australia that it '*recognises that some parents may make Act of Grace claim if they* *consider that their situation warrants consideration under that discretionary scheme. Any such claims will be considered on their individual merits'*. There is no evidence that Services Australia responded on this point or considered it as an option to mitigate 'unfair' outcomes if it were to implement the law.

In June 2025 Services Australia commenced work to analyse and 'assess the risk, barriers and practical implications' of options to implement the law while awaiting legislative reform.

Services Australia have advised it concluded that implementing a system fix would take 9-12 months, and that a manual fix would require resources beyond current capacity and engaging with assessments manually may risk further non-compliance and flow on impacts for family tax benefit entitlements.

In addition to believing legislative amendment would progress quickly despite indications to the contrary, it appears Services Australia formed a view early on that implementing the law was not practically viable or too difficult. We believe this hampered Services Australia in taking timely steps to properly consider remediation strategies other than legislative reform.

Internal correspondence from Services Australia also suggests that concerns about the sensitive and difficult nature of the issue may have impacted the agency's willingness to consider options for implementing the law. In a March 2021 email, one staff member suggested the agency 'deprioritise' any work to implement the law, noting:

> **Should Services Australia accept DSS's advice and strictly apply the legislation as written, it is possible that significant community concern could arise, especially from paying parents and groups who represent them…it would be difficult to justify in the wider context of the scheme and community expectations.**

While we acknowledge Services Australia held real concerns about the potential unfair impacts implementing the law could have on some customers, we consider this only magnifies the need for a timely and thorough assessment of the risks, barriers and practical implications of the available options for implementing the law.

In our view, Services Australia did not properly explore options for implementing the law until at least 4 years of failed attempts to progress legislative reform. Had Services Australia commenced this work earlier it would have been in a better position to, for example, weigh the 9-12 month timeframe for implementing a system fix against the time it was taking to progress a legislative amendment. We note that the 9-12 months it would have taken to implement a system fix, if commenced shortly after the issue was identified, have now well and truly passed. It also could have considered strategies for mitigating unfair outcomes for some people if it were to implement the law, such as developing clear advice to parents about the importance of notifying any changes in care within 28 days, and about the potential consequences of late notification. Services Australia could have also developed advice for customers about their options for seeking compensation from the Government in circumstances where they believed implementation of the law resulted in an unfair outcome, such as through Act of Grace claims.

Timely remediation action is particularly important where it is likely that an issue will impact an increasingly larger number of people over time. By taking several years to remediate the less than 35% care issue, the number of impacted customers has likely significantly increased, including people who have since left the child support system (because the children being supported are now 18 years of age or older). This has resulted in increased resources required to implement the law while attempts to progress legislative reform remain ongoing, including for people whose contact details are now out of date, or who may find it distressing to receive contact about changes to historical assessments due to domestic violence or other factors.

Recommendation 1

If they have not since done so, Services Australia and DSS should urgently brief the relevant Ministers, fully explain the significance and impacts of this issue and obtain time critical bill status for the legislative amendment.

Recommendation 2

Services Australia and DSS should, as a priority, propose to relevant Ministers a public statement of government intent to amend the legislation retrospectively. The public statement should communicate to the public:

- the importance of notifying any changes in care within 28 days
- the consequences under the law of late notifications, including a possible liability to pay child support to the other parent where they have less than 35% care of the child, and
- any options available to people to seek compensation from the agencies where the agency has deliberately incorrectly applied the legislative provisions, including the Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme).

Recommendation 3

In the absence of a government decision that the law should not be applied pending an attempt to retrospectively amend the legislation, Services Australia and DSS should take active steps to implement the legislation. If necessary, future legislative amendment can operate in a way to validate any decisions made in the interim.

After the draft report of this investigation was provided to the agencies for procedural fairness, the Secretary of DSS issued a public statement on 26 November 2025 advising of the government's intention to legislate with retrospective effect to address the less than 35% issue. We are advised by the agencies that legislation has now been drafted to address the less than 35% care issue, although no Bill has yet been introduced to Parliament. We welcome these developments.

Failure to escalate issue appropriately

Services Australia staff failed to escalate the less than 35% issue to senior staff in a timely manner. After first identifying the issue in 2019, Services Australia could not provide us with evidence of any substantial attempts to escalate the matter internally beyond the SES Band 1 level until 5 years later. Although on 2 August 2024 Services Australia's Chief Executive Officer (CEO), Mr David Hazlehurst, wrote to the then DSS Secretary about progressing legislative amendments to resolve a number of issues, including the 35% care issue, the agency could not provide evidence that it briefed the CEO in detail on the nature of the issue and its impacts until March 2025. The referenced letter to the DSS Secretary did not include any information about the issue itself, including Services Australia's approach of not applying the law. In response to our request for information, Services Australia advised:

> **The Agency has been unable to find any record of a formal options paper or similar minute being presented to an SES Officer or other decision-maker or committee on this matter at this time.**

This is concerning, given Services Australia's awareness during this period that legislative review was not progressing quickly, and understanding that their approach was contrary to the law and DSS's stated policy position.

It appears some consideration was given to escalating the issue in early 2021, following an internal discussion. Services Australia advised

> **It was agreed a brief would be drafted for the General Manager [SES Band 2]. Drafting of the brief commenced and data was sought but this brief did not proceed.**

The agency did not provide information to assist the Office to understand why the brief did not proceed. It is concerning that either a decision was made by Services Australia staff not to progress a brief at this stage or this was overlooked. Had senior staff been briefed earlier, perhaps they could have gained more traction with progressing one of the earlier attempts at legislative amendment.

DSS told our Office that emails were drafted to brief its Deputy Secretary and Secretary on the need to progress an amendment to resolve the less than 35% care issue on 3 November 2020 and the Minister's Office on 22 March 2021. However, these did not appear to progress past SES Band 1 level and, similarly to Services Australia, they did not provide information to assist our Office to understand why this was.

It was unclear to us from the information provided in response to our request for information what steps DSS took to escalate the issue beyond SES Band 1 level between September 2024, when Services Australia again informed DSS that it continued not to implement the law during a meeting, and 7 April 2025, when Mr Hazlehurst wrote to DSS Secretary, Michael Lye, about the issue. During procedural fairness, DSS advised that the issue was 'regularly escalated beyond SES Band 1 level since 2024, including as part of updates on status of work to the Deputy Secretary and as part of briefing to the Minister', without providing detail. DSS subsequently provided documents from March, April and October 2025 referencing the need for legislative amendment, while not mentioning that Services Australia was continuing to not apply the law. Noting the date of documents, they do not change our finding that DSS staff failed to escalate the issue appropriately.

In our recent report Automation in the TCF: when the law is changed but the system isn't, the Office noted its concern over continuing instances of agencies not taking timely action to identify and address systemic errors. In cases such as this, where there are significant complexities and risks inherent in a particular approach and these are known to the agency, it is critical that senior officers are briefed as early as possible. This is crucial for ensuring issues such as the less than 35% issue are appropriately considered and that remediation, including via legislative reform, is prioritised appropriately.

Recommendation 4

Services Australia should ensure that *all* staff are aware and provided with a copy of the guidance contained in its July 2025 'Legal Compliance and Remediation Playbook' about escalating issues of non-compliance to senior staff in a timely manner.

DSS should also ensure their staff are aware of the need to escalate issues of legal non-compliance to senior staff in a timely manner.

Failure to seek external legal advice for a significant issue

It is not the Office's view that external legal advice is required in relation to legal non-compliance issues in every case, for example, where seeking such advice would only delay planned remediation action. However, this was not a situation where any remediation was progressing.

Our Office's August 2023 Making things right - Public statement regarding Child Support historic assessments, which was also made to Services Australia, highlighted as a key lesson the need to seek external legal advice early to clarify and assist in resolving a contentious issue. This applies particularly here noting the known complexities and risks inherent in Services Australia's approach to not applying the law, and the significant and potentially unfair consequences for customers if Services Australia did apply the law.

Recommendation 5

Services Australia and DSS should ensure that their policies and procedures reflect the importance of seeking independent external legal advice early where serious and systemic issues such as the less than 35% care issue are identified.

This should include guidance for staff in relation to the circumstances in which external legal advice should be sought, including the risks involved with any planned remediation action and the potential impact on members of the public.

Failure to notify Responsible Minister

Section 19(1)(e) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) sets out a duty that agencies and departments such as Services Australia and DSS notify the responsible Minister as soon as practicable after it becomes aware of any significant issues that has affected it.

At the time of responding to our request for information, neither Services Australia nor DSS had provided detailed briefings to the relevant Ministers on the less than 35% care issue.

Services Australia subsequently advised that they briefed their Minister on 30 September 2025. DSS subsequently advised that they briefed their Minister in November 2025.

It is unacceptable that, over the course of the prior 6 years, Services Australia and DSS did not take steps to properly notify relevant Ministers of the less than 35% care issue after first identifying the issue, and prior to commencing an approach to knowingly not apply the law.

More timely notification of this issue to the relevant Ministers, particularly if accompanied by frank and fearless advice on the impacts of the issue, was the only way to seek timely legislative amendment – or alternatively a decision to accept the operation of the law as it currently stands.

Similarly, we note that our Office was not advised of this issue until 6 years had passed. We consider the agencies had the opportunity to and should have disclosed this matter to our Office earlier.

Recommendation 6

Services Australia and DSS should ensure their staff are aware of the duty to notify responsible Ministers of issues under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

This includes Services Australia and DSS ensuring that their policies and procedures include guidance for staff in relation to the circumstances in which an issue and its impact might be significant enough to require notification under the PGPA Act.

Publication Note

In accordance with my statutory procedural fairness obligation, my investigation report, *Following the law is not optional: An investigation into the actions of Services Australia and the Department of Social Services to address an ongoing issue of non-compliance with the law,* was provided to Services Australia and the Department of Social Services (DSS) prior to publication to give the agencies the opportunity to:

- advise of any errors of fact
- provide views on any parts of my investigation report that raised any legal professional privilege or public interest immunity concerns, and
- provide a response to the recommendations in the report.

While the agencies received and responded to my full report, I have decided to publish a modified version of my report, to remove material subject to legal professional privilege or public interest immunity. While I am not publishing the agencies' original responses to me, because they also included references to material subject to a privilege, I am publishing modified versions of the agencies' responses to my report, so as to still provide transparency to the public and Parliament and to hold the agencies to account publicly on the action needed to implement my recommendations.

I have published two versions of Services Australia's response. This is because Services Australia requested to amend its initial response to:

- remove some of the previous redactions, on the basis that information was now in the public domain, and
- bring forward some of its anticipated timeframes so that it undertakes to complete action to implement the recommendations sooner than originally advised.

While I welcome agencies deciding to take faster action to implement my recommendations, in my view it was appropriate to publish both versions of the timeframes proposed by the agency, for transparency.

Iain Anderson
Commonwealth Ombudsman

Australian Government

Services Australia

Your Ref: *A2541529*
Our Ref: EC25-003238

Chief Executive Officer
David Hazlehurst

Mr Iain Anderson
Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

Iain

Dear ~~Mr~~ Anderson

Services Australia's responses to the Ombudsman's final investigation report on the 'less than 35% care' issue

Thank you for providing a copy of the final report and for the opportunity to review the modified report and identify additional redactions prior to its publication. Services Australia (the Agency) has identified a few additional redactions and recommended corrections for your consideration. Details are set out in Attachment A.

It is of course the case that 'following the law is not optional'.

As you know, these are issues I am deeply concerned about, have taken very seriously with my senior team, and have acted on. That is why the Agency has established the Legal Compliance and Remediation Program and the board to coordinate the governance, reporting and action on all matters involving legal non-compliance across all programs administered by the Agency. It is why we developed the Legal Compliance and Remediation Playbook to assist staff in understanding their obligations, particularly with respect to early identification and escalation. It is why we have established Legal Compliance as a standalone enterprise risk, reviewed monthly by our Executive Committee. We have also driven purposefully a more open relationship with oversight bodies, including your Office, on these matters and our proposed approaches for managing them.

I note your observations about agency culture, largely drawing on evidence from 2021. Significant changes and progress have since been made, including implementation of the recommendations made by the Royal Commission into the Robodebt Scheme, commitment to strengthen trust, accountability and focus on customer-centred service design, deeper engagement with advocacy organisations, the establishment of the Legal Compliance and Remediation Program, and greater collaboration and partnership with policy agencies in managing legislative non-compliance issues.

I have regular formal and informal engagement and communication with relevant Secretaries, about legal compliance and policy issues, including collaborating on prompt action and resolution of the legislative non-compliance issues as they are identified, reported and escalated.

Addressing legislative non-compliance issues is complex and challenging and requires our collective effort and collaboration. I am keen to work closely with you and my policy colleagues to further strengthen our approach. I therefore again extend an invitation for you to periodically attend a briefing from our Legal Compliance and Remediation Board alongside myself, on legislative non-compliance issues and actions taken by the Agency. Without of course limiting your capacity to investigate matters in accordance with your statutory responsibilities, I would welcome your guidance and feedback.

Thank you for confirming you will advise me before publishing the report. The Agency will continue to work with your Office on this issue and provide updates on the implementation of the recommendations. I appreciate the suggestion that our response to the report not be published because of public interest immunity or legal professional privilege. However, I've asked my team to consider whether a version of it could be included, and asked them to work with your office on it.

The Agency's contact for the Legal Compliance and Remediation Program is [redacted] The Agency's contact for the less than 35% care issue is [redacted] Please do not hesitate to contact us if you require more information.

Yours sincerely

[redacted]

David Hazlehurst

8 December 2025

COMMONWEALTH OMBUDSMAN

Attachment A – Recommendation – Services Australia response template

The policy intent of the Child Support Scheme is that parents with less than 35 per cent care of a child should not be assessed to receive child support. This is to ensure that only parents who have a sufficient level of care receive child support and is aligned with Family Tax benefit (FTB) policy and legislation.

The Department of Social Services (DSS) has acknowledged that legislative amendments in 2008 and 2018 produced unintended outcomes, and that legislative amendment is needed as a priority to rectify the situation, prevent unfair outcomes eventuating for customers and to preserve resources for the primary carer.

Services Australia (the Agency) has been engaging with DSS since this issue was identified.

[redacted] DSS has made a public statement about the Government's intent to progress legislative amendments as a priority. These amendments will ensure parents with less than 35 per cent care are not entitled to receive child support, ensure that only parents who have a sufficient level of care are assessed to receive child support and would align the legislation, policy intent and current system functionality.

The Agency takes the approach to identifying and remediating issues of legislative non-compliance, and the need to take sufficient steps to implement the law where misalignment is identified, very seriously. The Agency is committed to resolving known issues and to identify, escalate and resolve new matters as they arise.

The Agency has established the Legal Compliance and Remediation Program to centrally coordinate reporting and escalation of all matters involving legal non-compliance in the administration of payments and services delivered across all programs.

The Program emphasises the requirement for all staff to notify and escalate issues of legal non-compliance and provides instructions on how to do so. This has been clearly set out in the Legal Compliance and Remediation Playbook which is available for all staff on the Agency's Intranet.

To address the recommendations, additional communications will be delivered across the Agency to raise awareness and to remind staff of their obligations to identify, report and escalate matters, and relevant documents will be reviewed and updated to provide improved guidance.

Recommendation	Agency response to recommendations/ suggestions	Action agency proposes to take and expected timeframes for implementation of recommendations/ suggestions
Recommendation 1: If they have not since done so, Services Australia and DSS should urgently brief the relevant Ministers, fully explain the significance and impacts of this issue and obtain time critical bill status for the legislative amendment.	☒ **Accepted** ☐ **Not accepted** If not accepted, please provide reasons:	**Proposed action**: The Agency provided a brief to the Minister for Government Services [redacted]. [redacted] [redacted] [redacted] [redacted]

		[redacted] **Expected timeframes**: Action Completed. **Justification for timeframes**: Action Completed.
Recommendation 2: Services Australia and DSS should, as a priority, propose to relevant Ministers a public statement of government intent to amend the legislation retrospectively. The public statement should communicate to the public: • the importance of notifying any changes in care within 28 days • the consequences under the law of late notifications, including a possible liability to pay child support to the other parent where they have less than 35% care of the child, and • and any options available to people to seek compensation from the agencies where the agency has deliberately incorrectly applied the legislative provisions, including the Scheme for Compensation for	☒ **Accepted (In Principle)** ☐ **Not accepted** If not accepted, please provide reasons:	**Proposed action**: On 26 November 2025, the DSS Secretary, Mr Michael Lye, issued a public statement acknowledging the less than 35 per cent care issue and confirming that the government will prioritise legislative amendments with retrospective effect in 2026 to address concerns that child support payments may be required to be made in a small number of cases to a person with less than 35 per cent of the care of a child. In relation to communicating to the public about the importance of notifying any changes in care within 28 days and potential consequences, there is information on the Agency's website (Child support payments and care arrangements - Child support assessment - Services Australia) advising customers: • there are rules that affect how changes in care arrangements apply to child support assessments

Detriment caused by Defective Administration (CDDA Scheme).		when the Agency is notified more than 28 days after the change occurred; and • failure to notify of changes to care arrangements can lead to a debt or overpayment. Letters issued to customers also provide notice that changes in circumstances, including care, need to be reported as soon as possible as some changes can only be made from the date of notification and a failure to notify on time may result in debt or overpayment. The Agency will further identify and implement improvements to better help customers understand the rules and consequences. Communication, reference and training materials will be reviewed. **Expected timeframes**: Public statement issued by DSS on 26 November 2025. Improved communication and reference materials by March 2026. **Justification for timeframes**: Existing communication and reference materials will be reviewed to identify improvement opportunities for implementation in the first quarter of 2026.

COMMONWEALTH OMBUDSMAN

Recommendation 3: In the absence of a government decision that the law should not be applied pending an attempt to retrospectively amend the legislation, Services Australia and DSS should take active steps to implement the legislation. If necessary, future legislative amendment can operate in a way to validate any decisions made in the interim.	☒ **Accepted** ☐ **Not accepted** If not accepted, please provide reasons:	**Proposed action**: As noted in the Agency's response to Recommendation 2, DSS released a public statement on 26 November 2025 confirming the intention and commitment to seek legislative amendment with retrospective effect as a priority in 2026 to ensure that only parents who have a sufficient level of care are assessed to receive child support. [redacted] The Agency will continue to work closely with DSS and relevant Ministers to progress urgent legislative amendment and a [redacted] decision on the management of this issue. **Expected timeframes**: By February 2026. **Justification for timeframes**: The development of a [redacted] decision will require engagement with relevant Ministers and collaboration between DSS and the Agency.
Recommendation 4: Services Australia should ensure that all staff are aware and provided with a copy of the guidance contained in its July 2025 'Legal Compliance and Remediation Playbook' about	☒ **Accepted** ☐ **Not accepted** If not accepted, please provide reasons:	**Proposed action**: On 20 August 2025, the Agency published a page dedicated to the Legal Compliance and Remediation Program on the internal Intranet, making it available to all Agency staff. This page includes a link to the Legal Compliance and Remediation Playbook.

escalating issues of non-compliance to senior staff in a timely manner. DSS should also ensure their staff are aware of the need to escalate issues of legal non-compliance to senior staff in a timely manner.		[redacted] Further communication will be made by the CEO in early December to all Agency staff to remind them of the importance of escalating issues to senior staff and providing a link to the Legal Compliance and Remediation Program Intranet page to access the Playbook and other relevant information. **Expected timeframes**: By December 2025. **Justification for timeframes**: Scheduled whole-of-agency communication in December 2025.
Recommendation 5: Services Australia and DSS should ensure that their policies and procedures reflect the importance of seeking independent external legal advice early where serious and systemic issues such as the less than 35% care issue are identified. This should include guidance for staff in relation to the circumstances in which external legal advice should be sought, including the risks involved with any	☒ **Accepted** ☐ **Not accepted** If not accepted, please provide reasons:	**Proposed action**: The Agency is committed to ensuring policies and procedures reflect the importance of seeking legal advice early where serious and systemic issues such as non-compliance with legislation are identified. [redacted]

planned remediation action and the potential impact on members of the public.		[redacted] **Expected timeframes**: By March 2026. **Justification for timeframes**: The review and updating of current templates and reporting requirements, including the alignment of documentation and processes, will require engagement and collaboration across a number of business areas.
Recommendation 6: Services Australia and DSS should ensure their staff are aware of the duty to notify responsible Ministers of issues under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). This includes Services Australia and DSS ensuring that their policies and procedures include guidance for staff in relation to the circumstances in which an issue and its impact might be significant enough to require notification under the PGPA Act.	☒ **Accepted** ☐ **Not accepted** If not accepted, please provide reasons:	**Proposed action**: The Agency is committed to ensuring all business areas and staff are aware of the duty to notify responsible Ministers of issues (including issues of legislative non-compliance) under the PGPA Act. The Agency will review and update its policies, procedures and guidelines to ensure the duty to notify responsible Ministers of issues is made clear. [redacted]

		The Agency will also review and update the Legal Compliance and Remediation Program Playbook to include greater clarity and examples for when an issue and its impact might be significant enough to require a notification under the PGPA Act. **Expected timeframes**: By March 2026. **Justification for timeframes**: The review and updating of current policies, procedures and guidelines, including the alignment of documentation and examples, will require engagement and collaboration across a number of business areas.

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Attachment A – Recommendation – Services Australia response template

The policy intent of the Child Support Scheme is that parents with less than 35 per cent care of a child should not be assessed to receive child support. This is to ensure that only parents who have a sufficient level of care receive child support and is aligned with Family Tax benefit (FTB) policy and legislation.

The Department of Social Services (DSS) has acknowledged that legislative amendments in 2008 and 2018 produced unintended outcomes, and that legislative amendment is needed as a priority to rectify the situation, prevent unfair outcomes eventuating for customers and to preserve resources for the primary carer.

Services Australia (the Agency) has been engaging with DSS since this issue was identified.

The Agency has worked with DSS to draft legislative amendments and [redacted] authority has been provided to bring forward a Bill, DSS has made a public statement about the Government's intent to progress legislative amendments as a priority. These amendments will ensure parents with less than 35 per cent care are not entitled to receive child support, ensure that only parents who have a sufficient level of care are assessed to receive child support and would align the legislation, policy intent and current system functionality.

The Agency takes the approach to identifying and remediating issues of legislative non-compliance, and the need to take sufficient steps to implement the law where misalignment is identified, very seriously. The Agency is committed to resolving known issues and to identify, escalate and resolve new matters as they arise.

The Agency has established the Legal Compliance and Remediation Program to centrally coordinate reporting and escalation of all matters involving legal non-compliance in the administration of payments and services delivered across all programs.

The Program emphasises the requirement for all staff to notify and escalate issues of legal non-compliance and provides instructions on how to do so. This has been clearly set out in the Legal Compliance and Remediation Playbook which is available for all staff on the Agency's Intranet.

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To address the recommendations, additional communications will be delivered across the Agency to raise awareness and to remind staff of their obligations to identify, report and escalate matters, and relevant documents will be reviewed and updated to provide improved guidance.

Recommendation	Agency response to recommendations/ suggestions	Action agency proposes to take and expected timeframes for implementation of recommendations/ suggestions
Recommendation 1: If they have not since done so, Services Australia and DSS should urgently brief the relevant Ministers, fully explain the significance and impacts of this issue and obtain time critical bill status for the legislative amendment.	☒ **Accepted** ☐ **Not accepted** If not accepted, please provide reasons:	**Proposed action**: The Agency provided a brief to the Minister for Government Services on 30 September 2025. The brief also noted that it constituted a notice to the Minister under subsection 19(1)(e) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) as a significant issue. The Agency understands that DSS has separately briefed the Minister for Social Services. [redacted] DSS is pursuing options to prioritise legislative amendments in 2026 to address this matter and is working with Services Australia to finalise amendments as a priority. The government's intention is to pass legislation with

		retrospective effect to ensure that no parent is unfairly disadvantaged by this anomaly. **Expected timeframes**: Action Completed. **Justification for timeframes**: Action Completed.
Recommendation 2: Services Australia and DSS should, as a priority, propose to relevant Ministers a public statement of government intent to amend the legislation retrospectively. The public statement should communicate to the public: • the importance of notifying any changes in care within 28 days • the consequences under the law of late notifications, including a possible liability to pay child support to the other parent where they have less than 35% care of the child, and • and any options available to people to seek compensation from the agencies where the agency has deliberately incorrectly applied the legislative provisions, including the Scheme for Compensation for	☒ **Accepted (In Principle)** ☐ **Not accepted** If not accepted, please provide reasons:	**Proposed action**: On 26 November 2025, the DSS Secretary, Mr Michael Lye, issued a public statement acknowledging the less than 35 per cent care issue and confirming that the government will prioritise legislative amendments with retrospective effect in 2026 to address concerns that child support payments may be required to be made in a small number of cases to a person with less than 35 per cent of the care of a child. In relation to communicating to the public about the importance of notifying any changes in care within 28 days and potential consequences, there is information on the Agency's website (Child support payments and care arrangements - Child support assessment - Services Australia) advising customers: • there are rules that affect how changes in care arrangements apply to child support assessments

Detriment caused by Defective Administration (CDDA Scheme).		when the Agency is notified more than 28 days after the change occurred; and • failure to notify of changes to care arrangements can lead to a debt or overpayment. Letters issued to customers also provide notice that changes in circumstances, including care, need to be reported as soon as possible as some changes can only be made from the date of notification and a failure to notify on time may result in debt or overpayment. The Agency will further identify and implement improvements to better help customers understand the rules and consequences. Communication, reference and training materials will be reviewed. **Expected timeframes**: Public statement issued by DSS on 26 November 2025. Improved communication and reference materials by end of January 2026. **Justification for timeframes**: Existing communication and reference materials will be reviewed to identify improvement opportunities for implementation by the end of January 2026.

Recommendation 3: In the absence of a government decision that the law should not be applied pending an attempt to retrospectively amend the legislation, Services Australia and DSS should take active steps to implement the legislation. If necessary, future legislative amendment can operate in a way to validate any decisions made in the interim.	☒ **Accepted** ☐ **Not accepted** If not accepted, please provide reasons:	**Proposed action**: As noted in the Agency's response to Recommendation 2, DSS released a public statement on 26 November 2025 confirming the intention and commitment to seek legislative amendment with retrospective effect as a priority in 2026 to ensure that only parents who have a sufficient level of care are assessed to receive child support. Ministerial engagement and briefing have also been undertaken. The Agency will continue to work closely with DSS and relevant Ministers to progress urgent legislative amendment and a government decision on the management of this issue. **Expected timeframes**: By end of January 2026. **Justification for timeframes**: The development of a government decision will require engagement with relevant Ministers and collaboration between DSS and the Agency.
Recommendation 4: Services Australia should ensure that all staff are aware and provided with a copy of the guidance contained in its July 2025 'Legal Compliance and Remediation Playbook' about	☒ **Accepted** ☐ **Not accepted** If not accepted, please provide reasons:	**Proposed action**: On 20 August 2025, the Agency published a page dedicated to the Legal Compliance and Remediation Program on the internal Intranet, making it available to all Agency staff. This page includes a link to the Legal Compliance and Remediation Playbook.

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Services Australia

escalating issues of non-compliance to senior staff in a timely manner. DSS should also ensure their staff are aware of the need to escalate issues of legal non-compliance to senior staff in a timely manner.		On 22 August 2025, all Agency Deputy CEOs were notified of the new Intranet page for cascading, as appropriate. Further communication will be made by the CEO in early December to all Agency staff to remind them of the importance of escalating issues to senior staff and providing a link to the Legal Compliance and Remediation Program Intranet page to access the Playbook and other relevant information. **Expected timeframes**: By December 2025. **Justification for timeframes**: Scheduled whole-of-agency communication in December 2025.
Recommendation 5: Services Australia and DSS should ensure that their policies and procedures reflect the importance of seeking independent external legal advice early where serious and systemic issues such as the less than 35% care issue are identified. This should include guidance for staff in relation to the circumstances in which external legal advice should be sought, including the risks involved with any	☒ **Accepted** ☐ **Not accepted** If not accepted, please provide reasons:	**Proposed action**: The Agency is committed to ensuring policies and procedures reflect the importance of seeking legal advice early where serious and systemic issues such as non-compliance with legislation are identified. The Legal Services Customer and Legal Services Corporate Divisions are responsible for determining whether external advice will be required, in consultation with the relevant program area.

planned remediation action and the potential impact on members of the public.		The Agency will review current templates to ensure sufficient information is captured to enable a decision to be made on the need for external legal advice. **Expected timeframes**: By end of January 2026. **Justification for timeframes**: The review and updating of current templates and reporting requirements, including the alignment of documentation and processes, will require engagement and collaboration across a number of business areas.
Recommendation 6: Services Australia and DSS should ensure their staff are aware of the duty to notify responsible Ministers of issues under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). This includes Services Australia and DSS ensuring that their policies and procedures include guidance for staff in relation to the circumstances in which an issue and its impact might be significant enough to require notification under the PGPA Act.	☒ **Accepted** ☐ **Not accepted** If not accepted, please provide reasons:	**Proposed action**: The Agency is committed to ensuring all business areas and staff are aware of the duty to notify responsible Ministers of issues (including issues of legislative non-compliance) under the PGPA Act. The Agency will review and update its policies, procedures and guidelines to ensure the duty to notify responsible Ministers of issues is made clear. This will include updates to the current template for requesting legal advice, which requires the officer completing the form to identify if 'Your request relates to obligations under the Public Governance, Performance and Accountability Act' and to other relevant documentation which inform next steps.

		The Agency will also review and update the Legal Compliance and Remediation Program Playbook to include greater clarity and examples for when an issue and its impact might be significant enough to require a notification under the PGPA Act. **Expected timeframes**: By end of January 2026. **Justification for timeframes**: The review and updating of current policies, procedures and guidelines, including the alignment of documentation and examples, will require engagement and collaboration across a number of business areas.

Australian Government

Department of Social Services

Patrick Hetherington
Deputy Secretary

Ref: EC26-000073

Mr Iain Anderson
Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

Dear Mr Anderson

Thank you for your letter dated 6 January 2026 and for providing your final investigation report into Services Australia and the Department of Social Services (the department) and whether the decision not to apply the law regarding the 'less than 35% care issue' was reasonable.

The department shares your concerns around the unintended consequences of the legislative amendments that inadvertently have rendered a small number of parents with little to no care of their child eligible for child support payments. The department supports the six recommendations outlined in your report and is committed to ensuring the law reflects the longstanding position that parents who provide the majority of care of their child get the support they need.

I can confirm that legislative amendments to address the less than 35% care issue are included in the Social Security and Other Legislation Amendment (Technical Changes No. 1) Bill 2026, which is scheduled for priority introduction in the Autumn 2026 sitting period.

Please find attached the department's final response to your report, for your consideration of publishing alongside your report.

I would appreciate your advice ahead of time on your intended publication date.

Yours sincerely

[redacted]

19 January 2026

GPO Box 9820 Canberra ACT 2601
Telephone 1300 653 227 • National Relay Service: TTY: 133 677, Speak and listen: 1300 555 727
Internet relay: www.relayservice.com.au
www.dss.gov.au

COMMONWEALTH OMBUDSMAN

Recommendation – DSS response template

Recommendation	Agency response to recommendations/ suggestions	Action agency proposes to take and expected timeframes for implementation of recommendations/ suggestions
Recommendation 1: If they have not since done so, Services Australia and DSS should urgently brief the relevant Ministers, fully explain the significance and impacts of this issue and obtain time critical bill status for the legislative amendment.	☒ **Accepted**	**Proposed action**: The Department of Social Services (the Department) briefed former Ministers for Social Services on this matter, initially in the context of previous legislation bids. The first comprehensive brief was provided to the current Minister in November 2025, including advice that in some circumstances child support legislation results in an outcome contrary to the longstanding policy principle that parents with little or no care should not be entitled to child support, in response to the Ombudsman's draft investigation report. The Australian Government will prioritise legislative amendments in 2026 to address the concerns raised and ensure child support payments cannot be paid to a person with less than 35% of the care of a child. The government's intention is to pass legislation with retrospective effect to ensure no parent is unfairly disadvantaged because of this anomalous legislative outcome.

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		Expected timeframes: Briefing to the Minister has been completed. Introduction of legislative amendment in 2026. **Justification for timeframes**: Legislation will be prioritised in 2026. Timing will be dependent on the parliamentary sitting calendar and decisions of government.
Recommendation 2: Services Australia and DSS should, as a priority, propose to relevant Ministers a public statement of government intent to amend the legislation retrospectively. The public statement should communicate to the public: • the importance of notifying any changes in care within 28 days • the consequences under the law of late notifications, including a possible liability to pay child support to the other parent where they have less than 35% care of the child, and • and any options available to people to seek compensation from the agencies where the agency has deliberately	☒ **Accepted (in principle)**	**Proposed action**: The Secretary of the Department, Mr Michael Lye, made a public statement on 26 November 2025. The statement confirms the government will prioritise legislative amendments in 2026 to address concerns that child support payments may be required to be made in a small number of cases to a person with less than 35% of the care of a child. The statement is available at: https://www.dss.gov.au/news/statement-secretary-progression-amendments-correct-anomaly-child-support-legislation **Expected timeframes**: N/A. **Justification for timeframes**: N/A

incorrectly applied the legislative provisions, including the Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme).		
Recommendation 3: In the absence of a government decision that the law should not be applied pending an attempt to retrospectively amend the legislation, Services Australia and DSS should take active steps to implement the legislation. If necessary, future legislative amendment can operate in a way to validate any decisions made in the interim.	☒ **Accepted**	**Proposed action**: The statement from the Secretary confirms the government has committed for legislation to address this issue to be a priority for 2026. The government's intention is to pass legislation with retrospective effect to ensure that no parent who cares for their child, and no child supported by the child support scheme, is unfairly disadvantaged. The Department is working with Services Australia in preparing a management plan by January 2026. It will focus on what is needed to undertake a system upgrade and processes that need to be completed manually, to enable its child support system to calculate entitlements in accordance with the law, if legislation does not pass as a priority in early 2026.

		Expected timeframes: Services Australia advise the management plan will be finalised by January 2026, with the ICT solution to be implemented after this. **Justification for timeframes**: The development of the management plan will require consideration of service delivery changes, ICT solutions in a complex system and work to ensure the best interests of parents and children can be managed within any new arrangements.
Recommendation 4: Services Australia should ensure that all staff are aware and provided with a copy of the guidance contained in its July 2025 'Legal Compliance and Remediation Playbook' about escalating issues of non-compliance to senior staff in a timely manner. DSS should also ensure their staff are aware of the need to escalate issues of legal non-compliance to senior staff in a timely manner.	☒ **Accepted**	The Department will review messaging to staff around escalating issues of legal non-compliance to senior staff in a timely manner. The Department will issue communication to staff to remind them of this important requirement. **Expected timeframes**: The Department will review messaging, and provide communication to staff by the end of 2025. **Justification for timeframes**: Time required to conduct review and provide communication.

Recommendation 5: Services Australia and DSS should ensure that their policies and procedures reflect the importance of seeking independent external legal advice early where serious and systemic issues such as the less than 35% care issue are identified. This should include guidance for staff in relation to the circumstances in which external legal advice should be sought, including the risks involved with any planned remediation action and the potential impact on members of the public.	☒ **Accepted**	The Department will review its policies and procedures to ensure they reflect the importance of seeking timely external legal advice when serious and systemic issues are identified. The Department will issue communication to staff to remind them of this important requirement. **Expected timeframes**: The Department will review policies and procedures, and provide communication to staff by the end of 2025. **Justification for timeframes**: Time required to conduct review and provide communication.
Recommendation 6: Services Australia and DSS should ensure their staff are aware of the duty to notify responsible Ministers of issues under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). This includes Services Australia and DSS ensuring that their policies and procedures include guidance for staff	☒ **Accepted**	The Department will review its policies and procedures to ensure they clearly communicate to staff their duty to notify responsible Ministers of issues under the *Public Governance, Performance and Accountability Act 2013*.

in relation to the circumstances in which an issue and its impact might be significant enough to require notification under the PGPA Act.		**Expected timeframes**: The Department will review policies and procedures, and provide communication to staff by the end of 2025. **Justification for timeframes**: Time required to conduct review and provide communication.

Contact us

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