



National Anti-Corruption Commission

Investigation Report

Operation Myrtleford

An investigation into the 6 persons referred by the Royal Commission into the Robodebt Scheme.

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Acknowledgement of Country

In the spirit of reconciliation, the National Anti-Corruption Commission acknowledges the Traditional Custodians of Country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples today.

Further information

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National Anti-Corruption Commission

Operation Myrtleford - Investigation Report

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Executive summary

In July 2023, the Royal Commission into the Robodebt Scheme (the Royal Commission) delivered its final report. On 6 July, in a sealed section of that report, the Royal Commission referred 6 persons (the referred persons) to the National Anti-Corruption Commission (the Commission) for further consideration. More detail about the history of the Commission's consideration of the referrals is outlined in [Decision to investigate](#).

This is the report on the Commission's investigation of corruption issues relating to the conduct of the referred persons. This investigation report has been prepared pursuant to section 149 of the *National Anti-Corruption Commission Act 2022* (Cth) (NACC Act). The Commission determined pursuant to section 156 of the NACC Act that it is in the public interest to publish this report (see, [Publication of this report](#)).

Conduct of the investigation

The investigation, known as Operation Myrtleford, commenced on 4 April 2025. It was conducted by an investigation team led by a Deputy Commissioner. More information about the investigation team is outlined in [Appendix A](#).

Operation Myrtleford was a complex investigation involving consideration of a large volume of material including: thousands of documents the Royal Commission provided with the referrals; video and transcripts of the Royal Commission's hearings; other material on the Royal Commission website; documents produced in response to notices to produce; interviews and private hearings involving more than 40 witnesses, including the examination of the 6 referred persons.

More details of the conduct of the investigation are contained in [Overview of evidence and process](#).

Events under investigation

The Commission's task was not to re-examine the events surrounding the Robodebt Scheme as a whole. Rather, the investigation was confined to specific events occurring in 2015, 2017 and 2018 and to determining whether the conduct of any of the referred persons in connection with those events constituted serious corrupt conduct within the meaning of the NACC Act.

The corruption issues the Royal Commission referred to the Commission related to the following key stages in the development and implementation of the Robodebt Scheme:

- 2014–15: the process leading to Cabinet approval as a budget measure in the 2015–16 Budget of a proposal that came to be known as the Robodebt Scheme
- early 2017: the Commonwealth Ombudsman's own motion investigation into the Robodebt Scheme and the engagement by Department of Human Services (DHS) of PricewaterhouseCoopers (PwC) to assist in addressing operational issues
- 2018: the then DHS Secretary's raising of concerns with the then DHS Chief Counsel regarding the lawfulness of the Robodebt Scheme.

Findings

The Commission concluded that 2 of the referred persons, Mr Mark Withnell and Ms Serena Wilson, engaged in corrupt conduct of a serious nature within the meaning of section 8(1)(a) and/or section 8(1)(b) of the NACC Act, but that the remaining 4 referred persons did not engage in corrupt conduct within the meaning of the NACC Act.

Evidence supporting these conclusions is set out in [Evidence](#).

Mr Withnell

The Commission found that Mr Withnell engaged in corrupt conduct by intentionally misleading officers of the Department of Social Services in 2015 during preparation of a submission to the Expenditure Review Committee of Cabinet of a proposal that became the Robodebt Scheme. See [Findings, Mark Withnell](#) for detail.

Ms Wilson

The Commission found that Ms Wilson engaged in corrupt conduct by intentionally misleading the Ombudsman in 2017 during the Ombudsman's own motion investigation into the Robodebt Scheme. See [Findings, Serena Wilson](#) for detail.

Recommendations and outcomes

The investigation made findings of serious corrupt conduct against 2 individuals. It also concluded that there was insufficient *admissible* evidence to establish the alleged offences against either Mr Withnell or Ms Wilson beyond reasonable doubt. Key admissions and statements made during this investigation are not admissible in criminal proceedings. It is therefore not appropriate to refer either to the Commonwealth Director of Public Prosecutions.

The NACC Act invests the Commission with corruption prevention and education functions and the power to make recommendations as part of the Commission's investigation reports aimed at preventing corrupt conduct from occurring again.

In this case, however, the Royal Commission made a number of recommendations to improve the budget process and agency responses to the Commonwealth Ombudsman, and they have since been implemented.

These measures should be sufficient to prevent recurrence of the type of corrupt conduct found in this investigation. Therefore, while the Commission has made observations in relation to contributing factors, it has not made recommendations in this report. (See [*Observations and recommendations*](#)).

NACC Act investigation reports

1. The *National Anti-Corruption Commission Act 2022* (Cth) (NACC Act) established the office of the National Anti-Corruption Commissioner, supported by a statutory agency, the National Anti-Corruption Commission (Commission).¹
2. The role of the Commission is to detect, investigate and report on serious or systemic corruption in the Commonwealth public sector. The Commission also educates the public sector and the public about corruption risks and prevention.
3. Section 149 of the NACC Act requires that, upon completion of a corruption investigation, the Commissioner² make a report setting out:
 - a. the findings or opinions on the corruption issue
 - b. a summary of the evidence and other material on which those findings or opinions are based
 - c. any recommendations that the Commissioner thinks fit to make; and
 - d. if recommendations are made – the reasons for those recommendations.³
4. A copy of the investigation report must be given to the Attorney-General and the head of the agency to which the corruption issue relates.⁴
5. If the Commissioner forms the opinion that a person whose conduct has been investigated has engaged in corrupt conduct of a serious or systemic nature, the Commissioner must include a statement to that effect in the investigation report.⁵
6. If the Commissioner forms the opinion that a person whose conduct has been investigated has not engaged in corrupt conduct, the Commissioner must set out that opinion in the report.⁶

¹ *National Anti-Corruption Commission Act 2022* (Cth) (NACC Act), ss 17, 20.

² Noting in this case, due to the Commissioner's conflict of interest with one of the referred persons, a Deputy Commissioner has undertaken the investigation as the Commissioner's delegate.

³ NACC Act, ss 149(1)–(2).

⁴ NACC Act, ss 154(1)–(4).

⁵ NACC Act, s 149(3).

⁶ NACC Act, s 149(4).

7. Before making a finding of corrupt conduct, the Commissioner is required to be ‘reasonably satisfied’, based on relevant facts, that the conduct occurred. Findings about whether a person has engaged in corrupt conduct are made based on the balance of probabilities rather than the criminal standard of proof which is beyond a reasonable doubt. However, in considering whether the Commissioner is ‘reasonably satisfied’ of relevant facts, the Commissioner applies the approach described in *Briginshaw v Briginshaw*,⁷ *Rejtek v McElroy*⁸ and *Re Day*.⁹

Publication of this report

8. The Commission determined pursuant to section 156 of the NACC Act that it is in the public interest to publish the Report, to inform the public about the outcomes of the investigation. The principal reasons are that:
- the Royal Commission’s referrals to the Commission were and remain a matter of public concern
 - the referrals identified corruption issues that, if established, would amount to serious corrupt conduct within the meaning of the NACC Act
 - it is important that the public be assured that the issues have been fully and fairly investigated.

7 (1938) 60 CLR 336, 361–62 (Dixon J).

8 (1965) 112 CLR 517, 521.

9 (2017) 91 ALJR 262, 268 [14]–[18].

Summary of the investigation

Royal Commission findings

9. By Letters Patent issued on 18 August 2022 under the *Royal Commissions Act 1902* (Cth) (Royal Commissions Act), the Royal Commission into the Robodebt Scheme (the Scheme) was established. The Honourable Catherine Holmes AC SC was appointed Royal Commissioner to inquire into the Scheme.
10. As set out in the Report of the Royal Commission dated 7 July 2023, the Scheme – originally known as the ‘PAYG Clean Up proposal’ – was developed by officers of the Department of Human Services (DHS). Its purpose was to identify and recover overpayments of social security income support benefits suspected to be the result of under-reporting of employment income by income support recipients.
11. The proposal consisted of an automated digital process. It compared the amount of employment income a recipient reported to DHS as having been earned during a particular fortnight with the amount of the recipient’s averaged Pay-As-You-Go (PAYG) income attributed to that same fortnight, determined by:¹⁰
 - i. taking the recipient’s PAYG income as computed from information held by the Australian Taxation Office (ATO) for the year of income in which the fortnight fell
 - ii. ‘averaging’ the annual PAYG income over each of the fortnights comprising the year of income
 - iii. determining the amount by which the averaged fortnightly PAYG income exceeded the amount of income from employment for the fortnight the recipient reported to DHS
 - iv. inviting the recipient to provide evidence to rebut the inference that the recipient had under-reported his or her income from employment for that fortnight, and

¹⁰ Report of the Royal Commission into the Robodebt Scheme, 7 July 2023, ‘Overview of Robodebt’, xxiii-xxv.

- v. if the recipient failed to demonstrate they had not under-reported their employment income for a particular fortnight, the agency would issue a demand to the recipient for repayment of the portion of income support benefits paid for that fortnight that was determined to be attributable to the inferred under-reported employment income for that fortnight.
- 12. Following its initial development in late 2014 and early 2015, DHS submitted the proposal on 12 February 2015 – as one of 4 proposals for the improvement of compliance integrity – to the Minister for Social Services.¹¹ The proposal sought authority for DHS to further develop the proposal in consultation with the Department of Social Services (DSS).¹²
- 13. On 20 February 2015, the Minister for Social Services authorised DHS to proceed with further development of the proposal in consultation with DSS.¹³
- 14. During further development by DHS in consultation with DSS, the proposal was renamed the Online Compliance Intervention (OCI) proposal. In March 2015, the Minister for Social Services submitted a New Policy Proposal (NPP) titled ‘Strengthening the Integrity of Welfare Payments’ (SIWP) to the Cabinet Expenditure Review Committee (ERC) as one of 51 social services portfolio budget proposals for the 2015-2016 Budget.
- 15. On 25 March 2015, ERC approved the SIWP NPP, and the OCI proposal within the NPP, as a 2015-2016 Budget measure.¹⁴
- 16. OCI began operation later in 2015, initially as a pilot program and subsequently on a more extensive basis, to recover suspected overpayments of social security income support benefits going back to the 2010-2011 year of income.¹⁵
- 17. By the end of 2016, however, OCI had attracted public criticism of the apparent inaccuracy of its averaging process, a range of implementation issues, and suggestions the averaging process was possibly unlawful.¹⁶

11 As portfolio minister.

12 CTH.4000.0399.0024_R, Email, ‘B15-125 - Signed brief for Minister Morrison and B15-126 - Cover brief to B15-125’, 12 February 2015; JR15, DSS.5053.0001.0088, Brief, ‘Executive Minute’, 20 February 2015.

13 JR15, DSS.5053.0001.0088, Brief, ‘Executive Minute’, 20 February 2015.

14 PMC.0001.0010.9004_R, ERC Business List, ‘15-03-25 - ERC - Business List [redacted] Exhibit 2305AA’, 25 March 2015; Report of the Royal Commission into the Robodebt Scheme, Referrals, 7 July 2023, 21.

15 Report of the Royal Commission into the Robodebt Scheme, 7 July 2023, ‘Introduction’, v.

16 Report of the Royal Commission into the Robodebt Scheme, 7 July 2023, ‘Introduction’, v.

18. In January 2017, DHS paused the operation of OCI while improvements were made to resolve issues related to some recipients' experience of the rollout of OCI that emerged in the first 18 months of operation.¹⁷
19. Following an own motion investigation, the Ombudsman determined in April 2017 that OCI was operating consistently with legislative and policy requirements.¹⁸ OCI then resumed operation until shortly after the Commonwealth Solicitor-General provided advice, in September 2019, that aspects of the averaging process did not comply with social security legislation.¹⁹
20. The Australian Government later announced that demands for repayment of suspected overpayments of social security income support benefits would no longer be raised solely by reference to averaged yearly income; the extinguishment of all previous demands for repayment based in whole or part on the OCI averaging process; and the repayment of all previous over-recoveries resulting from the averaging process.²⁰
21. Two years later, after a change of government at the federal general election on 22 May 2022, the newly elected government announced it would cause the establishment of the Royal Commission into the Scheme.
22. The Royal Commission found OCI to be flawed from the outset. OCI assumed an income support benefit recipient's annual PAYG income was derived by the recipient in equal instalments in each fortnight throughout the year of income. In fact, the fortnightly employment income of many social security income support benefit recipients varied significantly from fortnight to fortnight.
23. The Royal Commission concluded that, because OCI failed to make any or sufficient allowance for the possibility that a recipient did not derive any (or derived less than a one 26th part) of their annual PAYG income during a fortnight in respect of which social security income support benefits were paid, OCI had:
 - failed to comply with the methodology of income calculation mandated or implied by the *Social Security Act 1991* (Cth) (Social Security Act)

17 NACC Transcript, 19 September 2025, Kathryn Jane Campbell, T118, 122, 129-131; BJ7, CTH.3001.0032.8374_R, Email, 'Exhibit 3-4673 - CTH.3001.0032.8374_R - Further request from Minister', 9 January 2017.

18 JH5/LM16, CTH.3044.0003.7539, Report, 'Ombudsman Report - Centrelink's automated debt raising and recovery system containing letters', 7 April 2017, 41.

19 Report of the Royal Commission into the Robodebt Scheme, 7 July 2023, 'Overview of Robodebt', xxix.

20 Report of the Royal Commission into the Robodebt Scheme, 7 July 2023, 'Overview of Robodebt', xxix.

- generated results that were frequently inaccurate, and
- raised demands for repayment that caused recipients and their dependants consternation and suffering.²¹

Royal Commission findings regarding the 6 referred persons

Mark Withnell

24. The Royal Commission summarised its findings of fact against Mr Withnell, as follows:²²

The Scheme was first introduced in mid-2015 as part of the ‘Strengthening the Integrity of Welfare Payments’ budget measure (‘the Measure’). The spending necessary for the implementation of the Measure was approved by the Executive [sic: read Expenditure] Review Committee (‘ERC’) at a meeting on 25 March 2015. That ERC approval was informed by a New Policy Proposal (‘NPP’) that described features of the Measure and associated costings.

Authority to develop the NPP had been sought from the then Social Services Minister Mr Scott Morrison by way of an Executive Minute dated 12 February 2015 (B15/25) (‘the Executive Minute’). Mr Morrison provided that authority on 20 February 2015. What became [of] the Measure ultimately considered by the ERC had been the subject of a drafting process involving DHS and DSS officers.

At times relevant, Mr Withnell held the position of General Manager, Business Integrity, DHS. In that position, Mr Withnell was responsible for the Payment Integrity and Serious Non-Compliance branches of DHS. Mr Withnell had heavy involvement in the development of the Measure and the NPP.

Significantly, the NPP considered by Cabinet on 25 March 2015 failed to disclose the averaging component to the proposal, or the legal impediments associated with that component. The NPP failed to disclose these matters in circumstances where (a) the use of averaging was intended to be a part of the proposal, and (b) DSS had advised that the proposed use of averaging to determine social security entitlement was unlawful. Those omissions were apt to mislead Cabinet as to the true nature of the proposed measure.

²¹ Report of the Royal Commission into the Robodebt Scheme, 7 July 2023, ‘Closing Observations’, 655, 659.
²² Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 7 July 2023, 21-22.

... at the time of the NPP being presented to Cabinet, Mr Withnell had knowledge of the conditions described above at sub-paragraph [4].

Despite his knowledge of these conditions, Mr Withnell did nothing to ensure that Cabinet was properly informed of the averaging component of the Measure. To the contrary, Mr Withnell was a central figure in formulating the language used in the NPP.

Serena Wilson

25. The Royal Commission found against Ms Wilson that:²³

Serena Wilson knowingly engaged in conduct that was intended to mislead, and/or had the effect of misleading, the Ombudsman in relation to the Ombudsman's 2017 investigation into the Robodebt Scheme.

26. The basis of the finding was:²⁴

At a meeting with the Ombudsman on 16 January 2017, 'Ms Wilson failed to inform the representatives of the Ombudsman of the existence of the 2014 advice, to the effect that the use of income averaging to calculate social security entitlement may not be consistent with social security legislation.

... the 2017 advice was incorrect and influenced by pressure applied to the lawyer who provided that advice.

The document that combined the 2014 and 2017 advices was provided to the Ombudsman with an explanation which ... contained the following false representations:

- that in response to concerns expressed by DSS to DHS in 2015, there had been some revision or adjustment to how income averaging was proposed to be used in the Robodebt Scheme;
- that as a result of the asserted revision or adjustment, DSS had abandoned its former position that legislative change was required to implement the Scheme; and

²³ Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 19.
²⁴ Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 20.

- that the 2014 advice was premised on a proposal that was different to the Robodebt Scheme that was later implemented (a representation that can be seen was plainly false when regard is had to the instructions that informed the 2014 advice).

... Ms Wilson knew the above representations to be false.

... [T]he withholding of the instructions on which the 2014 advice was based was a deliberate decision involving Ms Wilson designed to conceal the falsity of the representations to the Ombudsman.

Catherine Halbert

27. The Royal Commission found against Ms Halbert that:²⁵

Catherine Halbert knowingly engaged in conduct that was intended to mislead, and/or had the effect of misleading, the Ombudsman in relation to the Ombudsman's 2017 investigation into the Scheme.

28. The basis of the finding was that:²⁶

At a meeting with the Ombudsman on 16 January 2017, 'Ms Halbert failed to inform the representatives of the Ombudsman of the existence of legal advice obtained by DSS in 2014 (the DSS 2014 legal advice) to the effect that the use of income averaging to calculate social security entitlement may not be consistent with social security legislation.

... [T]he Ombudsman's office made a request to DSS for legal advice on 24 February 2017. The response, which was settled by Ms Halbert, attached a document which combined the 2014 DSS legal advice with a further legal advice obtained by DSS in 2017 (the 2017 DSS legal advice), after the Ombudsman commenced its investigation ... [T]he 2017 advice was incorrect and influenced by pressure applied to the lawyer who provided that advice.

The document that combined the 2014 and 2017 advices was provided to the Ombudsman with an explanation which ... contained the following false representations:

- that in response to concerns expressed by DSS to DHS in 2015, there had been some revision or adjustment to how income averaging was proposed to be used in the Scheme,

²⁵ Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 9.

²⁶ Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 10-11.

- that as a result of the asserted revision or adjustment, DSS had abandoned its former position that legislative change was required to implement the Scheme, and
- that the 2014 advice was premised on a proposal that was different to the Scheme that was later implemented (a representation that can be seen was plainly false when regard is had to the instructions that informed the 2014 DSS legal advice).

... Ms Halbert knew the above representations to be false.

[T]he withholding of the instructions on which the 2014 advice was based was a deliberate decision involving Ms Halbert designed to conceal the falsity of the representation to the Ombudsman.

The making of the false representations and the concealing of information detailed above was designed to, and did, mislead the Ombudsman in the exercise of his functions.

Annette Musolino

29. The Royal Commission found against Ms Musolino that:²⁷

1. Ms Musolino dishonestly refrained from giving legal advice to Senior Executives of DHS in 2017 about the unlawfulness of income averaging because of an expectation that advice to that effect was unwanted by those executives (**Ms Musolino's dishonest failure to properly advise**).
2. Ms Musolino dishonestly overstated the strength of arguments about the lawfulness of income averaging in advice to DHS Secretary Renee Leon in 2018 because of a fear that her dishonest failure to properly advise in 2017 might be exposed (**Ms Musolino's dishonest overstatement**). One aspect of Ms Musolino's dishonest overstatement was that she falsely asserted the existence of a principle of law, which she knew did not exist, in the course of advising Secretary Leon for the purpose of dishonestly bolstering her advice to Secretary Leon.

Kathryn Campbell

30. The Royal Commission found against Ms Campbell that:²⁸

1. Ms Campbell was knowingly involved in the misleading of a committee of the Cabinet of the Australian Government [ERC] in 2015 in respect of a policy proposal, subsequently accepted as a Budget measure, called ‘Strengthening the Integrity of Welfare Payments’.
2. In January 2017, Ms Campbell instructed Department of Human Services (DHS) officers to cease the process of responding to a request for legal advice in order to prevent the exposure of the unlawfulness of her Department’s administration of the Robodebt Scheme (the Scheme) to the Commonwealth Ombudsman.
3. In or around June 2017, Ms Campbell gave instructions to an employee of PricewaterhouseCoopers (PwC) to not provide a written report to her Department, in circumstances where PwC had been contracted to prepare the report, it was in a substantially completed form and the Department subsequently paid the balance of the contract amount without receiving the report or amending the contract [and she did so with the object of preventing the exposure to the Ombudsman of the unlawfulness of her Department’s administration of the Scheme].²⁹

The Hon Scott Morrison

31. The Royal Commission found against Mr Morrison that:³⁰

The language used to describe the DHS proposal in the Executive Minute:

- contemplated the use of income averaging as the basis for determining social security entitlement.
- recognised that the use of income averaging in that way:
 - was inconsistent with social security policy
 - required legislative change to implement it
 - was likely to produce an incorrect assessment of actual fortnightly income

²⁸ Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 5.

²⁹ Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 7-8.

³⁰ Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 11-12.

- recognised that the use of income averaging as the basis for determining social security entitlement was a change to the way income was assessed and debts were calculated.
- linked the use of income averaging with the move to an online intervention process which enabled DHS to undertake the projected number of compliance interventions (866,857) and corresponding savings to be achieved (approximately \$1 billion).

Mr Morrison:

- understood the matters set out above, and
- knew that it was his responsibility to lawfully administer the *Social Security Act 1991* (Cth) and the *Social Security (Administration) Act 1999* (Cth) (SSA Act) under the AAO.

The NPP approved the use of income averaging as the basis for assessment of income and calculation of debts.

Mr Morrison understood that the NPP involved the use of income averaging as the basis for assessment of income and calculation of debts.

Mr Morrison had been warned that the proposed use of income averaging in that way was contrary to the legislative scheme.

The NPP considered by the ERC on 25 March 2015 failed to disclose the averaging component of the proposal, or the legal impediments associated with that component in circumstances where:

- the use of averaging as the basis for determining social security entitlement was intended to be a part of the proposal, and
- DSS had advised that the proposed use of averaging in that way was contrary to the legislative scheme.

The omissions were apt to mislead the Cabinet as to the true nature of the proposed measure and its unlawfulness.

Mr Morrison took no step to ensure DHS and DSS followed the recommendation to which he had agreed that they would develop a package of policy and legislative changes for him.

Mr Morrison's evidence, that he was told DHS had an established practice of income averaging ATO data where there was no response from the customer and in the absence of other evidence, was untrue ...

The evidence and circumstances detailed above and in the Commission's report raises for consideration whether Mr Morrison had knowledge of the misleading effect of the NPP and, or alternatively, dishonestly refrained from making an obvious inquiry that would have revealed the misleading effect of the NPP

...

Royal Commission referrals

32. On 6 July 2023, pursuant to section 6P(2B) of the Royal Commissions Act, the Royal Commissioner communicated to the National Anti-Corruption Commissioner information concerning 6 persons (the 6 referred persons) who had been examined before the Royal Commission on matters that related or may have related to the performance of the functions of the National Anti-Corruption Commission and which the Royal Commission considered might give rise to a 'corruption issue' within the meaning of section 9 of the NACC Act.
33. The referrals were contained in a confidential chapter of the Royal Commission's final report with a direction that the confidential chapter and the identity of the referred persons must not be published. However the direction not to publish did not restrict the Commission from performing its functions with respect to the referrals, including the publication of this report.
34. On 16 April 2024, a Deputy Commissioner (acting as the Commissioner's delegate pursuant to section 276(1) of the NACC Act) decided under section 41(6) of the NACC Act that the Commission would take no action in relation to any of the referrals.
35. That decision provoked complaints that led to the Inspector of the National Anti-Corruption Commission (the Inspector) undertaking an investigation into the decision-making process.
36. The Inspector determined that the Commissioner had engaged in 'officer misconduct', within the meaning of section 184(3) of the NACC Act, as the result of a mistake of law or fact in the management of the Commissioner's declared conflict of interest in relation to one of the 6 referred persons.

37. On 30 October 2024, the Inspector recommended that the Commissioner delegate to an appropriate person, pursuant to section 276(1) of the NACC Act, the function of reconsidering whether and how to deal with the 6 referrals, pursuant to section 41(5) of the NACC Act. The Commissioner accepted that recommendation.

Decision to investigate

38. On 11 December 2024, pursuant to section 41(5) of the NACC Act, the Commissioner appointed the Hon Geoffrey Nettle AC KC as Independent Reconsideration Delegate to determine whether, and if so how, the Commissioner should deal with any corruption issues arising from the 6 referrals.
39. On 10 February 2025, the Independent Reconsideration Delegate determined that:
1. Each of the 6 referrals alleged 'corrupt conduct' as defined by section 8 of the NACC Act, namely:
 - a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly:
 - i. the honest or impartial exercise of any public official's powers as a public official; or
 - ii. the honest or impartial performance of any public official's functions or duties as a public official;
 - b) any conduct of a public official that, constitutes or involves a breach of public trust; and
 - c) in the case of a person who is a public official, that includes conduct of a public official if it has, or could have, the specified adverse effects in relation to the public official's powers, functions or duties (s 8(3)).
 2. The conduct alleged in each of the 6 referrals therefore raised a 'corruption issue' within the meaning of section 9 of the NACC Act.

3. The corrupt conduct alleged in each referral was potentially ‘serious’ corrupt conduct within the meaning of section 41(3) of the NACC Act because, if proved beyond reasonable doubt, it could render the referred person liable to conviction of an offence contrary to section 135.1 of the Commonwealth Criminal Code (Criminal Code) of dishonestly influencing a public official in the exercise of their duties (punishable on conviction by a penalty of up to 5 years imprisonment),³¹ or an offence contrary to section 137 of the Criminal Code of giving information to a Commonwealth entity, or a person exercising or performing functions under or in connection with a law of the Commonwealth, knowing that the information was false or misleading or omitted any matter or thing without which the information was misleading (punishable on conviction by a penalty of up to 12 months imprisonment).
4. It was in the public interest for the Commissioner to commence a corruption investigation into each of the corruption issues because:
 - a) If the corruption investigation uncovered sufficient admissible evidence to establish beyond reasonable doubt that a referred person committed the alleged corrupt conduct, the Commissioner may consider it in the public interest to refer the person for criminal prosecution.
 - b) Alternatively, if the corruption investigation revealed that there was insufficient evidence to establish that the referred person committed the alleged corrupt conduct, the Commissioner may consider it in the public interest to publish that result pursuant to section 156(1)(b) of the NACC Act.
40. On 4 April 2025, the Commissioner delegated the conduct of the investigation to a Deputy Commissioner who was not the original decision-maker and who had no conflicts of interest in relation to any of the 6 referred persons.
41. The Commissioner was not involved at any stage in the conduct of the investigation, including in the preparation of this investigation report.

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For offences committed before 25 August 2018.

Overview of evidence and process

42. In his decision of 10 February 2025, Mr Nettle made recommendations concerning the investigative steps required in relation to each of the 6 referred persons. Those steps were followed.

Review of Royal Commission evidence

43. The Royal Commission provided a referral letter to the Commission in respect of each referred person and a USB containing referred evidence and information.
44. Referred evidence and information consisted of:
- many thousands of documents the Royal Commission had obtained in the course of its inquiry into the Robodebt Scheme, the majority of which were exhibits in the Royal Commission
 - transcripts of hearings before the Royal Commission
 - notices of proposed findings and notices of referral issued to the referred persons
 - correspondence with the referred persons.
45. In addition, the Commission also had access to the publicly available exhibits contained in the Royal Commission document library, available at <https://robodebt.royalcommission.gov.au/document-library>.
46. The referred material, together with other relevant documents available on the Royal Commission website, was analysed. The evidence given before the Royal Commission by each of the referred persons and other relevant witnesses was reviewed, including witness statements, hearing transcripts, recordings of evidence and exhibits.

Collection of additional material

47. In addition to the material referred by the Royal Commission, the Commission exercised its information-gathering powers under the NACC Act to obtain further documents relevant to the investigation.

48. On 1 July 2025, the Deputy Commissioner issued notices to produce under subsection 58(2) of the NACC Act (s 58(2) notice) to the following persons and/or entities:
- a. Ms Kathryn Campbell, seeking information as to whether Ms Malisa Golightly of DHS informed Ms Campbell that DSS had agreed that legislative amendment would no longer be required to implement the Robodebt Scheme, and any records of that communication.
 - b. PwC, seeking documents:
 - i. recording or referring to any instruction, direction or other communication received by PwC from DHS that PwC need not complete the Final Report as reflected in the terms of DHS's engagement with PwC
 - ii. recording or referring to any decision by PwC that PwC should not complete the Final Report as reflected in the terms of DHS's engagement with PwC.
49. Ms Campbell provided a response on 22 July 2025 indicating that she had no recollection that Ms Golightly informed her that DSS had agreed that legislative amendment would no longer be required to implement the Robodebt Scheme.
50. PwC responded on 31 July 2025, producing 8 documents, none of which recorded or referred to a communication or a decision from DHS that PwC need not complete the Final Report.
51. On 1 July 2025, directions pursuant to section 57 of the NACC Act were issued to:
- a. DSS, seeking documents:
 - i. recording or referring to any communication sent or received by DSS to the effect that the DSS considered it was unnecessary to include a warning that the NPP may require legislative amendment
 - ii. recording or referring to any communication received by DSS from DHS on or between 25 March 2015 and 1 January 2017 to the effect that DHS proposed to use or was using averaging of annual PAYG income to determine the income of social security benefit recipients.
 - b. Services Australia (formerly DHS), seeking documents:

- i. recording or referring to any advice communicated, sent or received by DHS to the effect that DSS considered it was unnecessary to include a warning that the NPP may require legislative amendment
 - ii. recording or referring to any communication sent by DHS to DSS on or between 25 March 2015 and 1 January 2017 to the effect that DHS proposed to use or was using averaging, smoothing or apportionment of annual PAYG income to determine the income of social security benefit recipients
 - iii. recording or referring to any instruction, direction or other communication sent by the DHS to PwC that PwC need not complete the final 'Phase 4 – Implementation roadmap and report' (Final Report) as reflected in the terms of DHS's engagement with PwC
 - iv. recording or referring to any decision by DHS that PwC should not complete the Final Report as reflected in the terms of DHS's engagement with PwC.
52. A small tranche (19 documents) was received from DSS on 13 August 2025. DSS produced a further tranche (39 documents) on 30 September 2025.
53. A small tranche (9 documents) was received from Services Australia on 28 August 2025 and a further tranche (76 documents) was produced on 17 September 2025.
54. The documents produced by DSS and Services Australia largely consisted of duplicates, or near duplicates, of documents which were already available in this investigation either from the information and documents referred by the Royal Commission or from the publicly available Royal Commission document library.
55. On 9 July 2025, a section 58(2) notice was issued to Corporate Counsel of the Attorney-General's Department (AGD). It requested copies of some of Mr Morrison and Ms Campbell's statements and submissions to the Royal Commission that had not been made available to the Commission to date. On 24 July 2025, at AGD's request, the section 58(2) notice to Corporate Counsel was withdrawn and a section 57(2) direction was issued to the Secretary of AGD. The production in response to the direction was completed on 7 August 2025.

56. On 28 August 2025, the Deputy Commissioner issued a further section 57(2) direction to the Secretary of AGD, seeking non-confidential versions of further statements and submissions of Mr Morrison and a limited number of specific documents relating to the referral of Ms Musolino. The production was partially completed on 5 September 2025, with an extension granted for one further document to be produced, which was produced on 12 September 2025.
57. On 12 September 2025, the Deputy Commissioner issued a further section 57(2) direction to DSS seeking:
- Documents recording communications sent or received by Ms Catherine Halbert or Ms Serena Wilson on 22 February 2017 or 23 February 2017, relating to the DSS' response or proposed response to the Commonwealth Ombudsman's request dated 19 February 2017 seeking any legal advice the DSS had received about averaging income for social security overpayment calculations.
58. DSS produced 10 documents in response on 18 September 2025. Again, the production did not contain further relevant documents beyond those that were already available in this investigation.
59. Interviews were conducted with 3 witnesses, whose roles in relevant events were marginal, such that calling them to give evidence during a private hearing was not necessary. These witnesses were:
- a. Ms Judith Kuleas, Executive Assistant to Ms Halbert 2011 to 2017. Ms Kuleas was interviewed on 18 September 2025.
 - b. Ms Collette Neumann, Executive Assistant to Branch Manager and Business Coordination Officer, DSS. Ms Neumann was interviewed on 19 September 2025.
 - c. Ms Susanne Lander, Executive Officer to Ms Halbert 2015-2017. Ms Lander was interviewed on 9 October 2025.
60. A fourth witness in the same category as described in paragraph 59, Ms Linda Navarro, Executive Officer to Ms Musolino (11 May 2015 to 28 January 2019), requested that a 58(2) notice be issued to her, rather than participate in a voluntary interview. The Deputy Commissioner issued a notice to her on 21 September 2025. Ms Navarro responded to the notice on 13 October 2025.

61. Due to ill-health, Mr Paul Menzies-McVey provided a written statement, dated 5 September 2025, rather than appear as a witness at a private hearing. Mr Menzies-McVey acted in Ms Musolino's position as Chief Counsel of DHS, from 3 to 8 January 2017, while Ms Musolino was on leave.

Hearings

62. Private hearings were held pursuant to section 62 of the NACC Act extending over 35 sitting days between 5 August and 3 October 2025. During those private hearings, each of the 6 referred persons and a further 33 witnesses were called to give evidence. See [Witnesses](#).
63. The Deputy Commissioner considered the use of public hearings and applied the statutory test established under the NACC Act. The statutory threshold for public hearings in this investigation was not met. For more detail, see [Appendix: Decision not to hold public hearings](#).

Preparation of s 149 report

64. After the hearings, Counsel Assisting prepared submissions for consideration by the Deputy Commissioner in relation to each referral.
65. Proposed findings were provided to the referred persons, in compliance with section 153 of the NACC Act, to afford them the opportunity to make submissions in response to the proposed findings. The submissions in response were considered before the section 149 report was finalised and, where relevant, are summarised in this report.
66. A section 149 report was prepared and provided to the Attorney-General, the Ministers for Social Services and Government Services and the agency heads of Services Australia and DSS. See [NACC Act investigation reports](#).
67. The Deputy Commissioner determined under section 156 of the NACC Act that it is in the public interest to publish the report. See [Publication of this report](#).

Evidence

About the 6 referred persons

68. Before setting out the evidence, below is a summary of the professional backgrounds of the 6 referred persons, and their roles in the events examined by the Royal Commission and this investigation.

Mark Withnell, General Manager, Business Integrity, DHS

69. Mark Withnell graduated Bachelor of Arts (Hons) in English literature and history, Graduate Diploma in Education, Graduate Diploma in Counselling, Bachelor of Arts in Strategic Studies, Graduate Certificate in Compliance Management, and Master of Arts in Defence Studies. He is also a Fellow of the Australian and New Zealand School of Government.
70. From 1981 to 2000, Mr Withnell was employed by the South Australian Department of Education in various positions; for the last several as a school principal. He then moved to Canberra, worked briefly for the University of Canberra, and subsequently for the Department of Defence, the Attorney-General's Department, Centrelink and its successor agencies and, finally, the National Disability Insurance Agency (NDIA). Between December 2008 and 6 August 2017, he was an SES Band 2 officer in the role of General Manager, Business Integrity, DHS.³²
71. As General Manager, Business Integrity, DHS, Mr Withnell was responsible for the DHS Payments Integrity Branch and the DHS Serious Non-Compliance (Fraud) Branch. That included the Child Support Program from 2014 to 2017 and the Medicare and Health Programs from 2015 to 2017. From 2012 he was responsible as well for Internal Fraud and unauthorised information access. Until 2011, he was responsible, too, for Debt Management and, from 2008 to about January/February 2016, for the Customer Compliance Branch. At that point, Ms Karen Harfield was appointed General Manager, Customer Compliance and Mr Withnell ceased to be involved with customer compliance activities.³³

32 Statement of Mark Withnell, 14 October 2022, MWI.9999.0001.0001_R, 1 [4]-[5]; NACC Transcript, 4 September 2025, Mark Denis Withnell, T6-7.

33 Statement of Mark Withnell, 14 October 2022, MWI.9999.0001.0001_R, 1-2 [4]-[6].

72. At relevant times, the DHS Customer Compliance Group was headed by National Manager Customer Compliance, Mr Scott Britton, who reported to Mr Withnell, and consisted of the Data Strategy and Analytics area headed by Director, Data Strategy and Analytics, Mr Ben Lumley and the Compliance and Risk Branch headed by Director, Compliance and Risk, Mr Jason Ryman. Mr Withnell, Mr Britton, and Mr Ryman were all directly involved in and principally responsible for the conception and development of OCI. Mr Withnell reported to DHS Deputy Secretary, Ms Malisa Golightly.³⁴
73. Mr Withnell is now retired.³⁵

Serena Wilson, Deputy Secretary, Social Security, DSS

74. Serena Wilson graduated from Melbourne University in 1984 with the degree of Bachelor of Arts with Honours, and in 1985 from Chisholm Institute (now Monash University) with a Graduate Diploma of Administrative Studies.
75. In 1986, Ms Wilson joined the Australian Public Service (APS) as a graduate through the APS Administrative Trainee program and in December 1986 was appointed to the Department of Prime Minister and Cabinet (PM&C). In March 1986 Ms Wilson was assigned to the Department of Housing and Construction and later to the Department of Health and Ageing. In 1991, she returned to PM&C and in 1998 was appointed to DSS. Further promotions followed to positions within the Department of Family and Community Services between 1996 and 2004, the Department of Employment and Workplace Relations between 2004 and 2005, PM&C between 2005 and 2009, and then the Department of Families, Housing and Indigenous Affairs between 2009 and 2013.³⁶

34 NACC Transcript, 4 September 2025, Mark Denis Withnell, T6-8; Statement of Ben Lumley, 30 November 2022, BLU.9999.0001.0005_R, 1 [8]; NACC Transcript, 6 August 2025, Scott James Edward Britton, T9.

35 Statement of Mark Withnell, 14 October 2022, MWI.9999.0001.0001_R, 1 [1].

36 Statement of Serena Wilson, 31 October 2022, SWI.9999.0001.00001_R, 2-3 [13]-[15]; NACC Transcript, 22 August 2025, Serena Wilson, T7-8.

76. In September 2013, Ms Wilson rejoined DSS and between 1 January 2015 and early June 2018 she held the position of Deputy Secretary, Social Security with responsibility for overseeing policy and management of social security payments to individuals and welfare reform across the social security system. In that capacity, Ms Wilson led work to establish the DSS policy framework and strategy and was Chair of the Policy and Deregulation Committee.³⁷
77. At relevant times, the Social Security Division headed by Ms Wilson was comprised of the Payments Policy Group headed by Group Manager, Payments Policy, Ms Catherine Halbert, and the Social Security Policy Group headed by Group Manager, Social Security Policy, Mr Paul McBride.³⁸
78. Mr McBride's group was comprised of the Rates and Means Testing Policy Branch headed by Branch Manager, Mr Andrew Whitecross, and the Social Security Performance Branch headed by Branch Manager, Mr Murray Kimber.³⁹ Both the Rates and Means Testing Policy Branch and the Social Security Performance Branch were involved in development of OCI in consultation with DHS. Mr McBride and Mr Kimber were directly involved in consultations with Mr Withnell and Mr Britton of DHS.⁴⁰ And as well as having overall divisional responsibility for both groups, Ms Wilson was directly involved in consultations with Ms Golightly.⁴¹ Ms Wilson reported to the Secretary, DSS, Mr Finn Pratt.⁴²
79. Ms Wilson retired from the APS on 31 August 2018.⁴³

Catherine Halbert, Group Manager, Payments Policy Group, DSS

80. Catherine Halbert graduated from Macquarie University in 1989 with the degree of Bachelor of Arts.

37 Statement of Serena Wilson, 31 October 2022, SWI.9999.0001.0001_R, 3 [15]; NACC Transcript, 22 August 2025, Serena Wilson, T7-8.

38 Statement of Catherine Halbert, 22 November 2022, DSS.9999.0001.0022_R, 2 [16]-[17].

39 Statement of Murray Kimber, 11 November 2022, MKI.9999.0001.0002_R, 4 [22]; Statement of Andrew Whitecross, 21 November 2022, AWI.9999.0001.0005_R, 3 [13].

40 Statement of Murray Kimber, 11 November 2022, MKI.9999.0001.0002_R, 5 [30], 6 [32], [34]; Statement of Paul McBride, 27 February 2023, PMB.9999.0001.0003_R, 8 [45], 9 [51].

41 NACC Transcript, 22 August 2025, Serena Wilson, T9.

42 NACC Transcript, 22 August 2025, Serena Wilson, T8.

43 Statement of Serena Wilson, 31 October 2022, SWI.9999.0001.00001_R, 1 [2].

81. Ms Halbert joined the APS in 1990. From 1996 to 1998 she served as an Executive Level 1 (EL1) officer in the Youth and Students Branch of the Department of Families and Community Services (formerly DSS). Between 1999 and 2001, she was a Senior Policy Adviser, Executive Level 2 (EL2), in the Families and Income Support Branch of PM&C.
82. In May 2001, Ms Halbert was appointed to the Senior Executive Service (at SES Band 1 level). Between May 2001 and May 2003, she was the Assistant Secretary, Families and Income Support Branch of PM&C, and between June and December 2003 she served on secondment to the Department of Health and Ageing (DHA) General Practitioner Red Tape Taskforce. Between October and December 2005, Ms Halbert was Assistant Secretary, Biosecurity and Disease Control Branch, DHA. From December 2005 to June 2009, she served as First Assistant Secretary, Office of Health Protection, DHA and from January 2009 to January 2010 she served as First Assistant Secretary, Population and Health, DHA. Between January 2010 and June 2012, Ms Halbert was Group Manager of the Office of Indigenous Policy Coordination and from March to July 2011 she was the Acting Deputy Secretary of the Department of Families, Housing, Community Services, and Indigenous Affairs. From November 2012 to February 2014, Ms Halbert was the Group Manager of the National Transition office, NDIA.
83. In March 2014, Ms Halbert returned to DSS. She first functioned as Group Manager, Payments Policy Group until December 2017, and then until October 2018 as Group Manager, Families and Communities Group. These were SES Band 2 positions.
84. Since then, Ms Halbert has been engaged in other government and semi-government roles including as an Executive Level Quality Assurance Officer and in Executive Level Research and Report Writing.⁴⁴
85. As Group Manager, Payments Policy and Acting Deputy Secretary, DSS, Ms Halbert had limited involvement in late 2014 and early 2015 with the PAYG Clean Up proposal. As Group Manager Payments Policy and Acting Deputy Secretary, Ms Halbert was involved, in late 2016 and early 2017, with the Ombudsman's own motion investigation into OCI.⁴⁵

44 Statement of Catherine Halbert, 22 November 2022, DSS.9999.0001.0022_R, 1-2 [10]-[15]; Attachment to Statement of Catherine Halbert, 22 November 2022, DSS.9999.0001.0023; NACC Transcript, 20 August 2025, Catherine Halbert, T6-8.

45 Statement of Catherine Halbert, 22 November 2022, DSS.9999.0001.0022_R, 2 [13]-[19].

Annette Musolino, Chief Counsel, DHS

86. Annette Musolino graduated from the Australian National University with the degrees of Bachelor of Arts and Bachelor of Laws (Honours) and, in 1994, she was admitted to practise as a solicitor of the Supreme Courts of New South Wales and the Australian Capital Territory.
87. Ms Musolino practiced as a litigation solicitor in private law firms in Canberra and Sydney for a few years and spent further years in private and government corporate legal roles. In April 2011 Ms Musolino was appointed to a 3-month contract position of Senior Government Lawyer (EL1) in the Department of Education, Employment and Workplace Relations (DEEWR).⁴⁶ In June 2011, Ms Musolino was appointed Principal Government Lawyer (EL2), DEEWR, and she served in that capacity until October 2012.
88. In October 2012, Ms Musolino joined the DHS as General Counsel, Strategic Information Management Legal Branch (an SES Band 1 position), and filled that role until June 2013. In June 2013, she was appointed General Counsel, Program Litigation & Review, and continued in that role until October 2013. Between October 2013 and April 2015, she served as General Counsel, Freedom of Information (FOI) & Information Release and, between June 2014 and January 2015, acted as Acting Chief Counsel Legal Services (an SES Band 2 position).⁴⁷
89. In April 2015, Ms Musolino was appointed Chief Counsel, Legal Services (an SES Band 2 position), and remained in this role until 6 January 2019. While serving as Chief Counsel, Ms Musolino acted as Acting Deputy Secretary, Enabling Services between 4 and 11 January 2016, 28 and 29 April 2016, 28 and 31 July 2016, 5 and 13 June 2017, 28 July 2017 and 7 August 2017, and 23 and 29 October 2017. In the latter capacity, she was responsible for delivering and maintaining departmental internal and external strategic communications, ministerial services, internal governance, legal services and internal audit.⁴⁸

46 Statement of Annette Musolino, 31 October 2022, AMU.9999.0001.0003_R, 9-14 [8]-[12]; NACC Transcript, 12 September 2025, Annette Musolino, T6-7.

47 Statement of Annette Musolino, 31 October 2022, AMU.9999.0001.0003_R, 9-13 [11]-[12]; NACC Transcript, 12 September 2025, Annette Musolino, T7-8.

48 Statement of Annette Musolino, 31 October 2022, AMU.9999.0001.0003_R, 9-13 [11]; NACC Transcript, 12 September 2025, Annette Musolino, T8-9.

90. As DHS Chief Counsel, Ms Musolino was involved in 2017 in the Ombudsman's own motion investigation into OCI. During 2018, she was called on several times to advise the then Secretary of DHS, Ms Renee Leon, regarding complaints and allegations which disputed the lawfulness of OCI.⁴⁹

Kathryn Campbell, Secretary, DHS

91. Kathryn Campbell AO, CSC and Bar, graduated with Bachelor degrees in Applied Science and Applied Mathematics and later with Masters degrees in Information Science and Business Administration.
92. Ms Campbell joined the APS in 1988 and served as an SES officer from 1997 to 2021. In April 2011, she was appointed by then Prime Minister, the Hon Julia Gillard, as Secretary of DHS. She served in that capacity: first under Minister the Hon Tanya Plibersek until December 2011, under Minister the Hon Brendan O'Connor from December 2011 to March 2012, under Minister the Hon Kim Carr from March 2012 to March 2013, and under Minister the Hon Jan McLucas until the defeat of the Labor government in September 2013.⁵⁰
93. Following the change of government at the general election of September 2013, Ms Campbell continued as Secretary of DHS: first under Minister the Hon Marise Payne from September 2013 to September 2015, under Minister the Hon Stuart Robert from September 2015 to February 2016, and finally under Minister the Hon Alan Tudge from February 2016 to September 2017.⁵¹
94. In December 2017, Ms Campbell was appointed by then Prime Minister the Hon Malcolm Turnbull as Secretary of DSS, and she served in that capacity: first under Minister the Hon Dan Tehan from December 2017 to August 2018; under Minister the Hon Paul Fletcher from August 2018 to May 2019; under both the Minister for Social Services, the Hon Stuart Robert, and the Minister for the National Disability Insurance Scheme (NDIS), the Hon Anne Ruston, until Mr Robert was replaced by Minister the Hon Linda Reynolds in April 2021; and finally (under Ministers Ruston and Reynolds) until July 2021. She was then appointed Secretary of the Department of Foreign Affairs and Trade (DFAT).⁵²

49 See, e.g., Statement of Annette Musolino, 31 October 2022, AMU.9999.0001.0003_R, 15 [16](a), 26 [40], 32-33 [52](k)-(l), 34 [56], [59], 59-60 [157]-[158].

50 Statement of Kathryn Campbell, 13 October 2022, KCA.9999.0001.0002_R, 2 [8]-[9]; Submissions of Kathryn Campbell, NACC, 10 September 2025, 2 [7]-[9]; ; NACC Transcript, 18 September 2025, Kathryn Campbell, T7.

51 Submissions of Kathryn Campbell, NACC, 10 September 2025, 2 [10].

52 Submissions of Kathryn Campbell, NACC, 10 September 2025, 2-3 [11]-[13].

95. Ms Campbell also had a notable career as an officer in the Australian Army. She enlisted in 1989 and was commissioned in 1990. She held a variety of regimental training and staff postings at Army, Divisional, and Brigade headquarters, ultimately rising to the rank of Major General.
96. Ms Campbell commanded the Sydney University Regiment from 2007 to 2009, and in 2010 was awarded the Conspicuous Service Cross for outstanding achievement as the Commanding Officer of the Sydney University Regiment. She commanded the 5th Brigade (Army Reserve units in New South Wales) from 2014 to 2016, during which 5th Brigade contributed to operational capability as well as deploying in support of flood-relief operations. Between 3 May 2016 and 7 August 2016, she took leave of absence from her role as Secretary, DHS, to serve in the Middle East Region as Deputy Commander, Joint Task Force 633. From 2017, she was the Assistant Commander, 2nd Division and from December 2018 to July 2021 she commanded 2nd Division (which comprises most of the Army Reserve Units in Australia). In January 2020, 2nd Division was called out as part of Operation Bushfire Assist and, from March 2020, 2nd Division supported Operation COVID-19. Ms Campbell retired from the Army in July 2021 upon her appointment as Secretary of DFAT. On 26 January 2022, she was awarded the Bar to the Conspicuous Service Cross for outstanding achievement as Commander of 2nd Division.⁵³
97. As Secretary of DHS, Ms Campbell was involved in settling the Executive Minute, in the subsequent approval of costings for the OCI NPP, in responding to the 2017 Ombudsman's own motion investigation into OCI and, in 2017, commissioning PricewaterhouseCoopers (PwC) to consider shortcomings in the operation of OCI and to plan a way forward.⁵⁴

The Hon Scott Morrison, Minister for Social Services

98. The Hon Scott Morrison AC was first elected as the member of the House of Representatives for Cook, New South Wales in 2007. He was subsequently re-elected as the member for Cook in 2010, 2013, 2016, 2019 and 2022. He resigned from Parliament on 28 February 2024.

⁵³ Submissions of Kathryn Campbell, NACC, 10 September 2025, 3-4 [15]-[21].

⁵⁴ See, e.g., Statement of Kathryn Campbell, 13 October 2022, KCA.9999.0001.0002_R, 7-8 (chronology row 1); CTH.2007.0002.7329_R, Email, 'Re- For clearance- 001944- Strengthening the Integrity of the Welfare Payments System', 9 March 2015; Statement of Kathryn Campbell, 3 March 2023, KCA.9999.0001.0039, 2[9]-[10].

99. While serving as a member of Parliament, Mr Morrison was Minister for Immigration and Border Protection from September 2013 to December 2014, Minister for Social Services from December 2014 to September 2015, Treasurer from September 2015 to August 2018, and Prime Minister from August 2018 to May 2022. On 8 June 2025, Mr Morrison was appointed a Companion of the Order of Australia (AC) for eminent service to the nation.⁵⁵
100. Mr Morrison was the Minister for Social Services in February 2015, at the time of presentation to him of the Executive Minute proposing further development of the PAYG Clean Up proposal, and in March 2015, at the time of his presentation of the OCI NPP to ERC.⁵⁶

Witnesses

101. Private hearings were held pursuant to section 62 of the NACC Act extending over 35 sitting days between 5 August and 3 October 2025. During those private hearings, each of the 6 referred persons and a further 33 witnesses were called to give evidence.
102. The further witnesses were:

DHS

1. **Jason Ryman:** Mr Ryman was a Director (EL2), Policy, Strategy and Business Solutions in the Customer Compliance Branch of DHS. He reported to Scott Britton.
2. **Scott Britton:** Mr Britton was the Branch Manager (SES1) of the Customer Compliance Branch of DHS. He reported to Mr Withnell, and later to Ms Harfield.
3. **Karen Harfield:** Ms Harfield was General Manager (SES2) of the Customer Compliance Division of DHS from March 2016 to May 2017, reporting to Malisa Golightly. From May 2017 to September 2018, she was General Manager of the Information, Debts and Appeals Branch.

55 Statement of Scott Morrison, 11 November 2022, SMO.9999.0001.0002_R, 1 [1]–[2]; NACC Transcript, 2 October 2025, Scott Morrison, T8.

56 Statement of Scott Morrison, 11 November 2022, SMO.9999.0001.0002_R, 1 [2](a).

4. **Jason McNamara:** From April 2016, Mr McNamara was General Manager (SES1), Audit at DHS, reporting to Ms Golightly. From March 2017, he was General Manager of the Integrity Modernisation Division in the Integrity and Information Group of DHS, also reporting to Ms Golightly. From July 2017, he was Acting Deputy Secretary of the Integrity and Information Group.
5. **Glyn Fiveash:** Mr Fiveash worked at DSS from 1998 to 2011, when he moved to the Legal Division of DHS. Between 2015 and 2017, he was Deputy General Counsel (EL2), Program Advice in the Legal and Ombudsman Branch of DHS, reporting to Maris Stipnieks. He was subsequently Deputy General Counsel (EL2), Business Transformation, reporting to Mr Menzies-McVey. In January 2017, he was acting for Mr Menzies-McVey as General Counsel, Business Transformation.
6. **Mark Gladman:** Mr Gladman was Deputy General Counsel (EL2), Program Advice and Privacy in the Legal Services Division of DHS, reporting to Mr Stipnieks. In December 2016 and January 2017, he was acting in Mr Stipnieks's role as General Counsel.
7. **John Barnett:** Mr Barnett was also Deputy General Counsel (EL2) in the Program Advice Branch of DHS, reporting to Mr Stipnieks.
8. **Maris Stipnieks:** Mr Stipnieks was General Counsel (SES1), Program Advice and Privacy in DHS. He reported to Ms Musolino.
9. **Matthew Roser:** From 2014, Mr Roser was General Counsel (SES1), Litigation, Subpoena, and FOI in the Legal Services Division of DHS. From late 2016, he was General Counsel, Litigation, Subpoena, and Information Release. In both roles, he reported to Ms Musolino.
10. **Lisa Carmody:** Ms Carmody was General Counsel (SES1), Commercial Law Branch within DHS' Legal Services Division and reported to Ms Musolino. In January 2017, Ms Carmody was Acting Chief Counsel while Ms Musolino was on leave.
11. **Sue Kruse:** From September 2016 to April 2017, Ms Kruse was General Manager (SES2), Whole of Government Coordination in DHS, reporting to Jonathan Hutson. In December 2016 and January 2017, Ms Kruse was Acting Deputy Secretary, Enabling Services, while Mr Hutson was on leave.
12. **Jonathan Hutson:** From 2013 to September 2017, Mr Hutson was Deputy Secretary (SES3), Enabling Services in DHS. He was subsequently Deputy Secretary, Shared Services.

13. **Barry Jackson:** Mr Jackson was Deputy Secretary (SES3), Service Delivery Operations in DHS. In December 2016 and January 2017, he was Acting Secretary of DHS while Ms Campbell was on leave.
14. **Renée Leon:** Ms Leon was Secretary of DHS from October 2017.

DSS

15. **Anthony Barford:** Mr Barford was Policy Manager (EL1) in the Debt Policy, Social Security Performance and Analysis Branch of DSS. He reported to Catherine Dalton.
16. **Mark Jones:** Mr Jones was Assistant Director (EL1), Payment Integrity and Debt Strategy in the Social Security Performance and Analysis Branch of DSS. He reported to Cameron Brown, and subsequently to Catherine Dalton.
17. **Catherine Dalton:** From December 2014 and through 2015, Ms Dalton was Acting Director (EL2), Payment Integrity and Debt Strategy in the Social Security Performance and Analysis Branch of DSS. She reported to Murray Kimber.
18. **Murray Kimber:** From October 2014 to September 2016, Mr Kimber was Branch Manager (SES1) of the Social Security Performance and Analysis Branch of DSS, reporting to Paul McBride. From September 2016 to March 2017, he was Branch Manager (SES1) of the Investment Approach Taskforce Branch of DSS, then from March 2017 to June 2018, was Branch Manager (SES1) of the Policy Capability and Evaluation Branch of DSS.
19. **Mary McLarty:** In 2016, Ms McLarty was Branch Manager (SES1), Welfare Reform at DHS. She reported to Mr McBride.
20. **Andrew Whitecross:** From July to November 2014, Mr Whitecross was Acting Group Manager, Welfare Reform in the Social Security Stream of DSS. From January to February 2015, he was Acting Group Manager, Social Security Policy. His substantive role was as a Branch Manager in the Rates and Means Testing Branch, reporting to Mr McBride.
21. **Paul McBride:** From 2013 to 2015, Mr McBride was Group Manager (SES2), Welfare Systems Taskforce within DSS. Between December 2014 and September 2015, Mr McBride was Group Manager of the Social Security Policy Group, reporting to Ms Wilson. From 2015 to June 2018, he was Group Manager (SES2), Welfare and Housing Policy within DSS.

22. **Emma Kate McGuirk:** In April 2015, Ms McGuirk was Director of Means Testing at DHS. In June 2015, she joined DSS as Branch Manager (SES1) of the Labour Market Payments Branch, reporting to Ms Halbert. At various times between July 2016 and June 2019, Ms McGuirk was Acting Group Manager of the Payments Policy Group within DSS.
23. **Robert Hurman:** From October 2016 to December 2017, Mr Hurman was Director (EL2) of the Payment Integrity and Debt Strategy section at DSS. He reported to Russell de Burgh.
24. **Russell de Burgh:** Mr de Burgh was Branch Manager (SES1), Pensions and Integrity in the Payments Policy Group of DSS. He reported to Ms Halbert.
25. **Anne Pulford:** Ms Pulford was a Principal Legal Officer, Social Security and Families in DSS. She reported to Alan Grinsell-Jones.
26. **Alan Grinsell-Jones:** Mr Grinsell-Jones was Branch Manager (SES1) of the Legal Services Branch Executive of DSS. He reported to Janean Richards.
27. **Janean Richards:** Ms Richards was Chief Legal Counsel and Group Manager (SES2) of the Corporate Services Group of DSS.
28. **Finn Pratt:** Mr Pratt was Secretary of DSS between 2013 and September 2017.

PwC

29. **Thai Bowe:** Mr Bowe was Senior Manager in Government Consulting at PwC, reporting to Frank van Hagen in relation to the DHS OCI engagement.
30. **Frank van Hagen:** Mr van Hagen was a Senior Manager at PwC Consulting. He reported to Shane West in relation to the DHS OCI engagement.
31. **Shane West:** Mr West was a Partner at PwC, and the Lead Partner for the DHS client account at the time of the OCI engagement.
32. **Terrence Weber:** Mr Weber was a Partner in the consulting division at PwC. He had been the Client Lead Partner of PwC's Federal Government practice between 2011 and 2014.

Office of the Commonwealth Ombudsman

33. Louise Macleod: From January to June 2017, Ms Macleod was the Acting Senior Assistant Ombudsman, Social Services, Indigenous and Disability Branch in the Office of the Commonwealth Ombudsman. She was later the Senior Assistant Ombudsman, Complaints Management and Education Branch in the Office of the Commonwealth Ombudsman.

103. Unless otherwise stated, references in this report to evidence given by the referred persons and the further witnesses are references to evidence given in the private hearings.

PAYG Clean Up proposal

Income data matching and income averaging

104. Commonwealth social security agencies have used **income data matching** for more than 30 years. The process has always involved a Commonwealth social security agency:
- obtaining data from another Commonwealth agency as to the amount of income from other sources that a recipient of social security benefits might have received during a period in respect of which social security benefits were paid, and
 - comparing that to the amount of income from other sources that the recipient had declared to the social security agency in respect of the period for which benefits were paid.⁵⁷
105. The use of **income averaging** by Commonwealth social security agencies also goes back more than 30 years. In its original most basic form (sometimes called income apportioning), it was adopted to overcome the difficulty that arises where:
- a recipient's income from other sources for a year of income suggests that the recipient may have under-declared income from other sources for a period in respect of which benefits have been paid, and

57

Report of the Royal Commission into the Robodebt Scheme, 7 July 2023, xxiii-xxiv, 11-13.

- after full investigation, there is insufficient available information to make a fully informed decision as to how much of the annual income from other sources related to the benefits period.⁵⁸
106. Then, as now, the relevant legislation provided that income support benefits be calculated and paid on a fortnightly basis by reference to the amount of income from other sources ‘first earned, derived or received’ by the recipient during each fortnight.
107. Generally, it was considered that calculation and payment on a fortnightly basis would provide recipients with a more beneficial outcome than application of the amount of income in fact from other sources in fact earned during the fortnight.
108. It was recognised, however, that there would be circumstances in which averaging or apportioning could disadvantage a recipient and, therefore, that particular care needed to be taken in ‘Assessing verified income where fortnightly details cannot be obtained’.
109. Until the advent of the Online Compliance Intervention (OCI) program that began operating in 2015, that ‘particular care’ consisted of a labour-intensive process of investigation undertaken by experienced social security compliance officers that included seeking details from employers and other relevant sources of information and engaging with recipients to glean and assess all forms of available relevant information.⁵⁹
110. Although there were cases where the process of averaging or apportioning led to an overestimation of fortnightly income, there were apparently few instances of that occurring and fewer, if any, complaints. In the case of those few recipients who were dissatisfied with the outcome of the process, there was then, as there is now, a right of internal departmental review and a right to apply to the Administrative Appeals Tribunal (now the Administrative Review Tribunal) for merits review of the assessment.⁶⁰

58 Report of the Royal Commission into the Robodebt Scheme, 7 July 2023, xxiii-xxiv, 14.

59 Report of the Royal Commission into the Robodebt Scheme, 7 July 2023, 14-15, 474-476.

60 Report of the Royal Commission into the Robodebt Scheme, 7 July 2023, 15-16, Services Australia, Income Apportionment Sampling Activity # 2 November 2023 – February 2024.

Early development of 'PAYG Data Clean Up' proposal

111. Early in 2014, the Customer Compliance branch of the Department of Human Services (DHS) began to conceive of ways in which social security compliance measures could be modernised and rendered more effective.
112. To that end, Mr Jason Ryman,⁶¹ then an EL2 Director within the branch, conducted several discussions within his leadership team to generate ideas for improvement.⁶² Among ideas considered worthy of further development were:
- a concept of online harvesting of Australian Taxation Office (ATO) Pay-As-You-Go (PAYG) data coupled with digitally generated averaging-based presumptive assessments of fortnightly income
 - a contemporaneous shift to online self-service compliance that cast the burden on recipients to produce evidence sufficient to rebut such presumptive assessments.
113. That resulted in a paper authored by Mr Graham Harvey (approved by Mr Ryman on 24 January 2014)⁶³ and a further paper of 28 March 2014 entitled 'Discussion - Process Simplification & Reduced Verification Activity in CCB'. These explored the potential options for process simplification and increased efficiencies through trusted third-party data direct assessments.⁶⁴
114. A section of the latter paper, headed 'Application 2' contained what appears to have been the first iteration and key features of the subsequently named 'PAYG Data Clean Up' proposal. These were:⁶⁵
- notifying the recipient of the harvested data and the details of it
 - warning the recipient that the application of the data may vary the recipient's payment or incur a repayment obligation
 - informing the recipient of the need either to contact DHS on a 1800 telephone number to discuss the matter with DHS or alternatively do nothing, in which event DHS would apply the data.
 - advising the recipient of his or her review and appeal rights.

61 Director, Compliance and Risk Branch, DHS.

62 Statement of Jason Ryman, 27 October 2022, JRY.9999.0001.0002_R, 4-5 [30], [32]-[33].

63 CTH.3030.0001.4252, Email, 'FW: Self Service Options for Compliance [DLM=For-Official-Use-Only]', 24 January 2014; CTH.3030.0001.4253, Document, 'Self Service Options for Compliance v0.2.docx', 24 January 2014.

64 JR1, CTH.3023.0009.1158_R, Email, 'FW- Process Simplification- Reduced Verification Activity', 1 April 2014, 1-2.

65 CTH.3023.0009.1160, Paper, 'Process Simplification - Reduced Verification Proposal Paper V4', 28 March 2014, 9-11.

115. On 1 April 2014, Mr Ryman sent an email to a branch email group (with a copy to Mr Scott Britton)⁶⁶ commenting on the latter paper as follows:⁶⁷

The paper discusses reduced verification. I am not sure this is the correct terminology. Essentially, the premise is why do we need to seek additional verification to apply and assess trusted third party data?

When I look at this my immediate interest is in the application against PAYG data (the 2011-12 PAYG file has tens of thousands of high risk cases attached ...). If we can identify another data source where there is big bang application I am all ears ...

I think a brief reference to the ATO model would assist our thinking/understanding – we could also then highlight where our barriers are. For example, for earnings we would need to make some assumptions associated with smoothing income over an extended period.

We need to consider efficiencies associated with the options in more detail – removal of processes which we could quantify, including specific reference to deregulation (definition of regulation ‘any rule endorsed by government where there is an expectation of compliance’)

116. The result was a ‘Concepts for Future Compliance Activity’ minute of 23 June 2014 authored by Mr Ryman and approved by Mr Britton. The minute proposed the use of PAYG income data to determine social security entitlements. It stated that the ‘next steps’ would include:⁶⁸

Seek advice regarding the apportionment of income annually (or other determined period) rather than the specific periods in which work was undertaken ... **The legislation itself is not a barrier as we are able to average income as per section 1068-G8 of the Social Security Act 1991**, but the current departmental policy is that apportionment of match data is only suitable as a last resort where customer or third party information cannot be obtained. Influencing policy through the de-regulation agenda will be an important aspect of progressing this concept. [Emphasis added.]

66 National Manager, Compliance and Risk Branch, Participation, Aged Care Integrity Group, DHS (11 January 2010 – 28 November 2016).

67 JR1, CTH.3023.0009.1158_R, Email, ‘FW- Process Simplification- Reduced Verification Activity’, 1 April 2014, 1.

68 JR2, CTH.3716.0001.0001_R, Minute, ‘Minute – Concepts for Future Compliance Activity’, Attachment A, 30 June 2014, 4.

117. Further consideration of the proposal followed across areas of DHS and, to some extent, up the chain of command. Mr Britton noted on Mr Ryman's minute of 23 June 2014 that the identified considerations included:⁶⁹

There are considerable 'Policy' issues associated with this intent.

We would obviously look to leverage from 'dereg' and welfare reform.

It will be important to commence the policy and legislative review to determine the scope and boundaries of possibility.

Will be interesting to pilot the concept ...

I raised this issue at our most recent DSS SBD (applying info / data to customer record) and received interest from Allanah and Murray

118. 'Allanah and Murray' were Ms Allanah Foster⁷⁰ and Mr Murray Kimber⁷¹ of DSS.
119. Likewise, in a DHS document addressed to 'Secretary' entitled 'Joint presentation on Welfare Reform for DHS Secretaries' retreat – 3 and 4 July 2014',⁷² reference was made to 'Service delivery opportunities and challenges including simplification and digital service delivery'. It was noted that:

There will also be an opportunity for discussion on issues such as expenditure vs savings, bringing together reforms, driving digital delivery across the Commonwealth and building consensus on reform⁷³

120. At the same time, it was recognised that there were potential problems with the accuracy of debts assessed using averaging:

69 JR2, CTH.3716.0001.0001_R, Minute, 'Minute - Concepts for Future Compliance Activity', Attachment A, 30 June 2014, 5.
70 Branch Manager, Eligibility & Participation Policy, Social Security Stream, DSS (2014-2015); Acting Group Manager, Social Security Policy, Social Security Stream, DSS (19 December 2014 - 9 January 2015).
71 Branch Manager, Social Security Performance and Analysis Branch, DSS (October 2014 - September 2016).
72 CTH.3008.0004.5823, Presentation talking points, 'Welfare Reform_Secs retreat', 2 July 2014, 1.
73 CTH.3008.0004.5823, Presentation talking points, 'Welfare Reform_Secs retreat', 2 July 2014, 1.

- An email chain from 5 August 2014 to 27 August 2014 (in which Mr Ryman, Mr Harvey and Ms Tenille Collins⁷⁴ were participants) regarding ‘Future Compliance Activity Concepts’⁷⁵ included an attachment containing feedback from stakeholders on various measures and references to the ‘Trusted Data Sources’ initiative.⁷⁶
- An email in the chain dated 26 August 2014 from Mr Ryman to Mr Harvey and copying in Ms Collins stated: ‘Bit of a concern re the Legal Services solution for Trusted Data Assessment as this would appear to defeat the purpose.’⁷⁷
- The attached document included a table which summarised feedback on ‘Trusted Data Sources’ from Mr John Barnett⁷⁸ of the Legal Services Division, based on a discussion on 23 July 2014 including: **‘Concerns over accuracy of debt values if specifically quoted’**. The solution identified by Legal Services was: **‘refer to possible debt, don’t quote values’**.⁷⁹
- In an email in the chain from Mr Harvey to Ms Collins, Mr Ryman and others, dated 27 August 2014, Mr Harvey referred recipients to Mr Ryman’s comments in the email of 26 August 2014, and stated that he would be scheduling a meeting early in the week of 8 September to work through the document (on stakeholder feedback) and ‘in particular, develop a response to the fundamental question of what we do next’.⁸⁰

121. But as was explained in evidence before the Royal Commission, there were also:⁸¹

numerous conversations with the LSD [Legal Services Division of DHS] regarding future compliance concepts, which were documented as part of the stakeholder engagement process. The consensus from those discussions was that the risk of inaccurate debts already existed and was effectively mitigated through the internal review and appeal process.

74 Assistant Director, Strategy and Evaluation, Customer Compliance Branch, DHS (April 2011 – June 2016).
 75 JR3, CTH.3030.0006.9013_R, ‘FW- Future Compliance Activity Concepts [DLM=For-Official-Use-Only]’, 27 August 2014.
 76 JR3, CTH.3030.0006.9015, Spreadsheet, ‘Future Concepts Stakeholder feedback draft_4’, 25 August 2014.
 77 JR3, CTH.3030.0006.9013_R, ‘FW- Future Compliance Activity Concepts [DLM=For-Official-Use-Only]’, 27 August 2014, 1.
 78 Deputy General Counsel, Program Advice Branch, Legal Services Division, DHS (2011 – 2018).
 79 JR3, CTH.3030.0006.9015, Spreadsheet, ‘Future Concepts Stakeholder feedback draft_4’, 25 August 2014, 2.
 80 JR3, CTH.3030.0006.9013_R, ‘FW- Future Compliance Activity Concepts [DLM=For-Official-Use-Only]’, 27 August 2014, 1.
 81 Statement of Tenille Collins, 19 February 2023, TCO.9999.0001.0008_R2, 132 [482].

122. On 9 September 2014, Ms Collins was tasked with developing process maps for the 'Trusted Data Assessment' and analysing PAYG match files in order better to understand potential outcomes of the 'Trusted Data Assessment', including income averaging and any risks associated with it.⁸²
123. On 14 October 2014, DHS and DSS officers met to discuss the 'Trusted Data Assessment' proposal.⁸³ Those present included Mr Mark Withnell,⁸⁴ Mr Britton and Ms Jan Bailey⁸⁵ of DHS and Mr Kimber, Ms Foster and Mr Cameron Brown⁸⁶ of DSS. Later the same day, Mr Britton emailed Mr Ryman, Mr Ben Lumley⁸⁷ and Mr Owen Lange recording what had occurred at the meeting, as follows:⁸⁸

I attended a meeting this morning with DSS to discuss potential budget measures for 15/16.

Our discussion led us to consider options around the large number of matches we create with no capacity to complete.

We need to develop our thinking around what options would be available, what policy impediments exists and what IT would be required.

We will focus on PAYG to start so we will need detail of what's in the pool for each year back to 2010/11.

We need to have a position by next Monday.

124. Mr Lumley responded with data for the '3:30 pm Meeting'.⁸⁹
125. The following day (15 October 2014), Mr Andrew Whitecross⁹⁰ emailed Ms Serena Wilson⁹¹ referring to a 'Payment Integrity and Debt Package as part of a working list of new policy proposals'.⁹²

82 Statement of Tenille Collins, 19 February 2023, TCO.9999.0001.0008_R2, 162 [597(a)].
 83 MJ4, DSS.5053.0001.0014_R, Calendar Invite, 'FW- 15-16 Budget follow up mtg', 20 October 2014.
 84 Group Manager, Business Integrity, DHS.
 85 National Manager, Payment Integrity Branch, DHS.
 86 Director, Payment Integrity and Debt Management, DSS (December 2013 – 23 November 2014).
 87 Director, Data Strategy and Analytics, DHS.
 88 JR4, CTH.3000.0001.6195, Email, '2015-16 Budget Measures [DLM=Sensitive]', 14 October 2014.
 89 JR4, CTH.3000.0001.6304, Email, 'RE: 2015/16 Budget Measures', 14 October 2014, 1.
 90 Branch Manager, Rates and Means Testing Policy, DSS.
 91 Deputy Secretary, Social Security, DSS (1 January 2015 – June 2018).
 92 Statement of Andrew Whitecross, 21 November 2022, AWI.9999.0001.0005, 4 [20].

126. Coincidentally, on 22 October 2014, Ms Kathryn Campbell⁹³ and Mr Finn Pratt⁹⁴ signed a Bilateral Management Agreement (BMA) between DHS and DSS ‘to establish a framework that supports DSS and DHS to work seamlessly together to deliver the government’s social services policies and programs’.⁹⁵ It provided that the outcomes to be achieved through the BMA included:⁹⁶

- a shared understanding of, and responsibility for, policy objectives and program outcomes;
- shared management information, access to information systems and data to enable each department to fully perform their portfolio responsibilities;
- cooperative problem solving;
- a shared approach to providing advice and information to the government and external stakeholders;
- comprehensively managed risk; and
- strong interdepartmental relationships.

127. As events transpired, however, the degree of cooperation between DHS and DSS in relation to the ‘Trusted Data Assessment’ proposal was not as close or seamless as the BMA appears to have envisaged.

128. Seemingly encouraged by the ostensibly favourable response of DSS during the meeting on 14 October 2014, Mr Lumley emailed Mr Britton and Mr Ryman on 24 October 2014 attaching a ‘DSS – PAYG analysis docx’. It contained ‘Analysis of PAYG Uninitiated Matches from ATO PAYG data for 2010/11, 2011/12, 2012/13 financial years’ and identified 866,857 uninitiated PAYG compliance matches.⁹⁷ Mr Lumley noted there had been a ‘noticeable reducing [sic] in the number of PAYG matches from the previous year for each of 2010/11, 2011/12, 2012/13 financial years’.⁹⁸ Five days later, on 27 October 2014 at 8:36 am, Mr Britton forwarded the analysis to Ms Foster and Mr Kimber of DSS, with a copy to Mr Withnell.⁹⁹

93 Secretary of DHS.

94 Secretary of DSS.

95 DSS.5018.0001.2225, Agreement, ‘Bilateral Management Arrangement’, 22 October 2014, 1.

96 DSS.5018.0001.2225, Agreement, ‘Bilateral Management Arrangement’, 22 October 2014, 1.

97 CTH.3000.0001.8416, Email, ‘DSS – PAYG analysis [DLM=For-Official-Use-Only]’, 24 October 2014; MW1,

CTH.3000.0001.8417_R, Attachment, ‘Analysis of PAYG Uninitiated Matches’, 24 October 2014.

98 MW1, CTH.3000.0001.8417_R, Attachment, ‘Analysis of PAYG Uninitiated Matches’, 24 October 2014.

99 SB1, CTH.2004.0001.3468_R, Email, ‘RE: PAYG Match Analysis’, 27 October 2014.

129. But at 8:41 am on 27 October 2014, Mr Withnell responded to Mr Britton chastising him for having sent the analysis to DSS:¹⁰⁰

Why has this gone to DSS? I haven't seen it, we have no authority even for the measure as yet and now we have given away control of it!

130. Mr Britton replied that he had sent it because:¹⁰¹

Mark, at the last meeting you agreed we would provide high level match data only by Friday if possible. [But] I have withdrawn the email.

131. On 27 October 2014, Ms Michelle Enchong¹⁰² emailed Mr Britton and Mr Ryman and several other DHS officers a document entitled 'Apportionment of Income Summary', which she described as 'a summary of the Act references and information that I have found relating to the apportionment of income'.¹⁰³ The attachment included a page of analysis (and a page of extracts from provisions of legislation) and concluded (in support of the view about the legislation expressed in the minute of 24 April 2014 that was earlier referred to) that:¹⁰⁴

Current assessment of legislation states we are able to average income as per section 1068-G8 of the Social Security Act 1991 (refer below), however current policy is that people receiving a social security income support payment generally have their employment income assessed in the instalment period in which it is earned, derived or received according to SSAct section 8.

132. On 11 November 2014, Mr Barry Sandison¹⁰⁵ emailed to Mr Withnell:¹⁰⁶

Did you mention that DSS want a new compliance measure?

If you have details, can we add it in as a 2-3 liner for the next key points for Kathryn [Campbell]'s mtg with Finn [Pratt]. Kathryn is interested in what they might be looking at.

133. Later that day, Mr Withnell responded to Mr Sandison:¹⁰⁷

100 SB1, CTH.2004.0001.3468_R, Email, 'RE: PAYG Match Analysis', 27 October 2014.

101 SB1, CTH.2004.0001.3468_R, Email, 'RE: PAYG Match Analysis', 27 October 2014.

102 Policy, Strategy and Business Solutions Customer Compliance Branch, DHS.

103 JR5, CTH.3002.0006.0434, Email, 'Apportionment of Income [DLM=For-Official-Use-Only]', 27 October 2014.

104 JR5, CTH.3002.0006.0435, Attachment, 'Apportionment of Income Summary', 27 October 2014, 1.

105 Deputy Secretary, Health, Compliance and Information, DHS.

106 MW3, CTH.3061.0002.8190_R, Email, 'Re: new compliance measure', 12 November 2014, 2.

107 MW3, CTH.3061.0002.8190_R, Email, 'Re: new compliance measure', 12 November 2014, 2.

There are 2 possibles:

[Redacted – Privileged].

A clean up of PAYG matches – this is less certain a [sic] depends on policy advice treatment of income.

I will get Jan to put together a couple of dot points.

134. On 12 November 2014, Ms Bailey emailed Mr Sandison (copying Mr Withnell):¹⁰⁸

The two possible new measures we have been discussed [sic] with DSS are:

[Redacted – Privileged].

Streamlined PAYG reviews: This measure is a broad scale cleanup of the PAYG reviews in preparation for One Touch Payroll due to roll out in 2016. It is proposed to introduce a new method of review that includes an automated debt calculation based on the information received from the ATO without verification from employers. The measure is dependent on a variation to the policy treatment of earned income under the income test of welfare payments. It is proposed that income treatment for earned income include an option to annualise income rather than use the point of earnings calculation. Each year DHS receives far more PAYG matches (260,000 customers for 2013/14 financial year) than we can process with the traditional method of review that requires verification from the employer and/or the customer. The department currently has the resources to process approximately 30,000 of the highest risk reviews this year under the traditional method. The new streamlined method of review would allow the department to review customers not captured in the high risk pool. The method of review would remain unchanged for the highest risk reviews.

The cost of these measures will be offset from the broader savings under the DSS proposals. The PAYG measure requires a policy change and DSS are yet to advise if this change is supported.

135. Mr Withnell replied (copying Mr Sandison):¹⁰⁹

108 MW3, CTH.3061.0002.8190_R, Email, 'Re: new compliance measure', 12 November 2014, 1.

109 MW3, CTH.3061.0002.8190_R, Email, 'Re: new compliance measure', 12 November 2014, 1.

A slight amendment – in the last paragraph I suspect the PAYG measure will need to offset against itself. I doubt it figures in the DSS calculations. We could leave it open for DHS to use as an offset – the savings over 4 years will likely approach \$1b.

136. On 27 November 2014, Ms Bianca Norris¹¹⁰ emailed Ms Collins (with a copy on 1 December 2014 to Mr Ryman) a PAYG analysis for hypothetical debts for 2010-11 and 2012-13 financial years.¹¹¹ It showed that, when the PAYG data smoothing methodology was applied to 2010-11, 94% of the cases resulted in an overpayment and only 6% of cases resulted in no debt.¹¹²
137. On 10 December 2014 Ms Elisha Hodgson¹¹³ emailed Ms Collins a first draft of the New Policy Proposal (NPP) PAYG Clean Up proposal,¹¹⁴ and on 11 December 2014, Ms Dionne Hughes emailed Ms Collins a revised NPP document.¹¹⁵ Ms Collins emailed Mr Ryman (copy to Ms Norris), attaching the draft NPP and Risk Potential Assessment Tool (RPAT) for the PAYG measures, and an updated 'process map', as well as assumptions and a spreadsheet regarding 'de-regulation benefits'.¹¹⁶
138. The draft NPP outlined the 'proposal description' as follows:¹¹⁷

This proposal will provide the Department of Human Services (the department) with the capability to address historical risk for customers with Earned Income. The proposal will introduce a digital approach to undertaking interventions with customers where information from the Australia [sic] Taxation Office (ATO) indicates the customer may have incorrectly declared income from employment.

110 Project Officer, Policy Strategy and Business Solutions, Customer Compliance Branch, DHS.

111 CTH.3030.0009.1889, Email, 'FW- PAYG analysis', 1 December 2014; CTH.3030.0009.1890, Attachment, 'Findings for PAYG Analysis 2010-2011 V0.2_0', 27 November 2014.

112 CTH.3030.0009.1890, Attachment, 'Findings for PAYG Analysis 2010-2011 V0.2_0', 27 November 2014, 1.

113 Policy Strategy and Business Solutions, Customer Compliance Branch, DHS.

114 CTH.3002.0006.5397, Email, 'RE- PAYG NPP draft', 11 December 2014.

115 CTH.3002.0006.5397, Email, 'RE- PAYG NPP draft', 11 December 2014; CTH.3002.0006.5398, Draft New Policy Proposal (NPP), 'NPP_ PAYG v0 2', 10 December 2014.

116 JR9, CTH.3002.0006.5491_R, Email, 'PAYG measure', 12 December 2014; JR9, CTH.3002.0006.5492, Draft NPP, 'NPP_ PAYG v0 2', 12 December 2014; JR9, CTH.3002.0006.5508, Memo, 'PAYG High Level Assumptions'.

117 JR9, CTH.3002.0006.5492, Draft NPP, 'NPP_ PAYG v0 2', 12 December 2014, 1-2.

Interventions will be undertaken in a digital environment using the myGov portal. The customer will be presented, via their online account, with the information obtained from the ATO and will receive an indication of how this is to be assessed. **This may include using an income smoothing methodology to apportion the customer's income over the time of employment.** The customer will have an opportunity to update the information prior to it being applied to their Centrelink record.

The proposal seeks to de-regulate the current way of undertaking compliance interventions through a reduced requirement for the customer and third parties to provide supporting documentation. The digital process will enable the department to address a pool of residual work which currently exceeds our capacity to undertake.

The proposal will provide for a XXX year measure to undertake 866,857 interventions for customers at risk of undeclared or under declared income from employment. It is anticipated that this would result in \$xxxxxx gross savings due to returned outlays...

There would need to be a change in departmental policy in relation to the application of income smoothing to assess a customer's income from employment. [Emphasis added.]

139. The 'PAYG – High Level Assumptions' document included a summary of analysis based on customer records with a PAYG match across 2010-11, 2011-12, and 2012-13 (866,857 customer records) and recorded that debts were increased by 13.06% when income smoothing was applied.¹¹⁸
140. The 'NPP Due Diligence Checklist' (which comprised the final page of the draft NPP) included a 'yes' in the box next to the query of whether there 'has been an assessment of the legal risk' and a 'no' next to the box: 'Is legislation required'.¹¹⁹ There is no evidence that Mr Barnett, or any other lawyer in DHS' Legal Services Division, was consulted about the draft NPP or completion of the checklist.

¹¹⁸ JR9, CTH.3002.0006.5508, Memo, 'PAYG High Level Assumptions', 1.
¹¹⁹ JR9, CTH.3002.0006.5492, Draft NPP, 'NPP_ PAYG v0 2', 12 December 2014, 4.

DSS early concerns

141. Meanwhile, unbeknownst to DHS, DSS had adopted a different, slower-paced, and less enthusiastic approach to the proposal.
142. In evidence given in this investigation, 2 of the officers who attended meetings with DHS on 14 and 20 October 2014 respectively described their initial reactions to the proposal as being that they regarded it as risible,¹²⁰ or so bad as to make them want to swear.¹²¹ Paradoxically, however, they did not say or do anything to convey their displeasure to DHS. To the contrary, as appears from evidence referred to below, DSS's outward reaction is likely to have appeared as suggesting that the proposal was conceptually 'OK'.¹²²
143. On 31 October 2014, Mr Mark Jones¹²³ began the process of seeking internal legal and policy advice on the proposal.¹²⁴
144. A week later, on 7 November 2014, Mr David Mason¹²⁵ responded with advice (2014 DSS Policy Advice) in substance to the effect that the proposal was so fundamentally flawed that it could not be supported:¹²⁶

It is flawed as **the suggested calculation method (averaging employment income over an extended period) does not accord with legislation, which specifies that employment income is assessed fortnightly**. It follows that the debt amount calculated could be incorrect according to law, and it is unclear how a DHS delegate could validly make a determination about the amount of a debt in these circumstances. Further, we can't see how such decisions could be defended in a tribunal or court, particularly when DHS have the legislative authority to seek employment income information from employers. [Emphasis added.]

145. Further observations in the 2014 DSS Policy Advice included that:¹²⁷

- There would be some cases where the debt value identified under a smoothed approach would be too high.

120 NACC Transcript, 20 August 2025, Catherine Halbert, T15.

121 NACC Transcript, 8 August 2025, Mark Jones, T16.

122 See paragraph 150 below.

123 Assistant Director, Payment Review and Debt Strategy Team, DSS.

124 MJ1, DSS.8000.0001.1009_R, Email, 'FW- Request for clarification on income testing rules' 7 November 2014; DSS.8002.0001.0257.

125 Acting Director, Rates and Means Testing Policy Branch, DSS.

126 MJ1, DSS.8000.0001.1009_R, Email, 'FW- Request for clarification on income testing rules' 7 November 2014, 1.

127 MJ1, DSS.8000.0001.1009_R, Email, 'FW- Request for clarification on income testing rules' 7 November 2014, 1.

- DSS would not be able to let any debts calculated in this matter (ie, smoothed) ‘reach a tribunal’ and the debt would need to be fully investigated if a customer requested a review.
- The proposal was not clear as to whether the recipient would be advised that the debt was calculated on a smoothed amount, and that it may accordingly be too low or too high.
- The proposal could disincentivise recipients from exercising their appeal rights.
- The proposal was misleading in suggesting that the debt could only be challenged if a recipient provided supporting evidence.
- The proposal might be productive of reputational damage to DHS and DSS.

146. On 12 November 2014, Mr Kimber responded to the 2014 DSS Policy Advice by emailing to several other DSS officers, including Ms Wilson:¹²⁸

A heads up on the development of the fraud + compliance NPP for 15-16.

You will recall a week or so back we were tossing around the idea to streamline compliance matches and subsequent follow up / debt raising – in essence this would allow DHS to move toward a process that would bypass the current detailed investigation of fortnightly income match discrepancies, smooth the income reported over a period, notify the customer of a potential debt and then place the onus on the individual customer to either accept or challenge the debt.

As a broad concept it sounded OK, however, as we discussed it did have a number of issues. Following further investigation we have confirmed as much. **We expect legal advice in coming days to confirm that it is not appropriate under current provisions and would not be expected to hold up to scrutiny or challenge.**

We will now take this off the table for further consideration and advise DHS once we get the final legal advice.

¹²⁸ MK3, DSS.5046.0001.0033, Email, ‘Compliance measure’, 12 November 2014.

That said, as you know the Minister did flag in his letter to the PM re the 15-16 Budget that he was investigating the feasibility for a Fraud + Compliance – recovery of overpayments proposal. The description in Annexure A to the letter was very broad and does not hold the Minister to any particular type of proposal in this area. [Emphasis added.]

147. On 17 November 2014, Mr Brown emailed Mr Jones, attaching a copy of the 2014 DSS Policy Advice and observing that we: ‘Need to close the loop on this with DHS after we get legal advice.’¹²⁹
148. Then a further week went by before, on 24 November 2014, Mr Jones emailed Ms Anne Pulford¹³⁰ confirming that formal legal advice was still required on the ‘DHS data matching issue’,¹³¹ and then it took another 10 days until, on 3 December 2014, Ms Pulford forwarded Mr Jones’s request for legal advice to Mr Simon Jordan, another lawyer in the Public Law Branch.¹³²
149. Finally, after another 2 weeks had elapsed, on 18 December 2014 Mr Jordan provided the formal legal advice (the 2014 DSS Legal Advice) to Mr Jones (with a copy to Ms Pulford), albeit consisting of no more than that:¹³³

In our view, a debt amount derived from annual smoothing or smoothing over a defined period of time **may** not be derived consistently with the legislative framework.¹³⁴ [Emphasis added.]

150. By that stage, the Christmas shutdown appears to have commenced and no-one at DSS considered it sufficiently advisable to inform DHS before Christmas of the conclusions that DSS had reached.

Minister Morrison’s request for proposals to improve the integrity of welfare payments

151. On 23 December 2014, the Hon Scott Morrison MP was appointed Minister for Social Services and member of the Cabinet.¹³⁵

129 MJ2, DSS.5050.0001.0008, Email, ‘Email Cameron Brown to Mark Jones dated 17-11-2014 FW- Request for clarification on income testing rules’, 17 November 2014.

130 Principal Legal Officer, DSS.

131 MJ5, DSS.5006.0003.1833, Email, ‘FW: Legal Advice - Data matching - notifications and debt raising’, 18 December 2014, 2.

132 MK2, DSS.8000.0001.1007, Email, ‘FW- Legal Advice - Data matching- notifications and debt raising’, 3 December 2014, 1.

133 MJ5, DSS.5006.0003.1833, Email, ‘FW: Legal Advice - Data matching - notifications and debt raising’, 18 December 2014, 1.

134 MJ5, DSS.5006.0003.1833, Email, ‘FW: Legal Advice - Data matching - notifications and debt raising’, 18 December 2014, 1.

135 Statement of Scott Morrison, 11 November 2022, SMO.9999.0001.0002_R, 1 [2(a)].

152. As Minister for Social Services, he acquired ministerial responsibility for the Department of Social Services and portfolio responsibility for other Departments of State and agencies within the Social Services Portfolio. At the time, they included the Department of Human Services.
153. On the same day, Minister Marise Payne, who was the Minister for Human Services with direct ministerial responsibility for the Department of Human Services (and who, other things being equal, would be expected to brief Minister Morrison on DHS activities) wrote to Minister Morrison noting that, because she was about to depart on leave, it had been agreed that Ms Campbell would return from leave to brief Minister Morrison in place of Minister Payne.¹³⁶
154. Accordingly, a week later, on 30 December 2014, Ms Campbell interrupted her Christmas leave to brief Minister Morrison on ‘key priorities and challenges for the department’.¹³⁷
155. In Mr Morrison’s evidence before the Royal Commission, which in substance he confirmed in this investigation, Mr Morrison described the meeting as being:¹³⁸
- of a general nature to understand how the Department of [Human] Services operated, what their systems were, to understand how they communicated benefits and dealt with the processing of payments
- and that:¹³⁹
- ... as a result of that general conversation, I asked that [DHS] advise me of ways we could do that better, which seemed to me to be consistent with my responsibilities as Minister
- more specifically, to:¹⁴⁰
- prepare a brief outlining the department’s current approach to protecting the integrity of the welfare system outlays and options for strengthening those arrangements, in particular those associated with fraud.

136 KC1, CTH.3732.0001.0007_R, Executive Minute, ‘B14-1288 BR 1 350167-1’, 23 December 2014; KC1, CTH.3732.0001.0008_R, Letter, ‘B14-1288 SF 3 393527-1’, 23 December 2014.

137 KC1, CTH.3732.0001.0008_R, Letter, ‘B14-1288 SF 3 393527-1’, 23 December 2014.

138 RRC Transcript, 14 December 2022 Scott Morrison, p 1765: lines 2-4.

139 RRC Transcript, 14 December 2022 Scott Morrison, T1765.

140 CTH.3053.0044.0425, Executive Minute, ‘B15-125 Deputy Secretary assigned brief.pdf’, 12 February 2015.

156. On Ms Campbell's return from Christmas leave, on 5 January 2015, she met Ms Malisa Golightly,¹⁴¹ Mr Darren Box,¹⁴² Mr Ben Rimmer¹⁴³ and Mr Grant Tidswell¹⁴⁴ to discuss matters arising from her meeting with Minister Morrison.¹⁴⁵ In the course of that meeting, Ms Campbell asked Ms Golightly to arrange for the preparation of a brief of the kind for which the Minister had asked.¹⁴⁶
157. Mr Withnell gave evidence in this investigation that he had already begun preparation of the brief before Ms Campbell instructed Ms Golightly to take control. From this point on, however, Ms Golightly was closely involved in supervising Mr Withnell's preparation of the brief.¹⁴⁷

Preparation of the ministerial brief

158. Between 5 and 9 January 2015, the work that Mr Britton and Mr Ryman had undertaken during 2014 on the PAYG Clean Up proposal was provided to Mr Withnell as the basis for one of several proposals to be included in the brief.¹⁴⁸
159. On 8 January 2015, Mr Ryman emailed Mr Barnett requesting legal advice.¹⁴⁹ Questions 1 and 2 related to whether DHS could give the customer a legal notice that required the customer to do something 'online'. Question 3 was as follows:¹⁵⁰

Automatic application of outcome — Can we automatically apply the assessment outcome if a customer fails to act? Where the customer fails to action the initial request and go online to action the compliance task, or fails to provide supporting documentation, is the branch able to apply the information to the customer record and automatically assess the outcome (current and/or historical entitlement). [Original emphasis.]

¹⁴¹ Deputy Secretary, DHS.

¹⁴² Chief Financial Officer, DHS.

¹⁴³ Associate Secretary, DHS.

¹⁴⁴ Deputy Secretary, Service Delivery Operations, DHS (July 2011 – 2 May 2016).

¹⁴⁵ Statement of Kathryn Campbell, 25 October 2022, KCA.9999.0001.0008_R, 1 [9], Annexure A.

¹⁴⁶ Statement of Kathryn Campbell, 25 October 2022, KCA.9999.0001.0008_R, 1 [9], Annexure A.

¹⁴⁷ NACC transcript pages 45–49 on 4 September 2025.

¹⁴⁸ Royal Commission into the Robodebt Scheme, Final Report, 57; NACC Transcript, 4 September 2025, Mark Withnell, T42–43.

¹⁴⁹ JR10, CTH.3702.0001.0707_R, Email, 'FW- Legal Advice - Proposed digital intervention process', 2 July 2015, 8–9.

¹⁵⁰ JR10, CTH.3702.0001.0707_R, Email, 'FW- Legal Advice - Proposed digital intervention process', 2 July 2015, 9.

160. Almost immediately, Mr Barnett forwarded Mr Ryman's request for advice to Ms Belinda Lewis, another lawyer in his branch, and asked her to assist Mr Ryman with it.¹⁵¹
161. On 8 January 2015, Ms Melissa Ryan emailed Ms Catherine Halbert,¹⁵² Ms Moya Drayton, Ms Joanne Groube, and Mr Adrian Hudson of DHS, referring to a conversation they had had earlier that day and confirming that DHS had been asked by Minister Morrison to prepare a brief by next week on compliance, fraud and payment integrity options.¹⁵³ Ms Ryan's email continued:¹⁵⁴

We have pulled together a draft list of possible proposals that build on and support proposals that both your departments have been working on. I appreciate this is tricky given you are already progressing a range of proposals. I am also mindful that each proposal will have costs/savings that would need to be worked through in more fulsome [sic] detail, including possible legislative changes; consequences/risks.

Any feedback you have the [sic] on list or alternative proposals you are able to share would be greatly appreciated. I was hoping to set up a meeting to work through the options on Monday 12 January 2015.

162. On 9 January 2015, Mr Withnell sent a first draft of the brief by email to Mr Britton and Ms Bailey, Mr Mark Brown,¹⁵⁵ Ms Rhonda Morris,¹⁵⁶ and Ms Mary Jerrim,¹⁵⁷ labelled 'Highly sensitive' and 'not to be shared'.¹⁵⁸ The main body of the brief included the following explanation of limitations inherent in DHS' existing process to detect 'customer error':¹⁵⁹

151 JR10, CTH.3702.0001.0707_R, Email, 'FW- Legal Advice - Proposed digital intervention process', 2 July 2015, 8.

152 Group Manager, Payments Policy, DSS.

153 CH2, DSS.5039.0001.0001, Email, 'Options to strengthen eligibility and participation requirements', 8 January 2015.

154 CH2, DSS.5039.0001.0001, Email, 'Options to strengthen eligibility and participation requirements', 8 January 2015.

155 National Manager, Serious Non-Compliance, Business Integrity, DHS.

156 National Manager, Internal Fraud Control and Investigations, Business Integrity, DHS.

157 National Manager, Payment Integrity, Business Integrity, DHS.

158 SB2, CTH.2004.0001.9608, Email, 'For your reading pleasure - DO NOT FORWARD', 9 January 2015; SB2, CTH.2004.0001.9609, Draft Brief, 'Min Morrison brief', 9 January 2015.

159 SB2, CTH.2004.0001.9609, Draft Brief, 'Min Morrison brief', 9 January 2015, 4.

The traditional compliance reviews are a staff intensive verification process involving obtaining information from customers and third parties and often take place up to 3 years after the person became non-compliant leading to substantial debts. The ability to change the process is limited due to legislative and policy constraints on how earned income is treated.

163. Attached to the main body of the brief were 3 separate draft proposals of which one was styled 'PAYG clean-up' and described in the draft proposal as follows:¹⁶⁰

PAYG clean-up

The proposal will introduce a digital approach to interventions with customers when historical information from the Australia Taxation Office (ATO) indicates the customer may have incorrectly declared income from employment.

Interventions will be undertaken in a digital environment using the myGov portal. **The customer will be presented, via their online account, with the information obtained from the ATO and an assessment of their correct welfare entitlement based on this information. The assessment will use an income smoothing methodology to apportion the customer's income over the time of employment. The customer will have an opportunity to update the information prior to it being applied to their Centrelink record.**

The proposal seeks to de-regulate the current way of undertaking compliance interventions through a reduced requirement for the customer and employers to provide supporting documentation. The digital process will enable the department to address a pool of residual work which currently exceeds its capacity.

The proposal will provide for a XXX year measure to undertake 866,857 interventions for customers at risk of undeclared or under declared income from employment. It is anticipated that this would result in an estimated \$1.2b gross savings and debt due to returned outlays.

160

SB2, CTH.2004.0001.9609, Draft Brief, 'Min Morrison brief', 9 January 2015, 8.

There would need to be a change in departmental policy in relation to the application of income smoothing to assess a customer's income from employment. [Emphasis added.]

164. Under the heading 'Potential changes and new directions', the draft predicted that:¹⁶¹

The estimated savings from the PAYG 'clean-up' proposal would more than off-set the cost of all other proposals. It is important to note that this specific proposal requires changes to the treatment of income away from fortnightly attribution.

165. Later on 9 January 2015, Ms Ryan sent the draft brief to Ms Golightly (copying in Mr Withnell and Mr Hudson) under cover of the following note:¹⁶²

Malisa

Attached is a rough first draft of the compliance brief incorporating Mark's material and Participation content. Further work is needed to refine it.

I have had some constructive discussions with both Employment (Moya) and DSS (Cath Halbert). I have arranged a meeting with both departments on Monday morning.

Happy to work through the brief in more detail once you have had a chance to read.

DSS early objections to the PAYG Clean Up proposal

166. On 10 January 2015, Ms Halbert, who (although not then the senior executive officer responsible for compliance policy and legislation) was acting as coordination officer between DSS and DHS, forwarded Ms Ryan's email to Ms Erin Rule¹⁶³ 'for discussion on Monday'.¹⁶⁴

161 SB2, CTH.2004.0001.9609, Draft Brief, 'Min Morrison brief', 9 January 2015, 5.

162 MW4, CTH.3008.0007.6435, Email, 'Draft compliance brief, 9 January 2015; MW4, CTH.3008.0007.6436, Draft Executive Minute, 9 January 2015.

163 Acting Branch Manager, Labour Market Payments Policy, Payments Policy Group, DSS.

164 MK5, DSS.5018.0002.4231_R, Email, 'RE- Options to strengthen eligibility and participation requirements', 12 January 2015, 2.

167. On 12 January 2015, Mr Andrew Whitecross (who was acting in Mr Paul McBride's position as General Manager, Social Security Policy Group, DSS), Mr Kimber and Ms Halbert met with other officers of DSS to discuss the suggestions that Ms Ryan had sent on 8 January 2015.¹⁶⁵

168. Shortly after that meeting, Mr Kimber had a telephone conversation with Mr Withnell 're the compliance side of things' and thereafter emailed Ms Halbert, Mr Whitecross and Ms Foster, expressing some uncertainty as to the 'particular focus that the Minister may take', and identifying one of the options proposed by DHS as follows:¹⁶⁶

PAYG / income declaration data matching debt clean up thru application of streamlining of income process - consistent with the idea that was being considered as part of initial 15-16 Budget thinking – does require lego change and also different way of considering how debt is established.

169. In evidence before the Royal Commission, Mr Kimber said that his reference to the proposal relating to 'initial 15-16 Budget thinking' was to what he had been told in discussions to that point – which he said was 'highly preliminary'; and that at that stage he had not seen a written-up proposal.¹⁶⁷

170. Later, on 12 January 2015 Mr Kimber sent the same email to Ms Catherine Dalton¹⁶⁸ of his branch with an attached note as follows:¹⁶⁹

Hi Catherine – for info at this stage – Minister Morrison is keen to explore compliance as a key focus. Not sure as to exact basis for this at this stage but see below for some ideas that DHS may flag in initial briefing that is beinf [sic] prepared. Understand that there is a Dep Secs mtg later today at which this will be explored.

Murray K.

165 MK5, DSS.5018.0002.4231_R, Email, 'RE- Options to strengthen eligibility and participation requirements', 12 January 2015, 1.

166 MK5, DSS.5018.0002.4231_R, Email, 'RE- Options to strengthen eligibility and participation requirements', 12 January 2015, 1.

167 Statement of Murray Kimber, 11 November 2022, MKI.9999.0001.0002, 10 [61].

168 Acting Director, Payment Integrity and Debt Strategy, DSS.

169 MK6, DSS.5091.0001.0965, Email, 'FW- Options to strengthen eligibility and participation requirements', 12 January 2015, 1.

171. As foreshadowed, there was a Deputy Secretaries' meeting later that day, which was attended by Ms Wilson, Ms Golightly and Ms Halbert¹⁷⁰ at which the PAYG Clean-Up proposal is likely to have been discussed.
172. The following day, there was a meeting of Ms Campbell and Minister Payne during which Ms Campbell relayed the substance of her conversation with Minister Morrison on 30 December 2014.¹⁷¹ Minister Payne made notes as follows:¹⁷²

Minister Morrison – compliance

Focus on integrity of system – integrity of outlay;

NPP compliance now / options for future?

173. On 14 January 2015, Ms Lewis provided Mr Ryman with the legal advice he had sought from Mr Barnett on 8 January 2015 (the DHS legal advice).¹⁷³ It was titled: 'Data-matching, tipoffs and internal profiling' and was 'second-counselled' by Mr Barnett.¹⁷⁴ It dealt explicitly with each of the 3 questions that Mr Ryman had posed and nothing more.
174. Consequently, it did not address the question of whether income averaging was lawful.
175. Later, on 14 January 2015, Mr Ryman forwarded the DHS legal advice to Ms Collins, Mr Britton, and Mr Michael Ley Huy.¹⁷⁵ ¹⁷⁶ In his covering email, Mr Ryman requested a 30-minute meeting to discuss 'our interpretation of the legal advice' and any follow-up questions. As it appears, there was such a meeting, and a decision was made to seek further legal advice on more specific questions.¹⁷⁷

170 CH3, DSS.5039.0001.0004, Calendar invite, 'Discussion with DSS-DHS-Employment on the approach and scope on Compliance work and participation in response to Minister Morrison's request', 12 January 2015; MK5, DSS.5018.0002.4231_R, Email, 'RE- Options to strengthen eligibility and participation requirements', 12 January 2015, 1.

171 KC2, MPA.0001.0001.0052, Calendar invite, 'Catchup with Kathryn – Megan', 13 January 2015.

172 KC2, MPA.9999.0001.0017, Notebook pages, '20150113', 13 January 2015; Statement of Marise Payne, 9 December 2022, MPA.9999.0001.0017_R, 2 [10(a)].

173 JR10, CTH.3702.0001.0707_R, Email, 'FW- Legal Advice - Proposed digital intervention process', 2 July 2015, 7; JR10, CTH.3007.0004.5295_R, Advice, 'Lex 17990 - Online mandating - data matching etc - advice' 14 January 2015.

174 JR10, CTH.3007.0004.5295_R, Advice, 'Lex 17990 - Online mandating - data matching etc - advice' 14 January 2015.

175 Project Manager, PSBS, Customer Compliance, DHS.

176 CTH.3027.0004.9380, Email, 'FW- Legal Advice - Proposed digital intervention process' 14 January 2015.

177 Statement of Tenille Collins, 19 February 2023, TCO.9999.0001.0008_R2, 167 [619].

176. Later, still on 14 January 2015, Mr Withnell sent Ms Golightly a ‘clean copy’ and a ‘marked-up copy’ of the draft brief.¹⁷⁸ It was noted in the draft that there were ‘legislative and policy constraints on the need to apply income averaging to fortnightly overpayments’.¹⁷⁹
177. It appears likely, therefore, as the Royal Commission inferred, that, by 14 January 2015, DSS had advised DHS that there was a real question as to whether legislative and policy amendments would be necessary to accommodate the ‘online compliance proposal (OCI)’ (as the PAYG Clean Up proposal had by then come to be referred to). As it now appears, Mr Kimber may have expressed those reservations to Mr Withnell during the telephone call of 12 January 2015.
178. In the course of the afternoon of 14 January 2015, Ms Golightly spoke by telephone to Ms Wilson in anticipation of the draft brief being provided to Ms Campbell and Minister Payne, to confirm that DHS had discussed ‘income smoothing’ with DSS.¹⁸⁰
179. Then after working on the draft for several hours, at 1:14 am on 15 January 2015, Ms Golightly sent an amended version to Mr Withnell, Ms Ryan and Mr Hudson under cover of the following instructions:¹⁸¹

Please find attached the version I have worked on tonight and sent through to the Secretary. As a priority in the morning could you do a very careful proof read and also fill in the required data for any places we have an ‘xx’ in the brief.

Mark — please also insert the stats you are preparing as requested by Minister Morrison.

180. At much the same time, Ms Golightly sent a copy of the amended draft to Ms Campbell under cover of the following note:¹⁸²

178 MW6, CTH.3008.0007.7493, Email, ‘brief revisions’, 14 January 2015; MW6, CTH.3008.0007.7514, Draft brief, ‘Minister Brief - Compliance and Newstart (markup)’, 14 January 2015.

179 MW6, CTH.3008.0007.7493, Email, ‘brief revisions’, 14 January 2015; MW6, CTH.3008.0007.7514, Draft brief, ‘Minister Brief - Compliance and Newstart (markup)’, 14 January 2015.

180 KC3, CTH.3008.0007.7938_R, Email, ‘FW- B15-39 - Cover brief - Compliance processes and options for improvement’, 15 January 2015.

181 MW7, CTH.2004.0001.9953, Email, ‘Compliance brief - final version sent to the Secretary’, 15 January 2015; MW7, CTH.2004.0001.9954, Draft brief, ‘Minister Brief - Compliance and Newstart (clean)’, 15 January 2015.

182 CTH.3008.0007.7589, Email, ‘Brief on Compliance Arrangements - Business Integrity and Job Seeker eligibility mutual obligations’, 15 January 2015; CTH.3008.0007.7590, Draft brief, ‘Minister Brief - Compliance and Newstart (clean)’, 15 January 2015.

Sorry for the delay. Please find attached a copy of the proposed brief for Minister Payne giving our response to the request from Minister Morrison. I need to do a final proof read, format check etc and there are some figures (marked as 'xx's) that need to be filled in asap tomorrow.

However, I didn't want to hold up getting it to you any further. Mark is also still working on the comprehensive stats re BI work and will prepare this as a data sheet which can be attached to the brief. He expects to have this by lunchtime tomorrow.

The brief is very lengthy but hopefully conveys the extensive BI work already undertaken, the complexity of the current job seeker arrangements and the breadth of thinking we have done in relation to opportunities for improvement in both areas.

181. This appears to have been the first occasion on which Ms Campbell was provided with anything in writing about the PAYG Clean Up proposal.
182. At 7:33 pm on 15 January 2015, Ms Golightly sent a copy of the amended draft to Ms Kate Ridderhof, Department Liaison Officer (DLO) in Minister Payne's office.¹⁸³ It had 4 attachments, including a description of the 'current arrangements to maintain the integrity of welfare payment outlays' and 3 suggested proposals to 'strengthen the integrity of welfare payments'.¹⁸⁴
183. As in Mr Withnell's draft of 9 January 2015, the existing process for ascertaining overpayment of welfare payments was described as follows:¹⁸⁵

183 CTH.4000.0308.1766, Email, 'Fwd- B15-39 - Cover brief - Compliance processes and options for improvement', 15 January 2015; KC3, CTH.3784.0001.0002_R, Executive Minute, 'B15-39 Current Compliance Processes and Options for Improvement (Agency Signed)', 15 January 2015; KC3, CTH.4000.0399.0151, Draft brief, 'Appendix 1', 15 January 2015.

184 KC3, CTH.3784.0001.0002_R, Executive Minute, 'B15-39 Current Compliance Processes and Options for Improvement (Agency Signed)', 15 January 2015; KC3, CTH.4000.0399.0151, Draft brief, 'Appendix 1', 15 January 2015.

185 KC3, CTH.4000.0399.0151, Draft brief, 'Appendix 1', 15 January 2015, 7.

The traditional compliance reviews are a manual staff intensive verification process involving obtaining information from customers and third parties often going back over a number of years. The ability to change the process is limited due to legislative and policy constraints on the need to apply income fortnightly to determine overpayments even if they occurred over several months or years and even if income data is only available on an annual basis (for example, income is determined annually by the Australian Tax Office so is therefore only available on an annual basis).

184. Likewise, in the introductory section under the heading ‘Proposed Changes to Strengthen the Integrity of the Welfare System’, it was stated:¹⁸⁶

The first option outlined below (and others) would need policy, and possibly legislative, change to proceed. However, the estimated savings are substantial and would more than off-set the cost of all other proposals. This specific proposal requires changes to the treatment of income away from fortnightly attribution to an annualised approach.

185. The ‘First Option’ was described in these terms:¹⁸⁷

Potential Priority New Policy Proposals

1. PAYG clean-up
 - a. The proposal will introduce a digital approach to interventions with customers when historical information from the ATO indicates the customer may have incorrectly declared income from employment.

¹⁸⁶ KC3, CTH.4000.0399.0151, Draft brief, ‘Appendix 1’, 15 January 2015, 11.

¹⁸⁷ KC3, CTH.4000.0399.0151, Draft brief, ‘Appendix 1’, 15 January 2015, 11.

b. Interventions will be undertaken in a digital environment using the myGov portal. The customer will be presented, via their online account, with the information obtained from the ATO and an assessment of their correct welfare entitlement based on this information. **The assessment will use an income smoothing methodology to apportion the customer's income over the time of employment (rather than the current cumbersome process whereby the department has to determine and apply income on a fortnightly basis).** The customer will have an opportunity to update the information prior to it being applied to their Centrelink record.

c. The proposal removes the need for the department to be dependent on customer and business information as the default and instead relies on the use of data already collected by the ATO as the default unless customers want to, and are able to, provide information that varies the outcome. The digital process will enable the department to undertake a much greater number of compliance reviews.

d. The proposal will provide for a four-year measure to undertake 866,857 interventions for customers at risk of undeclared or under declared income from employment. It is anticipated that this would result in an estimated \$1.2 billion gross savings and debt due to returned outlays.

e. **There would need to be a change of policy to enable the application of income smoothing to assess a customer's income. It may also need change to legislation. As a result, we have been working with DSS on developing this proposal and will continue to do so.** [Emphasis added.]

186. It may be inferred that the reference to 'working with DSS on developing the proposal' was to the exchanges between DHS and DSS during late 2014 and the first half of January 2015.

187. At 8:04 pm on 15 January 2015, Ms Golightly sent a further copy of the draft brief to Ms Campbell, under cover of the following explanation:¹⁸⁸

188 MW8, CTH.3008.0007.7938, Email, 'FW- B15-39 - Cover brief - Compliance processes and options for improvement', 15 January 2015; MW8, CTH.3008.0007.7939, 'Appendix 1'.

[I]t incorporates the changes we discussed and hopefully addresses the issues you raised. I did confirm with Mark [Mr Withnell] that the income smoothing option (ie, the Business Integrity \$1.2 billion gross savings measure) has been discussed with DSS. I also raised it with Serena [Ms Wilson] this afternoon to make sure.

188. At 8:22 pm on 15 January 2015, the brief was sent by Ms Ridderhof to Ms Megan Lees, Chief of Staff in Minister Payne's office with a note: 'Melisa [sic] is happy to answer questions.'¹⁸⁹

189. At 9:07 am on 16 January 2015, Ms Ridderhof sent the brief by email to Minister Payne (and later also in hard copy) under cover of a note:¹⁹⁰

Note that the brief has a critical date of 20 January 2015 as it is for discussion at a meeting with the Secretary, Malisa Golightly and Mark Withnell on that date.

190. As was explained in oral evidence, the 'critical date' was the date by which Minister Payne was expected to have read and comprehended the brief.¹⁹¹

191. At 12:12 pm on 16 January 2015, Mr Kimber sent a copy of Mr Jones's request for formal legal advice of 14 November 2014 to Ms Dalton, Mr Jones and Mr Anthony Barford,¹⁹² under cover of the following observation:¹⁹³

Below and attached sets out the details as far as we know re the DHS idea re streamlining data matching and debt raising. As you will note there were legal concerns concerning this approach.

I will ask the team to dig out any further advice we received subsequently.

192. It appears likely that Mr Kimber was aware of the 2014 DSS Legal Advice by that stage.

189 CTH.4000.0308.1766, Email, 'Fwd- B15-39 - Cover brief - Compliance processes and options for improvement', 15 January 2015; KC3, CTH.3784.0001.0002_R, Executive Minute, 'B15-39 Current Compliance Processes and Options for Improvement (Agency Signed)', 15 January 2015; KC3, CTH.4000.0399.0151, Draft brief, 'Appendix 1', 15 January 2015.

190 CTH.4000.0399.0009, Email, 'B15-39 - Current compliance processes and options for improvement', 16 January 2015.

191 NACC Transcript, 18 September 2025, Kathryn Campbell, T27.

192 Policy Manager, Debt Policy, Social Security Performance and Analysis Branch, DSS.

193 MK7, DSS.5023.0002.2164, Email, '2.01701150954175E+16', 16 January 2015, 1.

193. In response, at 12:34 pm on 16 January 2015, Mr Jones sent Mr Whitecross and Mr David Lawrence¹⁹⁴ copies of a chain of emails which included the 2014 DSS Policy Advice and the 2014 DSS Legal Advice.¹⁹⁵
194. That resulted at 5:56 pm in Mr Whitecross emailing to Ms Wilson to advise against the proposal as follows:¹⁹⁶

Serena

You requested information/advice on the DHS proposal for raising social security debts based on 'smoothed' income.

DHS Proposal

In late 2014, DHS proposed a changed approach to identifying and raising debts for employment income. Under the proposed approach, it would be assumed that any undeclared or incorrectly declared employment income identified by DHS through data matching with the ATO was earned evenly, or 'smoothed', across a financial year. This is very different from the current approach, under which income support entitlements (including debts) are calculated on a fortnightly basis, with employment income taken into account in the fortnightly entitlement period when it was earned. This is consistent with the principle that income support payments should be available for people when they are in most need of support.

There would be administrative savings for DHS under this approach as they could raise debts without the need to collect fortnightly employment income details (including approaching employers for this information) and debt calculations would be simpler. ...

DSS Concerns

DSS advised that it did not support the proposal for a number of reasons:

194 Senior Statistical Programmer, Payment Review and Debt Strategy, Social Security Performance and Analysis Branch, DSS.

195 MJ6, DSS.5006.0001.2529_R, Email, 'FW- Legal Advice - Data matching- notifications and debt raising', 16 January 2015.

196 AW2, DSS.5031.0001.0108, Email, 'RE- Information about the DHS proposal to change the approach to identifying and raising debts', 1-2.

- DSS Public Law Branch have confirmed that the suggested calculation method (smoothing employment income over an extended period) does not accord with social security legislation, which specifies that employment income is assessed fortnightly. It follows that the debt amount calculated would not be supported by law.
- It is counter to the policy rationale for assessing employment income on a fortnightly basis, which is to ensure that income support payments are made when income support recipients are most in need.

195. At 6:50 pm on 16 January 2015, Ms Wilson emailed back to Mr Whitecross:¹⁹⁷

Thanks - I was concerned when [Ms Golightly] described it to me. I will go back to [Ms Golightly] and let Finn [Pratt] know.

196. In her evidence before the Royal Commission Ms Wilson said that she did not recall whether she did let Mr Pratt know.¹⁹⁸ But in view of her evidence in this investigation and the evidence of Mr Pratt,¹⁹⁹ it is likely that she did.

197. At 11:29 am on 19 January 2015 Ms Halbert emailed Ms Ryan a copy of the 'Compliance options', with the following note:²⁰⁰

As discussed, some very minor comments. Can I just confirm, are the two papers that Minister Payne has this one and the 'cover paper' that we did?

198. Ms Ryan replied at 1:43 pm:²⁰¹

Thank you for these comments. At this stage Minister Payne does not have the cover paper. She has the attachments C & D which is marked with draft everywhere. We noted a cover paper was being developed with DSS.

The Secretary, Malisa and Mark Withnell are meeting with Minister Payne tomorrow. I will keep you posted on any developments/feedback.

197 AW2, DSS.5031.0001.0108, Email, 'RE- Information about the DHS proposal to change the approach to identifying and raising debts', 1.

198 RRC Transcript, 9 November 2022, Serena Wilson, T768-769.

199 NACC Transcript, 22 August 2025, Serena Wilson, T22-23; NACC Transcript, 15 September 2025, Finn Pratt, T18-19.

200 CH4, DSS.5064.0001.0346, Email, 'RE- Compliance options (2) (2)', 19 January 2015.

201 CH4, DSS.5064.0001.0346, Email, 'RE- Compliance options (2) (2)', 19 January 2015.

199. At 6:18 pm on 19 January 2015, Ms Ryan emailed Ms Halbert attaching 'ATTACHMENT B – WELFARE INTEGRITY OPTIONS', which Ms Ryan described in her email as:²⁰²

[D]raft options relating to Welfare integrity. These options have been prepared by Mark Withnell, Business Integrity Division. Mark has spoken with Murray Kimber (DSS) on a number of the proposals.

We would be happy to discuss in more detail the options following Tuesday's meeting with Minister Payne.

200. At 6:22 pm on 19 January 2015, Ms Ryan emailed Ms Halbert (copying in Mr Withnell), largely duplicating her email of 6:18 pm:²⁰³

I have just sent through on the enclave the draft welfare integrity options. Mark Withnell has prepared this document, and I understand that he has spoken with Murray Kimber (DSS) on a number of the options.

Following tomorrow's meeting with Minister Payne, we would be happy to discuss in further the proposals and next steps.

I will keep you posted on developments.

201. Ms Halbert replied: 'we'll have a look.'²⁰⁴
202. At 6:31 pm on 19 January 2015, Ms Ryan emailed Mr Withnell a copy of 'Attachment B' with the following note:²⁰⁵

I did note your preference to hold off until after tomorrow's meeting to share the draft options, however the Secretary was keen to send the draft options to DSS tonight.

I have cc'd you into an email that I sent to Cath Halbert. Here is the attachment that I sent (which I sent to DSS via the enclave).

203. At 8:33 pm on 19 January 2015, Ms Halbert forwarded Ms Ryan's email of 6:18 pm to Ms Wilson and Mr Whitecross.²⁰⁶

202 MJ7, DSS.5018.0003.0293, Email, 'FW- ATTACHMENT B - Welfare integrity options', 20 January 2015, 1; MJ7, DSS.5018.0003.0301, Draft attachment to brief, 'ATTACHMENT B - Welfare integrity options', 19 January 2015.

203 CH6, DSS.5053.0001.0129, Email, 'RE- Draft options - welfare integrity -sent via the enclave', 19 January 2015.

204 CH6, DSS.5053.0001.0129, Email, 'RE- Draft options - welfare integrity -sent via the enclave', 19 January 2015.

205 MW9, CTH.3061.0003.1273_R, Email, 'Draft options - welfare integrity', 19 January 2015.

206 SW1, DSS.5061.0001.0288, Email, 'FW- ATTACHMENT B - Welfare integrity options', 19 January 2015; SW2, DSS.5061.0001.0289, Draft attachment to brief, 'ATTACHMENT B - Welfare integrity options', 19 January 2015.

204. At 8:43 am on 20 January 2015, Ms Halbert forwarded the draft options to Mr Kimber²⁰⁷ and, at 8:52 am, Mr Kimber forwarded them on to Ms Dalton, Mr Jones, Mr Barford and Mr Lawrence, under cover of an email in which Mr Kimber noted that they had been asked to provide commentary back through Ms Halbert.²⁰⁸

For the smoothing income proposal in particular we will have to summarise the policy and legal advice into comments pls.

205. At 9:30 am on 20 January 2015, Mr Barford emailed Ms Dalton and Mr Lawrence attaching his draft comments.²⁰⁹
206. At 10:30 am on 20 January, Minister Payne, Ms Campbell, Ms Golightly, Ms Lees and Mr Withnell met in the 'Bubble Room' in the Commonwealth Parliamentary Offices in Sydney.²¹⁰ As the Royal Commission found, it appears likely that the meeting resolved to divide the draft brief to Mr Morrison into 2 briefs, to deal separately with the 2 matters in which he had expressed most interest: fraud and participation compliance.²¹¹
207. At 10:33 am on 20 January 2015, Mr Kimber emailed Ms Halbert with comments prepared by 'Ian [Joyce]'s area' with some additional comments 'from David Mason /Ian Joyce'.²¹²
208. At 11:03 am on 20 January 2015, Ms Halbert received a further draft from Ms Ryan of DHS under cover of a note:²¹³

... as discussed, here is the consolidated draft brief. I have tried to include most of your overview in either the cover brief or attachments C and D. The only new attachment that is included is one describing current Business integrity work ...

209. At 11:07 am on 20 January 2015, Ms Halbert sent copies of that draft to Mr Kimber, Mr Whitecross, Mr Ian Joyce,²¹⁴ and Ms Wilson, with a note.²¹⁵

207 MJ7, DSS.5018.0003.0293, Email, 'FW- ATTACHMENT B - Welfare integrity options', 20 January 2015, 1; MJ7, DSS.5018.0003.0301, Draft attachment to brief, 'ATTACHMENT B - Welfare integrity options', 19 January 2015.

208 MJ7, DSS.5018.0003.0293, Email, 'FW- ATTACHMENT B - Welfare integrity options', 20 January 2015, 1; MJ7, DSS.5018.0003.0301, Draft attachment to brief, 'ATTACHMENT B - Welfare integrity options', 19 January 2015.

209 MJ8, DSS.5067.0001.0007, Email, 'FW- DSS comments on DHS proposals', 20 January 2015.

210 MW10, MPA.0001.0001.0086, Calendar invitation, 'Meeting Kathryn Campbell - Malisa GoLightly - Mark Withnell - Megan', 20 January 2015.

211 NACC Transcript, 22 August 2025, Serena Wilson, T35-36; MJ9, DSS.5022.0001.0486_R, Email, 'RE- Appendix 1 (20 Jan)', 20 January 2015, 1.

212 MK8, DSS.5053.0001.0130, Email, 'RE- Information about the DHS proposal to change the approach to identifying and raising debts', 20 January 2015.

213 DSS.5064.0001.0086, Email, 'FW- Appendix 1 (20 Jan)', 20 January 2015; MK9, DSS.5064.0001.0087, Draft Executive Minute, 'Appendix 1 (20 Jan)', 20 January 2015.

214 Director, Means Test Policy Section, DSS.

215 MK9, DSS.5061.0001.0012, Email, 'FW- Appendix 1 (20 Jan)', 20 January 2015; MK9, DSS.5064.0001.0087, Draft Executive Minute, 'Appendix 1 (20 Jan)', 20 January 2015.

Here is the consolidated DHS document. They [DHS] are looking for our comments today.

210. At 11:56 am on 20 January 2015, Mr Joyce emailed Mr Kimber, Ms Dalton and Mr Barford, with copies to Ms Halbert, Mr Jones and Mr Lawrence, attaching Attachment B and commenting as follows:²¹⁶

Here are our further comments on the 'PAYG clean-up' proposal after having read the further DHS documents.

There is some additional information in this document, namely, the document makes it clear that the customer will be advised (via their on-line account) that the debts are calculated based on a 'smoothed' amount and customers will be given the opportunity to provide updated information ...

...

Notwithstanding this new information, our primary concerns remain. The high number of customer interventions and large indicative savings advised by DHS increases our concerns that the approach will be applied universally with a heightened potential for:

1. Debts to be advised and/or raised incorrectly for a significant proportion of cases ...

211. At 12:05 pm on 20 January 2015, Mr Barford emailed Ms Dalton attaching an updated version of his draft comments which, relevantly, included the following:²¹⁷

General Comments

- Proposals require extensive legislative change

...

PAYG clean-up

...

²¹⁶ MJ8, DSS.5091.0001.0990, Email, 'Comments from Means Test Policy - ATTACHMENT B - Welfare integrity options', 20 January 2015; DSS.5091.0001.0992, 'ATTACHMENT B - Welfare integrity options', 20 January 2015.

²¹⁷ MJ8, DSS.5067.0001.0007, Email, 'FW- DSS comments on DHS proposals', 20 January 2015; MJ8, DSS.5067.0001.0008, Draft attachment to brief, 'DSS comments on DHS Welfare integrity options', 20 January 2015.

- DSS Public Law Branch confirms that the suggested calculation method does not accord with social security legislation, which specifies that income is assessed fortnightly.
- Proposal does not accord with the intent of social security law as beneficial legislation, and adds significant administrative and regulatory complexity.
- It is counter to the policy rationale of assessing employment income on a fortnightly basis, which ensures that income support payments are made when the recipient is most in need.

212. At 12:51 pm on 20 January 2015, Ms Halbert emailed Ms Susanne Lander (her Executive Officer), attaching a copy of the draft brief (which was titled 'DHS Appendix 1') with the following note: 'I only had a couple of comments.'²¹⁸
213. One of the comments was that the income averaging approach 'would be contrary to the direction of welfare reform'.²¹⁹
214. In her evidence before the Royal Commission, and again in her evidence in this investigation, Ms Halbert explained that her comment that income averaging 'would be contrary to the direction of welfare reform' was based on a then current intention to change all social welfare payments to a fortnightly basis of assessment using a planned 'Single Touch Payroll system' (which, once introduced, would enable exact assessment of fortnightly income).²²⁰
215. At 3:12 pm on 20 January 2015, Ms Wilson replied to Ms Halbert's email of 11:07 am as follows:²²¹

218 CH7, DSS.5064.0001.0010, Email, 'Appendix 1 (20 Jan) (3)', 20 January 2015; CH7, DSS.5064.0001.0011, Draft Executive Minute, 'Appendix 1 (20 Jan) (3)', 20 January 2015.

219 CH7, DSS.5064.0001.0011, Draft Executive Minute, 'Appendix 1 (20 Jan) (3)', 20 January 2015, 9 [20].

220 Statement of Catherine Halbert, 22 November 2022, DSS.9999.0001.0022, 8 [48]; NACC Transcript, 20 August 2025, Catherine Halbert, T66-67.

221 DSS.5022.0001.0479, Email, 'RE- Appendix 1 (20 Jan) [DLM=Sensitive]', 20 January 2015.

I am concerned about the smoothing proposal on assessing debts rather than looking fortnight by fortnight. I expressed my reservations to Malisa [Golightly] as I am not sure it can be done without fundamentally changing basis of eligibility away from current income which is also where we want to get to in family payments. Happy to be convinced otherwise if possible but would need very strong advice. Apparenbtly [sic] they are going to pslit [sic] into two docs and Morrison most interested in hard edged fraud stuff and participation compliance each of which hwould [sic] be a separate brief.

216. At 4:43 pm on 20 January 2015, Mr Kimber emailed Ms Wilson, Ms Halbert, Mr Joyce, Ms Rule, Ms Andrea Wallace-Green²²² and Mr Whitecross (with copies to Ms Lander, Ms Dalton, Mr Jones and Mr Barford) attaching a document titled 'our input to any responses back to DHS' and noting that:²²³

In particular

We are highlighting that the smoothing of income proposal fundamentally changes the way SSL is constructed.

The DSS Dot Points

217. The attached document was comprised of dot points (the DSS Dot Points) in a series of black bordered lists of dot points interspersed amongst the contents of the draft brief. The following points are most relevant:²²⁴

- Most proposals will require legislative change, in some cases there are fundamental impacts on social security law and policy ...
- It could be expected that some proposals will come under significant scrutiny as not being consistent with the overall beneficial nature of Social Security Law and for the imposition of what may be considered to be retrospective legislative amendments ...

222 Director, Payment Rates Policy Section, Rates and Means Testing Policy Branch, Social Security Policy Group, DSS.

223 MJ9, DSS.5022.0001.0486_R, Email, 'RE- Appendix 1 (20 Jan)'; 20 January 2015; DSS.5022.0001.0488, Draft attachment to brief, 20 January 2015.

224 DSS.5022.0001.0488, Draft attachment to brief, 20 January 2015, 1-2.

- Whilst potentially attractive in terms of the level of savings and capacity to clean up a significant number of cases, the proposal fundamentally changes the assessment of income within the social security system and is not supported by current policy or legislation.
- DSS Public Law Branch confirms that the suggested calculation method does not accord with social security legislation, which specifies that employment income is assessed fortnightly.
- The legislation is framed to support the policy rationale for assessing employment income on a fortnightly basis, which ensures that income support payments are made when the recipient is most in need. This proposal would introduce an arrangement that runs counter to that rationale.

218. Ms Foster made some comments on the draft brief (DHS Appendix 1) in track changes and recirculated as marked to Ms Halbert, Mr Whitecross, Ms Doegan, Ms Corner and Ms Smith of DSS.²²⁵

219. Ms Wilson then made the following further tracked change to the document and recirculated it, as so changed, to Ms Halbert, Mr Kimber, Mr Whitecross, Ms Foster and other officers:²²⁶

- Smoothing income on an annual basis **is not consistent with the policy directions DSS wishes to pursue for all payments, including family assistance, under welfare reform, taking the opportunity provided by the ATO single touch payroll development to implement this should government agree. ~~may also be counter to directions in the treatment of income under development more broadly through welfare reform processes eg family payments.~~**

220. At 5:08 pm on 20 January 2015, Ms Halbert sent the draft brief including the DSS Dot Points as amended by Ms Wilson to Ms Ryan and Mr Withnell with copies to Ms Wilson, Mr Kimber, Mr Joyce, Ms Foster and several other DSS officers.²²⁷ In her covering email, Ms Halbert wrote:²²⁸

225 DSS.5061.0001.0050_R, Email, 'FW – Appendix 1 (20 Jan)', 20 January 2015 and DSS.5061.0001.0051, Email, 'Appendix 1 (20 Jan)(2) EPPB', 20 January 2015.

226 CH8, DSS.5064.0001.0071, Email, 'DSS comments on DHS Welfare integrity options (2)', 20 January 2015; CH8, DSS.5064.0001.0072, Draft attachment to brief, 'DSS comments on DHS Welfare integrity options (2)', 20 January 2015.

227 MK10, DSS.5024.0001.0191, Email, 'DSS comments on DHS Welfare integrity options (2)', 20 January 2015; MK10, DSS.5024.0001.0192, Draft attachment to brief, 'DSS comments on DHS Welfare integrity options (2)', 20 January 2015.

228 MK10, DSS.5024.0001.0191, Email, 'DSS comments on DHS Welfare integrity options (2)', 20 January 2015.

As discussed, here are our comments on the compliance part of the brief. We feel particularly strongly about the clean up PAYG measure – you will see the comments.

221. At 5:17 pm on 20 January 2015, Mr Kimber emailed Ms Dalton and Mr Jones attaching a copy of the DSS Dot Points as sent to DHS and thanking them ‘for your work on this today’.²²⁹

DHS reaction to the DSS Dot Points

222. At 9:37 am the following morning, 21 January 2015, Mr Withnell forwarded Ms Halbert’s email and the attached document to Mr Britton and Mr Brown, stating in his covering email: ‘for your information – DO NOT FORWARD.’²³⁰
223. At 11:54 am on 21 January 2015, Ms Collins emailed Ms Michelle Poel²³¹ a copy of the DHS legal advice that had been provided to Mr Ryman on 14 January 2015,²³² and at 12:59 pm Ms Collins emailed Mr Ryman (with a copy to Ms Poel) extracts from sections 72 and 196 of the *Social Security Act 1991* (Cth).²³³
224. At 12:01 pm on 21 January 2015, a chain of emails between Ms Rosina McCabe, Ms Poel and Mr Ryman concluded with a final note from Mr Ryman stating: ‘Thanks, can we go back to them to reconfirm this.’²³⁴
225. To which Ms Poel responded:²³⁵

Have spoken with them, they referred us to earnings assessment and means test, will be seeking advice from means test.

226. The attachment to the email chain was an earlier chain directed to ascertaining whether the use of averaging to calculate debt in the manner contemplated in the PAYG Clean Up proposal was consistent or inconsistent with existing DHS Debt Policy.²³⁶

229 MK11, DSS.5091.0001.0847, Email, ‘FW- DSS comments on DHS Welfare integrity options (2)’, 20 January 2015.
230 SB3, CTH.2004.0002.0332_R, Email, ‘FW- DSS comments on DHS Welfare integrity options (2)’, 21 January 2015;
233 CTH.2004.0002.0333, Draft attachment to brief, ‘DSS comments on DHS Welfare integrity options (2).pdf’, 21 January 2015.
231 Assistant Director, Customer Compliance and Business Solutions, DHS.
232 Statement of Tenille Collins, 19 February 2023, TCO.9999.0001.0008_R2, 167 [618].
233 CTH.3027.0004.9379, Email, ‘14 day requirement’, 21 January 2015.
234 CTH.3027.0004.9372, Email, ‘FW- Email Trail Using IRMD as last resort for raising debt [DLM=For-Official-Use-Only]’, 21 January 2015.
235 CTH.3027.0004.9370, Email, ‘FW- Email Trail Using IRMD as last resort for raising debt [DLM=For-Official-Use-Only]’, 21 January 2015.
236 CTH.3023.0004.9373, Email, ‘Email Trail Using IRMS as last resort of raising debt rtf.odf’, 24 June 2010.

227. At 12:50 pm on 21 January 2015, Mr Ryman emailed to Ms Collins and Ms Poel a 'response to DSS Dot Points' as follows:²³⁷

- This approach is consistent with the current Debt Policy (no legislation existing which states how a debt is to be calculated).
- DSS currently applies a similar process for Data Matching Program (DMP) and PAYG compliance interventions where it is unable to obtain the required information from the employer. This can occur when the employer can't be identified (for example ceased operations), or the employer does not respond or provide a suitable response.
- The proposal provides for an automated assessing of debt. This will reduce administrative error.

228. In the email, Mr Ryman instructed Ms Collins and Ms Poel to: 'Review my comments. Hand on heart time – any exposure?'

229. At 1:29 pm (AEST) on 21 January 2015, Ms Collins replied: 'I don't think there is any exposure'.²³⁸

230. At 2:26 pm on 21 January 2015, Ms Collins emailed a number of her team members under the heading 'Legal Advice – Proposed digital intervention process', requesting them to:²³⁹

review [the DHS Legal advice] (with consideration to the process and policy), so that we can have a discussion about questions we need to go back with.

231. Between 3:03 pm and 3:35 pm on 21 January 2015, Ms Poel emailed to Mr Ryman and Ms Collins that:²⁴⁰

I've spoken with Debt Policy, they referred me to Means Test on the basis that it's [sic] assessment of income and EANS coding, [is] not an issue for debt policy as a debt is raised on the basis of the coding applied.

237 JR12, CTH.3027.0004.9371_R, Email, 'DSS Response Dot Points', 21 January 2015.

238 JR12, CTH.3027.0004.9368, Email, 'RE- DSS Response Dot Points', 21 January 2015, 2.

239 JR11, CTH.3002.0007.1628_R, Email, 'FW- Legal Advice - Proposed digital intervention process', 21 January 2015; JR10, CTH.3007.0004.5295_R, Advice, 'Lex 17990 - Online mandating - data matching etc - advice' 14 January 2015.

240 JR12, CTH.3027.0004.9368, Email, 'RE- DSS Response Dot Points', 21 January 2015, 1.

232. Mr Ryman replied: 'So are we saying that Debt policy advice is no longer relevant?' To which Ms Poel replied: 'Pretty well, they say it's up to the owner of the earnings coding as this is what 'generates' the debt.'²⁴¹
233. Meanwhile, at 2:25 pm on 21 January 2015, Mr Ryman had forwarded the 'response to DSS Dot Points' to Mr Britton under cover of an email headed 'DSS Response to dot points':²⁴²

As requested:

PAYG clean up

- The information received by DHS for PAYG matches includes the period the individual was employed as well as the total gross amount paid during the period. The proposal will provide this information to the recipient and advise them of what action they need to undertake.
- The recipient will have an opportunity to provide the fortnightly breakdown of this income so DHS can assess any possible debts on a fortnightly basis. This will be clear in both the initial notice to the recipient as well as when they commence a digital process.
- If the recipient does not respond to a legal notice or chooses not to provide a fortnightly breakdown of income, it is proposed that the income would be 'smoothed' over the period of employment reported by the employer to the Australian Taxation Office. This would involve equal attribution of the income to each fortnight within the employment period.
- This approach is consistent with current Debt Policy (no legislation existing which states how a debt is to be calculated).
- DHS currently applies a similar process for Data Matching Program (DMP) and PAYG compliance interventions where it is unable to obtain the required information from the employer. This can occur when the employer can't be identified (for example ceased operations), or the employer does not respond or provide a suitable response.

²⁴¹ JR12, CTH.3027.0004.9368, Email, 'RE- DSS Response Dot Points', 21 January 2015, 1.

²⁴² JR12, CTH.3023.0013.3028_R, Email, 'FW- DSS Response Dot Points', 21 January 2021.

- The proposed process does not change a recipient's right of review and is consistent with Guideline 6 of Guidelines on Data Matching in Australian Government Administration as it provides the recipient an opportunity to respond before administrative action is undertaken.
- The proposal provides for an automated assessment of debt. This will reduce administrative error.
- The introduction of Single Touch Payroll will provide DHS with more timely employment income details. The full benefits of this are not likely to be realised until 2018 or 2019 and will not address historical non-compliance. As this estimated savings from this proposal are largely debt, Single Touch Payroll would not impact estimated savings.

234. The email also included: 'Exerpt [sic] from the Debt Policy Advice a couple of years ago – we are not aware of any changes but will follow up to be sure.'²⁴³
235. Following receipt of Mr Ryman's email, Mr Britton added a further dot point:²⁴⁴ 'There would be no requirement to seek and/or apply retrospective legislative change based on the above,' as well as excerpts of section 72 and 196 of the Social Security Act. Then, at 2:40 pm on 21 January 2015, he forwarded the dot points (including his emendation) to Mr Withnell (with a copy to Mr Mark Brown of DHS): 'In response to points raised by DSS.'
236. But Mr Withnell did not use the dot points prepared by Mr Ryman and Mr Britton to respond to the DSS Dot Points. Instead, at 4:45 pm on 21 January 2015, he sent Ms Golightly a 'Revised new draft brief to Mr Morrison' (Draft B15/65) with a note:²⁴⁵

²⁴³ JR12, CTH.3023.0013.3028_R, Email, 'FW- DSS Response Dot Points', 21 January 2021.

²⁴⁴ SB4, CTH.2004.0002.0342_R, Email, 'RE- DSS comments on DHS Welfare integrity options (2)', 21 January 2021.

²⁴⁵ CTH.2004.0002.0345, Email, 'new draft [DLM=Sensitive]', 21 January 2015; CTH.2004.0002.0346, Draft Executive Minute, 'Revised new draft brief to Minister Morrison', 21 January 2015.

I have attached the new draft brief. It will still need some fine tuning so don't worry too much about proof reading or finessing words at this point. It is more how I have packaged the options and beefed up the covering brief. I have done very little to Att A but substantial revision of the covering brief and Att B. The proposals are essentially the same but I have repackaged them and made the language of the Taskforce more 'aggressive' and punchy ... If you have any comments by midday tomorrow that would help as I intend to spend a bit more time fine tuning it tomorrow afternoon. I have also in places tried to address or raise some of the issues raised by DSS — but not exhaustively.

237. The changes Mr Withnell made to Attachment B did not alter the stipulation that:²⁴⁶

[t]he assessment will use an income smoothing methodology to apportion the customer's income over the time of employment (rather than the current cumbersome process whereby the department has to determine and apply income on a fortnightly basis).

or otherwise deal with DSS' concerns about income smoothing.

238. Meanwhile, at 4:52 pm on 21 January 2015, Ms Lander had sent a copy of the draft brief (DHS Appendix 1) incorporating the previous comments of Ms Halbert, Ms Wilson and Ms Foster, to Ms Halbert under cover of a note:²⁴⁷ 'As discussed attached is the document that incorporates comments from you, Serena and Alanna.' Those comments included:²⁴⁸

DSS is concerned about the smoothing proposal on assessing debts rather than looking fortnight by fortnight. These reservations have been expressed to Malisa as we are not sure it can be done without fundamentally changing basis of eligibility away from current income which is also where we want to get to in family payments. Happy to be convinced otherwise if possible but would need very strong advice.

²⁴⁶ CTH.2004.0002.0346, Draft Executive Minute, 'Revised new draft brief to Minister Morrison', 21 January 2015, 14.

²⁴⁷ DSS.5064.0001.0043, Email, 'DSS comments on Appendix 1', 21 January 2015; DSS.5064.0001.0044, Draft Executive Minute, 'DHS Appendix 1 - DSS Comments 20 Jan 2015', 21 January 2015.

²⁴⁸ DSS.5064.0001.0044, Draft Executive Minute, 'DHS Appendix 1 - DSS Comments 20 Jan 2015', 21 January 2015, 12.

239. At 5:12 pm on 21 January 2015, Ms Halbert forwarded the document to Ms Ryan and Mr Hudson (with copies to Mr Whitecross, Ms Foster and Ms Wilson) with the following cover email:²⁴⁹

Melissa/Adrian

Here are our comments on your document which you sent last night. I have cut down the cover brief and plonked the words into an attachment. I will send it tonight. The words haven't changed except for a little bit added by Employment. Otherwise our comments stand regardless of which version you go with. Thanks.

240. At 5:25 pm on 21 January 2015, Mr Kimber sent an email to Mr Whitecross in response to a request made by Ms Wilson earlier that day for advice on the DHS PAYG Clean Up proposal:²⁵⁰

I will follow up with Mark W [Withnell] re the material DHS has been asked to do re compliance.

In the interim, Serena [Wilson] may be interested in the attached for her background information (not something to hand over / discuss with Minister) as no doubt the material DHS produces will have a different scope / timing and therefore different data.

The attached provides a snap shot of Compliance Review activity that we have pulled together for the Financial year 2013-14. It covers all the payments from ex DEEWR/FaCHSIA and Industry that DSS now manages. It is based on targeted review activity designed to detect and correct non-compliant behaviour but not including Service Updates and other Host System reviews which are designed to check the entitlement in a similar way to the old periodic saturation reviews in the past.

Overall there were 803,266 compliance reviews completed with 61,575 of these reviews resulted in either a cancellation or reduction of payment. 103,779 debts with a value of \$355,885,513 were raised.

249 DSS.5018.0001.2404, Email, 'DHS Appendix 1 - DSS Comments 20 Jan 2015', 21 January 2015.

250 SW3, DSS.5037.0001.0018, Email, 'RE- URGENT & important - products-comebacks for Minister', 21 January 2015; SW3, DSS.5037.0001.0020, Spreadsheet, 'Combined Agency Compliance Table', 21 January 2015.

241. On 22 January 2015, Ms Wilson and Mr Pratt of DSS met Minister Morrison to discuss a number of matters.²⁵¹ It is likely that compliance review activity for the financial year 2013-2014 and DHS compliance activities were among the matters discussed.
242. At 11:11 am on 22 January 2015, Mr Ryman forwarded to Mr Britton Ms Collins' advice of the previous day that she did not consider that there was any exposure, and he attached a hyperlink to documents for verifying income when investigating debts.²⁵²
243. At 11:41 am on 22 January 2015, Ms Golightly emailed the DSS Dot Points to Ms Catherine Rule and Mr Withnell with the following note:²⁵³

Hi Mark and Catherine

Here are the written comments from DSS on the compliance measures for your reference — when you are talking to Cath [Halbert] could you also address the other key comments they make ...

244. At 11:54 am on 22 January 2015, Mr Kimber emailed Mr Whitecross a copy of the draft brief (DHS Appendix 1) including the DSS Dot Points (which Ms Halbert had emailed to Ms Ryan and Mr Withnell on 21 January 2015).²⁵⁴
245. On 22 January 2015 commencing at 1 pm there was a teleconference between Ms Halbert and Mr Whitecross of DSS and Ms Rule and Mr Withnell of DHS to discuss the PAYG Clean Up proposal, and in particular the DHS Appendix 1 document including the DSS Dot Points.²⁵⁵ According to Mr Whitecross's testimony before the Royal Commission, which was consistent with the evidence he gave in this investigation, during the teleconference he stated in direct and forthright terms that:²⁵⁶

251 SW3, DSS.5037.0001.0018, Email, 'RE- URGENT & important - products-comebacks for Minister', 21 January 2015.

252 CTH.3023.0013.3217, Email, 'FW- DSS Response Dot Points', 22 January 2015.

253 MW11, CTH.3008.0007.8462, Email, 'URGENT- DSS comments on DHS Welfare integrity options (2)', 22 January 2015; MW11, CTH.3008.0007.8464, 'DSS comments on DHS Welfare integrity options (2)', 21 January 2015.

254 AW3, DSS.5053.0001.0066, 'FW- DSS comments on DHS Welfare integrity options (2)', 22 January 2015; AW3, DSS.5053.0001.0067, 'DSS comments on DHS Welfare integrity options (2)', 21 January 2015.

255 Statement of Andrew Whitecross, 21 November 2022, AWI.9999.0001.0005, 9-10, [57]; RRC Transcript, 8 December 2022, Andrew Whitecross, T1374-1375.

256 RRC Transcript, 8 December 2022, Andrew Whitecross, T1375-1377; NACC Transcript, 14 August 2025, Andrew Whitecross, T33-35; Statement of Andrew Whitecross, 21 November 2022, AWI.9999.0001.0005, 9-10, [57].

- Income averaging could not be applied without more to determine that an overpayment had occurred in a given fortnight. Additional information would still need to be collected to be satisfied that the apportioned income was received during the relevant fortnight.
- Averaging could be used only to identify potential discrepancies in circumstances where an individual had received social security payments for the entire period to which the PAYG data related.
- Small discrepancies identified using the proposed methodology were unlikely to reflect misreporting of income and were not worth the cost of investigating, so could not realistically be included in an estimate of likely savings.

246. Mr Whitecross further deposed, and his evidence in this respect was not contradicted, that Mr Withnell appeared to find Mr Whitecross's criticisms of the proposal frustrating.²⁵⁷ He did not dispute the validity of the criticisms but said that DHS did not have sufficient resources to collect and evaluate the kind of information that Mr Whitecross believed was needed to determine whether apportioned income was received during a relevant fortnight, and that the estimated savings of \$1.2 billion would not be achieved if individuals with smaller discrepancies, or who were not receiving social security payments for the entire PAYG data period, were excluded.²⁵⁸

247. Mr Whitecross said that, by the end of the teleconference, he did not expect to see any more of the PAYG Clean Up Proposal.²⁵⁹

248. Later that afternoon at 3:38 pm Ms Poel emailed Mr Ryman, referring to their discussion the previous day concerning the policy constraints relevant to the PAYG Clean Up Proposal, and seeking approval to obtain legal advice on the proposal as follows:²⁶⁰

Jason,

For your checking before sending to Belinda in Legals for follow as per our discussions yesterday.

²⁵⁷ RRC Transcript, 8 December 2022, Andrew Whitecross, T1375-1376; NACC Transcript, 14 August 2025, Andrew Whitecross, T33-35; NACC Transcript, 4 September 2025. Mark Withnell, T100-101.

²⁵⁸ RRC Transcript, 8 December 2022, Andrew Whitecross, T1375-1376; NACC Transcript, 14 August 2025, Andrew Whitecross, T34.

²⁵⁹ RRC Transcript, 8 December 2022, Andrew Whitecross, T1376-1377.

²⁶⁰ JR11, CTH.3027.0003.9827_R, Email, 'FW- Legal Advice - Proposed digital intervention process', 18 March 2015, 1-2.

Belinda,

...

We are already using income smoothing as a last resort in current processes where we are unable to identify the employer or unable to contact the employers (e.g. out of business) or where the customer and/or employer have not complied with the request for information ...

Are you aware of any impediments to applying income smoothed information to a customer record in the process proposed above?

249. At 3:50 pm on 22 January 2015 Mr Ryman responded, withholding approval:²⁶¹

Just hold on this at the moment. I think we are very safe based on the policy advice we have to date.

250. At 3:59 pm on 22 January 2015, Ms Golightly forwarded to Ms Campbell a 'Revised new draft brief to Minister Morrison' (Draft B15/65)²⁶² which was in essential respects the same as the draft that Mr Withnell had forwarded to Ms Golightly at 4:45 pm on 21 January 2015 (and which Mr Withnell had discussed with Mr Whitecross during the teleconference at 1 pm on 22 January 2015).

251. Appendix B to that draft included the stipulation that:²⁶³

[t]he assessment will use an income smoothing methodology to apportion the customer's income over the time of employment (rather than the current cumbersome process whereby the department has to determine and apply income on a fortnightly basis).

252. It also stated that the:²⁶⁴

ability to change the process is limited due to legislative and policy constraints on the need to apply income fortnightly to determine overpayments even if they occurred over several months or years

261 JR11, CTH.3027.0003.9827_R, Email, 'FW- Legal Advice - Proposed digital intervention process', 18 March 2015, 1.

262 MW11, CTH.3008.0007.8534_R, Email, 'Revised Compliance Brief', 22 January 2015; MW11, CTH.3008.0007.8535, Draft Executive Minute, 'Revised new draft brief to Minister Morrison', 22 January 2015.

263 MW11, CTH.3008.0007.8535, Draft Executive Minute, 'Revised new draft brief to Minister Morrison', 22 January 2015, 8.

264 MW11, CTH.3008.0007.8535, Draft Executive Minute, 'Revised new draft brief to Minister Morrison', 22 January 2015, 13.

253. At 4:27 pm on 22 January 2015, Mr Withnell sent to Ms Golightly an amended version of Appendix B to the draft, stating in the accompanying email:²⁶⁵

I have made some amendments to try and tighten up and make clearer.

That version of Appendix B deleted all reference to the use of an ‘income smoothing methodology’ and ‘averaging’ and, although it stated that there may be a need for a change of policy, it removed all reference to the need for legislative change. (Emphasis intentional.)

254. Just over an hour later, at 5:37 pm on 22 January 2015, Ms Golightly sent to Ms Campbell another version of the draft brief to Minister Morrison under cover of an email explaining that it included ‘updated attachments as discussed’; and stating that Ms Golightly had added a paragraph ‘re meeting with Commissioner Colvin’ (which was something that related to one of the other proposals).²⁶⁶ Attachment B to that version of the draft was the amended version of Attachment B which Mr Withnell had sent to Ms Golightly at 4:27 pm (which removed reference to averaging and the need for legislative amendment).²⁶⁷
255. At 6:40 pm on 22 January 2015, Ms Campbell replied (copying in Mr Withnell):²⁶⁸

Malisa and Mark

Thanks very much for this brief. I think it is looking much more 'punchy'.

...

I think there is a typo in one of the attachments around the ATO data - the years we are considering - 2103 instead of 2013? (Yes detail obsessed I know -,sorry) Malisa I think we should get it to the office ASAP so the Minister [Payne] can consider tomorrow. Probably worth calling Megan [Lees] to let her know when it is there.

265 MW11, CTH.2004.0002.0460, Email, ‘old b with revisions’, 22 January 2015; MW11, CTH.2004.0002.0461, Draft attachment to Executive Minute, ‘revision of old att b’, 22 January 2015.

266 MW11, CTH.2007.0002.6780_R, Email, ‘Revised Compliance brief and attachments’, 22 January 2015; MW11, CTH.2007.0002.6781_R, Draft Executive Minute, ‘Revised new draft brief to Minister Morrison’, 22 January 2015.

267 MW11, CTH.2004.0002.0461, Draft attachment to Executive Minute, ‘revision of old att b’, 22 January 2015; MW11, CTH.2007.0002.6781_R, Draft Executive Minute, ‘Revised new draft brief to Minister Morrison’, 22 January 2015.

268 MW11, CTH.2007.0002.6796_R, Email, ‘Re- Revised Compliance brief and attachments’, 22 January 2015.

256. At 10:25 am on 23 January 2015, the brief was delivered to Ms Lees bearing a stamp showing that it had been received by DHS-DLO on that day.²⁶⁹ On 30 January 2015, Minister Payne signed the Executive Minute B15/65 and circled ‘please discuss’ re point 2 (having first written and, presumably then, scribbled out ‘notes’).²⁷⁰ Later, on 2 February 2015, Minister Payne wrote ‘discussed’ in relation to the attachments.²⁷¹
257. In the meantime, at 9:37 am on 23 January 2015, Mr Whitecross had emailed Mr Kimber recording the key points of the teleconference with Mr Withnell and Ms Rule on 22 January 2015, and setting out the draft of an email which Mr Whitecross proposed be sent to Ms Halbert (who at this stage was acting Deputy Secretary while Ms Wilson was on leave):²⁷²

Cath

Further to our discussion with Mark Withnell and Catherine Rule yesterday. When I checked back with Murray, he pointed out that there is still a major problem with the proposal to use new assessment rules to clear the overpayment backlog, namely that we can’t make the legislation retrospective. I think this is pretty fatal for what they are proposing.

I wanted to give you a heads up before I get back to DHS, and given that I didn’t raise the issue yesterday in the hookup, I will call Mark to explain.

258. The email continued with a number of ‘key points’, of which the first was that:²⁷³

it won't be possible to retrospectively amend the legislation to authorise a different methodology for calculating overpayments and debts.

259. In the events which occurred, however, the email was not sent to Ms Halbert but subsumed in a covering email sent by Mr Kimber headed ‘Revised Draft Executive Minute’.²⁷⁴

269 CTH.4700.0001.2356, Executive Minute, ‘B15_65’, 30 January 2015; Statement of Megan Lees, 24 January 2023, MLE.9999.0001.0001.2_006, 7 [45].

270 CTH.4700.0001.2356, Executive Minute, ‘B15_65’, 30 January 2015.

271 CTH.4700.0001.2356, Executive Minute, ‘B15_65’, 30 January 2015.

272 MK12, DSS.5053.0001.0128, Email, ‘PAYG clean-up’, 23 January 2015.

273 MK12, DSS.5053.0001.0128, Email, ‘PAYG clean-up’, 23 January 2015.

274 Statement of Andrew Whitecross, 21 November 2022, AWI.9999.0001.0005, 10-11 [58]-[64].

260. At 9:43 am on 23 January 2015, Mr Kimber forwarded Mr Whitecross's email to Ms Dalton and Mr Jones with a request:²⁷⁵

Can we check below pls. Maybe a quick calls to legals also if we want to check the retrospective issue

261. At 9:52 am on 23 January 2015, Ms Dalton forwarded on the email to Mr Barford for comment.²⁷⁶
262. Between 9:43 am and 10:27 am on 23 January 2015, Mr Kimber spoke to DSS Legal Services Division as to whether legislative change to give effect to the PAYG Clean-Up proposal could be made retrospective,²⁷⁷ and then, at 10:27 am on 23 January 2015, Mr Kimber replied to Mr Whitecross's email of 9:37 am (copying in Ms Dalton, Mr Barford and Mr Jones) as follows:²⁷⁸

Hi Andrew - we made a call to legals about the retrospective nature. Whilst they would not be definitive undesirably – it did raise a number of concerns for them incl potential constitutional risks also as this coule [sic] be considered 2 tier arrangement, where people on the same payment are treated differently. Have added in a bit of text below re this for your advice to Cath. If we want definitive legal; [sic] advice it would take probably mid week to get this.

263. The email continued with proposed consequential additions to the draft of the email proposed to be sent to Ms Halbert:²⁷⁹

Whilst we have not sought formal legal advice on the retrospective issue, a brief conversation with our legal area, suggests that retrospective legislation that imposes a negative outcome would not stand up to scrutiny. They also mentioned that there would likely to be constitutional issues with any proposal that implements a two tier type of system. (as always, legals will reserve their advice until they see the proposal / have further time to examine issues etc).

264. At 10:43 am on 23 January 2015 Ms Golightly emailed Ms Halbert (copying in Mr Withnell and Ms Rule):²⁸⁰

275 MK12, DSS.5091.0001.1016, Email, 'FW- PAYG clean-up', 23 January 2015.

276 MK12, DSS.5091.0001.1016, Email, 'FW- PAYG clean-up', 23 January 2015.

277 MK12, DSS.5037.0001.0049, Email, 'RE- PAYG clean-up', 23 January 2015.

278 MK12, DSS.5037.0001.0049, Email, 'RE- PAYG clean-up', 23 January 2015.

279 MK12, DSS.5037.0001.0049, Email, 'RE- PAYG clean-up', 23 January 2015.

280 MK13, DSS.5037.0001.0238_R, Email, 'FW- New version of draft brief on fraud and compliance', 23 January 2015; DSS.5037.0001.0239, Draft Executive Minute, 'Revised new draft brief to Minister Morrison', 23 January 2023.

Thanks for spending time with Catherine and Mark yesterday on the fraud and compliance options for the draft brief for Minister Morrison. We have made some revisions to the draft brief to try to explain more clearly what the proposals involve and also to address the comments you had provided the other day. Would appreciate any further feedback you may have. Catherine and Mark are available to talk through the changes we have made if that would assist. Feel free to also give me a call if you would prefer.

265. As with the revised draft brief that Mr Withnell had sent to Ms Golightly at 4:27 pm on 22 January 2015, Attachment A to the revised draft brief delivered with the email to Ms Halbert (previously Attachment B) eschewed reference to the use of an ‘income smoothing methodology’ and the need for legislative change. But within the discussion within the body of the brief of existing manual compliance reviews, the statement remained that:²⁸¹

The ability to change the process is limited due to legislative and policy constraints on the need to apply income fortnightly to determine overpayments even if they occur over several months or years and even if income data is only available on an annual basis.

266. At 10:57 am on 23 January 2015, Ms Halbert forwarded Ms Golightly’s email and attached draft brief to Mr Whitecross and Mr Kimber (copying in Ms Stawyskyj, Ms Rule and Ms Foster),²⁸² noting that Ms Halbert had told Ms Golightly that DSS would get back to her as soon as possible.
267. Mr Kimber was the first to respond. At 11:19 am on 23 January 2015, he forwarded Ms Halbert’s email, together with a tracked changes version of the draft brief, to Ms Dalton, Mr Barford and Mr Jones.²⁸³
268. At 11:43 am on 23 January 2015, Mr Whitecross replied with an email to Ms Halbert and Mr Kimber in which he noted that Mr Kimber was preparing some edits and that ‘we have some covering points to make as well’.²⁸⁴

281 DSS.5037.0001.0239, Draft Executive Minute, ‘Revised new draft brief to Minister Morrison’, 23 January 2015, 12 [16].

282 MK13, DSS.5037.0001.0238_R, Email, ‘FW- New version of draft brief on fraud and compliance’, 23 January 2015; DSS.5037.0001.0239, Draft Executive Minute, ‘Revised new draft brief to Minister Morrison’, 23 January 2015.

283 MJ12, DSS.5037.0001.0568, Email, ‘RE: New version of draft brief on fraud and compliance [DLM=Sensitive]’, 23 January 2015; MJ12, DSS.5004.0001.3293_R, Document, ‘Revised new draft brief to Minister Morrison (2)’.

284 DSS.5053.0001.0132, Email, ‘RE- Revised new draft brief to Minister Morrison (2)’, 23 January 2015.

269. That was followed at 12:05 pm on 23 January 2015 with an email from Mr Kimber to Ms Dalton, Mr Jones, and Mr Barford attaching proposed revisions of the new Draft Brief and requesting a response as follows:²⁸⁵

Have added in some thoughts – highlighted – given it is to the Minister have kept them brief. do we need to say any more.

270. At 1:09 pm on 23 January 2015, Mr Kimber emailed Mr Whitecross and Ms Halbert (copying in Ms Rule, Ms Foster and Ms Stawysky) attaching a further version of the revised draft brief that incorporated highlighted revisions, and a proposed email for Ms Halbert to send to Ms Golightly as follows:²⁸⁶

Hi Cath,

Some brief comments added to attached to reflect our cautionary note esp around the PAYG tidy up. Also some points below to make back to Malisa in covering email.

...

Hi Malisa

Thank you for the opportunity to provide comments on the briefing. We have made some suggestions in the attached. These are highlighted. They are at a high level and reflect the cautionary note re some of the proposals in particular that we feel needs to be added.

Some of the issues that we would expect that will need to be explored if the PAYG proposal is further developed are:

- Leaving aside the potential fundamental shift that this proposal has in assess income for social security purposes, it may not potentially might not be possible to amend the legislation that has a retrospective nature and application to authorise a different methodology for calculating overpayments and debts.

285 MK16, DSS.5037.0001.0583, Email, 'FW- Revised new draft brief to Minister Morrison (2) (3)', 23 January 2015; MK16, DSS.5037.0001.0584, Draft Executive Minute, 'Revised new draft brief to Minister Morrison (2) (3)', 23 January 2015.

286 MK17, DSS.5024.0001.0017, Email, 'RE- New version of draft brief on fraud and compliance', 23 January 2015; AW6, DSS.5024.0001.0019, Draft Executive Minute, 'Revised new draft brief to Minister Morrison (2) (3)', 23 January 2015.

- Even if it were possible, we think that the numbers may be overstated because any strategy would need to be refined to avoid ‘false positives’. This refinement would be necessary because the methodology is inherently not precise. There is a significant risk in initiating a reassessment process if the reporting has been done correctly and the apparent overpayment is the result of weaknesses in the shortcut methodology for calculating the overpayment.

271. The attached draft brief included added observations to the effect that all the proposals would need to be assessed for their consistency with policy, and in relation to the PAYG proposal.²⁸⁷

It is important to note that this proposal fundamentally changes the assessment of income within the social security system and is not supported by current policy or legislation. Any change to legislation to give effect to such arrangements may not stand scrutiny including any provisions that are introduced that that [sic] have a retrospective nature and application.

272. At 1:39 pm on 23 January 2015, Mr Kimber emailed Ms Dalton, Mr Barford and Mr Jones the revised draft brief to Minister Morrison, with the following note:²⁸⁸

Thanks all for your work on this. I suspect it is not over yet. Good to get some further legal advice I suspect.

273. Between 1:09 pm and 2:55 pm on 23 January 2015, Ms Halbert called Mr Whitecross and said that she had spoken to Ms Golightly and that Ms Golightly had expressed concern with the force with which at least some of the DSS Dot Points were expressed. In particular, Ms Golightly had asked why DSS could not simply say that the proposal required legislative amendment and leave it at that.²⁸⁹ Mr Whitecross said in evidence that he regarded Ms Halbert’s call as a request for him to make changes that would accommodate Ms Golightly’s preference.²⁹⁰

287 DSS.5024.0001.0019, Draft Executive Minute, ‘Revised new draft brief to Minister Morrison (2) (3)’, 23 January 2015, 11.

288 MJ13, DSS.5037.0001.0619_R, Email, ‘FW- New version of draft brief on fraud and compliance’, 23 January 2015; MJ13, DSS.5037.0001.0621_R, Draft Executive Minute, ‘Revised new draft brief to Minister Morrison (2) (3)’, 23 January 2015.

289 Statement of Anthony Whitecross, 21 November 2022, AWI.9999.0001.0005, 11-12 [65]; RRC Transcript, 8 December 2022, Andrew Whitecross, T1385-1386; NACC Transcript, 20 August 2025, Catherine Halbert, T82-84.

290 Statement of Andrew Whitecross, 21 November 2022, AWI.9999.0001.0005, 11-12 [65]; RRC Transcript, 8 December 2022, Andrew Whitecross, T1385-1386.

274. At 2:55 pm on 23 January 2015, Mr Whitecross responded with an email to Ms Halbert attaching a revised updated version of the brief, stating:²⁹¹

I have pared back the edits in the brief and in the covering words below to cover the main points in the edits.

275. As Mr Whitecross explained in his evidence before the Royal Commission, and confirmed in his evidence in this investigation:²⁹²

- a) the comment in the Revised Draft Executive Minute regarding the need for legislative change was revised to:

‘The approach would involve legislative change and questions may arise about whether such changes can be made retrospectively’;

- b) an additional comment was added to the Revised Draft Executive Minute in relation to the estimated \$1.2 billion savings, as follows:

‘These figures are at the upper bound of what is the estimated amount of overpayment and are unlikely to represent a realistic picture of the amount which would be collected. It is recommended that lower figures are used, based on a scenario, eg if x% were able to be collected’; and

- c) the proposed cover email was revised to note:

‘As noted in the edits, it may not be possible to amend the legislation with a retrospective application to authorise a different methodology for calculating overpayments and debts under the PAYG clean-up. This will need to be further explored if the Minister wants to pursue this option.’

Reiteration of 2014 DSS Legal Advice

276. At 2:59 pm on 23 January 2015, Ms Dalton sent the draft brief containing Mr Kimber’s stronger comments to Ms Pulford and Ms Susan Djura of the DSS Public Law Branch, with the following request for advice:²⁹³

291 DSS.5024.0001.0036, Email, ‘FW- New version of draft brief on fraud and compliance’, 23 January 2015; DSS.5024.0001.0038_R, Draft executive minute, ‘Revised new draft brief to Minister Morrison (2) (3)’, 23 January 2015.

292 Statement of Andrew Whitecross, 21 November 2022, AWI.9999.0001.0005, 12 [66]; NACC Transcript, 14 August 2025, Andrew Whitecross, T50-53; DSS.5024.0001.0036, Email, ‘FW- New version of draft brief on fraud and compliance’, 23 January 2015; DSS.5024.0001.0038_R, Draft executive minute, ‘Revised new draft brief to Minister Morrison (2) (3)’, 23 January 2015.

293 CD1, DSS.5091.0001.0865_R, Email, ‘FW- New version of draft brief on fraud and compliance’, 23 January 2015; CD2, DSS.5091.0001.0866_R, Draft Executive Minute, ‘Revised new draft brief to Minister Morrison (2) (3)’, 23 January 2015.

Minister Morrison has requested that DHS bring forward proposals for strengthening the integrity of the welfare system. DHS has developed the attached Minute and given the quick turn around required the Social Security Performance and Analysis Branch has provided comments highlighting the need for legislative change as well as a shift away from underlying principles of Social Security law.

I understand that Tony Barford has had some discussion with you regarding our concerns with the proposals. We would appreciate your scrutiny of the proposals and advice on any legal implications/impediments, what action would need to be undertaken to resolve legal issues as well as some indication of the lead time required to obtain legislative change.

I am happy to arrange a meeting once you have had time to go through the issues if that would be of assistance.

277. At 1:06 pm on 23 January 2015, Ms Halbert emailed Ms Golightly, (copying in Ms Rule, Mr Withnell, Mr Kimber, Ms Stawyskyj and Mr Whitecross) attaching a revised version of the draft brief (which included the observation that the PAYG proposal ‘would involve legislative change and questions may arise about whether such changes can be made retrospectively’), and noting the issues which would need to be explored if the PAYG Clean Up Proposal were to be further developed:²⁹⁴

Hi Malisa

Thanks for the opportunity to provide comments on the briefing. We have made some suggestions in the attached. These are highlighted. They are at a high level and reflect the cautionary note re some of the proposals in particular that we feel needs to be added.

Some of the issues that we would expect that will need to be explored if the PAYG proposal is further developed are:

- As noted in the edits, it may not be possible to amend the legislation with a retrospective application to authorise a different methodology for calculating overpayments and debts under the PAYG clean-up. This will need to be further explored, if the Minister wants to pursue this option.

294

MK14, DSS.5024.0001.0054, Email, ‘FW- New version of draft brief on fraud and compliance’, 23 January 2015; MK14, DSS.5024.0001.0056, Draft Executive Minute, ‘Revised new draft brief to Minister Morrison (2) (3) (2)’, 23 January 2015.

- Also in relation to the PAYG clean-up, the numbers quoted in the brief are at the high end of the estimates of possible overpayments, and may not provide a realistic picture of the amount that might ultimately be recoverable. For example, as discussed with Mark Withnell, strategies would have been put in place to avoid 'false positives', eg a minimum threshold and algorithms to exclude cases where the earning may have occurred during a non-entitlement period. We suggest that estimates in the brief be based on a scenario, eg if we recovered x% of the estimated overpayments.

278. At 2:22 pm on 23 January 2015, Ms Golightly forwarded Ms Halbert's email to Mr Withnell, with a note:²⁹⁵

Hi Mark – can you have a look please at the comments below and those in the attached document and let me know if:

- there is a quick response I can email back to Cath on the points below; and
- whether it is ok to take up the changes they have made to the brief itself (some are a little frustrating but probably won't hurt for us to make the change)?

Thanks

Malisa

279. At 5:43 pm on 23 January 2015, Mr Withnell responded:²⁹⁶

Malisa

...

In relation to the legislative change – I got hold of Murray [Kimber] but he had left for the day so couldn't give me specifics on which provision in the legislation – his only comment is that it relates to attribution of income. This suggests maybe Section 1073 but he had no idea really. I left a message for Andrew Whitecross which he didn't return but I have just tried him again and he has just got back to me – his advice is that they believe that several provisions in Chapter 3, General Provisions Relating to Payability and Rates would need to be changed and possibly others. I think if just change their 'would' to 'may' and go with that? Or we indicate that DSS have advised that they believe that legislative change would be required. We will be unable to get a clear resolution tonight and we have flagged potential legislative or policy impacts elsewhere. The other key thing is that the measure could still be done using the existing arrangements – just at a higher cost.

As discussed their other comments/changes are fine.

Mark

280. At 5:39 pm on 23 January 2015, Ms Golightly replied so far as is relevant as follows:²⁹⁷

... I also like your suggestion that we say DSS advise that there will be leg changes and will add appropriate words.

I note your point that we can do it under existing arrangements (just at higher costs) but we might keep that up our sleeve for the moment in case we need it as a contingency later on.

281. At 5:59 pm on 23 January 2015, Ms Golightly emailed Ms Halbert (copying in Ms Rule, Mr Withnell, Mr Whitecross, Mr Kimber and Ms Stawyskyj):²⁹⁸

296 MW12, CTH.3095.0001.4993_R, Email, 'RE- New version of draft brief on fraud and compliance', 23 January 2015, 1.
297 MW12, CTH.3095.0001.4993_R, Email, 'RE- New version of draft brief on fraud and compliance', 23 January 2015, 1.
298 MK13, DSS.5024.0001.0086_R, Email, 'RE- New version of draft brief on fraud and compliance', 23 January 2015.

Many thanks Cath for getting back so quickly. Will make the changes you suggest. Certainly happy to keep working on any leg issues and costings etc.

282. At 6:03 pm on 23 January 2015, Mr Britton emailed Mr Withnell quoting section 1068-G8 of the *Social Security Administration Act*, with the following note:²⁹⁹

Mark, this appears to be the relevant section and my interpretation is that it supports our proposition of averaging earning over the period of employment.

Period of radio silence

283. Thereafter, DSS heard nothing further about the PAYG Clean-Up Proposal until on or about 25 February 2015. During the month which elapsed, referred to in evidence in this investigation as a period of 'radio silence', DHS continued on independently with refining the brief for submission to Minister Morrison, and DSS continued on independently with its analysis of the proposal and in particular whether there was need for legislative change.

284. On 28 January 2015, Ms Pulford assigned to Ms Milli Wong³⁰⁰ the task of providing the legal advice sought by Ms Dalton on 23 January 2015.³⁰¹ On 4 February 2015, Ms Wong emailed Ms Dalton (copying in Mr Barford, Mr Djura and Ms Pulford) advice in response to the task sent to her by Ms Pulford.³⁰² In relation to the PAYG issue, Ms Wong advised: 'Refer to the advice by Simon Jordan dated 18 December 2014 in relation to this issue (the DSS 2014 Advice).'³⁰³

285. At 11:24 pm on 28 January 2015, Ms Golightly sent an email to Mr Withnell attaching the revised new draft brief to Minister Payne.³⁰⁴ It made no mention of income averaging as such but included the following express reference to the need for legislative change:

DSS has also advised that legislative change would be needed to implement this initiative. As a result, we have been working with DSS on developing this proposal and will continue to do so.

299 SB6, CTH.3034.0032.7254_R, Email, 'Some reading.....', 23 January 2015.

300 Acting Principal Legal Officer, Public Law Branch, DSS Legal.

301 AP2, DSS.5091.0001.0840_R, Email, 'FW- New version of draft brief on fraud and compliance', 4 February 2015, 2.

302 AP2, DSS.5091.0001.0840_R, Email, 'FW- New version of draft brief on fraud and compliance', 4 February 2015, 1-2.

303 AP2, DSS.5091.0001.0840_R, Email, 'FW- New version of draft brief on fraud and compliance', 4 February 2015, 1.

304 CTH.3008.0008.0217_R, Email, '[DLM=For-Official-Use-Only]'; 28 January 2015; CTH.3008.0008.0218, Executive Minute, 'Revised new draft brief to Minister Morrison'; 28 January 2015, _0227.

286. On 30 January 2015, Minister Payne signed the revised new draft brief (with some minor annotations and corrections)³⁰⁵ and arranged for a meeting between Minister Payne, Ms Campbell and Ms Golightly for 2 February 2015.³⁰⁶ Ms Campbell, however, did not return from Christmas leave until 2 February 2015, and so the meeting proceeded on 2 February 2015 as a telephone conference between Minister Payne and Ms Golightly alone.³⁰⁷ In her notes of the meeting (which are the only extant documentary record of what was said) Ms Payne wrote: 'cracking down' – what can we do [without] having to legislate.'³⁰⁸
287. At 8:21 pm on 3 February 2015, Ms Golightly incorporated what purported to be the results of the discussion of 2 February 2015 into a yet further revised draft brief and sent it to Ms Campbell (copying in Mr Withnell) under cover of an email stating that Ms Golightly and Mr Withnell had '[taken] up Minister Payne's feedback as much as possible.'³⁰⁹ As with the previous draft, the new draft did not refer to averaging but retained the statement inserted on 28 January 2015 that:³¹⁰

There may be a need to be a change of policy to enable the use of the ATO data in this way. DSS has also advised that legislative change would also be needed to implement this initiative. As a result, we have been working with DSS on developing this proposal and will continue to do so.

288. Between 3 and 12 February 2015, Minister Payne reviewed and amended several further successive drafts of the Executive Minute for submission to Minister Morrison,³¹¹ and Ms Campbell reviewed several drafts and received the final version,³¹² none of which made any relevantly substantive change to the proposal.

305 CTH.4700.0001.2356, Executive Minute, 'B15_65', 30 January 2015.

306 CTH.4000.0399.0018_R, Email, 'Re: Compliance brief', 30 January 2015; MPA.0001.0001.0068, Calendar Invitation, 'Malisa GoLightly | Henry', 2 February 2015; RRC Transcript, 13 December 2022, Marise Payne, T1670-1671.

307 Statement of the Hon Marise Payne, 18 November 2022, MPA.9999.0001.0004_R, 4 [30(b)]; Second Statement of the Hon Marise Payne, 9 December 2022, MPA.9999.0001.0017_R, 2 [10(d)].

308 KC10, MPA.0001.0002.009, Notebook pages, '20150202', 2 February 2015.

309 CTH.3008.0008.1654_R, Email, 'Fwd- Draft Compliance Brief', 3 February 2015; MW14, CTH.2004.0002.5316_R, Email, 'FW- Draft Compliance Brief', 26 February 2015; MW14, CTH.3008.0008.1656_R, Draft Executive Minute, 'Revised draft brief to Minister Morrison 3 Feb', 3 February 2015.

310 MW14, CTH.3008.0008.1656_R, Draft Executive Minute, 'Revised draft brief to Minister Morrison 3 Feb', 3 February 2015, 10.

311 CTH.3008.0008.3970_R, Email, 'new version of the compliance brief', 10 February 2015; CTH.3008.0008.3971_R, Executive Minute, '09022015155728-0001', 10 February 2015; CTH.3008.0008.4320_R, Email, 'B15-119 - Current compliance processes and options for improvement - brief for Minister for Social Services - signed-noted by Minister with amendments', 11 February 2015; CTH.3008.0008.4321, Draft brief, '11022015174213-0001', 11 February 2015.

312 Statement of Kathryn Campbell, 13 October 2022, KCA.9999.0001.0002_R, 7-8 (chronology row 1).

289. On 12 February 2015, the brief was finalised as Executive Minute B15/125, signed by Ms Golightly, and sent to Ms Lees to be sent by Minister Payne's office to Minister Morrison's office.³¹³
290. Consistently with the previous recent drafts of the brief, on page 2 of the brief it was stated that:³¹⁴

The two Operations [ie, the 'creation of a Taskforce' and the 'Systematic clean-up of existing error and low level non-compliance'] could be undertaken under existing arrangements but would be significantly strengthened if the suggested policy and legislative changes were adopted. These proposed changes require customers to explicitly and actively fulfil their obligations, streamline the gathering and presentation of evidence to increase efficiency, speed up prosecutions, and provide for additional administrative sanctions.

291. On page 10, it was stated that:³¹⁵

There may be a need to be a change of policy to enable the use of the ATO data in this way. DSS has also advised that legislative change would also be needed to implement this initiative. As a result, we have been working with DSS on developing this proposal and will continue to do so.

Ministerial approval of PAYG Clean Up Proposal

292. On 20 February 2015, Minister Morrison signed the Executive Minute³¹⁶ and marked it in a manner that conveyed that he:
- agreed to the development of a package of NPPs (including the PAYG Clean Up Proposal (by then renamed the 'Increased use of Employment Income matching')).
 - agreed to DHS continuing to work with DSS to progress 'consideration of additional policy and legislative changes in relation to payment integrity'.
 - noted the current arrangements.

313 CTH.4000.0399.0024_R, Email, 'B15-125 - Signed brief for Minister Morrison and B15-126 - Cover brief to B15-125', 12 February 2015; JR15, DSS.5053.0001.0088, Brief, 'Executive Minute', 20 February 2015.

314 JR15, DSS.5053.0001.0088, Brief, 'Executive Minute', 20 February 2015, 2 [4].

315 JR15, DSS.5053.0001.0088, Brief, 'Executive Minute', 20 February 2015, 10.

316 JR15, DSS.5053.0001.0088, Brief, 'Executive Minute', 20 February 2015.

293. At 5:09 pm on 23 February 2015, a scanned copy of the Executive Minute as signed by Minister Morrison, not including pages 12 to 17, was sent to Mr Withnell with the following message:³¹⁷

Minister Morrison has signed B15/125 – see attached scan. He has agreed to pursue some options and has indicated that he would like to discuss some options.

Signed brief will be in tomorrow morning's courier bag. Note Minister Morrison has kept Attachment B, hence only pages 1 – 11 of the brief have been returned.

294. At 9:42 am on 24 February 2015, Mr Withnell emailed Mr Britton, Mr Brown, Ms Rhonda Morris and Ms Bailey of DHS, attaching a copy of pages 1 to 11 of the signed Executive Minute, with the following note:³¹⁸

NOT TO BE FORWARDED

We will discuss the implications of this at BI Exec today.

295. On 25 February 2015, Mr Britton emailed Mr Ryman that he had just been advised that the NPP was to be prepared by Monday 2 March 2015 as the 'exposure draft' was to be released on Tuesday. Mr Britton stated that he was 'leading the development of the single package' and asked Mr Ryman to 'clear' his diary to assist.³¹⁹

Implementation without legislative amendment

296. Ms Wilson gave evidence that, on or about the same day, she received a telephone call from Ms Golightly in which Ms Golightly stated that Minister Morrison wished to implement the PAYG Clean Up Proposal in a way that did not require legislative amendment.³²⁰
297. Later that day, Ms Wilson and Ms Golightly met in Ms Wilson's office and Ms Golightly reiterated that Minister Morrison wanted the PAYG Clean Up proposal implemented in a way that did not require legislative amendment.³²¹

317 CTH.3053.0016.0749, Email, 'RE- Urgent re B15-125 – Signed brief for Minister Morrison and B15-126 – Cover brief to B15-125 for urgent progressing to the Minister', 23 February 2015, 1.

318 SB7, CTH.3023.0013.8662, Email, 'FW- Minister Morrison signed brief', 24 February 2015.

319 Statement of Jason Ryman, 24 November 2022, JRY.9999.0001.0007, 2 [13]-[14].

320 NACC Transcript, 22 August 2025, Serena Wilson, T47-52.

321 NACC Transcript, 22 August 2025, Serena Wilson, T47-52.

298. Ms Wilson responded in substance by referring to the concerns that DSS had previously expressed regarding the need for legislative amendment, although, towards the end of the conversation, Ms Wilson said that she would see if anything could be done.³²²
299. Following the meeting, Ms Wilson consulted Mr Kimber as to how she should respond to Ms Golightly's request.³²³ Mr Kimber referred to the manner in which the Social Security Act required income to be assessed and reiterated the substance of the 2014 DSS Policy Advice and the 2014 DSS Legal Advice.³²⁴
300. Ms Wilson thereafter telephoned Ms Golightly and told her in substance that DSS's 'bottom line' was that, without legislative amendment, there could be no change from the way in which income is calculated for Social Security purposes.³²⁵
301. At 8:37 am on 26 February 2015, Mr Britton sent an email to his branch 'Directors' stating:³²⁶

We have now received authority to submit an NPP to include the measures we have been discussing.

It needs to be fully costed and supported by stakeholders by COB Monday which is unprecedented so I may need you to do work at short notice. I will clear my diary for the next few days and Leanne will re-arrange meetings.

302. At 1:24 pm on 26 February 2015, Mr Kimber emailed Mr Rob Barrenger and Ms Tracey Carroll of DSS's Finance area (copying in Ms Wilson, Mr McBride and Ms Halbert) that he had just been informed that:³²⁷

Minister Morrison has indicated that he wants a number of potential proposals in the attached briefing re compliance to be brought fwd in his portfolio PBS.

I have asked DHS for a copy of the final decisions on the brief. I understand that he potentially wants to take fwd PAYG clean up - there are potentially legal issues with this but we need to tease these out more specifically over coming days

...

322 NACC Transcript, 22 August 2025, Serena Wilson, T47-52.

323 NACC Transcript, 22 August 2025, Serena Wilson, T47-52.

324 NACC Transcript, 22 August 2025, Serena Wilson, T47-52.

325 NACC Transcript, 22 August 2025, Serena Wilson, T47-52.

326 SB8, CTH.3000.0004.0551_R, Email, 'CONFIDENTIAL - CCB Direction', 26 February 2015.

327 DSS.5023.0001.1305, Email, 'New version of draft brief on fraud and compliance', 26 February 2015.

I understand the process to be

- DHS are going to draft some descriptive words around the proposals to go into the exposure draft – if that is possible in the timeframe – I have reiterated that the PAYG clean up proposals needs to have appropriate words re potential legal risks / retrospectivity
- NPPs incl agreed costing need to be finalised by next Friday. I suspect as some of this is new grd that we will have to have discussions with DoF in coming week re savings methodologies etc.

Paul [McBride] and I are mtg with DHS tomorrow morning to get an update and we will be in touch with more specific advice following.

303. At 1:28 pm on 26 February 2015, Mr Kimber forwarded his email of 1:24 pm to Ms Dalton, Mr Jones and Mr Barford with a note:³²⁸

Payment compliance has just become a feature of this Budget. Paul [McBride] and I are mtg tomorrow morning – I think Jason Ryman is going also – I think it would be good for a couple of you who are across the costings/legal issues to be part of it.

304. At 6:41 pm on 26 February 2015, Ms Golightly emailed Ms Wilson referring to their telephone conversation the previous day and confirming that Minister Morrison had signed the Executive Minute on 20 February 2015.³²⁹ She continued:³³⁰

Minister Morrison has supported all three overarching recommendations (basically, that he agrees to the development of a package of measures, that we continue to work with you in the policy and legislation aspects of the package and that he notes the current arrangements in place to protect the integrity of welfare payments).

...

328 MK19, DSS.5046.0001.0002_R, Email, 'FW- New version of draft brief on fraud and compliance', 26 February 2015.

329 SW5, CTH.3095.0002.4674_R, Email, 'Compliance Brief', 26 February 2015.

330 SW5, CTH.3095.0002.4674_R, Email, 'Compliance Brief', 26 February 2015.

We will need to progress the relevant NPP(s) quickly to fit in with the Portfolio Budget Submission timetable. Once Mark [Withnell] and Paul [McBride] and the others have met and worked up a substantive draft, maybe it would be a good idea for us to get together to discuss the NPP to make sure we have covered off any issues?

305. At 9:30 am on 27 February 2015 Mr Withnell and Mr Britton met Mr Kimber and Mr McBride at DSS's offices³³¹ and Mr Withnell outlined orally to Mr Kimber and Mr McBride what was described as a 'revised proposal' that would not change how income was assessed or overpayments calculated but instead use newly available data sources and analytical tools to digitise the existing manual process of raising debts.³³²
306. In his evidence before the Royal Commission, and again in evidence in this investigation, Mr Withnell said that, during the course of that meeting, he told Mr Kimber and Mr McBride that the revised proposal would not involve averaging to calculate debts.³³³ Mr McBride confirmed that was so.³³⁴
307. Mr Britton's recollection was different. In his evidence in this investigation, he said that he did not hear Mr Withnell say any such thing and that he would have been surprised if he had, because he always understood that the essence of the PAYG Clean-Up proposal was income averaging.³³⁵
308. Even so, however, it is plain enough from Mr Withnell's admission, Mr McBride's evidence and, inferentially, from the events which preceded and the events which followed the meeting, that Mr Withnell did indeed convey to Mr Kimber and Mr McBride, either in terms or in substance and effect, that the revised proposal would eschew averaging in the assessment of income.
309. Following the meeting, Mr Withnell and Mr Britton returned to DHS' offices and Mr Withnell instructed Mr Ryman (either directly or through Mr Britton) to amend the then current draft of the NPP by:³³⁶
- deleting the explanation:³³⁷

331 DSS.5053.0001.0127, Calendar invitation, 'NPP', 27 February 2015.

332 SB12, DSS.5023.0002.2174_R, Email, 'RE- Background to issue', 15 January 2017; NACC Transcript, 5 September 2025, Mark Withnell, T152.

333 RRC Transcript, 24 February 2023, Mark Withnell, T3757-3761; NACC Transcript, 5 September 2025, Mark Withnell, T152.

334 NACC Transcript, 13 August 2025, Paul McBride, T31-32.

335 NACC Transcript, 3 September 2025, Scott Britton, T201-202; 211-212.

336 NACC Transcript, Jason Ryman, 6 August 2025, T 20-21; NACC Transcript, Scott Britton, 7 August 2025, T17; NACC Transcript, Mark Withnell, 5 September, T24-25 and 152.

337 JR14, CTH.3023.0001.5381_R, Draft NPP, 'Strengthening the Integrity of Welfare Payments NPP (6)'; 27 February 2015, 3.

The new approach will involve presenting to the customer, via their online account, information obtained from the ATO, the amount they declared to us and an assessment of their correct welfare entitlement based on this information. This assessment will be based on fortnightly attribution of income advised by the ATO, equally distributed over the duration of employment for the period the customer was on payment;

- substituting therefor;³³⁸

The new approach will not change how income is assessed or overpayments is calculated, but it will enable the department to undertake a significant clean-up of potential incorrect payments for 866,857 customers for the 2010-13 financial years; and

- noting in the checklist at the end of the document that no legislative amendment was required.³³⁹

310. At 1:37 pm on 27 February 2015, Mr Ryman emailed the amended draft to Mr Britton with a covering note:³⁴⁰

Here is the latest version. I would like to ensure it is going in the right direction so we don't get to the end of the day and have to start again.

311. At 2:18 pm on 27 February 2015, Mr Britton forwarded the amended draft, with some minor stylistic amendments, to Mr Withnell and at 5:08 pm on 27 February 2015, Mr Withnell forwarded the amended draft to Ms Golightly with the following note:³⁴¹

Malisa

Here is a draft. The assumptions are out with ICT, DSS and others for costing purposes. We are awaiting advice on the Regulatory impact section. We have spoken to AUSTRAC and ATO.

338 JR14, CTH.3023.0001.5381_R, Draft NPP, 'Strengthening the Integrity of Welfare Payments NPP (6)'; 27 February 2015, 3.

339 JR14, CTH.3023.0001.5381_R, Draft NPP, 'Strengthening the Integrity of Welfare Payments NPP (6)'; 27 February 2015, 6.

340 JR14, CTH.3023.0001.5380_R, Email, 'NPP Latest Version', 27 February 2015; JR14, CTH.3023.0001.5381_R, Draft NPP, 'Strengthening the Integrity of Welfare Payments NPP (6)'; 27 February 2015, 3.

341 CTH.2004.0002.5630_R, Email, 'Fwd: NPP [DLM=Sensitive]'; 27 February 2015. SB13, CTH.2004.0002.5570_R, Email, 'NPP'; 27 February 2015; SB13, CTH.2004.0002.5571_R, Draft NPP, 'Strengthening the Integrity of Welfare Payments NPP (7)'; 27 February 2015.

312. On or about 2 March 2015, a copy of the draft NPP was provided to DSS and, despite the assurance that averaging would not be used to calculate income, at least some officers of DSS remained concerned that legislative amendment might still be required.³⁴² Hence, at 4:17 pm on 2 March 2015, Mr Barford emailed to Ms Dalton:³⁴³

Susan Djura suggests we approach David Hertzberg on matters relating to information law,

Unfortunately, due to DoF requirements, we will need at least preliminary advice by Wednesday 4 March. I also note that the NPP checklist states that there is NO legislative change required.

...

Issues:

DSS is concerned that the mix of strategies may require legislative change (perhaps significant) and are seeking your advice as to what and the possible extent.

I note that PLB have provided an initial advice based on previous assumptions, and that some of the proposed assumptions have changed since that advice.

These strategies have been cleared by Minister Morrison for DHS to pursue with DSS, or discuss further.

Advice required by COB Wednesday to meet DoF timeframes.

...

7. Increased us [sic] of Employment Income matching

Increased PAYG matching with the ATO and subsequent advice to customer that their income estimate is in error, 'placing the obligation on the customer to ensure their record is correct by providing evidence to support their claim'. This is designed to clean up outstanding variances between estimate and actual income prior to Single Touch Payroll implementation, and then to work in hand with STP measures.

342 SB11, CTH.2004.0002.5630, Email, 'Fwd- NPP', 27 February 2015.

343 AB1, DSS.5091.0001.0900, Email, 'Possible legislative amends to enable DHS measures', 2 March 2015.

[While DSS agrees that alignment to STP and real time matching is preferable, we anticipate significant legislative change to bring it [STP] into effect. DSS however has concerns about potentially reversing the onus of proof [sic] and responsibility onto customers, and any implications that may have for the purpose and intent of social security law]. (Emphases and colours as in the original).

313. At 5:38 pm on 2 March 2015, Ms Dalton emailed Mr David Hertzberg of the DSS Public Law Branch (copying in Mr Barford, Ms Djura, Ms Pulford, Ms Wong, Ms Carey and Mr Kimber):³⁴⁴

Urgent advice is required as the following strategies have been cleared by Minister Morrison for DHS to take forward as an NPP. The checklist in DHS' draft NPP states that no legislation is required. However, we are concerned that the strategies may require legislative change (perhaps significant) and are seeking your advice as to the possible extent. I have included the email trail below with previous legal advice from Public Law Branch. Some of the initial advice was based on assumptions that have changed since that advice.

Unfortunately, due to Department of Finance requirements we will need at least preliminary advice by **COB Wednesday 4 March**.

Measure:

DHS - Strengthening the Integrity of Welfare Payments

Components of DHS measure:

...

7. Increased use of Employment Income matching

Increased PAYG matching with the ATO and subsequent advice to recipients that their income estimate is in error, 'placing the obligation on the customer to ensure their record is correct by providing evidence to support their claim'. This is designed to clean up outstanding variances between estimate and actual income prior to Single Touch Payroll implementation.

344

MK21, DSS.5006.0002.4235, Email, 'RE New version of draft brief on fraud and compliance', 4 March 2015, 3-4.

[We need to know the scope of legislative change required to bring this into effect and any implications for the purpose and intent of social security law.]³⁴⁵

314. Mr Kimber replied to Ms Dalton's email of 5:38 pm:³⁴⁶

Thanks Catherine – would it be useful to have a quick catch up with legals tomorrow?

315. It does not appear that meeting occurred.

316. At 6:17 pm on 2 March 2015, Mr Barford emailed Ms Dalton again (copying in Mr Jones and Mr Lawrence) commenting further on the 'revised proposal' as follows:³⁴⁷

Catherine,

My comments are:

Under **Proposal Description:**

Para 3, page 1: proposal must involve DSS closely to ensure appropriate change and adherence to legislated and administrative policy.

Para 5, page 2: *active confirmation* shifts responsibility from a combined DHS/customer mix to solely customer.

- This does not accord with current social security law, its purpose or intent.
- Currently, a person must provide evidence at initial claim, and thereafter only when circumstances change.

This provides for errors of omission due to ignorance or no fault etc. **There is a risk that the proposed change will effectively remove this protection.**

...

Is legislation required? – States NO, but that does not accord with my understanding. Awaiting DSS Legals advice ... [Original colour and emphasis.]

345 Colour as in the original.

346 MK21, DSS.5091.0001.0973, Email, 'RE- New version of draft brief on fraud and compliance', 2 March 2015, 1.

347 DSS.5105.0001.8847_R, Email, 'Tony - Comments on DHS NPP', 2 March 2015; DSS.5105.0001.8848_R, Email, 'Tony - Comments on DHS NPP', 2 March 2015.

317. At 4:29 pm on 3 March 2015, Ms Dalton emailed Ms Zheng Hong and Ms Kari Ahmer (officers in the DHS Budget team) (copying in Mr Kimber, Mr Barford, Mr Jones and Mr Lawrence), warning of DSS' concerns:³⁴⁸

Could you please forward this email to Jason Ryman and Scott Britton who do not have enclave access.^[349]

Thanks

Catherine

Jason

Thank you for a copy of the draft NPP. I note you have addressed a range of issues including the targeting of high-risk individuals and not running dual systems. I have provided below some of comments regarding he [sic] NPP and costings. I am happy to discuss in more detail.

Legislation

*We have raised the proposed measure with our Public Law Branch (PBL). PBL aims to provide preliminary advice tomorrow. **However, it may be a case of needing to better understand how DHS proposes to implement the measure within exiting [sic] legislation.** [Emphasis added.]*

318. At 7:31 pm on 3 March 2015, Mr Hertzberg sent a draft of his proposed advice to Ms Wong, Ms Djura, and Ms Pulford (copying in Ms Carey and Ms Weller) seeking their comments as follows:³⁵⁰

Do you have comments on this before I send it? I have attached the Min Minute which appears to be the most helpful document in actually setting out what each proposal actually looks like. The draft NPP is also attached. Any comments on my email below by lunch if possible would help me meet the ridiculous timeframe they've given me. Even if you can glance at it to check any glaring errors, I would be appreciative.

Janet cc to you because we are saying legislation is likely to be required for this NPP (which is being coordinated by DHS).

348 JR20, CTH.4700.0002.0001, Email, 'FW- Comments DHS NPP', 6 March 2015.

349 To the secure email service being used.

350 AP3, DSS.8002.0001.0002, Email, 'FW- New version of draft brief on fraud and compliance', 4 March 2015, 1.

319. At 9:35 pm on 3 March 2015, Ms Pulford responded:³⁵¹

Your responses look really good to me. Milli has already mentioned below various suggested consultations which would need to be undertaken before the suggestions proceed, which were the only things which occurred to me on reading your advice, although you have focussed on legislative implications as requested. Therefore, I have no comments.

320. For reasons unexplained, Ms Hong delayed until 6 March 2015 before sending Mr Ryman Ms Dalton's email of 3 March 2015,³⁵² and, in the meantime, seemingly unaware of DSS's concerns, at 11:55 am on 4 March 2015, DHS delivered to Ms Wilson, Mr McBride, Ms Halbert and Mr Sean Innis (with copies to several other DSS officers) a draft of each of the NPPs that DHS had developed for inclusion in the DSS portfolio budget submission, including the draft Strengthening the Integrity of Welfare Payments Measure in substantially the form of the draft NPP provided to DSS on 2 March 2015.³⁵³

321. At 11:57 am on 4 March 2015, Ms Wilson forwarded the draft NPPs she had received to Mr Whitecross, Mr Kimber and Ms Foster for comment.³⁵⁴

322. At 2:20 pm on 4 March 2015, Mr Hertzberg delivered his legal advice in response to Ms Dalton's instructions of 2 March 2015 (copying in Mr Barford, Ms Djura, Ms Pulford, Ms Wong, Ms Carey, Mr Kimber and Mr Jones) as follows:³⁵⁵

I have also discussed some of the other issues with [Ms] Wong and note her earlier advice, from 4 February, on some of the issues is still applicable. In general, I think it is clear that at least some legislative amendments will be required for the NPP and that there should be a Bill for this. The extent of the amendments will depend upon the detail of what is proposed.

323. At 4:42 pm on 4 March 2015, Mr Barford emailed a summary of Mr Hertzberg's advice to Mr Jones with the following summary of the advice:³⁵⁶

351 AP3, DSS.8002.0001.0002, Email, 'FW- New version of draft brief on fraud and compliance', 4 March 2015, 1.
352 JR20, CTH.4700.0002.0001, Email, 'FW- Comments DHS NPP', 6 March 2015.
353 PM1, DSS.8500.0001.1928_R2, Email, 'DHS NPPs for inclusion in the 2015-16 PB Sub', 4 March 2015; PM1, DSS.8500.0001.1936_R, Draft NPP, '[NPP B.35] - 204 Strengthening the integrity of Welfare payments (v.8)', 4 March 2015.
354 MK25, DSS.5023.0002.2176, Email, 'FW- DHS NPPs for inclusion in the 2015-16 PB Sub', 15 January 2017; DSS.5053.0001.0061, Draft NPP, '[NPP B.35] - 204 Strengthening the integrity of Welfare payments (v.8)', 4 March 2015.
355 MJ16, DSS.8500.0001.1145_R2, Email, 'RE- New version of draft brief on fraud and compliance', 4 March 2015.
356 MJ16, DSS.5060.0001.0551, Email, 'FW- New version of draft brief on fraud and compliance', 4 March 2015.

Summary of legal advice for DHS.

DSS Legal advise (noting that this advice may change as more information becomes available) that:

...

#7 Employment Income Matching. DSS Is unsure whether current social security law would support the conception of primary evidence through data matching where a person's subsequent information is to be somehow afforded lower evidentiary status. Eg: defining Part 3.10 or the Social Security Act 1991 to clarify that a person's employment income is taken to be the amount sourced from the ATO, unless another person has provided subsequent information to indicate otherwise. Subsequent provisions would also be required to address date-of-effect rules should primary evidence sourced from the ATO later proves not sustainable.

324. At 5:05 pm on 4 March 2015, Mr Kimber emailed Mr McBride (with copies to some other DSS officers including Ms Dalton) attaching DSS costing information for the NPP together with a copy of Mr Hertzberg's legal advice, stating:³⁵⁷

Hi Paul – for info – the following has been provided to DHS thru our Budget area.

'Details of our costing for DHS Compliance NPP (PAYG component) and also based on preliminary legal advice we believe that there may be some lego changes required – this will depend on the specific[s] of implementation. We are suggesting that tis [sic] be noted in the NPP so that govt is then not surprised if that it [sic] becomes a requirement.'

Have attached the legal prelim legal advice for info.

325. At much the same time, Mr Jones emailed Ms Heidee Lukban and Mr Kevin Pek (officers in DSS Budget area) asking that the following email message be sent to Mr Ryman:³⁵⁸

357 MK24, DSS.5006.0002.4093, Email, 'FW- 11779 - Strengthening the Integrity of Welfare Payments - PAYG component', 4 March 2015, 1.

358 MK24, DSS.5006.0002.4093, Email, 'FW- 11779 - Strengthening the Integrity of Welfare Payments - PAYG component', 4 March 2015, 3.

Please also note some components of this measure will require legislative amendment to implement, depending on how each component is designed, according to DSS's preliminary legal advice. **Therefore DSS recommend the NPP checklist note that some legislative amendment may be required, the extent of which will depend on the detail of each part of the proposal.** [Emphasis added.]

326. It does not appear Mr Ryman received the email.
327. At 5:43 pm on 4 March 2015, Mr McBride replied to Mr Kimber's email of 5:05 pm that Mr Kimber's suggestion of including a note in the NPP concerning the prospect of legislative change made sense.³⁵⁹
328. At 8:59 am on 5 March 2015, Mr Kimber emailed Mr Britton (copying in Mr Ryman and Ms Dalton) as follows:³⁶⁰

Thanks for your message re the changes to the NPP as a result of Exec co

...

You will have got by now that I expect thru Budget areas the costings and comments incl that we advise that **the NPP does need to indicate that legislative amendments will be required.**

We also suggest that with the inclusion of these elements that within the risks section that it would be useful to reference that it could be [exp]ected that legislative changes will generate negative reaction from stakeholders etc. [Emphasis added.]

329. Mr Britton acknowledged receipt of the email³⁶¹ but DHS did not add an indication to the NPP that legislative amendments would be required, nor any warning that legislative changes would likely generate negative reaction from stakeholders.
330. Possibly, that was because both Mr Britton and Mr Ryman were confident in the view that legislative amendment was not required. It may be, too, they misinterpreted legal advice provided by AGS as to the constitutionality of the proposal. After 10 years and imperfect recollections it is difficult to say.

359 MK24, DSS.5081.0001.9189_R, Email, 'RE- 11779 - Strengthening the Integrity of Welfare Payments - PAYG component', 5 March 2015.

360 JR20, DSS.5081.0001.9154, Email, 'RE- NPP', 5 March 2015.

361 JR20, DSS.5081.0001.9154, Email, 'RE- NPP', 5 March 2015.

331. At 11:33 am on 6 March 2015 Mr Julian Bellati (Budget Strategy and Coordination Team) emailed Mr Britton (copying in Ms Pippa Mitton), that:³⁶²

The NPP Strengthening the Integrity of Welfare Payments has been assessed by the Australian Government Solicitor (AGS) for the constitutional and legislative authority risk.

The advice from the AGS is that spending activities involved in this NPP are supported by the executive power. Accordingly, they have asserted that the constitutional risk associated with the NPP is low. No legislation is required to authorise any of the spending contemplated by the NPPs.

Please find attached the updated NPP to reflect this assessment.

332. In his evidence before the Royal Commission (which the Royal Commission appears to have accepted)³⁶³ and in his evidence in this investigation, Mr Ryman deposed that he understood the AGS advice was confined to the constitutionality of the proposal and that the question of whether legislative amendment was required to implement the proposal was a ‘separate question that sits on the due diligence checklist on the new policy proposal’.³⁶⁴
333. At 4:48 pm on 6 March 2015, Mr Pratt and Ms Wilson were provided with an exposure draft of the 2015-16 Social Services Portfolio Budget Submission including the Strengthening the Integrity of Welfare Payments (**SIWP**) proposal in the form of the NPP that had been provided to Ms Wilson on 4 March 2015.³⁶⁵
334. At or about that time, Ms Wilson had a further conversation with Mr Kimber regarding the legality of the OCI proposal; although, at that stage, Ms Wilson had not been provided with, and had no knowledge of, Mr Barford’s email of 2 March 2015, Ms Dalton’s email of 2 March 2015 to Mr Hertzberg, Mr Kimber’s email of 2 March 2015 to Ms Dalton, or Mr Hertzberg’s advice of 4 March 2015, or any of the subsequent communications between DSS and DHS concerning the need for legislative amendment.³⁶⁶

362 CTH.3023.0001.5856_R, Email, ‘FW: URGENT: Strengthening the Integrity of Welfare Payments NPP’, 6 March 2015.

363 Supplementary Statement of Jason Ryman, 24 November 2022, JRY.9999.0001.0007_R, 4[20]; JR21, CTH.3023.0006.8872_R, Email, ‘RE- Comments DHS NPP’, 7 March 2015.

364 NACC Transcript, T168-169.

365 DSS.5001.0002.5507_R, Email, ‘For your records- EXPOSURE DRAFT 2015-16 Social Services Portfolio Budget Submission’, 6 March 2015.

366 Supplementary Statement of Serena Judith Wilson, 8 November 2022, SWI.9999.0001.0005_R, 5 [27]; NACC Transcript, 9 November 2022, Serena Wilson, T12-13.

335. According to the evidence Ms Wilson gave before the Royal Commission and repeated in substance in this investigation, during that discussion she and Mr Kimber confirmed that the NPP included words to the effect there would be no change to the way PAYG income was assessed or debts calculated and that the NPP checklist indicated that no legislative amendment was required. Ms Wilson said that those considerations, coupled with the assurance which Ms Wilson believed Ms Golightly had given her during their discussion on 26 February 2015, led her to conclude that DHS had accepted DSS' reservations about income smoothing and would not change the existing manual process of calculating income before raising debts.³⁶⁷
336. Mr Kimber was not asked about the conversation when examined before the Royal Commission and, when asked about it in this investigation, he said that he could not recall it.³⁶⁸ But he did not deny that it occurred, or suggest that it was unlikely to have occurred, and he did not suggest that he said anything to Ms Wilson which might have led her to believe that legislative amendment remained a necessary requirement.³⁶⁹
337. In the 3 weeks after 6 March 2015 leading up to the submission of the SIWP proposal to the Expenditure Review Committee (ERC) on 25 March 2015, there was a spate of correspondence in and between DSS and DHS regarding the proposal. With one exception, however, on 24 March 2015, none of it related to the need for legislative amendment. And, although the communication on 24 March 2015 referred to the possibility of legislative changes being required in future for some ancillary aspects of the SIWP proposal (still then in the 'scoping stage'), it did not suggest that there was any need for legislative amendment to authorise implementation of the principal features of the OCI part of the proposal.³⁷⁰
338. Thus, at 6:33 pm on 6 March 2015, Ms Foster emailed Mr McBride and Mr Whitecross:³⁷¹ 'for your action please: Finalisation of NPPs15/16 budget submission' attaching 53 docs, one of which was the doc for the SIWP.'

367 Supplementary Statement of Serena Judith Wilson, 8 November 2022, SWI.9999.0001.0005_R, 5 [27]-[28]; RRC Transcript, 9 November 2022, Serena Wilson, T819, 825; NACC Transcript, 22 August 2025, Serena Judith Wilson, T56.

368 NACC Transcript, 12 August 2025, Murray Keith Kimber, T31, 52-53.

369 NACC Transcript, 12 August 2025, Murray Keith Kimber, T31, 52-53.

370 DSS.5006.0002.3934_R, Email, 'FW- update DHS NPP legislative change checklist', 22 April 2015, 1.

371 DSS.8500.0001.1808_R, Email, 'FW For your action please Finalisation of NPPs in the 2015-16 Portfolio Budget Submission due COB Tue 10 Mar 2015 ERC one-page briefs on each NPP for the ERC on 18 March 2015'; 6 March 2015; DSS.8500.0001.1853, Draft ERC Brief, 'B.5 Strengthening the Integrity of Welfare Payments [ERC BR 18 Mar 15], 6 March 2015.

339. At 7:03 pm on 7 March 2015, Ms Mitton emailed Mr Britton an annotated version of the NPP, with the following note:³⁷²

The Minister's Office came back to us with comments on several of the NPPs, including yours. The Minister has asked for a bit more on the alignment with WPIT developments (connectivity and compliance that will come through WPIT). Can you please update the NPP accordingly.

In addition there were a number of minor editorial changes suggested by the Minister — I have updated the attached for those in track changes. I have also updated this latest version for Shane Bennett's advice regarding the RIS.

Note the financial tables still need to be completed (will try and pull something together tomorrow incorporating the other agency costs) and several other \$xx in the text still need completion.

In addition, several of the items in the checklist still need completion. How did you go with the Regional Impact Statement? Was one required?

340. At 8:36 pm on 9 March 2015, Ms Ahmer emailed Ms Campbell (copying in Ms Golightly and Ms Emily Canning)³⁷³ the costing for the SIWP NPP for clearance with a note:³⁷⁴

Please find attached costing 01944: Strengthening the Integrity of the Welfare Payments System for your clearance.

The costing has been cleared by Malisa and Emily, with ICT costs approved by Gary.

The costing needs to be sent to Finance tonight if at all possible

341. At 9:22 pm on 9 March 2015, Ms Campbell cleared the costing, with the following note:³⁷⁵

Happy for these to go to Finance to get them started. Malisa have we engaged with both Austrac and CDPP. Do they need money?

372 CTH.3023.0001.5966_R, Email, 'Strengthening the Integrity of Welfare Payments NPP', 7 March 2015; CTH.3023.0001.5967_R, Draft NPP, 'Strengthening the Integrity of Welfare Payments 040315', 7 March 2015.

373 Acting Chief Financial Officer, DHS.

374 CTH.3004.0001.4295_R, Email, 'For clearance- 001944 – Strengthening the Integrity of the Welfare Payments System', 9 March 2015; CTH.3004.0001.4297_R, Draft Secretary Brief, 'Secretary Brief 001944 – Strengthening the Integrity of Welfare Payments', 9 March 2015.

375 CTH.2007.0002.7329_R, Email, 'Re- For clearance- 001944- Strengthening the Integrity of the Welfare Payments System', 9 March 2015.

342. At 2:31 pm on 10 March 2015, Ms Elicia Rudnicki (Acting Director, Budget Coordination and Publications, DSS) emailed several officers of DSS including Ms Foster, Mr McBride, Ms Halbert and Mr Whitecross noting that ‘PM&C’³⁷⁶ had provided comments on the NPPs.³⁷⁷ In his statement before the Royal Commission, Mr McBride noted that Ms Rudnicki had indicated that PM&C’s comments included that B35 – the SIWP NPP – was to be reduced to a maximum of 3 pages of substantive content plus the due diligence checklist.³⁷⁸
343. At 9:40 pm on 10 March 2015, Ms Lees emailed Ms Canning (copying in Ms Campbell) that the advice from DSS was that the next version of the Portfolio Budget Submission was to be submitted to Minister Morrison on the morning of Thursday 12 March 2015 and that Minister Payne’s clearance was needed on the revised SIWP NPP by the afternoon of 11 March 2015.³⁷⁹
344. At 11:12 am on 11 March 2015, Ms Lees emailed Minister Payne to update her on a conversation that Ms Golightly had had with PM&C regarding apparently unsupportive exposure draft comments. Ms Lees explained that a misunderstanding had arisen because the formatting of the SIWP NPP was such that the compliance measure was listed under a ‘spend’ measure rather than a ‘save’ measure.³⁸⁰
345. At 12:35 pm on 11 March 2015, Ms Canning emailed Ms Campbell and Ms Golightly in relation to the Portfolio Budget Submission and DHS NPPs that comments by PM&C and the Department of Finance had been provided on the SIWP NPP.³⁸¹
346. At 4:33 pm on 11 March 2015, Ms Lees emailed Minister Payne to advise that the ERC meeting was scheduled for 25 March 2015.³⁸²
347. Between 4:24 pm and 4:43 pm on 11 March 2015, Mr Britton requested Ms Ahmer and Ms Mitton to provide the ‘latest version of the NPP’, and upon receipt, Mr Britton forwarded the draft to Mr Ryman, who in turn forwarded it to Ms Collins and others.³⁸³

376 Department of the Prime Minister and Cabinet.

377 DSS.8500.0001.1116_R, Email, ‘PM&C comments on NPPs, and revised submission time of 10am Wed 11 Mar 15 close out of all Central and Affected Agency comments in NPPs for 2015–16 Portfolio Budget Submission’, 10 March 2015.

378 Statement of Paul David McBride, 27 February 2023, PMB.9999.0001.0003, 11 [65].

379 CTH.3094.0001.9075_R, Email, ‘SS PB Sub – next version due to Morrison Thursday’, 10 March 2015.

380 Third Statement of Senator the Hon. Marise Payne, 21 February 2023, MPA.9999.0001.0019_R, 3 [11](g)–(h); CTH.4000.0399.0050_R, Email, ‘Re- compliance NPP’, 11 March 2015.

381 CTH.2007.0002.7344_R, Email, ‘Re- [printed] update on PB Sub and DHS NPPs’, 11 March 2015.

382 CTH.4000.0399.0051_R, Email, ‘budget update – NPPs to clear this afternoon’, 11 March 2015.

383 CTH.3027.0001.5004_R, Email, ‘FW- NPP changes as discussed’, 11 March 2015, 1.

348. At 5:05 pm on 11 March 2015 Ms Lees sent Minister Payne 2 NPPs, one of which was the 'Integrity' NPP (the SIWP NPP), with the following note:³⁸⁴

Two additional NPPS — Integrity and—[redacted] comments on both provided in earlier email — are a couple of small edits in compliance one I would make)

Let me know if you are happy to proceed — need late today or first thing tomorrow.

349. The 'Integrity' NPP, like previous drafts since 27 February 2015, included the statement that '[t]he new approach will not change how income is assessed or overpayments calculated'.³⁸⁵
350. At 8:06 pm on 11 March 2015, Ms Canning emailed Ms Campbell that the DHS NPPs had been signed off by Minister Payne and were now with DSS, and that hard copies of them had been delivered.³⁸⁶
351. As the Royal Commission inferred, the draft of the OCI NPP so provided to Ms Campbell included the statement: '[t]he new approach will not change how income is assessed or overpayments calculated' and made no reference to averaging or the need for legislative change.³⁸⁷
352. Between 8:48 am and 10:10 am on 12 March 2015, various emails passed between Ms Ahmer and Ms Campbell regarding minor changes made to the NPP and Ms Campbell's approval of Ms Ahmer's and Ms Canning's approach to the NPP staff budget.³⁸⁸
353. At 1:18 pm on 12 March 2015 Ms Ridderhof emailed Ms Lees a further copy of the NPP, with a note:³⁸⁹

We has [sic] updated the attached NPP around the questions you had raised in your discussion with Kari Ahmer yesterday, which will hopefully assist with readability for other stakeholders.

384 CTH.4000.0308.2411_R, Email, 'ACION more NPPS for clearance', 11 March 2015.

385 CTH.4000.0399.0192_R, NPP, 'NPP integrity', 11 March 2015.

386 CTH.3094.0001.9242_R, Email, 'Re- revised NPPs have been signed off by Minister and are now with DSS', 11 March 2015.

387 Report of the Royal Commission into the Robodebt Scheme, Section 2, 96.

388 CTH.3095.0002.8018_R, Email, 'Re- For clearance- Recommendation in relation to increasing the SES cap for the Strengthening Integrity proposal in the PBS', 12 March 2015.

389 CTH.4000.0308.2441_R, Email, 'FW- Updated NPP - Strengthening the Integrity of Welfare Payments', 12 March 2015; CTH.4000.0308.2442_R, NPP, 'NPP Strengthening the Integrity of Welfare Payments 110315', 12 March 2015.

354. At 7:25 pm on 17 March 2015 Ms Mitton emailed Mr Britton, Mr Withnell and Mr Ryman (copying in Ms Ahmer, Ms Golightly and Ms Canning) 'comments from other agencies on the second exposure draft'.³⁹⁰ As was established by evidence given in this investigation, those comments of other agencies were given by a select group of relevant departments and other Commonwealth agencies (essentially, those having any interest in the proposal or its consequences) to whom the draft was sent as part of the regular Cabinet review process applied to all ERC submissions.³⁹¹
355. At 8:48 pm on 17 March 2015, Mr Britton emailed Ms Mitton (copying in Mr Withnell, Ms Ahmer, Ms Golightly and Ms Canning):³⁹²

In speaking with Mark we have decided that we do not require any updates to the NPP beyond those already discussed.

We do request that we participate in the discussion with Treasury in the morning to ensure they fully understand the PAYG measure and how this supports the introduction of STP but is not reliant upon it's [sic] implementation.

We will also update the ERC brief in the morning to clarify this point and the others we discussed regarding the case cleansing and legal aide [sic].

356. At 10:32 am on 18 March 2015, Mr Barford emailed Ms Dalton and Ms Pulford costings information on the SIWP NPP with a note:³⁹³

Here are the relevant costings (contains descriptive data) and associated docs which may be useful for tomorrow's discussion re possible legislative amends.

357. At 10:33 am on 18 March 2015 Ms Golightly emailed Mr Withnell (copying in Mr Britton, Ms Mitton, Ms Ahmer and Ms Canning):³⁹⁴

390 JR22, CTH.3006.0001.6640, Email, 'Exposure draft comments - Strengthening the Integrity of the Welfare System', 17 March 2015.

391 NACC Transcript, 6 August 2025, Jason Ryman, T171, 173; Statement of Paul McBride, 17 February 2023, PMB.9999.0001.0003, 12[70].

392 CTH.3006.0001.6651, Email, 'Re- Exposure draft comments - Strengthening the Integrity of the Welfare System', 17 March 2015.

393 AB2, DSS.5091.0001.0118, Email, 'Docs for Thursday meeting - Potential legislative amends - DHS Strengthening Welfare NPP package', 18 March 2015.

394 MW18, CTH.3006.0001.6662, Email, 'RE- Exposure draft comments - Strengthening the Integrity of the Welfare System', 18 March 2015.

Thanks Mark - as Megan mentioned this morning, the Minister is probably not across the BL NPP as much as she may be for some of the others so we will need to do a detailed briefing for her on all the items in the brief – but I agree with you – particularly on the PAYG one.

358. At 12 pm on 18 March 2015 Mr Britton emailed Ms Mitton a draft of the NPP with the note:³⁹⁵

The updated NPP paragraph has been cleared by Mark.

359. The updated paragraph in the draft attached to Mr Britton's email stated that the proposal did not rely on Single Touch Payroll.³⁹⁶
360. At 6:59 pm on 19 March 2015, Ms Halbert, Mr Whitecross and Mr McBride received an email from Mr Scott Dilley of DSS attaching the Portfolio Budget Submission.³⁹⁷ Paragraph 32 of the attached submission was as follows:³⁹⁸

I seek agreement to a measure targeting fraud, reducing overpayments and strengthening the integrity of the welfare system (Attachment A.3 refers). I propose to create a taskforce to aggressively target fraud and non-compliance in Newstart, Austudy, Disability Support Pension and Carers Payments in high risk locations around Australia.

361. At 8:56 pm on 19 March 2015, Mr Dilley emailed Ms Wilson, Mr Lye, Mr Whitecross, Mr McBride, Ms Halbert, and others a document titled a 'PB Sub NPP summary table and backpocket saves'.³⁹⁹
362. At 8:58 pm, on the same day, Mr Dilley emailed Ms Wilson, Mr Lye, Mr Whitecross, Mr McBride, Mr Halbert and others a 'Rollback of 2015-16 Portfolio Budget Submission for Coordination,' with a note:⁴⁰⁰

FYI Paul, Cath and Andrew, PB submission re: previous email.

395 CTH.3006.0001.6664, Email, 'Updated NPP - Single Touch Payroll', 18 March 2015.

396 CTH.3006.0001.6665, Draft Document, 'NPP Strengthening the Integrity of Welfare Payments', 3.

397 PM2, DSS.8500.0001.1415, Email, 'FW- Rollback of 2015-16 Portfolio Budget Submission for Coordination Comments', 19 March 2015.

398 Statement of Paul McBride, 17 February 2023, PMB.9999.0001.0003, 11-12[68].

399 DSS.8500.0001.1250, Email, 'PB Sub NPP summary table and backpocket saves', 19 March 2015.

400 PM2, DSS.8500.0001.1415, Email, 'FW- Rollback of 2015-16 Portfolio Budget Submission for Coordination Comments', 19 March 2015.

363. The 'Rollback' summarised the comments (also referred to as 'co-ord comments') of the various interested departments and other Commonwealth agencies to which the draft 2015-16 Portfolio Submission had been sent as part of the ordinary budget process, so that they could then be included in the Cabinet submission.⁴⁰¹

364. At 1 pm on 20 March 2015, Mr Barford emailed Ms Dalton an 'update DHS NPP legislative change checklist' with the following note:⁴⁰²

Here is an update checklist following this morning's discussion with Jason at DHS...

David L has sent the payment inclusions for #9 — Case Cleansing — doesn't really say much. I'm inclined to think that unless Jan Bailey's team say otherwise, that DHS should be able to meet the review process for these under existing provisions.

365. Under the heading 'Customer reporting and declarations' and 'DHS detailed advice' the document stated:

DHS assume no legislative impediment to trials [...] DSS note that if reporting program is implemented under existing notification provisions, and a failure to confirm, report or respond by the recipient does not result in automatic cancellation (not imposed as a condition of payability), then no impediment. If program does impose as a condition of payability, then legislative change will be needed to proceed ...⁴⁰³

366. At 9 am on 24 March 2015, Mr Britton, Mr Withnell, Ms Mitton and other DHS officers met to discuss 'any outstanding issues associated with [the Strengthening the Integrity of Welfare Payments submission] prior to ERC'.⁴⁰⁴

367. At 11:14 am on 24 March 2015, Ms Dalton replied to Mr Barford's email of 20 March as follows:⁴⁰⁵

401 Statement of Paul McBride, 17 February 2023, PMB.9999.0001.0003, 12 [70].

402 DSS.5006.0002.3934, Email, 'FW- update DHS NPP legislative change checklist', 20 March 2015, 4.

403 AB3, DSS.5006.0002.3936, NPP, 'DHS NPP potential legislative change and operations checklist', 20 March 2015, 3.

404 CTH.2004.0002.7523, Email, 'Strengthening the Integrity of Welfare Payments', 24 March 2015.

405 DSS.5006.0002.3934, Email, 'FW- update DHS NPP legislative change checklist', 24 March 2015, 1-2.

This is a good summary. Please forward to Anne Pulford to inform her understanding of the DHS Budget measure. I think this would be good to send back to Jason [Ryman] as confirming our understanding which then gives him the opportunity to clarify DHS' position if necessary. Please forward to Jason through our BDB area so it can go via the DHS BDB for security.

368. Mr Barford duly arranged for Mr Barrenger to forward the email to Ms Ahmer and Ms Hong at DHS (copying in Ms Dalton and Mr Barford)⁴⁰⁶ who later forwarded it to Mr Ryman (copying Mr Britton).⁴⁰⁷
369. Meanwhile, at 11:14 am on 24 March 2015, Ms Golightly had emailed Ms Canning and Ms Ahmer that Ms Campbell had called with questions on some of the ERC briefs, and that, consequently, some of the ERC briefs and NPPs would be updated. Ms Canning responded with details about the 'Finance Green Brief'.⁴⁰⁸
370. A 'Finance Green Brief' contains a summary of each proposal and the associated financial implications, and Finance and other central agency views on the proposal submitted to the ERC for acceptance or rejection at a meeting of the ERC. Each of the proposals is attached to the summary, but the ERC operates, essentially, on the basis of the summary with scant regard to the attachments. The volume of proposals and the time available in which to consider each proposal allows for no more.⁴⁰⁹ The ERC involved 'constant meetings' for about 6 to 8 weeks preceding the Budget between March and April, lasting 4 to 6 hours at a time.⁴¹⁰ Members of the ERC are necessarily reliant on and must trust in the integrity of the Cabinet process and the accuracy of the Green brief. As Mr Morrison explained in his evidence in this investigation:⁴¹¹

406 Statement of Anthony Barford, 29 November 2022, ABA.9999.0001.0002, 4[22]-[23].

407 JR26, CTH.3023.0014.1916, 'FW- Document from DSS [DLM=Sensitive]', 20 March 2015.

408 CTH.3095.0003.1275, Email, 'RE- ERC Briefs [DLM=For-Official-Use-Only]', 24 March 2015.

409 See NACC Transcript, 29 August 2025, Jonathan Hutson, T67; NACC Transcript, 2 October 2025, Scott John Morrison, T43; Report of the Royal Commission into the Robodebt Scheme, 7 June 2023, Section 15, 424-425.

410 NACC Transcript, 2 October 2025, Scott John Morrison, T43.

411 NACC Transcript, 2 October 2025, Scott John Morrison, T43.

[T]he Greens were the basis upon which you actually dealt with the business of the meeting. While the submissions were all available, Ministers would focus on the Greens and the Greens were the summary of the measure, the fiscal financial issues, the comments from both the sponsoring department and the comments from the Department of Finance and Department of Prime Minister and Cabinet. If it's a spending measure, then it's the Department of Finance. If it's a revenue measure, they're called a Pink, and Treasury provides the comments on those measures. And so they will summarise that submission and the key points from the checklist and various other things about what the status of that proposal is and that's presented and the item would be introduced by the Chair of the meeting. ... The Minister responsible for the submission, I'm talking generally here as a practice, the Minister responsible for the submission would be asked to make a comment and Ministers would discuss and then say yes or no.

371. At 12:12 pm on 24 March 2015, Mr Barford forwarded the 'legislative change checklist' to Anne Pulford, with the following note:⁴¹²

Here is our summary of the DHS Strengthening Welfare Compliance NPP, with estimated start dates and advice as to what processes are likely to be used to achieve the measure. The key areas likely to require legislative change are only at scoping study status for now. Item #5 may require change, depending on whether or not the increased reporting is deemed a condition of payability.

Key implementation dates...[which were then set out].

372. The checklist did not suggest that legislative amendment was required to implement the OCI.
373. At 2 pm on 24 March 2015, Ms Canning emailed Ms Campbell that, based on comments that had been received, work had been done to polish the talking points proposed to be given to Minister Payne's office and Minister Morrison's office (for use at the ERC) and asking whether Ms Campbell was content with them.⁴¹³ The talking points (which were attached to the email) did not refer to averaging or the need for legislative change.⁴¹⁴

412 DSS.5006.0002.3934, Email, 'FW- update DHS NPP legislative change checklist', 20 March 2015, 1; AB3, DSS.5006.0002.3936, NPP, 'DHS NPP potential legislative change and operations checklist', 20 March 2015.

413 CTH.2007.0002.7534_R, Email, 'Final version of talking points', 24 March 2015.

414 CTH.2007.0002.7535_R, Talking Points, 'ERC Talking Points v2', 24 March 2015.

374. At 3:11 pm on 24 March 2015, the Cabinet Liaison Officer emailed the 'Finance Green Brief for DSS – to be considered by the ERC on 25 March' to Ms Tracey Carroll and Mr Scott Dilley of DSS.⁴¹⁵
375. At 4:48 pm Ms Carroll forwarded the email (and brief) to Mr Pratt, Ms Wilson, Mr Lye, Ms Bennett, Ms Jackie Wilson, Ms Smith, Ms H and and Mr Dilley and, at 4:02 pm, Ms Wilson forwarded the email to Mr McBride, Mr Whitecross, Ms Halbert (and a number of other DSS officers).⁴¹⁶
376. At 4:25 pm on 24 March 2015 Mr McBride responded as follows:⁴¹⁷

Finance don't support strengthening integrity, PM&C do

377. On the same day, Ms Hong forwarded the email chain comprised of Mr Barford's email to Ms Dalton of 1 pm on 20 March 2015 and Ms Dalton's email of 11:14 am on 24 March 2015 to Mr Barford to Mr Britton and Mr Ryman.⁴¹⁸ In his evidence before the Royal Commission (which the Royal Commission appears to have accepted), and which in substance Mr Ryman repeated in this investigation, Mr Ryman stated:⁴¹⁹

I understood from this email that DSS's view was that the income matching component of the SIWP NPP did not require legislative change.

378. Between 8:30 am and 9:30 am on 25 March 2015, Ms Campbell, Ms Golightly and Mr Withnell briefed Minister Payne in preparation for attendance at the ERC.⁴²⁰ That included providing Minister Payne with
- a briefing folder enclosing the DHS NPPs (but not DSS NPPs) and relevant Cabinet documentation
 - the Finance Green Brief
 - talking points and other relevant documents.⁴²¹

415 DSS.8500.0001.1041_R, Email, 'FW- Finance Green Brief for DSS PBS TA15-0154', 24 March 2015, 2.

416 DSS.8500.0001.1041_R, Email, 'FW- Finance Green Brief for DSS PBS TA15-0154', 24 March 2015, 1.

417 DSS.8500.0001.1041_R, Email, 'FW- Finance Green Brief for DSS PBS TA15-0154', 24 March 2015, 1; Statement of Paul David McBride, 27 February 2023, PMB.9999.0001.0003_R, 12 [72].

418 JR26, CTH.3023.0014.1916_R, Email, 'FW- Documents from DSS', 24 March 2015.

419 Supplementary Statement of Jason Ryman, 24 November 2022, JRY.9999.0001.0007_R, 4 [21].

420 MPA.0001.0001.0058, Calendar Invitation, 'ERC Briefing – Kathryn – Grant – Barry – Malissa – David Megan', 25 March 2015; Statement of Megan Lees, 24 January 2023, MLE.9999.0001.0001_2, 12 [69]; Second Statement of Senator the Hon. Marise Payne, 9 December 2022, MPA.9999.0001.0017_R, 3 [10](h).

421 Statement of Megan Lees, 24 January 2023, MLE.9999.0001.0001_2, 9 [57].

379. At 12:30 pm on 25 March 2015, Ms Payne met with Minister Morrison in preparation for the ERC.⁴²²
380. The ERC meeting began at 4 pm on 25 March 2015.⁴²³ The Business List for the meeting records in relation to the 2015-16 Budget for Social Services that the Portfolio Budget Submission (TA15/0154 and Finance Green Brief)⁴²⁴ was item 5(a).⁴²⁵ Both Minister Morrison (as the Senior Social Services minister and member of the ERC), and Minister Payne (as the sponsoring Minister for the SIWP proposal) attended the meeting.⁴²⁶ It is also likely that Mr Pratt attended, at least for some of the time.⁴²⁷ There is insufficient available evidence to determine if Ms Campbell attended.
381. In the result, the NPP was submitted to ERC without warning that legislative amendment might be required, was approved by ERC on the basis that legislative amendment was not required and, as will be explained, the OCI was thereafter implemented on that basis.

PAYG Pilot Program

382. Early in April 2015, DHS officers began work on a pilot program that was designed to test the assumptions on which the OCI was based and write the computer software necessary to operate the OCI.
383. At 11 am on 20 April 2015 Mr Le Huy, Mr Danny Scott⁴²⁸ and another DHS officer met to review and update PAYG Pilot business process maps ‘for external walk throughs’⁴²⁹ and assign the work of preparing the business process maps and ‘talking points’ for the external walk throughs.⁴³⁰
384. At 11:26 am on 24 April 2015 Mr Scott emailed Ms Emma Kate McGuirk⁴³¹ (copying in Ms Collins) seeking policy approval of the way in which it was proposed to conduct the OCI.⁴³²

422 Second Statement of Senator the Hon. Marise Payne, 9 December 2022, MPA.9999.0001.0017_R, 3 [10](h).
 423 FP1, PMC.001.0054.001_R, Attendance Record, ‘EXPENDITURE REVIEW COMMITTEE (ERC) ATTENDANCE RECORD’, 25 March 2025.
 424 The SIWP proposal, see DSS.8500.0001.1041_R, Email, ‘FW- Finance Green Brief for DSS PBS TA15-0154’, 24 March 2015.
 425 PMC.0001.0010.9004_R, ERC Business List, ‘15-03-25 - ERC - Business List [redacted] Exhibit 2305AA’, 25 March 2025.
 426 FP1, PMC.001.0054.001_R, Attendance Record, ‘EXPENDITURE REVIEW COMMITTEE (ERC) ATTENDANCE RECORD’, 25 March 2025.
 427 NACC Transcript, 15 September 2025, Finn Axel Pratt, T29-30.
 428 Policy, Strategy and Business Solutions, Compliance Risk Branch, DHS.
 429 Presentations to persons outside DHS to explain the operation of the system.
 430 CTH.3715.0001.0401, Meeting Minutes, ‘Online Compliance Interventions Meeting Minutes 20042015.pdf’, 20 April 2025; CTH.3002.0008.0165_R, Email, ‘Online Compliance Intervention Meeting Draft Minutes – Action Items 20 Apr 2015 [DLM=For-Official-Use-Only]’, 22 April 2015.
 431 At this time, Director, Income Support Means Test, DHS.
 432 EM1, CTH.3027.0004.9343, Email, ‘Proposed PAYG process [DLM=For-Official-Use-Only]’, 24 April 2015.

Hi Emma-Kate,

Thanks for your and your team's time to go through the business process design for the PAYG matching. As discussed at the meeting, there are aspects of the process that relate to the policy for application of the income test and we would like to confirm that you support our proposed way forward. I have summarised the key points below;

1. We propose to send the customer a letter outlining the information relevant to the review. This would include: the match data details (such as the name of the employer, period of employment and amount of income earned), information declared by the customer, and the discrepancy. This will ensure the customer is fully aware of what we intend to discuss [with] them, and allow them to be prepared for the review.
2. We do not propose to suspend/cancel customers for failing to respond to the initial letter. Rather, the letter will clearly outline that if they fail to contact [us] we will update their record with the information from the match. The customer would then be notified of any debt through existing debt notifications.
3. As with point 2 above, if the customer does contact and we need to ask the customer to provide documents to support their circumstances, we are proposing to ask them to provide this (whether through an online notice or letter). In this advice it will be made clear that if the customer chooses not to provide the information, we will update their record with the information from the match. The customer would then be notified of any debt through existing debt notifications.

4. Applying the matched information to the customer record means that the total gross income (advised on the PAYG summary) will be evenly distributed across all fortnights in the employment period (advised on the PAYG summary), and then standard fortnightly attribution of income will be applied. It is important to note that the matched information will only be used for retrospective earnings related to debt calculations and not for the assessment of income in relation to ongoing rates of payment. We already apply this method as a last resort in current processes where we are unable to identify the employer or unable to contact the employers (e.g. out of business) or where the customer and/or employer have not complied with the request for information. Using this method upfront reduces the red tape burden on third parties, and we are using acceptable 'verification of income documents' for the purposes of coding income in relation to a debt being raised (guide to SSLaw 2.2.3).

Thanks again for your time.

385. At 11:49 am on 1 May 2015, Ms McGuirk responded to Mr Scott:⁴³³

As we discussed at our meeting, as long as the customer is given the opportunity to correctly declare against each fortnight and apportionment is the last resort, we support what you are doing. Good luck!

386. At 11 am on 4 May 2015 there was a PAYG Pilot meeting of DHS officers Mr Ryman, Ms Collins, Mr Le Huy, Mr Scott, Ms Enchong, Ms Poel, Ms Symmons and Mr Kristjan Hera-Singh. Under the Agenda item 3) 1, 'Legals Advice and Policy', it was recorded that:⁴³⁴

DMB and Means Test have provided in principle support for the PAYG Pilot process.

387. On 5 May 2015, a first version of the PAYG Pilot – Manual Year 1 Draft report was produced and circulated to Mr Britton and met with his support.⁴³⁵

433 EM1, CTH.3027.0004.9343, Email, 'Proposed PAYG process [DLM=For-Official-Use-Only]', 1 May 2015.

434 CTH.3715.0001.0933, Minutes, 'Online Compliance Interventions Meeting Minutes 04052015.pdf', 4 May 2015.

435 CTH.3000.0005.2330_R, Email, 'RE: Pilot Plan – PAYG [DLM=For-Official-Use-Only]', 5-6 May 2015; CTH.3000.0005.2117, Draft Document, 'PAYG Pilot – Manual Year 1, Department of Human Services', 5 May 2015.

388. Between 9:30 am and 10:30 am on 28 May 2015, Mr Kimber's executive assistant emailed Ms Dalton, asking her to step in for Mr Kimber at a cross-agency meeting with DHS to discuss the compliance/welfare integrity matters.⁴³⁶ It does not appear, however, that the meeting took place, and Ms Dalton had no recollection of it.⁴³⁷
389. In June 2015 DHS Estimates Brief 0.18 (2015-16 Budget – new compliance measures) was sent to Minister Payne's office to be signed by her and submitted to Cabinet.⁴³⁸ The brief provided 'an overview of all compliance measures agreed in the May 2015 Budget including the income matching measure'.
390. On 6 August 2015 the 'Project Management Plan and Risk Management Plan: for SIWP' was signed off by Mr Britton.⁴³⁹
391. On 25 August 2015, Mr McBride, Mr Kimber, Mr Barford and Ms Dalton held a Payment Strategic Business Discussion meeting with DHS officers including Mr Britton. The minutes of meeting record the following:⁴⁴⁰

Work is currently underway around the Digital Compliance Intervention. The aim is for auto debt calculation, debt recovery and appeals to be automated. 450, 000 interventions to be completed in Year 2, ICT are heavily involved and the project appears to be tracking well.

ACTION ITEM 25/08/15_03: Scott Britton to walk Paul McBride and Murray Kimber through the Digital Compliance Intervention project.

392. Evidence given by Mr McBride suggests that the proposed walk through did not occur, and the likelihood that it did not is to some extent confirmed by a lack of any documentary record of a walk-through taking place.⁴⁴¹ Mr McBride and Mr Kimber are thus likely to have remained ignorant of the fact that DHS was relying on ATO data as the only basis of debt calculation and, therefore, that the process involved averaging.

436 DSS.5091.0001.0775_R, Email, 'FW: Fortnightly Cross Agency meeting [SEC=UNCLASSIFIED]', 28 May 2015.

437 Witness Statement of Catherine Margaret Dalton, 30 November 2022, CDA.9999.0001.0003, 12[83].

438 CTH.4700.0001.2202, Executive Minute, 'MB17-000172 Overview Brief – Online Compliance Intervention (OCI), 17February 2017, Attachment A, 7.

439 Statement of Jason Ryman, 27 October 2022, JRY.9999.0001.0002_R, 6 [45].

440 DSS.8500.0001.1366, Minutes, 'Payment Assurance Business Discussion (SBD) DRAFT Minutes, 25 August 2015.

441 Statement of Paul McBride, 27 February 2023, PMB.9999.0001.0003_R, 18[104], 19 [106].

393. At 10:09 am on 26 August 2015, a Draft of the Final Report on the PAYG Pilot produced by Ms Collins was sent to Mr Ryman.⁴⁴² It left no doubt that the process involved averaging. But it does not appear that it was shared with DSS.
394. At 8:51 am on 16 September 2015, the Escalated Correspondence Coordination team of DHS sent an email to Mr Le Huy, Ms Robynne Walker and Ms Collins, requesting an update on the Customer Compliance Branch's contribution to an Incoming Minister Brief then in preparation in anticipation of the appointment of Mr Christian Porter as the Minister for Social Services.⁴⁴³ At 9:13 am Ms Collins replied by email to Ms Geni Spokes⁴⁴⁴ attaching an amendment to the brief for National Manager clearance.⁴⁴⁵ And at 11:20 am, Ms Spokes sent an email to Mr Britton and Ms Collins attaching the brief containing the edits made by Ms Walker and Ms Collins for Mr Britton's clearance.⁴⁴⁶

Mr Porter appointed Minister

395. On 21 September 2015, Mr Porter became the Minister for Social Services. Subsequently, a copy of the Incoming Minister Brief provided to the Minister was sent to Mr Le Huy and Ms Collins.⁴⁴⁷ It did not mention averaging.
396. Shortly after Mr Porter was sworn in as Minister, Mr Pratt instructed Ms Wilson that Minister Porter wanted DSS and DHS to work together on compliance. In response, DSS provided some ideas and, among other proposals, DHS proposed extending the 2015-16 OCI Budget measure with 2 more years of data to be matched.⁴⁴⁸
397. DHS was responsible for developing that measure and, in October 2015, DHS sent SB15-000113 (2015-16 Budget – new compliance measures – Strengthening the Integrity of Welfare Payments) to the Minister for Human Services'⁴⁴⁹ office to be signed and submitted to Cabinet.⁴⁵⁰

442 CTH.3027.0001.9661_R, Email, 'RE: PAYG Report [DLM=For-Official-Use-Only]', 26 August 2015; CTH.3027.0001.9662_R, Draft Report, 'Strengthening the Integrity of the Welfare System, PAYG Interventions: Final Report', v.02, 25 August 2015.

443 Statement of Tenille Collins, 19 February 2023, TCO.9999.0001.0007_R, 11.

444 Customer Compliance Branch, Business Integrity Division, DHS.

445 Statement of Tenille Collins, 19 February 2023, TCO.9999.0001.0007_R, 11.

446 Statement of Tenille Collins, 19 February 2023, TCO.9999.0001.0007_R, 12.

447 Statement of Tenille Collins, 19 February 2023, TCO.9999.0001.0007_R, 11.

448 SW6, Statement of Serena Wilson, 8 November 2022, SWI.9999.0001.0005, 6 [31].

449 On 21 September 2015, Mr Stuart Robert replaced Senator Payne as Minister for Human Services.

450 CTH.4700.0001.2202, Executive Minute, 'MB17-000172 Overview Brief – Online Compliance Intervention (OCI), 17 February 2017, Attachment A, 7.

398. At 1:28 pm on 5 November 2015, Mr Britton sent Mr Kimber (copying in Mr Ryman) an email entitled 'Proposal' relating to a further proposal to obtain PAYG data under the voluntary data matching guidelines rather than the *Data Matching Act 1990* (Cth):⁴⁵¹

Murray,

The following background as discussed. We will also send you the savings assumptions and calculations tomorrow morning through our finance team. I am meeting with DHS Legals next week where we will clarify the situation regarding the DMP Act and potential repeal

...

399. At 4:37 pm on 5 November 2015, Mr Kimber forwarded Mr Britton's email to Ms Carroll, Ms Smith, Mr McBride and Ms Helen McMurtrie, with a note:⁴⁵²

Hi Paul, Tracey, Jenelle and Helen

A quick heads up re advice that we have just received from DHS (see below) concerning a proposal being prepared by them for the 2016-17 Budget, to improve the usage and processes around matched data from the ATO, to support additional compliance activity especially as it relates to incorrect declaration of income from employment (self employment), financial investments, business, real estate and other assets. All of these elements form part of an individual's taxable income that has been declared to the ATO but may not match what has been provided to DHS.

It will support additional compliance activity from 1 July 2016 until 30 June 2020, in relation to these individuals including using some matched data from 2010. This compliance activity will be in addition to the work already undertaken. It is not a duplicate of the 2015-16 Budget measure (Improving the Payment Integrity of Welfare Payments) that targets primarily PAYG earned income declarations, but will use some of the newer processes and systems being developed.

451 DSS.8500.0001.1389, Email, 'DHS proposal – improved data matching for income [DLM=Sensitive]', 5 November 2015.
452 DSS.8500.0001.1389, Email, 'DHS proposal – improved data matching for income [DLM=Sensitive]', 5 November 2015.

Similar to the approach used for the 15-16 Budget measure, we expect DHS to anchor the details concerning the process re-design, NPP development, input to the Social Services PBS and ERC briefs etc etc and we will anchor the calculation of the impact on administered outlays. **In addition we will have to consider the impact of any changed processes for legislation including Data Matching Act which covers TFN matching between ATO and DHS.**

We would expect this proposal to be on the same timetable as DSS led measures - with the first considerations by ERC to be around 20th November. DHS mentioned that they are on a 16 November deadline for ERC briefs.

We expect DHS to fwd initial assumptions and initial parameters tomorrow so that we can get cracking on the costings. [Emphasis added.]

400. At 5:38 pm on 11 November 2015, Mr Nathan Williamson (on behalf of Ms Cathy Hamlyn) of DHS sent Mr Kimber (copying in Mr McBride and Mr Withnell) an email titled 'PAYG Material'. Attached was a document titled 'MYEFO Savings Option Final', which provided details of the proposed 2-year extension of the OCI program as follows:⁴⁵³

Title: Extension of Employment Income Matching (PAYG)

Proposal:

This two year proposal would extend the successful compliance outcomes being achieved by the Employment Income Matching element of the Strengthening the Integrity of Welfare Payments measure.

The current Employment Income Matching project is funded to manage the stockpile of income discrepancies for 2010-2013. These discrepancies have been identified by comparing information individuals have declared to the department to what their employer has declared to the Australian Taxation Office (ATO).

453 DSS.8500.0001.1925, Email, 'PAYG material [DLM=Sensitive]', 11 November 2015; DSS.8500.0001.1926, Document, 'MYEFO Savings Option Final', 11 November 2015, 1.

This proposal would extend the period to include identified employment income discrepancies for 2013-15. As a result, an additional 780,000 individuals would be required to reconcile the variation in their employment income.

This additional compliance activity would leverage off the development and implementation of a self-service digital solution for Employment Income Matching to provide a cost effective approach to managing the income discrepancies between the information held by the department and the ATO.

The proposed compliance activity is in addition to the compliance work already undertaken that returns significant savings to government.

Indicative Implementation: 1 July 2016

Risks: The proposal is dependent on the ICT development scheduled to be delivered in June 2016

Legislation / Policy: No legislation or policy change required

Savings: Anticipated savings of \$500m to \$1b in net underlying cash over four years (\$1b plus fiscal balance).

401. At 6:43 pm on 11 November 2015, Mr Kimber emailed a document titled 'MYEFO savings – additional debt measures 11 November 2015.docx' to Mr McBride, Mr Withnell, Ms Ryan, Mr Darren Box and Mr Ty Emerson, with a note:⁴⁵⁴

Hi All - many thanks for the details/input

I have pulled together the attached for the MOs. For consideration and any final suggestions pls.

A couple of points to note

Darren – put the DPO [Departure Prohibition Order] idea as part of debt strategy esp as it has lego changes involved.

402. Following various amendments, Mr McBride emailed the document to Ms Danielle Donegan and Mr Sidesh Naikar of DSS with the note:⁴⁵⁵

454 DSS.8500.00011877_R, Email, RE: Note for Mos re savings [DLM=Sensitive]; 11 November 2015; DSS.8500.00011878, Document, 'MYEFO savings – additional debt measures 11 November 2015.docx', 11 November 2015.
455 MK26, DSS.8500.00011877_R, Email, RE: Note for Mos re savings [DLM=Sensitive]; 11 November 2015.

The attached saves have been worked up by DHS and ourselves in response to the ERC request from last Friday.

Although they focus predominately on debt issues, there are also other proposals that DHS sought to include that could be worked up for budget

I understand that you are meeting with other Min offices on this tomorrow morning. If you could let us know ASAP thereafter which of the saves you prefer, we will start the process of costing, NPPs and getting clearance to bring before ERC. Needless to say, timing will be tight.

403. In the event, however, the DHS proposed option for savings initiative was returned unsigned by the Minister as ‘overtaken by events’.⁴⁵⁶
404. The Mid-Year Economic and Fiscal Outlook (MYEFO) was published early in December 2015 and, at page 210 under ‘Enhanced Welfare Payment Integrity — income data matching’, provided as follows:⁴⁵⁷

The Government will achieve savings of \$1.3 billion over three years from 1 July 2016 by recovering money from a greater number of people where discrepancies have been identified between employment income declared to Centrelink and pay as you go (PAYG) information provided by employers to the Australian Taxation Office.

This measure extends the 2015-16 Budget measure titled Strengthening the Integrity of Welfare Payments, which examined income discrepancies over the period 2010-11 to 2012-13, to also examine the 2013-14 and 2014-15 years' data.

The savings from this measure will be redirected by the Government to repair the Budget and fund policy priorities.

456 CTH.2004.0004.9204, Email, 'MS15-00294 – Department of Human Services' proposed option for savings initiative – returned unsigned by the Minister [DLM=For-Official-Use-Only]; 30 November 2015; CTH.2004.0004.9205, Brief, 'MS15-00294 – returned brief.pdf', 23 November 2015.

457 SW6, Statement of Serena Wilson, 8 November 2022, SWI.9999.0001.0005, 6 [32].

405. In her evidence before the Royal Commission, Ms Wilson said that at or around the time of publication of MYEFO, she had a conversation with Mr Kimber in which he queried whether DSS should be raising any concerns with the Minister.⁴⁵⁸ She said that she inferred that Mr Kimber was concerned that DHS might be ‘rolling back’ their commitment not to use averaging to calculate income.⁴⁵⁹ She said she responded with words to the effect that the ‘Government wants to do it’,⁴⁶⁰ which is to say expand the 15-16 Budget measure with a further 2 years,⁴⁶¹ and that at that time she believed it would not involve averaging.⁴⁶²

... I genuinely believed that the measure was not going to proceed on the basis of income averaging. I genuinely believed in 2015-16 at this point and at points up and until the 15-16 Budget measure and subsequently that income averaging was not involved.

406. In the result, DSS did not raise any concerns with the Minister.

407. On 13 January 2016, Minister Porter had a ministerial planning day, most probably with the Secretary and Deputy Secretaries of DSS, during which the Minister requested a briefing on DHS compliance activities.⁴⁶³

408. Following several email exchanges within and between DHS and DSS on 1 February 2016, Mr Withnell provided Mr Kimber a document titled ‘DSS Response for Minister Porter’.⁴⁶⁴ Mr Kimber then sent the document to Mr Lawrence and Ms Dalton with a note:⁴⁶⁵

Can we pls check how this looks against our brief pls – perhaps we should request an extension until tomorrow morning?

409. And then to Mr McBride with a note:⁴⁶⁶

Info from DHS just received. I suspect this may sit nicely as an Attachment to our brief.

458 SW6, Statement of Serena Wilson, 8 November 2022, SWI.9999.0001.0005, 6 [33].

459 NACC Transcript, 2 October 2025, Serena Wilson, T20-22.

460 SW6, Statement of Serena Wilson, 8 November 2022, SWI.9999.0001.0005, 6 [33].

461 SW6, Statement of Serena Wilson, 8 November 2022, SWI.9999.0001.0005, 6 [33]; NACC Transcript, 2 October 2025, Serena Wilson, T20-22.

462 RRC Transcript, 9 November 2022, Serena Wilson, T827.

463 Statement of Murray Kimber, 20 January 2023, MKI.9999.0001.0012, 9 [41(a)].

464 DSS.8500.0001.1186_R, Email, ‘FW: Information on DHS compliance – assurance for Minister Porter [DLM=For-Official-Use-Only]’, 1 February 2016; DSS.8500.0001.1188, Document, ‘DSS Response for Minister Porter’, 1 February 2016.

465 MK27, DSS.8500.0001.1186_R, Email, ‘FW: Information on DHS compliance – assurance for Minister Porter [DLM=For-Official-Use-Only]’, 1 February 2016.

466 MK27, DSS.8500.0001.1186_R, Email, ‘FW: Information on DHS compliance – assurance for Minister Porter [DLM=For-Official-Use-Only]’, 1 February 2016.

410. In so far as is relevant, the 'DSS Response for Minister Porter'. document relevantly stated:⁴⁶⁷

Increased use of Employment Income matching

The measure will introduce a new approach to reconciling information declared to us by the customer with information from the ATO that indicates the customer may have incorrectly declared income from employment.

Analysis of the Pay as You Go (PAYG) tax file from the ATO for the 2010-2013 financial years has identified 866,857 customers with likely incorrect payments. These customers are in addition to the customers that we review annually based on this data.

The customer will be presented, via their online account, with the information obtained from the ATO, the amount they declared to us and an assessment of their correct welfare entitlement based on this information. The customer will have an opportunity to update the information prior to it being applied to their Centrelink record. This puts the obligation on the customer to ensure the record is correct, by providing the evidence to support their claim.

This measure uses information which we already receive from the ATO as part of our normal data matching processes and does not involve any additional demands on the ATO. **The ATO data would be used as the trusted source** and removes the need for the Department to be dependent on customer and business information. It still provides customers the opportunity to provide evidence to correct the calculation of entitlement should they choose to. **The digital process and relying on the ATO data as the primary evidence rather than just a trigger** will enable the Department to undertake a much greater number of compliance reviews than is currently the case.

The measure will undertake 866,857 compliance interventions over four years for customers at risk of undeclared or under declared income from employment. It is anticipated that this would result in an estimated \$1.2 billion gross savings due to returned outlays.

This measure will compliment Single Touch Payroll being introduced by the ATO to provide a comprehensive, modern and cost effective approach to reducing welfare overpayments resulting from failure to correctly declare income.

The PAYG clean-up element of this measure does not rely on or duplicate the introduction of Single Touch Payroll. This measure addresses historical non-compliance, while Single Touch Payroll does not address historical non-compliance.

Activity under this measure was increased through the MYEFO process. [Emphasis added.]

411. That document left no doubt that PAYG income was to be used as the primary source of assessment and, in the absence of response from the customer, as the only basis of assessment. If Mr Kimber read the document, he would surely have concluded that the basis of assessment was PAYG income averaging. But if he did read it, he did nothing about it; and, in particular, he did not raise the matter again with Ms Wilson.
412. At 12:50 pm on 1 February 2016, Mr Kimber emailed Ms Wilson, Ms Renee Spinks,⁴⁶⁸ Mr Lawrence and Mr McBride:⁴⁶⁹

You will recall that at the mtg on 13th January, the Minister requested additional information concerning DHS compliance activity.

Please find attached draft brief (cleared by Paul) and an attachment prepared by DHS.

While we know Minister has general interest in all things compliance and debt recovery, advice from the DLO late last week is that he is also considering his response to McKinsey and Co concerning their approach late last year suggesting that a review of DHS compliance activity be undertaken. A reply was prepared for Minister (which we understand has not as yet been dispatched) in which he wished to reply along the lines of - he would consider matter further/seek advice and also refer the matter to DHS Minister Stuart Robert.

468 A/g Executive Assistant to Serena Wilson, DSS.

469 SW7, CTH.2005.0002.2650, Email, 'FW: MS16-000130 - WIP version (2) (3) [SEC=UNCLASSIFIED]', 1 February 2016.

Generally this seems to be another example of getting across the detail on how the system operates. The brief sketches the approach at the high level and the attachment from DHS goes into some detail as to how the compliance system works.

For your consideration please. Apologies for the short turn around - DLO has advised that they wish this to be cleared today and go in the courier run early tomorrow.

413. At 1:23 pm on 1 February 2016, Ms Spinks replied to Mr Kimber's email as follows:⁴⁷⁰

Serena has reviewed the min sub and attachment, and has made a few comments. Please see attached.

414. Comments made in a handwritten note on the covering email were as follows:⁴⁷¹

A few small editing changes. Can we check whether DHS would be willing to do a verbal briefing & if so also have a record on this.

Handwritten notes on the brief included the following:⁴⁷²

Indicate whether you would like a briefing from DHS in person on their compliance activities.

415. The attachment included a note on page 4 and an amendment (correcting a typographical error) on page 8.⁴⁷³
416. If Ms Wilson had read the attachment with any care, she, too, would surely have concluded, or at least suspected, that DHS was using income averaging as the prime, and frequently only, source of assessment. But when asked about it in evidence in this investigation, she had no recollection of having seen the document, still less of having studied the attachment. She repeated that, until 15 January 2017, she remained constantly of the view that DHS was adhering to its assurances that averaging would not be used.⁴⁷⁴

470 SW7, CTH.2005.0002.2650, Email, 'FW: MS16-000130 – WIP version (2) (3) [SEC=UNCLASSIFIED]', 1 February 2016.
471 SW7, CTH.2005.0002.2652, Scanned Email (with annotations), 'Covering email.pdf', 1 February 2016.
472 SW7, CTH.2005.0002.2654, Draft Ministerial Submission (with annotations) 'Min sub', 1 February 2016.
473 SW7, CTH.2005.0002.2657, Document, 'Attachment A', 1 February 2016.
474 NACC Transcript, 22 August 2025, Serena Wilson, T98; NACC Transcript, 2 October 2025, Serena Wilson, T43-45.

417. On 23 February 2016, a brief titled 'Current Arrangements for the Monitoring and Protection of Administered Outlays', which had been signed off by Mr Withnell, was sent to the Minister for Human Services' office.⁴⁷⁵ It provided an overview of the current measure at paragraphs 9-12 and included a presentation of slides on:
- areas to target
 - current v non-current recipients
 - projected debt recovery
 - opportunity and capacity to pay for 3 cohorts (current income support, not receiving any benefits with no identified income and/or assets but location known, and those not receiving any benefits with identified income or assets and location unknown).
418. The Minister for Human Services, Minister Alan Tudge⁴⁷⁶, agreed that DHS should develop NPPs 'aimed at expanding debt recovery activity'.⁴⁷⁷
419. At 3:34 pm on 7 March 2016, Ms Leanna Hanns (Executive Assistant to Mr Britton) emailed Mr Doug Newbigging and Ms Kelly Rowlands of DSS a PowerPoint presentation titled 'Digital Compliance Intervention_V1 2.pptx' with a note:⁴⁷⁸
- Please see attached the PowerPoint for the Scott Britton's presentation at the DSS Payments Forum.
420. The DSS Payments Forum was scheduled between 2 pm and 4 pm on 9 March 2016 and chaired by Ms Halbert, although it appears to have concluded at 3:30 pm. According to the minutes, those attending included DSS officers Ms Wilson, Mr Innis, Mr Iain Scott, Mr McBride, Ms Mary McClarty, Mr Emerson, Mr Russell de Burgh,⁴⁷⁹ Mr Kimber, Ms McGuirk, Ms Amanda Robertson, Ms Jane Dickenson, Ms Andrea Wallace-Green, Mr Phil Brown and Ms Anita Davis, and Mr Britton from DHS.

475 CTH.2009.0006.2319_R2, Executive Minute, 'Current Arrangements for the Monitoring and Protection of Administered Outlays', 23 February 2016; CTH.4700.0001.2202, Executive Minute, 'Overview Brief – Online Compliance Intervention (OCI)', 17 February 2017, Attachment A, 5.

476 Mr Tudge replaced Mr Robert as Minister for Human Services on 18 February 2016.

477 CTH.2009.0006.2319_R2, Executive Minute, 'Current Arrangements for the Monitoring and Protection of Administered Outlays', 23 February 2016; CTH.3001.0014.8040, Executive Minute, 'Current Arrangements for the Monitoring and Protection of Administered Outlays', Undated.

478 CTH.3023.0003.5069, Email, 'DSS Payments Forum – DHS Presentation Digital Compliance [SEC=Unclassified]', 7 March 2016; SB16, CTH.3023.0003.5070_R, PowerPoint Presentation, 'Digital Compliance Intervention_W 1 2.pptx', 7 March 2016.

479 Branch Head, Work and Study Payments, DSS.

421. The minutes also record that Mr Britton gave a presentation as follows:⁴⁸⁰

Scott Britton, National Manager, Customer Compliance Branch, DHS provided a presentation on 'Strengthening the Integrity of Welfare Payments'. The package of measures has provided an opportunity to reshape thinking about how DHS treat compliance risk and customer error. Scott discussed the strategic drivers for change, walked through the Digital Compliance Platform to be launched in July 2016 and described the build plan to 2020.

422. There is, however, some doubt about the accuracy of the minutes. Neither Mr McBride nor Mr Kimber had any recollection of attending the meeting and each doubted that he did.⁴⁸¹ Ms McLarty gave evidence that, before the meeting began, Ms Wilson and Mr McBride were called away to attend to an urgent request from the Minister for Social Services and she had no recollection of them reappearing.⁴⁸² Ms McLarty said that there was then some discussion of whether the presentation should be postponed to another day but that, because Mr Britton was already in the building, it was decided that the presentation should proceed.⁴⁸³ She said it was possible, however, that the presentation was much reduced because Ms Wilson and Mr McBride were absent. She recalled Mr Britton showing disappointment, which she conjectured might be due to Ms Wilson and Mr McBride being absent.⁴⁸⁴
423. At 2:16 pm on 9 March 2016, Mr Scott emailed Mr Ryman (copying in Ms Collins and Mr Le Huy):⁴⁸⁵

Hi Jason

As discussed, looking for your direction please. Below are the 4 points outlining the Proposed PAYG process that Emma-Kate originally agreed to in May of last year,⁴⁸⁶ and I want to highlight point 2. We originally agreed that we would not need to revisit below with Means Test as we are providing the customer every opportunity to respond in the event that they fail to action their online activity.

480 MK28, DSS.5023.0001.6194, Minutes, 'Minutes, DSS Payments forum – Meeting 31', 9 March 2016, 1.
481 NACC Transcript, 13 August 2025, Paul McBride, T59-60; NACC Transcript, 12 August 2025, Murray Kimber, T73-75.
482 NACC Transcript, 24 September 2025, Mary McLarty, T9.
483 NACC Transcript, 24 September 2025, Mary McLarty, T11.
484 NACC Transcript, 24 September 2025, Mary McLarty, T13.
485 CTH.3027.0004.9339, Email, 'FW: OCI – Matching ATO Employers on EANS [DLM=For-Official-Use-Only]', 9 March 2016.
486 See paragraph 385 above.

There is a risk that the customer may incur extra debt if the match data is applied on top of earnings already recorded for the same employer, but under a different name. A solution has been suggested during discussions in Adelaide that looks to delete any employer details on EANS during the match period that haven't been directly matched and upload the remaining ATO employer details on EANS.

I just wanted to bring this to your attention and get your confirmation on whether we are still to proceed as per below rather than pursue an ICT solution, as the customer hasn't responded and will still get the opportunity to respond/reassess.

...

2. We do not propose to suspend/cancel customers for failing to respond to the initial letter. Rather, the letter will clearly outline that if they fail to contact we will update their record with the information from the match. The customer would then be notified of any debt through existing debt notifications.

424. There is no evidence of a response to the email, but presumably it was considered that point 2 accorded with the advice that Ms McGuirk had given on 2 May 2015.
425. On 4 April 2016 MS16/266 (Department of Human Services' Proposed Option for Savings Initiative) was submitted to the ministerial office.⁴⁸⁷ It included 5 new policy proposals relating to Extend Enhanced Welfare Payment Integrity—income Data Matching that extends the previous proposal to financial years 2015-16, 2016-17 and 2017-18; Extend Enhanced Welfare Payment Integrity—Non-employment income Data Matching, Increased Welfare Compliance for Assets and Investment Proposal; Enforcing Welfare Recipients obligations; and Expand Tax Garnishee.
426. On 6 April 2016, Minister Porter marked the brief as 'noted and that an in-person briefing by DHS was 'Not relevant'.⁴⁸⁸

487 CTH.4700.0001.2202, Executive Minute, 'Overview Brief – Online Compliance Intervention (OCI)', 17 February 2017, Attachment A, 5.

488 DSS.5001.0001.3994_R, Ministerial Submission, 'MS16-000130 DHS Compliance Activity.pdf', 6 April 2016.

427. Early in May 2016, SB16-000482 (2015-16 Budget – Strengthening the Integrity of Welfare Payments) was sent to the ministerial office for signing by Minister for Human Services and to be considered by Cabinet, and on 4 May 2016 was noted by the Minister.⁴⁸⁹

Early signs of trouble and the Ombudsman’s initial involvement

428. By May 2016, the first signs of dissatisfaction with the OCI began to emerge. On 24 May 2016 Ms Angela Geerdink⁴⁹⁰ sent a calendar invite to Mr Kimber with the following note:⁴⁹¹

It would be great to have just a few minutes of your time asap to discuss a potential issue regarding AAT requiring DHS to obtain third party information (i.e. payslips) in regards to the PAYG measure.

I am of the opinion this is not required within existing policy.

Following an initial quick chat, if it is determined we need more time (or others involved), we can set up a formal meeting.

I would like to obtain your views on the best approach going forward.

429. Mr Kimber accepted the calendar invite.⁴⁹²
430. On 25 May 2016, Ms Geerdink emailed Mr Britton a chain of email correspondence regarding an AAT review requiring employer payslips for PAYG debts, with the following note:⁴⁹³

Please find below the email trail in regards to the AAT requiring DHS to seek third party evidence (in this case pay slips) in regards to a PAYG review.

489 SW8, CTH.4700.0001.2202, Executive Minute, ‘Overview Brief – Online Compliance Intervention (OCI)’, 17 February 2017, Attachment A.

490 National Manager, Appeals Branch, Customer Payment Services Division.

491 MK29, DSS.5123.0001.0104, Email Calendar Invitation, ‘AAT Policy Query [DLM=For-Official-Use-Only]’, 24 May 2016.

492 DSS.5123.0001.0037, Email Calendar Invitation, ‘Accepted: AAT Policy Query [DLM=For-Official-Use-Only]’m 24 May 2016.

493 MK29, CTH.3023.0019.6685_R, Email, ‘RE: Stakeholder management – AAT requiring employer payslips for PAYG debts [DLM=Sensitive: Personal]’, 25 May 2016.

I had a quick chat with Murray Kimber (DSS) and a few of his team yesterday about whether the AAT are acting in accordance with agreed policy. DSS agree that the ATO data is the true source of data, that in undertaking the compliance activity and associated internal review, the department uses the ATO data and any additional evidence provided by the customer (which our staff would encourage customers to provide). However, DSS did advise that under legislation the AAT can request either additional evidence from us, or ask that we seek additional evidence from the customer or other third parties (of course all within set timeframes).

It is my understanding we have only received the one AAT request to date. It would be great to have our relevant staff determine the best way to manage these requests. Who pursues the third party data and what would be the process. It would also be a good idea to monitor this closely to see how many like AAT requests are received, and the potential impact on workloads.

431. Mr Britton responded at 10:46 am with:⁴⁹⁴

Given this a [sic] policy and application issue I will have Jason's team make the appropriate contact.

432. Mr Kimber said in evidence that he did not recall the meeting with Ms Geerdink,⁴⁹⁵ but, given Ms Geerdink's email to Mr Britton, it seems likely that the meeting occurred and therefore equally likely that, at least by May 2016, Mr Kimber can have had no doubt that averaging was being used whenever a customer failed to respond. Once again, however, there is no direct evidence that he raised it with Ms Wilson.

433. At 4:36 pm on 2 June 2016, Mr Brian O'Malley⁴⁹⁶ sent an email to 2 DHS distribution lists (copying in Mr Britton and Mr Ryman) with the following note:⁴⁹⁷

Some of you may be aware of a recent AAT1 decision which set aside an ARO decision concerning a Newstart Allowance debt.

494 MK29, CTH.3023.0019.6685_R, Email, 'RE: Stakeholder management – AAT requiring employer payslips for PAYG debts [DLM=Sensitive: Personal]', 25 May 2016.

495 NACC Transcript, 12 August 2025, Murray Kimber, T80.

496 Director, Appeals Branch, DHS.

497 CTH.3023.0019.7800_R, Email, 'AAT1 set aside decision concerning Pay as You Go [DLM=For-Official-Use-Only]', 2 June 2016.

The decision turned on the need to obtain third party evidence and in particular whether verified fortnightly pay details were required.

High level discussions are occurring about the decision.

AROs should continue to adhere to the current PAYG debt raising process in Operational Blueprint:

- Customer contact, conversation and verification for Employment Income Matching (PAYG) Interventions 110-13070010, <https://ourblueprint.dhsstaff.dhs.gov.au/Pages/compliance-and-reviews/10-13070010-01.aspx>
- Assessing and finalising Employment Income Matching (PAYG) Interventions 110-13070020, <https://ourblueprint.dhsstaff.dhs.gov.au/pages/compliance-and-reviews/110-13070020-01.aspx>

434. An email chain of 3 June 2016 between Mr Le Huy, Mr Ryman, Ms Collins and Ms Poel titled 'Legal and Policy advice for OCI' included, at the end of the chain, the following 'supporting extract under Operational Blueprint 107-02040020':⁴⁹⁸

Employment income for workforce age customers should be assessed for the fortnight the income is earned. Sometimes it is not possible to determine a fortnightly breakdown and the only means to assess the income is as an annual amount, such as using income tax returns (ITRs), payment summaries (group certificates), or other annual amounts. If every possible means of obtaining the actual income information has been attempted, it is possible to use any evidence available to raise a debt including an annual figure.

Some of the difficulties:

- If a customer reports fortnightly and has under declared, there may be no evidence to support a finding of false or misleading information for any given fortnight
- If employment is for a part of a 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

498 CTH.3027.0003.9853_R, Email, 'RE: Legal and Policy advice for OCI [DLM=For-Official-Use-Only]', 3 June 2016.

- If income varied greatly during the year, the result may be incorrect Actual period(s) worked should be obtained so that averaging only occurs for periods worked.

The raising and recovery of debts must satisfy legislative requirements. Evidence is required to support the claim that a legally recoverable debt exists.

435. It is difficult to see how the quoted extract from Operational Blueprint 107-02040020 was thought to support the practice of the applying averaged PAYG income in the case of any customer who failed to respond. To the contrary, the extract was a correct, clear statement of applicable law and, hence, a clear explanation of why averaging could not be used in the absence of other evidence. Perhaps, it was thought that support was to be derived from the statement – ‘if every possible means of obtaining the actual income information has been attempted, it is possible to use any evidence available to raise a debt including an annual figure’ – supported the practice of averaging. It is conceivable that Mr Ryman and Mr Britton might have thought so on the basis that they considered that giving the customer every opportunity to provide contrary material was tantamount to ‘every possible means of obtaining actual income information’. But even then, to conclude that the quoted extract supported averaging in the case of any customer who failed to respond required ignoring the last 3 bullet points and conclusion of the extract.

436. On or about 3 June 2016, Ms Geerdink sent Mr Britton and Ms Alice Linacre of DHS a PAYG Compliance Measure discussion meeting invitation for 4 pm to 4:30 pm on 3 June 2016 with the following email:⁴⁹⁹

It would be great if we could discuss how the AAT are approaching PAYG debt related appeals. The AAT may not be aware of the relevant policy regarding the application of earnings apportionment when reviewing these cases. If not addressed, this will be problematic going forward — especially considering the anticipated levels of compliance activity and associated savings.

Following our discussion, we will need to discuss with DSS (Murray Kimber). (It is DSS policy, so assuming it is DSS' responsibility to alert the AAT.)

499 MK29, CTH.3023.0019.7798_R, Email Calendar Invitation, 'PAYG Compliance Measure discussion [DLM=For-Official-Use-Only]'.

437. Mr Britton responded on 12 June 2016 with the offer of a meeting on the following Friday.⁵⁰⁰
438. On 8 June 2016 at 12:10 pm, Ms Nikki Quirke⁵⁰¹ emailed DHS with a series of questions relating to a presentation which Mr Britton had given on 26 May 2016 at a Quarterly Liaison Meeting between DHS and the Ombudsman's office:⁵⁰²

Following on from Mr Scott Britton's presentation at the Quarterly Liaison Meeting on 26 May 2016 about the Online Compliance Platform, I am seeking some additional information pertaining to the 10% recovery fee (REC).

Slide 5 in the attached Power point indicates that the REC will be automatically applied if the potential debtor does not contact the department. This approach is the opposite of the present practice whereby the REC can only be applied if DHS first has contact with the person (as explained, for example, in part 6.7.1.45 Guide to Social Security Law • <http://guides.dss.gov.au/guide-social-security-law/6/7/1/45>). The slide also says that that the potential application of the REC is explained in the first letter. I seek a response to the following questions:

1. Can DHS please provide me with a copy of all of the Online Compliance Platform template letters, particularly any that mention the REC?
2. Please advise me whether DHS has sought any internal or external legal advice instructions/comment from DSS about this change in approach, particularly whether automatic application of the REC, in the absence of contact from the potential debtor, will satisfy the reasonable excuse provision ins 1228B(4)? If so, please provide copies of any such advice, instructions or communication.

439. On 22 June 2016, an AAT Tier 1 Decision was handed down by Tribunal Member Mr P White, affirming the decision under review and stating in the reasons for decision:⁵⁰³

500 CTH.3023.0004.6367, Email, 'RE: PAYG Process and Policy Walkthrough [SEC=Unclassified]'; 12 June 2016.
501 Senior Investigation Officer, Office of the Commonwealth Ombudsman.

502 LM1, LMA.1000.0001.1261, Email, 'Questions concerning Online Compliance Platform – IOI-2012-500003 debt recovery [DLM=For-Official-Use-Only]'; 8 June 2016.

503 CTH.4750.0025.0013, AAT Decision and Reasons for Decision, '[REDACTED] 22.6.16'; 22 June 2016.

[21] In the view of the tribunal, the apportionment of earnings is reasonable, in the absence of any information about the actual earnings for each fortnight. Although [redacted] complains that there must have been some fortnights when he was entitled to some residual payment of Newstart allowance, there is no evidence before the tribunal, to show that the calculations are unfair or wrong. As noted earlier, the only way the overpayment could have been calculated is on an averaging basis. This is the correct or preferable decision, in terms of calculating the debt.

...

[24] ... The tribunal is satisfied the debt was correctly raised and calculated.

440. At 1:26 pm on 24 June 2016, Mr Ryman emailed the 'Social Security Legal Advices' and 'BI Operations Escalated Correspondence' distribution lists concerning the 'Questions concerning Online Compliance Platform' raised by the Ombudsman on 8 June 2016. Mr Ryman recorded that a meeting with DSS was tentatively scheduled for 3 pm on 27 June 2016 and attached an 'email trail from Murray Kimber with his additional questions'. Mr Ryman continued:⁵⁰⁴

The Customer Compliance Division is currently preparing a response to the Ombudsman regarding the application of the recovery fee. The highlighted content below outlines the proposed response which represents outcomes of discussions with DSS when Customer Compliance was developing the business processes and business requirements for this project. Prior to submitting the response Customer Compliance sought input from DSS who have advised – We are also seeking internal legal advice on whether, the automatic application of the Recovery Fee where a recipient is issued with the initial contact letter but does not engage online, satisfies the reasonable excuse provision in s12283(4) of the Social Security Act.

Can you please advise whether you see any issues with the approach regarding the application of the recovery fee and the proposed response to the Ombudsman noting that the DHS response is due back with Ombudsman early next week and the timeline for DSS to respond is unclear.

504 LM5, CTH.3024.0004.7505, Email, 'FW: 27 June 2016- FW: REQUEST: Ombudsman Issue of Interest – Questions concerning Online Compliance Platform – [DLM=For-Official-Use-Only]', 24 June 2016.

Q2. Please advise me whether DHS has sought any internal or external legal advice or Instructions/comment from DSS about this change in approach. Particularly whether automatic application of the REC, in the absence of contact from the Potential debtor, will satisfy the reasonable excuse provision in s1228B(4)? If so, please provide copies of any such advice. Instructions or communication.

DHS sought advice from DSS in relation to the application of the recovery fee in an automated online environment. It was agreed that:

For customers who undertake the intervention online, we would use information already known to the department (for example existing vulnerability indicators), and ask customers whether there were any personal circumstances that prevented them from declaring correctly. Existing vulnerabilities and/or the response to this question would determine whether the recovery fee is applied.

For customers who choose not to go online, the recovery fee will be automatically applied, and this possibility will be highlighted in the initial contact letter.

DSS advised that the Social Security Guide would be updated so that the policy supported the new online environment, once the online intervention has been implemented.

441. At 11:29 am on 30 June 2016, Ms Karishma Pettit from DHS Legal Services Division provided legal advice to the effect that automatically imposing the penalty (recovery fee) where a customer has not responded via online channels would not satisfy the 'reasonable excuse' provision at subsection 1228B(4) of the Social Security Act.⁵⁰⁵

505 LM2, CTH.3702.0001.0157, Email, 'FW: 27 June 2016- FW: REQUEST: Ombudsman Issue of Interest – Questions concerning Online Compliance Platform – [DLM=Sensitive:Legal]', 30 June 2016.

OCI goes live

442. In evidence in this investigation, Mr Britton said that the OCI was required to be developed in far too much haste, and as a result was not ready to go live.⁵⁰⁶ Problems identified during the pilot program were extensive and far from resolved. They included significant deficiencies in the required computer software (which was behind schedule and yet to be completed), manifest problems in communication design and reach, and inadequate attention to the lack of capacity of a significant proportion of customers to engage with DHS online.⁵⁰⁷
443. Consequently, until Mr Britton went on leave in September 2016, he had resisted Ms Golightly's insistence that OCI go live. But while on leave, he learned that, in his absence, the pilot program had been terminated and that the OCI had gone live in September 2016 despite the many faults still outstanding.⁵⁰⁸ At that point he began to look for another job, in another department, which he found and to which he moved in late November 2016.⁵⁰⁹
444. For the time being, however, the full significance of the problems stemming from the too-rapid development of OCI (and from OCI's inherent design deficiencies) were yet to be realised, and the appetite for further online compliance measures was growing, or at least in some quarters.
445. On 21 July 2016, an MB16/000224 (2015-16 Budget and Mid-Year Economic and Fiscal Outlook Compliance and Debt Measures) brief was sent to the ministerial office for the Minister for Social Services.⁵¹⁰ It included a glowing summary of the development of the OCI.

506 NACC Transcript, 7 August 2025, Scott Britton, T107, T121.

507 NACC Transcript, 7 August 2025, Scott Britton, T107, T121.

508 NACC Transcript, 7 August 2025, Scott Britton, T149-153.

509 NACC Transcript, 7 August 2025, Scott Britton, T152-153.

510 CTH.0009.0001.0104_R, Brief, 20MB16-000224%20MO.pdf, 21 July 2016; CTH.4700.0001.2202, Executive Minute, 'Overview Brief – Online Compliance Intervention (OCI)', 17 February 2017, Attachment A.

446. On 26 July 2016 an MB16-000216 (Compliance Measures announced during the 2016 Election Campaign) brief was sent to the ministerial office for the Minister for Social Services, outlining election commitments which included the extension to the Income Data Matching initiative.⁵¹¹ The brief stated that the Data Matching initiative built on current compliance activities undertaken by DHS to address identified employment income discrepancies for a further 3 financial years. It explained that the initiative would use the self-service digital compliance platform being implemented as part of the 2015-16 Budget measure Strengthening the Integrity of Welfare Payments.
447. On 4 October 2016, brief MS16/861 (Election Commitment New Policy Proposal for the Mid-Year Economic Outlook 2016-17) was sent to the ministerial office of the Minister for Social Services.⁵¹² It included 5 new policy proposals, including the extension to the Income data matching proposal for a further 3 financial years to 2017-18, and material for inclusion in a letter from the Minister for Social Services, the Hon Christian Porter MP, to the Prime Minister in relation to the election commitments.
448. On 6 October 2016 that brief was agreed to by the Minister.
449. On 9 November 2016, Ms Carroll emailed Mr Pratt (copying in Ms Gayle Murray, Mr de Burgh, Ms Lander, Ms Elicia Rudnicki, Ms Wilson, Ms Halbert, Mr Lye and Ms Ruth Heymann) headed 'For the MINHS mtg - [1 a] Debt & Compliance for Sec meeting with Minister – UPDATED'. Attached was a document, '[1a] Debt & Compliance for Sec meeting with Minister – UPDATED', which included the following information:⁵¹³

Non-Legislative Debt and Compliance Options

A number of non-legislative measures are already being implemented by DHS as part of the Enhanced Welfare Payment Integrity election commitments:

- More intensive income data matching;
- Non-employment income data matching;

511 CTH.4000.0001.6902_R, 'MB16-000216.pdf', 26 July 2016, .6919-.6925; CTH.4700.0001.2202, Executive Minute, 'Overview Brief – Online Compliance Intervention (OCI)', 17 February 2017, Attachment A.

512 CTH.4700.0001.2202, Executive Minute, 'Overview Brief – Online Compliance Intervention (OCI)', 17 February 2017, Attachment A.

513 DSS.5001.0002.2870_R, Email, 'For the MINHS mtg – [1a] Debt & Compliance for Sec meeting with Minister – UPDATED [SEC=PROTECTED, DLM=Sensitive:Cabinet]', 9 November 2016.

- Expansion of debt recovery measures by providing resources for DHS to actively pursue more debts more quickly

Early signs of problems

450. At the same time, there were some early instances of frontline staff dissatisfaction with OCI, and questions about OCI's legality and rectitude.
451. Evidently in an attempt to head off that disquiet, on 23 August 2016 DHS released the transcript of a video-recorded conversation between Mr Ryman and Ms Collins which aimed to inform DHS staff of the benefits of OCI and, in particular, emphasise the care which it was said had been taken in ensuring OCI's compliance with policy and legislative requirements. It included the following:⁵¹⁴

There were a number of stakeholders ... At a policy level, the Department of Social Services were a big stakeholder. A lot of discussions with them about the recovery fee and how we made that a real and applicable thing in the online environment.

We talked with the Means Test and talked about how we would go about the automated assessment of employment income and making sure that we were staying within the rules and we are not changing the ways that income is assessed or how overpayments are raised, so Debt Management Branch had a role as well.

... So right across the board we were engaged with not just internal but external stakeholders.

... it's about that we are engaging the right people and they are all comfortable with the approach we are all taking.

So it is quite a different approach to compliance in the past.

So how much engagement did you have with Legal Services? - - -

514 CTH.0004.0003.0698, Transcript, 'Transcript Jason and Tenille EIM', 23 August 2016; Statement of Jason Ryman, 27 October 2022, 8 [59].

Legal Services were involved from day one. We talked to them about some of the concepts that we were thinking about. ... So Legal Services were really helpful and have been really supportive all the way through. ... Legal Services I think we engaged them probably back in 2014 with some conceptual design stuff. But again, when we actually went to pilot (OCI), I am thinking about fourteen or fifteen months ago. They were involved even up to this point so they have been involved all the way along.

452. But the concerns were not confined to staff. In October 2016, the Office of the Commonwealth Ombudsman received high numbers of complaints about the Scheme and tracked them as an ‘issue of interest’ (IOI) in its complaints system.⁵¹⁵
453. On 8 November 2016, the first report regarding the PAYG program and the response of the ‘AAT1’ and ‘AAT2’ (referring to AAT first review and AAT further/second review) was generated within DHS and circulated internally. It recorded that a pattern of appeals relating to the PAYG pilot was beginning to emerge, albeit not regarded as concerning at that stage.⁵¹⁶
454. During November 2016, a business process was established within DHS to identify and track complaints relating to OCI using a defined complaint reason and business area organisational unit code as a way of identifying complaints relevant to the Customer Compliance Division (CCD).⁵¹⁷ That business process involved the identification of OCI complaints as a ‘Potential Systemic Issue’ using the appropriate check box.
455. On 23 November 2016, DHS Legal Services Division issued a note of advice that an AAT Tier 2 proceeding be settled because ‘it could be the case [in which] the PAYG process is raised’.⁵¹⁸

This is the AAT2 PAYG decision that is proceeding to hearing.

The debt is \$2495. The AAT1 sensibly said that ‘In the view of the tribunal the apportionment of earnings is reasonable in the absence of information about actual earnings. The only way the overpayment could have been calculated is on an averaging basis.

515 LM17, Statement of Louise Macleod, 22 February 2023, LMA.9999.0001.0011, 7-8 [40]-[43].

516 CTH.3008.0015.7237_R2, Email, ‘RE- PAYG DEBT CASES - AAT Review numbers and update’, 8 November 2016; Statement of Scott Britton, 25 October 2022, SBR.9999.0001.0002_R, 12 [78].

517 CTH.3720.0001.0001, Email, ‘Complaint Tracking of OCI issue between 21 and 24 October 2016 [DLM=For-Official-Use-Only]’, 3 November 2016; Statement from Services Australia, CTH.9999.0001.0102, Undated, [4.10].

518 CTH.4750.0025.0001_R, Email, ‘FW: LEX: 26638 – [Redacted] and Secretary Department of Social Services – Submissions – Due 23 November 2016 [DLM=Sensitive: Legal]’, 24 November 2016.

An attempt to settle was made but the applicant wanted a 100% waiver. There is nothing in this decision that is likely to cause any difficulties in the AAT2 but it could be the case that the PAYG process is raised.

On reflection settling this on a 100% waiver is sensible particularly given the cost of defending the decision — well in excess of the debt — and I intend to instruct our lawyer accordingly.

456. During December 2016, the number of complaints received about Centrelink debt and data matching almost tripled.⁵¹⁹ The Ombudsman's office was also monitoring media reports about people receiving automated debt letters from Centrelink.⁵²⁰ At the same time the ATO noticed a spike in complaints due to DHS compliance activities and identified some potential issues with the way ATO data was being interpreted and applied.⁵²¹
457. On 6 December 2016 at 10:45 am, Mr Andrew Wilkie⁵²² issued a press release regarding complaints made to his office about the OCI.⁵²³
458. On 20 December 2016, DHS received advance notice of the Ombudsman's intention to conduct an own motion investigation into OCI.⁵²⁴
459. By the end of December 2016, and continuing into January 2017, DHS had become the subject of intense, adverse media publicity in relation to OCI (which the press had dubbed 'Robodebt'), including reasoned commentary that questioned the efficacy of the use of income averaging to assess social services entitlements and the accuracy and lawfulness of debts raised on the basis of it. Some witnesses in this investigation described the intensity of the media storm as unprecedented in their experience.⁵²⁵

519 LM17, Statement of Louise Macleod, 22 February 2023, LMA.9999.0001.0011, 8 [44].

520 LM17, Statement of Louise Macleod, 22 February 2023, LMA.9999.0001.0011, 8 [44].

521 ATO.001.923.9752_R, Email, 'FW: MO Request: Deputy PM OBO [Redacted] [DLM=For-Official-Use-Only] [DLM=Sensitive]', 30 November 2016, 2.

522 Independent Member for Dennison.

523 SK1,CTH.3001.0030.6877_R, Email, 'BREAKING NEWS ALERT: Guilty until proven innocent – Centrelink gone rogue – Andrew Wilkie media call [SEC=UNCLASSIFIED]', 6 December 2016.

524 CTH.1000.0006.8741, Email, 'Section 8 Questions under IOIs 2016-400007 and 2016-600004 [SEC=UNCLASSIFIED]', 20 December 2016.

525 See, for example, NACC Transcript, 25 August 2025, Barry Raymond Jackson, T8; NACC Transcript, 1 October 2025; Emma Kate McGuirk, T44-45; NACC Transcript, 18 September 2025, Kathryn Campbell, T78-80; NACC Transcript, 11 September 2025, Maris Stipnieks, T22-23; NACC Transcript, 5 September 2015, Mark Withnell, T214-215; NACC Transcript, 29 August 2025, Jonathan Hutson, T13-14.

DHS response to the media storm

460. In terms of DHS' capacity to respond to the media storm (and more importantly to its underlying causes), the events of late December 2016 and early January 2017 could not have come at a worse time.
461. Between 22 December 2016 and 9 January 2017, Ms Campbell was absent on leave and Mr Barry Jackson (whose prior specialist expertise was in property and procurement management, rather than social services⁵²⁶) acted as Secretary of DHS.⁵²⁷ Between 23 December 2016 and 16 January 2017, Mr Jonathan Hutson, the Deputy Secretary (Enabling Services) of DHS, was absent on leave and Ms Susan Kruse (whose prior specialist expertise was in health benefits and Medicare rather than in social services benefits payments⁵²⁸) acted as Deputy Secretary in Mr Hutson's place.⁵²⁹ For much the same period, Mr Maris Stipnieks, General Counsel (Program Advice and Privacy) (and thus the most senior social security benefits specialist lawyer in DHS), was absent on leave and Mr Mark Gladman (whose specialist expertise was in health and who lacked specialist expertise in social security benefits law⁵³⁰) acted as General Counsel in Mr Stipniek's place.⁵³¹ Between 23 December 2016 and 16 January 2017, Ms Musolino, Chief Counsel of DHS, was absent on leave, during which period, first, Mr Paul Menzies-McVey, and then, Ms Lisa Carmody, acted as Chief Counsel in Ms Musolino's place.⁵³² Neither of them had any specialist expertise or experience in social security benefits law.⁵³³

526 Statement of Barry Jackson, 3 March 2023, BAJ.9999.0001.0001_R, 2 [16]; NACC Transcript, 25 August 2025, Barry Raymond Jackson, T6.

527 Statement of Barry Jackson, 3 March 2023, BAJ.9999.0001.0001_R, 3-4 [18], [22].

528 NACC Transcript, 27 August 2025, Susan Margaret Kruse, T6-7.

529 Statement of Sue Kruse, 19 February 2023, SKR.9999.0001.0001_R, 4 [31]-[32].

530 NACC Transcript, 26 August 2025, Mark Stanley Gladman, T10-11; Statement of Mark Gladman, 30 January 2023, MGL.9999.0001.0002_2, 2 [13], 3 [16]-[17].

531 Statement of Mark Gladman, 30 January 2023, MGL.9999.0001.0002_2, 2 [14], 8[44]; Statement of Mark Gladman, 26 February 2023, MDA.9999.0001.0003, 2 [13].

532 Statement of Annette Musolino, 31 October 2022, AMU.9999.0001.0003_R, 11 [12], 27 [45]; Statement of Lisa Carmody, 23 February 2023, LCA.9999.0001.0002_R, 3 [9], 6 [11].

533 Statement of Paul Alexander Richard Menzies-McVey, 24 January 2023, PMM.9999.0001.0002_2_R, 2 [12], 3 [13], 4 [18]; NACC Transcript, 28 August 2025, Lisa Maree Carmody, T9; Statement of Lisa Carmody, 23 February 2023, LCA.9999.0001.0002_R, 6 [14].

462. At 8:18 pm on 2 January 2017, Ms Golightly emailed Ms Cathy Sear, Mr Hank Jongen and Ms Karen Harfield (copying in Mr Jackson and Mr Hutson⁵³⁴) noting that Minister Porter's office⁵³⁵ had asked for a 'fact check' of an ABC report regarding OCI and seeking 'expert media advice' on 'what strategy we should use to get the facts out there, reinforce the Government's message'. At 8:14 am on 3 January 2017, the email was forwarded to Ms Kruse.⁵³⁶
463. On the morning of 4 January 2017, Mr Jackson with Mr Pratt held a telephone conference with Minister Porter. The Minister asked Mr Jackson to provide him with a 'quick overview of the Robodebt scheme and current issues'. Due to Mr Jackson's limited understanding of the Scheme, he responded at what he described as a 'high level': to the effect (as he had been advised by Mr Craig Storen)⁵³⁷ that the Scheme was working as it should, employing an approach that had been used for about 30 years.⁵³⁸
464. According to Mr Jackson's evidence, there was no discussion during the conference of the legality of the program or any suggestion of seeking legal advice.⁵³⁹ Nevertheless, at 2:06 pm on 4 January 2017, Mr Jackson emailed Mr Mark Wood, Senior Advisor to Minister Tudge (copying in Ms Kruse, Ms Golightly and Mr Ben Keily) that Minister Porter had asked for 2 things:
1. some more information on 'income smoothing' and confirmation that 'the final screen ... is only produced as a result of information provided/confirmed (or not provided) by the customer'
 2. (2) background detail on 2 customers to be interviewed on the 7.30 Report.⁵⁴⁰
465. Then at 2:33 pm on 4 January 2017, Mr Jackson emailed Mr Menzies-McVey under the heading 'Ombudsman':⁵⁴¹

I believe you are acting Annette at the moment. As per the Andrew Wilkie media regarding the Online Compliance Intervention work — have we been contacted by the Ombudsman seeking information as per their claim?

534 Despite his being absent abroad on leave.

535 At this point, Minister Tudge was absent on leave and Minister Porter was acting as Minister for Human Services as well as Minister for Social Security.

536 BJ1, SKR.0001.0001.0020_R, Email, 'Exhibit 4-5815 - SKR.0001.0001.0020_R - Fwd- Request from Minister Porter's Office', 2-3 January 2017, 1-2.

537 General Manager, Customer Compliance Division, DHS.

538 Statement of Barry Jackson, 3 March 2023, BAJ.9999.0001.0001_R, 3-4 [21](b).

539 Statement of Barry Jackson, 3 March 2023, BAJ.9999.0001.0001_R, 3-4 [21](b).

540 BJ2, CTH.4750.0028.0433_R, Email, 'Exhibit 4-6851 - CTH.4750.0028.0433_R - Minister Porter', 4 January 2017.

541 BJ3, CTH.4750.0028.0208_R, Email, 'Exhibit 4-6861 - CTH.4750.0028.0208_R - RE- Ombudsman', 4 January 2017.

466. Mr Menzies-McVey responded at 3:03 pm on 4 January 2017:⁵⁴²

The Ombudsman's office contacted the department earlier today to advise that it will conduct an own motion investigation on the debt process that is the focus of Andrew Wilkie's media. The Legal Services Ombudsman team is currently briefing Karen Harfield on this proposed investigation. The department will need to brief the Ombudsman's office on the debt process as soon as possible — probably next week — this is something that is being discussed with Karen now. We are also discussing with Karen the best way to keep you briefed on the Ombudsman investigation.

467. Then at 3:38 pm on 4 January 2017, Mr Menzies-McVey sent a follow-up email to Mr Jackson as follows:⁵⁴³

Just one point of clarification to my email below — we have not received a formal letter from the Ombudsman's Office at this stage — it was verbal advice this morning — and the Ombudsman's Office has not decided on the scope of the investigation at this point. They want a briefing next week and, following that briefing, they will decide what parts of the process they want to look at. We will get a formal letter commencing the investigation at that point.

468. At 3:50 pm on 4 January 2017, Mr Jackson forwarded the email chain to Ms Kruse for 'Further info'.⁵⁴⁴

469. At 3:51 pm on 4 January 2017, Ms Kruse replied:⁵⁴⁵

Okay, on that basis might provide the MO⁵⁴⁶ a heads up that this may occur, but we are waiting formal advice from them.

470. Meanwhile at 3:03 pm on 4 January 2017, Ms Harfield had emailed Ms Golightly in response to Ms Golightly's request of 2 January 2017 for a 'fact check' of the ABC report regarding OCI⁵⁴⁷ (copying in 'CCD.COORDINATION', 'EXEC.CCD' and Ms Pamela Kennedy) under the heading 'FW: Averaging Income' ... 'Explanation of assessment methodology (algorithm)':⁵⁴⁸

542 BJ3, CTH.4750.0028.0208_R, Email, 'Exhibit 4-6861 - CTH.4750.0028.0208_R - RE- Ombudsman', 4 January 2017.

543 BJ3, CTH.4750.0028.0208_R, Email, 'Exhibit 4-6861 - CTH.4750.0028.0208_R - RE- Ombudsman', 4 January 2017.

544 BJ3, CTH.4750.0028.0208_R, Email, 'Exhibit 4-6861 - CTH.4750.0028.0208_R - RE- Ombudsman', 4 January 2017.

545 BJ3, CTH.4750.0028.0208_R, Email, 'Exhibit 4-6861 - CTH.4750.0028.0208_R - RE- Ombudsman', 4 January 2017.

546 Minister's Office.

547 See 462 above.

548 BJ3, CTH.3001.0032.1486_R, Email, 'Exhibit 3-4657 - CTH.3001.0032.1486_R - FW- Averaging Income', 4 January 2017.

The concept of averaging income in the absence of detailed information has been around since at least 1981. The legislation (the social security act) refers to assessing/applying income ‘when it is first earned, derived or received’. However, the practicality is that this is not always known. The choice would be to ignore it, or apply it in the best way available.

In the last five years, DHS has moved to a more proactive early intervention methodology for compliance. Our approach for potential non-compliant customers has changed. There is now a requirement for the customer to provide their correct information, rather than DHS sourcing it directly from the employer.

The methodology for assessing and calculating a debt has not changed, and averaging is only used where the customer does not provide the detailed information.

All of the information used is provided to the customer, and they are given 21 days to confirm or update this information. Only where the customer chooses not to engage, would the method of averaging be used.

Averaging is used in all other compliance activity where the customer does not provide the required information, and this process is not specific to OCI, and is not a new process.

Where customers provide evidence of weekly/fortnightly breakdown for the entire period of earnings (ie the amount disclosed in their evidence matches) we will use those specific details.

There is provision in the guide to Social Security Law to enable averaging of income to occur, in the absence of other information from the customer.

471. At 3:14 pm on 4 January 2015, Ms Golightly forwarded the email to Mr Wood and the ‘Secretary’s Office’ email address (copying in Ms Kruse and Ms Harfield⁵⁴⁹).⁵⁵⁰

549 General Manager, Customer Compliance Division, DHS.

550 BJ3, CTH.3001.0032.1486_R, Email, ‘Exhibit 3-4657 - CTH.3001.0032.1486_R - FW- Averaging Income’, 4 January 2017.

472. It is to be noted that Ms Harfield was an SES Band 2 senior public servant who had been appointed by Ms Campbell during the latter part of 2016 to relieve Mr Withnell of responsibility for ‘rolling out’ the OCI program.⁵⁵¹ Her expertise lay in administration and, before that, as a Detective Superintendent of police in the United Kingdom. She had next to no knowledge or experience of income averaging, its origins, or its previous use by DHS, and she was not a lawyer.⁵⁵² The contents of her email to Ms Golightly were drafted for her by specialist DHS officers – in particular Mr Andrew Chambers and Mr Ryman or Mr Britton, and possibly also Mr Withnell – and would have been understood as such (and therefore as authoritative) by the DHS officers who read them.⁵⁵³ Hence, the idea that the failure of a customer to respond was a sufficient basis to apply averaging, that it was a practice that had long been followed, and that it was sanctioned by the guide to Social Security Law, continued to be the basis on which Ms Golightly, DHS more generally, and ultimately DSS, advised their ministers and otherwise defended OCI against any suggestions that averaging might be unlawful.
473. At 4:30 pm on 4 January 2017, Mr Jackson, Ms Golightly, Ms Harfield, Ms Kruse and Mr Wood (by telephone) met Minister Porter and 2 members of staff from Minister Porter’s office.⁵⁵⁴ In evidence before the Royal Commission, which Mr Jackson repeated in part in this investigation, Mr Jackson recalled⁵⁵⁵ that the purpose of the meeting was to provide Minister Porter with a high-level overview of the Robodebt scheme in preparation for the Minister’s appearance on the 7:30 Report.
474. In her evidence before the Royal Commission, Ms Harfield stated that:⁵⁵⁶
- I spoke to Ms Golightly by telephone on or around 4 January 2017. During that call I suggested, given the issues I had been dealing with in relation to OCI and the now apparent increased level of customer dissatisfaction in respect of the media, that it would be a suitable time to consider declaring a major incident response to re-evaluate if the original measure assumptions were still valid.

551 Statement of Karen Harfield, 4 December 2022, KHA.9999.0001.0001_2_R2, 12 [10]; NACC Transcript, 18 September 2025, Kathryn Campbell, T38.

552 NACC Transcript, 2 September 2025, Karen Mary Harfield, T9-11, 12; Statement of Karen Harfield, 4 December 2022, KHA.9999.0001.0001_2_R2, 11 [6]-12 [9].

553 NACC Transcript, 4 September 2025, Karen Harfield, T 24-25.

554 Statement of Barry Jackson, 3 March 2023, BAJ.9999.0001.0001_R, 5-6 [23]-[34].

555 Statement of Barry Jackson, 3 March 2023, BAJ.9999.0001.0001_R, 5-6 [23]-[34]; NACC Transcript, 25 August 2025, Barry Raymond Jackson, T22-25.

556 Statement of Karen Harfield, 4 December 2022, KHA.9999.0001.0001_2, 51-52 [190]-[191].

When I expressed my view that a major incident should be declared. I recall that Ms Golightly was angry and dismissed my suggestion immediately. I was attempting to identify an opportunity to reflect on the issues to date and 'course correct', if required. Ms Golightly, expressing herself with great indignation and obvious irritation, asserted aggressively that she was the Band 3 and that she was responsible for deciding whether something was a major incident. Ms Golightly made it very clear that she had lots of experience of major incidents. She stated that she was responsible for implementing any recovery plan if needed. She made it clear that what she expected of me was to do as I was told. I was not expected or required to suggest strategic actions. Ms Golightly said she would manage the work and I should make sure that I and my staff were ready to respond to her requirements, as she would tell me what needed to be done.

475. In evidence in this investigation, Ms Harfield explained that Ms Golightly's style of micromanagement, lack of planning, constant unreasonable demands of staff and disregard of staff welfare resulted in a response to the media storm, and later the Ombudsman's investigation, that was utterly frenetic, or as she summarised the situation: a 'shit show'.⁵⁵⁷ And notably, none of the other DHS officers who had worked under Ms Golightly at the time and gave evidence in this investigation was disposed to disagree. Each in his or her own terms conveyed a near identical assessment.

⁵⁵⁷ NACC Transcript, 3 September 2025, Karen Mary Harfield, T78-79.

Jackson request for legal advice

476. In his evidence before the Royal Commission, and again in his evidence in this investigation, Mr Jackson stated that, although Minister Porter did not ask for legal advice, Mr Jackson noticed that DHS' stated justification for the Robodebt scheme methodology was that it 'has always been done this way', as opposed to relying explicitly on identified statutory authority.⁵⁵⁸ Mr Jackson said that, by dint of his long experience as a public servant, his usual practice whenever he is told that something has always been done in a particular way is to ask what is the authority for doing it that way.⁵⁵⁹ Consistently, therefore, with his usual practice, on or about 4 January 2017, he orally requested Ms Golightly to 'ascertain the authority for using the Averaging methodology'.⁵⁶⁰
477. Two days later, at 5:24 pm on 6 January 2017, Mr Jackson followed up his oral request, with an email to Ms Golightly asking:⁵⁶¹

Did we find out whether the Averaging is in the lego or the guidelines and if so where [sic]?

478. At 6:27 pm on 6 January 2017, Ms Golightly replied (copying in Ms Kruse and Ms Harfield):⁵⁶²

Hi Barry – we were going to check this with Paul Menzies McVey who has been tied up with the certificate of public interest.⁵⁶³

We have confirmed that it is at least in the policy as advised.

The advice from legals re the legislation is that it is a very complex job to get the answer (for example the leg clauses for each payment are different). They have started on this.

Also, in the meeting with the Ombudsman today it was apparent that they are interested in getting more info around how we do averaging (don't they asked a specific question re leg but we are preparing in case they do – which would not be a surprise).

558 Statement of Barry Jackson, 3 March 2023, BAJ.9999.0001.0001_R, 7 [36]; NACC Transcript, 25 August 2025, Barry Raymond Jackson, T13.

559 Statement of Barry Jackson, 3 March 2023, BAJ.9999.0001.0001_R, 7 [36]; NACC Transcript, 25 August 2025, Barry Raymond Jackson, T17.

560 Statement of Barry Jackson, 3 March 2023, BAJ.9999.0001.0001_R, 6 [35].

561 BJ4, SKR.0001.0001.0054_R, Email, Exhibit 4-5830 - SKR.0001.0001.0054_R - Re- UPDATE- Media and Social Media Commentary re- online compliance system - Friday 6 January', 6 January 2017, 1.

562 BJ4, SKR.0001.0001.0054_R, Email, Exhibit 4-5830 - SKR.0001.0001.0054_R - Re- UPDATE- Media and Social Media Commentary re- online compliance system - Friday 6 January', 6 January 2017, 1.

563 An unrelated matter.

479. At 9:14 pm on 6 January 2017, Mr Menzies-McVey emailed Ms Kruse:

Sue I confirm that I have set the wheels in motion on this advice as the top priority next week. Call over the weekend if needs be (I will only be doing WPIT anyway). PMM

480. At 12:04 am on 7 January 2017, Ms Kruse replied: 'Thanks Paul.'⁵⁶⁴

481. Meanwhile, at 6:51 pm on 6 January 2017, Mr Menzies-McVey had emailed Mr Gladman (copying in Mr Michael Robinson (National Manager Ombudsman and Information Release Branch, DHS), Ms Carmody, and 'Chief Counsels Office') stating:⁵⁶⁵

Sue Kruse would like us to develop, as a top priority next week, a paper on the department's current practice of averaging income for the purposes of calculating payments under the social security law. This paper should look at the legislative basis for this practice for each payment, and identify the circumstances where it is permissible for the department to assume (in the absence of other evidence) that income over a period has been earned pro rata over the period. If, in some or all cases, the department should use its information gathering powers to obtain detailed information about when income has been earned (ie by compelling detailed information from an employer), rather than relying upon averaging, this should be identified. Any guidance in the Guide should also be identified. The advice should include an executive summary (for use by our senior executives) and detailed references to statutory provisions (for use by stakeholders such as the Ombudsman's Office).

Let me know if you have any questions about this.

The advice initially should be provided to Sue Kruse as a draft. I think aim to have this done by Tuesday [10 January] at latest.

482. At 7:13 pm on 6 January 2017, Mr Gladman forwarded the email to Mr Barnett, stating:⁵⁶⁶

Could you start working on this as a top priority. On Monday we should discuss how to approach it and how I can help.

564 SK6, SKR.0001.0001.0052_R, Email, 'Exhibit 4-5832 - SKR.0001.0001.0052_R - RE- Legal advice on averaging', 6 January 2017, 1.

565 MG1, CTH.3111.0017.9684_R, Email, 'Exhibit 4-5827 - CTH.3111.0017.9684_R - Social security law - averaging provisions', 6 January 2017.

566 MG1, MGL.0001.0001.0002, Email, 'Exhibit 4-5831 - MGL.0001.0001.0002_R - Fwd- Social security law - averaging provisions', 6 January 2017.

483. At 7:27 pm, Mr Gladman replied to Mr Menzies-McVey.⁵⁶⁷

Thanks Paul, Will do.

484. At 1:39 pm on 7 January 2017, Menzies-McVey replied to Mr Gladman:⁵⁶⁸

If you need to rope Glyn [Fiveash] in to assist, that's fine – let me know.

485. Mr Gladman responded at 13:41 pm: 'Thanks Paul.'⁵⁶⁹

486. At 4:17 pm on 7 January 2017, Mr Menzies-McVey forwarded his email exchange with Mr Gladman to Mr Glyn Fiveash (Acting General Counsel Business Transformation Legal Branch⁵⁷⁰ and who was considerably experienced in social security benefits law), with a note:⁵⁷¹

Glyn See below for info. Mark might need a bit of help.

487. At 11:45 pm on 6 January 2017 an article written by journalist Mr Peter Martin was published in the *Sydney Morning Herald* newspaper: 'How Centrelink unleashed a weapon of math destruction' (the Martin article). At 12:15 pm on the following day, the Martin article was updated. Relevantly, it contained the following:⁵⁷²

What's important in this description is the humans charged with applying the law didn't issue debt notices unless they had evidence that a debt existed. To do so without evidence would be to break the law.

...

The formula used by Centrelink produces consistently false estimates of debts by dividing by 26 the annual wages employers report paying in order to overestimate income received during the smaller number of fortnights claimants get benefits.

567 GF1, GFI.0001.0002.0001_R, Email, 'Exhibit 8433 - GFI.0001.0002.0001_R - FW- Social security law - averaging provisions', 6 January 2017, 1.

568 GF1, GFI.0001.0002.0001_R, Email, 'Exhibit 8433 - GFI.0001.0002.0001_R - FW- Social security law - averaging provisions', 7 January 2017, 1.

569 GF1, GFI.0001.0002.0001_R, Email, 'Exhibit 8433 - GFI.0001.0002.0001_R - FW- Social security law - averaging provisions', 7 January 2017, 1.

570 Mr Fiveash was acting for Mr Menzies-McVey who was on leave at the time.

571 GF1, GFI.0001.0002.0001_R, Email, 'Exhibit 8433 - GFI.0001.0002.0001_R - FW- Social security law - averaging provisions', 7 January 2017, 1.

572 RBD.9999.0001.0369, Article, 'Exhibit 3-4321 - RBD.9999.0001.0369 - Sydney Morning Herald Article How Centrelink unleashed a weapon of math destruction', 7 January 2017, 2.

488. At 8:07 am on 7 January 2017, Mr Wood emailed Minister Alan Tudge (Minister for Human Services), Mr Andrew Asten (the Minister's Chief of Staff) and Rachelle Miller (the Minister's Media Advisor) responding to a number of questions that had been raised by Minister Tudge in consequence of the Martin article, including:⁵⁷³

What time period is the data matching done. ie, does it look at every fortnight of the year in question and match your stated income v ato income? Or every four weeks or 26 weeks or whatever.

The ATO provides data for every reporting period (fortnight) for the year to provide an annual figure.

489. At 11:25 am on 7 January 2017, Prime Minister Malcolm Turnbull forwarded the Martin article to Minister Tudge for comment and, at 8:06 pm on 7 January 2017, Minister Tudge responded thus:⁵⁷⁴

It is not correct that we simply take the average of the income declared to ATO and apply that evenly across the 26 fortnights. However, he identifies a key methodological change we made in the July 2015 which was essentially to put greater onus on the recipient to explain the discrepancy of the data, rather than a centrelink officer doing a lot of calling up first.

490. At 1:14 pm on 7 January 2017, Ms Golightly forwarded the Martin article to Mr Withnell.⁵⁷⁵ Then, 3 hours later, at 3:45 pm on 7 January 2017, Ms Golightly emailed Mr Jackson, Ms Harfield, Mr Withnell, Mr Marcus Markovic and Ms Kruse seeking information on behalf of Minister Tudge as follows:⁵⁷⁶

All – I have just got off a long phone call from Minister Tudge. He wanted to understand in a lot of detail the way things worked under (a) the old system (ie back several years through to 1 July 15 when the Income Matching measure was introduced; (b) the period 1 July 2015 to 30 June 2016, and (c) this financial year.

573 CTH.3051.0015.0646_R, Email, 'Exhibit 3-4317 - CTH.3051.0015.0646_R - RE- DRAFT Op Ed - Centrelink automated debt recovery system', 7 January 2017, 1.

574 Statement of Malcolm Turnbull, 20 February 2023, MTU.9999.0001.0001_R, 8 [23].

575 CTH.3001.0032.6417_R, Email, 'Exhibit 9972 - CTH.3001.0032.6417_R - Fwd- BREAKING NEWS- Peter Martin in The Age- How Centrelink unleashed a weapon of math destruction', 7 January 2017.

576 BJ5, CTH.3001.0032.6216_R, Email, 'Exhibit 3-4664 - CTH.3001.0032.6216_R - Phone call from Minister Tudge', 7 January 2017.

We talked at length about the methodology of averaging, when it was used etc being the same throughout but he wanted to understand in detail how the process had changed during each of those time periods. For example, which bits had been automated and what exactly looked different to customers in terms of when they got letters or phone calls, under what circumstances did we or did we not check with the employer etc. I was able to take him through a lot but there are a number of things I need to check and confirm.

491. At 5:36 pm on 7 January 2017, Ms Golightly emailed again Ms Harfield, Mr Markovic and Mr Withnell, adding to her earlier request, as follows:⁵⁷⁷

All – See below for some of the detailed data/explanation the Minister is looking for – it is not a complete list – just wanted to give you the flavour so you could see the level of expertise knowledge we need for our work this morning and also a flavour of the data runs. We need to think of what other data is needed to prove the system is working AND what data might indicate that there is a problem with parameters etc.

492. At 7:59 pm on 7 January 2017, Minister Tudge forwarded the Martin article to Mr Asten, stating: ‘PM sent me this one and has the clearest critique. Please forward this to Malisa.’ At 8:27 pm Mr Asten forwarded the article to Ms Golightly.⁵⁷⁸

493. At 11:10 am on 8 January 2017, Ms Golightly emailed Ms Harfield, Mr Withnell, Mr Markovic and Ms Kruse (copying in Mr Storen) forwarding questions from Minister Tudge including a request to:⁵⁷⁹

more deeply understand how the automated system makes a decision that there could be a discrepancy when on many occasions we presumably don't have fortnightly ATO income data.

494. In her email, Ms Golightly stated:⁵⁸⁰

577 KH3, CTH.3001.0032.6218_R, Email, ‘Exhibit 3-4660 - CTH.3001.0032.6218_R – Questions’, 7 January 2017.

578 CTH.3001.0032.6643_R, Email, ‘Exhibit 3-4320 - CTH.3001.0032.6643_R - Fwd- How Centrelink unleashed a weapon of math destruction’, 7 January 2017.

579 BJ6, CTH.3007.0027.3920_R, Email, ‘Exhibit 3-4669 - CTH.3007.0027.3920_R - Fwd- MB17-000023 - Online compliance and debt letters’, 8 January 2017, 2.

580 BJ6, CTH.3007.0027.3920_R, Email, ‘Exhibit 3-4669 - CTH.3007.0027.3920_R - Fwd- MB17-000023 - Online compliance and debt letters’, 8 January 2017, 1.

... I think we are going to have to clearly explain that the initial data match does not compare fortnight by fortnight (nor the OCI system) in the first instance. All that happens in my understanding is that we check whether [sic] the total amount and the time periods match fairly closely for each employee (within tolerances) and it is only if they don't match at this high level that we send it to be the OCI online system (excluding those we filter out for other reasons like vulnerability) to seek clarification from the customer (first letter). Even then, if the customer updates the info and the totals and dates are within tolerances we would not take further action. If they are not in tolerances, we would first seek further evidence before calculating a debt. The only time a debt would be automatically calculated is if the customer has accepted the ATO details or the customer has not engaged at all. Therefore the only point at which fortnightly comparison comes in is when we are actually calculating the debt (because under the SS Act we have to determine eligibility on a fortnightly basis)?? Is my understanding correct??? I might have over simplified it.

I know the Minister know[s] about the fortnightly eligibility test requirement in the SS Act, and from reading the note below, I think he thinks that means that the data match itself is comparing at a fortnightly basis right from the start and I am not sure that is actually what the data match does.

495. At 3:54 pm on 8 January 2017, Mr Withnell emailed Ms Golightly, Ms Harfield and Mr Markovic, purporting to refute the Martin article as follows:⁵⁸¹

... He critiques the system using the view promulgated by the media as his start point — in doing so his argument is premised on inaccurate information.

496. Mr Withnell attached a 'brief overview' of the Martin article which included a response to Mr Martin's observation that it was important that humans who issued debt only did so with evidence a debt existed and to do otherwise would break the law, thus:⁵⁸²

581 CTH.3001.0032.7224_R, Email, 'Exhibit 9035 - CTH.3001.0032.7224_R - Peter Martin article', 8 January 2017.
582 CTH.3001.0032.7225, Summary, 'Exhibit 9036 - CTH.3001.0032.7225 - Peter Martin article', 8 January 2017.

- the difference in income between ATO and DHS records already suggest a debt. The system only raises a debt after the customer has verified or updated the data (therefore making it accepted data) unless they fail to respond in which case the individual is technically breaking the law and would leave DHS legally entitled to take a relevant course of action (should check with Legals).

497. At 9:30 am on 9 January 2017, Ms Carmody attended a handover with Mr Menzies-McVey in anticipation of her taking over as Acting Chief Counsel during the following week. In her evidence, Ms Carmody recalled that she and Mr Menzies-McVey discussed Ms Kruse's request for advice (hereafter referred to as the 'Averaging Advice') and may have briefly discussed the possibility of obtaining external legal advice.⁵⁸³

Draft Gladman advice

498. At 9:39 am on 9 January 2017, Mr Gladman emailed Ms Carmody asking:⁵⁸⁴

Do you want to see the draft [advice] before it is provided to Sue?

499. Ms Carmody replied at 10:28 am:⁵⁸⁵

Yes pls and let's chat about it once I've had a look. Thanks Mark.

500. At 10:30 am on 9 January 2017, Ms Golightly, Mr Jackson, Mr Wood and Ms Harfield met with Minister Tudge at Parliament House. In his evidence before the Royal Commission, Mr Jackson recalled that:⁵⁸⁶

- the focus of the meeting was on the Client Portal, the nature of the correspondence being sent to the public, and the overall customer experience
- Minister Tudge requested some refinements be made to the system to improve the customer experience

583 CTH.3135.0001.0004_R, Meeting invitation, 'Exhibit 4-5814 - CTH.3135.0001.0004_R - Handover to Lisa Carmody', 9 January 2017; Statement of Lisa Carmody, 23 February 2023, LCA.9999.0001.0002_R, 7 [19].

584 MG2, MGL.0001.0001.0004, Email, 'Exhibit 4-5834 - MGL.0001.0001.0004_R - Re- Social security law - averaging provisions', 1.

585 MG2, MGL.0001.0001.0004, Email, 'Exhibit 4-5834 - MGL.0001.0001.0004_R - Re- Social security law - averaging provisions', 1.

586 Statement of Barry Jackson, 3 March 2023, BAJ.9999.0001.0001_R, 3-4 [21](c)-(d).

- there was no discussion about the legal basis of the Scheme other than a conversation between Mr Golightly and Ms Harfield to the effect that the Scheme had been operating this way for a long period.

501. At 10:38 am on 9 January 2017, Mr Gladman replied to Ms Carmody's email of 10:28 am as follows:⁵⁸⁷

Thanks Lisa. John Barnett is working on this today. I wouldn't expect that we'll have anything for you to look at until tomorrow but will try to get you something as soon as possible.

502. Ms Carmody responded at 11:04 am:⁵⁸⁸

I understand this kept you all very busy late last week. I have had a handover from Paul but I'd like a briefing from you too pls. Can we chat about it today? Perhaps this afternoon if you have some time?

503. The meeting was, at first, scheduled for 2:30 pm. but was likely later rescheduled to 3:30 pm.⁵⁸⁹ In her statement as tendered before the Royal Commission, which Ms Carmody confirmed in her evidence in this investigation, Ms Carmody said that she did not recall what was discussed.⁵⁹⁰

504. At 4:20 pm on 9 January 2017, Mr Markovic emailed Ms Harfield, Mr Britton, Mr Withnell and Ms Golightly (copying in Mr Jackson and 'Secretary's Office'), sharing a 'list of questions I captured from the discussion with the Minister', including:⁵⁹¹

- Does the ATO have fortnightly income details?
- DATA REQUEST: What percentage of periods of employment from the ATO are for full year, and what are part year?
- ...
- SUGGESTIONS AROUND OCI system - raised during walkthrough

587 CTH.3113.0004.6842_R, Email, 'Exhibit 4-5839 - CTH.3113.0004.6842_R - RE- Social security law - averaging provisions', 9 January 2017, 1.

588 CTH.3113.0004.6848_R, Email, 'Exhibit 4-5842 - CTH.3113.0004.6848_R - RE- Social security law - averaging provisions', 9 January 2017, 1.

589 CTH.3113.0004.6850_R, Email, 'Exhibit 4-5843 - CTH.3113.0004.6850_R - RE- Social security law - averaging provisions', 9 January 2017, 1; Statement of Lisa Carmody, LCA.9999.0001.0002_R, 23 February 2023, 7-8 [20].

590 Statement of Lisa Carmody, 23 February 2023, LCA.9999.0001.0002_R, 8 [21].

591 BJT, CTH.3001.0032.8131_R, Email, 'Exhibit 3-4672 - CTH.3001.0032.8131_R - Questions arising from Minister meeting on OCI', 9 January 2017, 1.

...

How do we make it easier for people who have to provide fortnightly income? For example, are we able to look at whether we can populate the fortnightly figures the customers reported to Centrelink at the time of receiving their payment if they have to break up the ATO income into fortnightly amounts. For example, can we look at screens to reverse engineer from bank statement 'net' figures.

505. At 9:57 pm on 9 January 2017, Ms Golightly emailed Ms Harfield, Mr Withnell and Mr Markovic (copying in Ms Kennedy) that:⁵⁹²

the Minister called me again after the meeting with a couple more ideas which I have outlined below:

- Could we change the OCI screens so that the individual could enter in the net fortnightly pay from their bank statements (because this is easy to get particularly for the years we are talking about) and then we have some way of grossing this up for them? I think we would have to explain to them somehow what we have done and what the result is in terms of a debt etc but could we see how we could make this, or something similar, work.

...

- The Minister also asked why we used gross income anyway. I said it was required under the legislation (hope that is correct?). He then asked me if we should change the legislation and I said yes. This is not a task for tomorrow or even this week but we need to [p]ut it on the radar somewhere to do a bit of research into what would be involved (eg changing 250 pages of leg, or changing a fundamental premise of the SS Act etc) so we can brief him at a high level before going to DSS (he may want to float with Min Porter first) ...

592 BJ7, CTH.3001.0032.8374_R, Email, 'Exhibit 3-4673 - CTH.3001.0032.8374_R - Further request from Minister', 9 January 2017.

506. It is to be noted that, at this stage of the media storm, apart from the Martin article and some other suggestions that averaging was not lawful, the bulk of complaints regarding OCI centred on its undoubted shortcomings in communicating with recipients and in affording recipients ready, accessible means of responding to DHS communications. Consequently, although Minister Tudge had sought DHS advice on the legality of OCI, the Minister was principally focussed on overcoming delivery shortcomings through improvements to the means of customer communication and response.
507. At 10:16 am on 10 January 2017, Mr Barnett emailed Mr Gladman (copying in Mr Matthew Daly⁵⁹³) attaching a draft document titled 'Annualisation of Income Review Process.doc' (the Barnett draft).⁵⁹⁴
508. In his evidence before the Royal Commission, which he in substance confirmed in this investigation, Mr Gladman said:⁵⁹⁵

I reviewed the [Barnett draft]. In the course of reviewing the advice I had a number of conversations with Mr Barnett, to understand the arguments better and to identify whether there were relevant provisions in the social security law that should be considered. I made a number of changes to the [Barnett draft], for the purpose of clarifying and elaborating the arguments.

Because the [Barnett draft] was dealing with a matter that was receiving significant attention in the media, and as I was making a number of changes to the [Barnett draft], I considered it appropriate for the advice to be in my name, as Acting General Counsel, and second counselled by Ms Carmody, as Acting Chief Counsel.

509. At 11:53 am on 10 January 2017, Mr Daly emailed Mr Barnett (copying in Mr Gladman) an 'overview of my research so far in relation to the role of our department in assessing the income of social security recipients', and stating 'I will continue to look into the legislative provisions affecting the calculation of ordinary income'. The overview concluded:⁵⁹⁶

593 Lawyer, Legal Services Division, DHS.

594 MG3, MGL.0001.0001.0011_R, Email, 'Exhibit 4-5855 - MGL.0001.0001.0011_R - Draft', 10 January 2017; MG3, MGL.0001.0001.0012, Draft Advice, 'Exhibit 4-5856 - MGL.0001.0001.0012 - Annualisation of Income Review Process', 10 January 2017.

595 Statement of Mark Gladman, 30 January 2023, MGL.9999.0001.0002_R, 4 [22]-[23].

596 MG4, CTH.3038.0002.6650_R, Email, 'Exhibit 3-4229; Exhibit 4-8081 - CTH.3038.0002.6650_R - Social Security - Calculating Ordinary Income', 10 January 2017, 1-2.

The legislation provides a sound basis for calculating ordinary income on a yearly basis in respect of pension payments and parenting payments. For all other payments mentioned above, these are normally calculated on a fortnightly basis, but are subject to section 1073, and in all cases except Youth Allowance and Abstudy, section 1072 as well. Those provisions provide that certain income received during the year can be reconfigured [sic] into a weekly amount for the purpose of working out ordinary income.

510. Late in the morning of 10 January 2017, Mr Gladman met Ms Carmody to discuss the progress of preparation of the Averaging Advice.
511. Mr Gladman told Ms Carmody that Mr Barnett had prepared a draft in which he had done his best to come up with some arguments, but that having had a look at them, Mr Gladman considered them to be 'weak'. Mr Gladman suggested, therefore, that, rather than provide the Averaging Advice, a preferable approach would be to seek AGS advice. It is possible, but not clear, that Mr Gladman also said to Ms Carmody that if Ms Kruse required something in writing from the Legal Services Division to support obtaining AGS advice, the Averaging Advice could take the form of a recommendation to obtain AGS advice. Ms Carmody said that she would discuss the proposal to seek AGS advice with Ms Kruse.⁵⁹⁷
512. At 12:17 pm on 10 January 2017, Mr Gladman emailed Ms Carmody under the heading 'urgent advice – calculating income for income support payments', a draft email to an AGS lawyer, Leo Hardiman, 'for your [Ms Carmody's] consideration'. It stated:⁵⁹⁸

Leo

I'm emailing to seek urgent legal advice on the process that the Department of Human Services (DHS) is using to identify potential overpayment of social security payments. This is a high profile issue, being considered at the highest levels in DHS, and so we are seeking advice of an appropriately senior AGS lawyer.

597 Statement of Mark Gladman, 30 January 2023, MGL.9999.0001.0002_R, 4 [24].

598 MG6, CTH.3881.0001.0009_R, Email, 'Exhibit 4-5848 - CTH.3881.0001.0009_R - RE- urgent advice - calculating income for income support payments', 10 January 2017.

In broad terms, the process involves DHS obtaining information from the ATO about an employee's annual earnings for a financial year. This information is then checked against information that the recipient of the social security benefit has provided to DHS about their income. If there is a discrepancy, the recipient is contacted and invited to provide further information to clarify the income that the recipient received. If no response is received, DHS will rely on the information from the ATO. The methodology for relying on the information from the ATO involves averaging an annual amount over 26 fortnightly periods. As a general rule, social security payments are paid fortnightly and an entitlement to social security payment is calculated by reference to the person's income in the fortnight to which the payment relates.

We are seeking urgent advice on whether it is legally open to DHS to use information on annual income in this way.

We will provide you with further background information to assist with the advice.

In the meantime, we wish to speak with you about the request and the timeframe for receiving the advice.

I would be grateful if you could ring me as soon as possible on the telephone number below.

513. At 12:24 pm on 10 January 2017, Mr Barnett emailed Mr Gladman (copying in Mr Daly) a document titled 'AGS Instruction.docx' (draft AGS Instructions) incorporating elements of the Barnett draft and Mr Daly's overview of the legislative provisions affecting the calculation of ordinary income, followed by the following questions:⁵⁹⁹

QUESTIONS

1. Has DHS complied with procedural fairness and the social security law in the debt raising process;
2. In the absence of any additional information from the customer can DHS average by fortnight the income information received from the ATO over a financial year period by either:
 - a. The application of the relevant legislative provisions;

599 MG6, CTH.3038.0002.6640_R, Email, 'Exhibit 3-4230; Exhibit 4-8082 - CTH.3038.0002.6640_R - Draft Instructions', 10 January 2017; MG6, CTH.3038.0002.6641, Draft Instructions, 'Exhibit 3-4231 - CTH.3038.0002.6641 - AGS Instruction', 10 January 2017.

b. By reliance on the capacity of DHS to manage its own business in the furtherance of the principles of administration and the intent of the social security law.

3. Does the appeal and review process found within the social security law provide customer's [sic] with appropriate recourse.

514. At 12:30 pm on 10 January 2017, Ms Carmody replied to Mr Gladman's email of 12:17 pm:⁶⁰⁰

Thanks – I'll have a look – 2 things though before we instruct AGS though:

We'll need to make sure the relevant area in the dept wants legal advice (Scott Britton's area)

We need to be clear about whether advice has already been sought from LSD about any of these issues.

515. At 12:37 pm on 10 January 2017, Ms Carmody sent a further email to Mr Gladman:⁶⁰¹

Leo just returned my call so I have had a preliminary discussion — he would be able to do the work (ie has capacity and experience) we now need to determine what work needs to be done.

516. At 1:29 pm on 10 January 2017, Mr Daly sent a second version of the draft AGS Instructions to Mr Barnett, and, at 1:33 pm, Mr Daly forwarded the second version of the draft AGS Instructions to Mr Gladman stating:

John [Barnett] has reviewed the instructions.

517. The second version was significantly pared back in terms of the observations made, but the questions for AGS remained the same.⁶⁰²

600 MC6, CTH.3881.0001.0008_R, Email, 'Exhibit 4-5847 - CTH.3881.0001.0008_R - RE- urgent advice - calculating income for income support payments', 10 January 2017.

601 MG6, CTH.3881.0001.0009_R, Email, 'Exhibit 4-5848 - CTH.3881.0001.0009_R - RE- urgent advice - calculating income for income support payments', 10 January 2017.

602 MG5, CTH.3038.0002.6646_R, Email, 'Exhibit 3-4232; Exhibit 4-8084 - CTH.3038.0002.6646_R - FW- AGS Instruction', 10 January 2017; MG5, CTH.3038.0002.6647, Draft Instructions, 'Exhibit 3-4233 - CTH.3038.0002.6647 - AGS Instruction v2', 10 January 2017.

518. At 3:57 pm on 10 January 2017, Mr Gladman emailed Ms Carmody attaching a document titled 'calculating of income for income support payments.docx', which was in substance the Barnett draft as amended by Mr Gladman (the draft Gladman advice). In his email, Mr Gladman stated:⁶⁰³

Attached is the draft advice for your consideration.

As discussed, it is fairly high level. Perhaps more in the nature of preliminary advice. It is difficult to generalise about a range of payments, given the complexity of the social security legislation and the time available.

I've left in the suggestion about seeking external advice.

Happy to discuss.

519. Under the heading 'Summary', the draft Gladman advice stated:⁶⁰⁴

We think that there are some reasonable arguments that could be made to support the process involving the use of information received from the ATO about annual income amounts to calculate a customer's entitlement to income support and to not use the information gathering powers. However, the Social Security Act 1991 (the SSA) is complex. The SSA includes a number of provisions (or rate calculators) that set out how a person's ordinary income should be factored into the method of calculating their rate of payment. For some types of payments, the legislation requires the ordinary income to be worked out on a yearly basis. For other types of payments, ordinary income is required to be calculated on a fortnightly basis. It is possible therefore that the arguments for using annual income figures is stronger with some types of payments.

Given the complexity of the legislation, and the significance of this issue for the department, it may be prudent to obtain external legal advice on this matter.

520. At 5 pm on 10 January 2017, Ms Carmody responded to Mr Gladman's email.⁶⁰⁵

603 MG7, CTH.3113.0004.7075_R, Email, 'Exhibit 4-5844 - CTH.3113.0004.7075_R - draft advice - calculating income for income support payments', 10 January 2017; MG7, CTH.3113.0004.7076, Draft Advice, 'Exhibit 4-5845 - CTH.3113.0004.7076 - calculating of income for income support payments', 10 January 2017.

604 MG7, CTH.3113.0004.7076, Draft Advice, 'Exhibit 4-5845 - CTH.3113.0004.7076 - calculating of income for income support payments', 10 January 2017, 1.

605 MG8, MGL.0001.0001.0033, Email, 'Exhibit 4-5865 - MGL.0001.0001.0033_R - RE- draft advice - calculating income for income support payments', 10 January 2017, 1.

Thanks – I'll take a look. Is someone still working on a document setting out the types or [sic] payments/relevant legislative provisions?

521. At 5:06 pm on 10 January 2017, Mr Gladman responded:⁶⁰⁶

John [Barnett] and Matt[hew Daly] have put together a document with some background and reference to the key legislative provisions. It's something we could use to brief AGS. I don't think it's something we'd include in the advice to Sue [Kruse].

522. At 5:09 pm and 5:11 pm Ms Carmody sent 2 follow-up replies stating:⁶⁰⁷

Could I have it though?

523. and:

Also, have we referred to the Guide anywhere in this note?

524. At 5:13 pm, Mr Gladman replied:⁶⁰⁸

We haven't mentioned the guide John [Barnett] said that he couldn't find anything in the guide that is relevant.

525. At 5:20 pm, Mr Daly emailed Ms Carmody (copying in Mr Gladman) attaching a link to the 'Guide to Social Security Law' and, at 5:23 pm, Mr Gladman sent a follow-up email to Ms Carmody (copying in Mr Daly):⁶⁰⁹

The relevant parts of the guide would seem to [be]:

- a. Period of Income Calculations ...
- b. Determining the Rate of Income for PP ...

606 MG8, MGL.0001.0001.0033, Email, 'Exhibit 4-5865 - MGL.0001.0001.0033_R - RE- draft advice - calculating income for income support payments', 10 January 2017, 1.

607 MG8, MGL.0001.0001.0040, Email, 'Exhibit 4-5868 - MGL.0001.0001.0040_R - RE- draft advice - calculating income for income support payments', 10 January 2017, 1.

608 MG8, MGL.0001.0001.0040, Email, 'Exhibit 4-5868 - MGL.0001.0001.0040_R - RE- draft advice - calculating income for income support payments', 10 January 2017, 1.

609 MG8, CTH.3882.0001.0005_R, Email, 'Exhibit 4-5854 - CTH.3882.0001.0005_R - FW- Guide to Social Security Law', 10 January 2017.

526. At 5:27 pm on 10 January 2017, Mr Gladman sent a further email to Ms Carmody titled 'AGS instructions – background', stating: 'Here is the draft background for the AGS advice', and attaching another version of the draft AGS Instructions titled 'AGS Instruction (002).docx'. It deleted the questions that had appeared in the earlier draft of the instructions.⁶¹⁰
527. At 7:46 pm on 10 January 2017 Mr Gladman forwarded an 'updated' version of the draft Gladman advice to Ms Carmody.⁶¹¹
528. Consistently with that state of affairs, in her statement before the Royal Commission (which Ms Carmody confirmed in evidence in this investigation),⁶¹² Ms Carmody stated:⁶¹³

To the best of my recollection, my view on 10 January 2017 was that external advice from AGS might be required but that, at that point in time, we had not yet settled the scope of the request, or determined what, if any, internal or external legal advice already existed, and we did not yet have instructions to engage AGS to provide legal advice.

529. Meanwhile, during the morning of 10 January 2017, Ms Campbell had returned from leave and Mr Jackson provided her with a brief oral handover.⁶¹⁴ In his evidence in this investigation he recalled remarking to her that, contrary to her prediction when handing over to him that there would be insufficient demands over the Christmas/New Year period to preclude him watching the cricket, in fact, due to the media storm, the demands on him during her absence had been significant.⁶¹⁵

610 MG9, CTH.3881.0001.0025_R, Email, 'Exhibit 4-5850 - CTH.3881.0001.0025_R - AGS Instructions – background', 10 January 2017; MG9, CTH.3881.0001.0026, Draft Instructions, 'Exhibit 4-5851 - CTH.3881.0001.0026 - AGS Instruction (002)', 10 January 2017.

611 MG9, MGL.0001.0001.0043_R, Email, 'Exhibit 4-5870 - MGL.0001.0001.0043_R - revised draft of paper', 10 January 2017; MG9, MGL.0001.0001.0044, Draft Advice, 'Exhibit 4-5871 - MGL.0001.0001.0044 - calculating of income for income support payments', 10 January 2017.

612 NACC Transcript, 28 August 2025, Lisa Maree Carmody, T43.

613 Statement of Lisa Carmody, 23 February 2023, LCA.9999.0001.0002_R, 10 [33].

614 Statement of Barry Jackson, 3 March 2023, BAJ.9999.0001.0001, 7 [40].

615 NACC Transcript, 25 August 2025, Barry Raymond Jackson, T46.

530. In his statement before the Royal Commission, Mr Jackson stated that he also provided Ms Campbell with some details in relation to the media storm but that they were limited because he believed that Ms Campbell was in contact with Ms Golightly and other DHS officers during the previous week (either by email as a recipient or by way of being copied, or by telephone) and would have been ‘well across the issues’. He recalled, however, that he told Ms Campbell of the various meetings he had had with Minister Tudge, Minister Porter, and Mr Pratt, and told her that he had raised the issue of legislative authority with respect to averaging with Ms Golightly, who had advised him that that she was ‘progressing’ his request.⁶¹⁶
531. In her evidence in this investigation, Ms Campbell did not recall a substantive handover but did recall speaking to Mr Jackson briefly, and that she had been communicating with Ms Golightly during the previous week in relation to the media storm. Ms Campbell denied, however, that Mr Jackson told her that he had raised the issue of legislative authority with Ms Golightly and she swore that she had no knowledge of the issue.⁶¹⁷
532. On 11 January 2017, Ms Campbell received formal notice from the then Commonwealth Ombudsman, Mr Colin Neave, that he had determined to conduct an own motion investigation into the DHS’s online compliance platform. The notification was dated 10 January 2017 and marked as ‘Received – Secretary’ on 11 January 2017.⁶¹⁸

Fiveash advice

533. Unrelated to the media storm and the question of legislative authority that had been posed by Mr Jackson, at 12:03 pm on 11 January 2017, Mr Fiveash emailed Ms Tracy Tozer of the Business Transformation Division of DHS (copying in Ms Natalie Butler and Ms Janet Courtis) the following legal advice (the Fiveash advice):⁶¹⁹

⁶¹⁶ Statement of Barry Jackson, 3 March 2023, BAJ.9999.0001.0001, 7-8 [40]-[42].

⁶¹⁷ NACC Transcript, 18 September 2025, Kathryn Jane Campbell, T89, 98-99.

⁶¹⁸ CTH.3001.0033.1195_R, Letter, ‘Exhibit 4-6979 - CTH.3001.0033.1195_R - EC17-000064 Letter’, 10-11 January 2017.

⁶¹⁹ GF2, CTH.3007.0004.3602_R, Email, ‘Exhibit 4-5107 - CTH.3007.0004.3602_R - FW- debts’, 11 January 2017.

Social security debts arise where a person is paid more than their entitlement. While this sounds fairly simple in theory, it is not necessarily the case. When a person is paid an amount under the social security law, they are entitled to that money. This is regardless of the fact that there may be incorrect, or a lack of, information that leads to the person being paid at a particular rate that is higher than the rate they would have been paid if all the facts were known. It is only where the social security law allows for a second rate determination to be made in relation to the person, and that second rate determination can be backdated to cover a period where the person received a higher rate of payment, that a debt can arise. There are quite strict rules in relation to when rate determination decisions can be backdated. Consequently, even when the Department believes that a person has been 'overpaid' (often for good reason), if there is no legal power that allows for a lower rate determination to be made, that can be backdated to cover that same period, then no debt can arise.

When working out what rate a person should be paid a social security payment, whether it's the first time the calculation is done (the original rate calculation) or the second (for the purposes of working out whether the person owes a debt) the rules relating to the rate of payment are the same. Consequently, if the income test applied to a person in a certain way the first time that the person's rate of payment was calculated, then it also applies in the same way when their rate is calculated a second time. This means that where a person is on 'fortnightly reporting' for the purposes of determining their income and consequently their rate of payment, where information is later received (eg from the tax office) this income must also be divided up into fortnightly amounts. Where there is no 'income averaging' mechanism in the first instance of rate calculation, there can also be no 'income averaging' in the second instance. That is, the Department cannot apply an income amount received over a larger period (eg 12 months), in any way against a customer other than in the manner in which the person received it in those individual fortnights; ie the annual amount cannot simply be divided by 26 and applied as the person's income over 26 payment fortnights. Rather, the annual amount needs to be apportioned between the relevant fortnights in the period at the rate at which it was actually earned, derived or received.

534. In the past, Mr Fiveash had been part of Mr Stipnieks's Program Advice Branch in the DHS Legal Services Division. As at January 2017 he had been seconded to the Business Transformation branch led by Mr Menzies-McVey and was acting as General Counsel while Mr Menzies-McVey acted as Chief Counsel. The Fiveash advice was thus written without consultation with the Program Advice Branch, to assist the Business Transformation team with their work. It was not shared with the Program Advice Branch or brought to DHS Legal Services Divisions attention until later, as is explained in what follows.

535. At 3:06 pm on 11 January 2017, Mr Barnett (who, despite Mr Menzies-McVey's email of 7 January 2017, had not spoken to Mr Fiveash and did not know of the Fiveash advice⁶²⁰) sent an email to Mr Gladman titled 'calculating of income for income support payments', to which he attached another version of the draft Gladman advice. In the email, Mr Barnett wrote:⁶²¹

I haven't included business income in this. If the source of the income is unknown or listed as a combination of remuneration and income covered by section 1073 (business or one off payments), then averaging based on annualisation may be as legitimate an approach as opposed to doing nothing. The customer has been given an opportunity and not complied and has not on the face of the information fully declared income.

536. The advice was more detailed than the previous version of the draft Gladman advice but retained the suggestion that:⁶²²

Given the complexity of the legislation, and the significance of this issue for the department, it may be prudent to obtain external legal advice on this matter.

537. At 3:30 pm on 11 January 2017, Mr Gladman forwarded the new version of the draft Gladman advice to Ms Carmody (copying in the 'Chief Counsels Office' email inbox) noting that: 'An updated version of the draft paper is attached, as discussed.'⁶²³

620 NACC Transcript, 27 August 2025, John Douglas Barnett, T42-43.

621 JB2, JBL.0001.0001.0455_R, Email, 'Exhibit 4-8089 - JBL.0001.0001.0455_R - RE- calculating of income for income support payments', 11 January 2017.

622 JB2, JBL.0001.0001.0456, Draft Advice, 'Exhibit 4-8090 - JBL.0001.0001.0456 - calculating of income for income support payments', 11 January 2017, 1 [4].

623 MG10, CTH.3702.0001.0348_R, Email, 'Exhibit 4-5891 - CTH.3702.0001.0348_R - calculating of income for income support payments', 11 January 2017; MG10, CTH.3702.0001.0349, Draft Advice, 'Exhibit 4-5892 - CTH.3702.0001.0349 - calculating of income for income support payments', 11 January 2017.

538. Then, at 5:39 pm on 11 January 2017, Mr Gladman emailed Ms Carmody a still further updated copy of the draft Gladman advice which included as part of the background a description of the DHS debt raising process before the inception of OCI and referred to DHS's obligations under section 8 of the *Social Security (Administration) Act 1999* (Cth) and the *Public Governance, Performance and Accountability Act 2013* (Cth). The recommendation to obtain external legal advice remained unaltered.⁶²⁴
539. In her statement before the Royal Commission (which Ms Carmody confirmed in her evidence in this investigation) Ms Carmody explained that the succession of drafts was the result of Mr Gladman and she discussing each draft as it was produced and then Mr Gladman making further amendments as required.⁶²⁵
540. At 8:02 pm on 12 January 2017, Mr Markovic emailed Ms Harfield, Mr Withnell, Mr Andrew Larkin, Mr Britton, Ms Alison McCann, and Ms Kruse (copying to himself) 'Re: Questions arising from Minister meeting on OCI'. It listed as one of the '[a]ction items from discussion with Malisa [Golightly]':⁶²⁶

Obtain legal advice on proposed new debt processes for all department debts for non-current customers [Sue - due 12 pm 13/1 for Minister Tudge meeting].

'Draft note of advice re averaging/apportioning'

541. At 6:09 pm on 13 January 2017, Ms Carmody emailed Mr Damien Brazel and Mr Gladman requesting their 'thoughts please' on an included 'draft note of advice re averaging/apportioning'. The draft note of advice was based on the draft Gladman advice but expressed in more certain terms. It did not retain the recommendation to obtain external legal advice.⁶²⁷ Ms Carmody's email was in part as follows:

624 MG10, MGL.0001.0001.0052_R, Email, 'Exhibit 4-5885 - MGL.0001.0001.0052_R - updated draft - calculating of income for income support payments', 11 January 2017; MG10, MGL.0001.0001.0053, Draft Advice, 'Exhibit 4-5886 - MGL.0001.0001.0053 - calculating of income for income support payments', 17 January 2017, 1-2.

625 Statement of Lisa Carmody, 23 February 2023, LCA.9999.0001.0002_R, 11 [41].

626 SK9, CTH.3023.0006.7525_R2, Email, 'RE: Questions arising from Minister meeting on OCI', 12 January 2017, 1.

627 MG11, MGL.0001.0001.0058_R, Email, 'thoughts please - draft note of advice re averaging-apportioning', 13 January 2017, 1.

The Social Security law does not expressly provide for this approach however we consider that it does not preclude it either. A person is only entitled to receive income support payments to the extent provided in the social security law. While the social security law does require an assessment of the level of entitlement using fortnightly amounts in some circumstances, the means by which the department must come to the fortnightly amount is not set out in the legislation.

We think that there are some reasonable arguments that could be made to support this approach.

542. Surprisingly, there is no evidence of Mr Brazel or Mr Gladman replying to Ms Carmody's email. Ms Carmody said in evidence that it was possible they attended on her at her office to discuss the draft, although she could not recall the meeting;⁶²⁸ and Mr Gladman said that he had no recollection of discussing the 'draft note of advice re averaging/apportioning' with Ms Carmody.⁶²⁹
543. Regardless however of whether there was a discussion, at some time after 6:09 pm on 13 January 2017, Ms Carmody amended the draft by adding the email address of Ms Kruse (then Acting Deputy Secretary, Enabling Services); adding the words: 'Sensitive, 'Legal Draft' 'Sue'; and adding a brief introductory paragraph and final paragraph as follows:

I realise that to some extent circumstances have moved beyond this – we have prepared a preliminary/draft note of advice in relation to apportioning annual amounts of income across 26 fortnightly payments (commonly referred to as 'averaging'). This can be reconsidered and expanded upon as needed.

...

...

As set out above, we would be happy to consider further as needed or explore any particular complexities more closely, however these are our thoughts for your consideration.

628 RRC Transcript, 27 February 2023, Lisa Carmody, T3906.

629 NACC Transcript, 26 August 2025, Mark Stanley Gladman, T50.

544. Ms Carmody explained in her evidence in this investigation that her reference to circumstances having moved on was most probably a recognition of the fact that, since announcement of the Ombudsman's own motion investigation, the focus had moved to formulating and providing answers to questions posed by the Ombudsman's officers and providing them with documents they required.

545. But Ms Carmody did not email the draft to Ms Kruse. She saved it in her email drafts folder, and later added a note to the draft in the drafts folder:

Draft - Only

Hard copy delivered to Sue Kruse 13/1/2017.⁶³⁰

546. Ms Carmody could not recall when she added the note but said that she believed she delivered the draft to Ms Kruse's office, in hard copy, and made the note as a record of having done so. Nor could Ms Carmody remember whether she handed the draft to Ms Kruse or simply left it at Ms Kruse's office. And Ms Carmody said that she had no recollection of discussing the draft with Ms Kruse.⁶³¹

547. Mr Gladman said he recalled having a brief, informal conversation with Ms Carmody, in Mr Gladman's office, about a meeting which he believed Ms Carmody was about to attend with Ms Kruse. He also recalled Ms Carmody having a hard copy document with her that he assumed was to assist Ms Carmody in her meeting with Ms Kruse. But he did not know whether Ms Carmody intended to show the document to Ms Kruse or use it as speaking notes. He recalled, too, that Ms Carmody handed him a copy of the document, and said in substance that it was for his information. But he said that he did not read the document while Ms Carmody was in his office – as a 'sort of politeness' – and he could not now recall what was in it. Nor could he find any record of having received it.⁶³²

548. By contrast, Ms Kruse was clear in her evidence that she did not ask for or expect to receive advice in hard copy; that she did not receive the draft note of advice, in hard copy or at all; and that she did not have any discussion with Ms Carmody about it.⁶³³

630 MG11, CTH.3754.0001.0001_R, Email, 'Lisa Carmody Scanned Email', 13 January 2017, 1.

631 RRC Transcript, 27 February 2023, Lisa Carmody, T3893; NACC Transcript, 28 August 2025, Lisa Carmody, T46.

632 NACC Transcript, 27 August 2025, Mark Stanley Gladman, T49-50; Statement of Mark Gladman, 30 January 2023, MGL.9999.0001.0002_2, 7-8 [42]; NACC Transcript, 28 August 2025, Lisa Carmody, T19.

633 NACC Transcript, 27 August 2025, Susan Margaret Kruse, T51-52.

549. The matter is further complicated by the existence of another undated draft document, entitled ‘Draft note of advice re averaging/apportioning’, which is similar to the draft saved to Ms Carmody’s drafts mailbox but in the form of the first 2 pages of what is otherwise a bundle of emails.⁶³⁴
550. Ms Carmody said that, although she could not be certain, she thought it likely that that document was printed for inclusion in hard copy in a ‘handover pack’ for Ms Musolino upon Ms Musolino’s return to the role of Chief Counsel.⁶³⁵
551. In the result, it appears that the evidence to this point is insufficient to conclude that Ms Kruse was supplied with the ‘Draft note of advice re averaging/apportioning’, or that she had any conversation with Ms Carmody about that document, or that Mr Gladman’s and Mr Barnett’s work on the draft Gladman advice, or Ms Carmody’s contribution to it, led to anything more than the delivery to Ms Musolino as part of a ‘handover pack’ of the ‘Draft note of advice re averaging/apportioning’ which excluded the recommendation to obtain external legal advice.
552. On Monday, 16 January 2017, Ms Musolino returned from leave and, at approximately 9:30 am, had a handover meeting with Ms Carmody.⁶³⁶ In her evidence, Ms Carmody stated that, to the best of her recollection, she handed Ms Musolino a clear plastic wallet containing hard copies of ‘all relevant documents ... including emails’ from the previous week; and that, while she could not specifically recall whether the wallet included the draft Gladman advice, she believed that it would have done so: because she broadly recalled discussing with Ms Musolino that ‘we had been asked a range of questions’; had prepared ‘a range of advice and draft advice in response’; and that ‘the extent to which we had existing relevant legal advice was not yet resolved’.⁶³⁷

634 CH21, CTH.0028.0002.0016_R, Email, ‘Draft internal advice Averaging ok’, 1-2, undated.

635 NACC Transcript, 28 August 2025, Lisa Maree Carmody, T64-65.

636 Statement of Lisa Carmody, 23 February 2023, LCA.9999.0001.0002_R, 12 [50].

637 Statement of Lisa Carmody, 23 February 2023, LCA.9999.0001.0002_R, 12 [50]; NACC Transcript 28 August 2025, Lisa Maree Carmody, T64.

553. In substance, Ms Musolino's evidence was not a lot different. She remembered returning from annual leave, having a handover meeting with Ms Carmody, and being made aware of 'a draft legal advice that [Ms Carmody] had prepared regarding averaging/apportioning', and she recalled that either on that day or subsequently, she received and read a copy of the document which Ms Carmody thought likely was printed from her drafts folder for inclusion in the handover pack.⁶³⁸
554. On 16 January 2017, Mr Hutson returned from leave and resumed his role as Deputy Secretary, DHS. He had been in Malaysia while on leave but had followed the media storm online. He recalled he had sent a note to Ms Kruse asking her if she were OK, and that she had replied to the effect that she was, but that 90% of his handover from Ms Kruse was comprised of counselling her in relation to the previous week. He said that she seemed as if she were 'shell shocked' and she said that she was glad that he was back.⁶³⁹
555. Mr Hutson was aware that the Ombudsman had on 10 January 2017 announced his intention to conduct an own motion investigation into the OCI. But he said that he was not informed of Ms Kruse's request for legal advice as to the legality of averaging or of the draft Gladman advice. He was told of the problems. Between his return in January and April 2017, his focus was on the implementation and use of OCI.⁶⁴⁰
556. In mid to late January 2017 (likely before 19 January 2017), Mr Stipnieks returned from leave to resume his role as General Counsel, Program Advice and Privacy Branch, and, on or about that date, he attended a handover meeting with Mr Gladman.
557. Mr Gladman gave evidence (which was not refuted by Mr Stipnieks) that he briefed Mr Stipnieks on what had occurred in relation to the OCI while Mr Stipnieks was away, as well as on the other work that the Branch had been doing during that time, and provided the draft Gladman advice to Mr Stipnieks as part of the handover.

638 RRC Transcript, 30 January 2023, Annette Musolino, T2673; Statement of Annette Musolino, 31 October 2022, AMU.9999.0001.0003_R, 27 [46].

639 NACC Transcript, 29 August 2025, Jonathan Hutson, T22.

640 NACC Transcript, 29 August 2025, Jonathan Hutson, T23, 52-53.

558. Mr Gladman said that, although the draft Gladman advice was only a draft advice, he provided it to Mr Stipnieks on the basis that it might be of some assistance in any work in advising or obtaining external legal advice on income averaging that might need to be done. At that stage he believed that the Branch was waiting on a decision on whether the Department would seek AGS advice on income averaging.⁶⁴¹
559. At 7:37 am on Friday, 20 January 2017, Ms Campbell forwarded to Mr Jason Stott and Mr Bevan Hannan (copying in Ms Golightly and Mr Hutson), a media briefing email sent at 7 am by a 'MEDIA' email address concerning an interview on Sky News Live by Mr David Spears with Ms Cassandra Goldie, CEO of Australian Council of Social Services. Ms Campbell asked:⁶⁴²

Can someone get me the transcript of the Spears/Goldie [sic] interview. I thought she said at the end that she was ok with automation as long as it was always beneficial to the recipient. If so, it will be a good line for us to use in the future — **we have to make sure it is in accordance with the law, not just beneficial to the recipient.** [Emphasis added.]

Idea of obtaining AGS end-to-end advice

560. At 9:57 am on Saturday, 21 January 2017, Ms Golightly forwarded to Ms Musolino and Mr Hutson an email from the DHS media unit detailing various media reporting about DHS. It included an article from *The Guardian* newspaper referring to consideration said to be being given to the institution of a class action concerning OCI. Ms Golightly wrote:⁶⁴³

... re the article in The Guardian below and the mention of Slater and Gordon, this is likely to generate a new set of questions from the Minister and possibly Prime Minister and we may need to get some advice very quickly.

641 Statement of Mark Gladman, 30 January 2023, MGL.9999.0001.0002_2, 8 [46], 13 [69]–[71]; NACC Transcript, 26 August 2025, Mark Stanley Gladman, T58.

642 JH3, CTH.3001.0033.7774_R, Email, 'RE- PRINTED-RE- Top Stories – Friday 20 January 2017', 20 January 2017, 1.

643 JH4, CTH.3007.0004.3585_R, Email, 'Possible Legal issues – for discussion with Malisa', 23 January 2017, 1.

Given we haven't changed the way we do the data matching or the way we assess or calculate the debts – in we are doing it the same way we have done it for many years – does this form the kernel of any immediate legal advice we may need to give? (This has been our position to date when other mentions of legal issues have come up in the press). Is there something you need from my people to give you/show you to help you with this?

The thing that is different is that people have the opportunity to go online to correct their details themselves if they choose. If they don't engage then a debt is generated based on what we know – this is also the same as in the past except that in the past current recipients were suspended altogether – we are NOT doing this in the new system – just raising the debt.

Not sure we need formal external legal advice just yet – unless you have a different view? Just want to be ready with something but not scare the horses. We don't want to give the impression we are concerned when we are not.

561. At 10:04 am on Saturday 21 January 2017, Ms Golightly sent a follow-up email stating:⁶⁴⁴

Sorry – should have also said that I am happy to talk this through as there are a number of ways of handling but would appreciate your advice re strategy.

562. At 6:11 pm on Saturday, 21 January 2017, Mr Hutson replied:⁶⁴⁵

Not sure what action they could take.

I'll get Annette to give us some ideas. We can consider external advice if we need it.

Do you think there any parts of this where we have been relying on internal advice that may need the reassurance of an AGS view?

563. At 7:42 pm on Saturday, 21 January 2017, Ms Golightly replied:⁶⁴⁶

Thanks Jonathan – not sure about your last question – was that one for Annette?

644 JH4, CTH.3007.0004.3585_R, 'Possible Legal issues – for discussion with Malisa', 23 January 2017, 1.

645 JH4, CTH.3001.0034.0729_R, 'FW: Weekend Top Stories – Saturday 21 January 2017', 21 January 2017, 1.

646 JH4, CTH.3001.0034.0729_R, 'FW: Weekend Top Stories – Saturday 21 January 2017', 21 January 2017, 1.

564. At 9:04 pm on Saturday, 21 January 2017, Ms Musolino responded:⁶⁴⁷

There is no obvious legal cause of action other than individuals seeking review of their individual debt decision.

I don't think there is a legal advice (either internal or external) that considers the end to end process – that is something we could consider getting.

565. At 9:07 pm on 21 January 2017, Ms Golightly responded:⁶⁴⁸

Thanks Annette

Could the three of us discuss on Monday the pros and cons of getting any further advice.

566. Ms Musolino said in evidence that she took Ms Golightly's reference to 'not scare the horses', and Ms Golightly's admonishment that 'We don't want to give an impression we're concerned when we are not', as indications that Ms Golightly would not wish to get external advice because Ms Golightly had previously represented to the Minister that DHS had advice or that the position was clear:⁶⁴⁹

I think she was concerned about, you know, about us getting advice when she I suspect she had represented to the Minister that we had advice or that it was all good.

...

I think that's what it must have meant, which is, um, if the next thing she said to the Minister was, 'We've commissioned an end to end legal review' it might contradict what she had previously told the Minister.

...

It could have. I mean yes, yes. So it may have just – but, I mean I'm now sort of trying to imagine what she meant by those words, but that's all I can think that she meant, she was concerned that if it came to be known that we had commissioned an end to end review that might upset, you know, a communication she'd previously given.

647 JH4, CTH.3001.0034.0729_R, 'FW: Weekend Top Stories – Saturday 21 January 2017', 21 January 2017, 1.

648 JH4, CTH.3001.0034.0729_R, Email, 'FW: Weekend Top Stories – Saturday 21 January 2017', 21 January 2017, 1.

649 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T50-52.

...

... I think she was concerned to control the message that was going to the Minister and to and the public message I suppose as well.

567. Ms Musolino also said, however, that it was her perception that Mr Hutson would share her view that it would be prudent to obtain the end-to-end AGS advice, and so, at 9:33 am on Monday 23 January 2017, Ms Musolino sent a further response to Mr Hutson (copying in Mr Stipnieks but not Ms Golightly), titled 'Possible Legal issues – for discussion with Malisa':⁶⁵⁰

I don't think there is a legal advice (either internal or external) that considers the end to end process. If the department wants assurance on the legal issues, I recommend we get the end to end review. I think for the purposes of the Senate Inquiry Submission and Senate Estimates it will be useful to be able to say that as part of the review work undertaken, a full legal analysis was undertaken. Possible Legal issues

1. What is the legal basis of the data matching we do with the ATO for the OCI system?
2. Prior to implementation of the OCI, what if any legal sign off was obtained?
3. Was a Privacy Impact Assessment (PIA) obtained?
4. Is it lawful to 'average' absent any other income information?
5. Are there any legal issues with the department having used former customers last known addresses without first verifying their currency?
6. Do the letters and notices comply with legal requirements?
7. If a person was sent a letter demanding a debt which is incorrect, what if any legal cause of action would they have against the Cth?

568. Ms Musolino said in evidence, in substance, that the email was designed to ensure that she and Mr Hutson were ‘on the same page’ at the meeting to consider the ‘pros and cons of getting further advice’.⁶⁵¹
569. There is no written record, as such, of a meeting between Ms Golightly, Mr Hutson, and Ms Musolino to discuss the ‘pros and cons’ of obtaining external legal advice, although a meeting invitation circulated by Ms Musolino on 23 January 2017 for a meeting at 4:30 pm on 24 January 2017 suggests that there might have been. In her evidence in this investigation Ms Musolino also expressed a degree of confidence that, whether or not there was such a meeting, she would have discussed the pros and cons of getting the external end-to-end advice with Ms Golightly and Mr Hutson.⁶⁵²

She [Ms Golightly] was the Deputy Secretary with responsibility for the Integrity area and for the program, and – yeah, so she would have been the client, for want of a better word, she would have been the go to person for this.

...

I don't have a specific recollection of a particular conversation about this, but ... Jonathan sat around the corner from me and I expect I would have been talking to Malisa quite regularly during this period. So I don't have a specific recollection but I expect I would have spoken to them about it.

570. Regardless, however, it appears that Ms Golightly decided that DHS would not follow Ms Musolino’s recommendation that DHS obtain external end-to-end advice, and that Mr Hutson and Ms Musolino were not disposed to push the issue with her.
571. Mr Hutson said that he had no recollection of the matter,⁶⁵³ which is surprising. Ms Musolino was more direct. She said that she did not push the point because, at that stage she did not know if they had a problem, and even if she had thought so, she would probably not have been brave enough to push the point with Ms Golightly. She would have gone through Mr Hutson to Ms Campbell.⁶⁵⁴

651 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T55.

652 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T45-46.

653 NACC Transcript, 29 August 2025, Jonathan Hutson, T43-44.

654 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T52.

At this stage I don't know if we have a problem or not, and I don't know I mean that's a list of issues that I could and the fact that Maris is on the email suggests I spoke to him and we kind of came up with what do we think the top issues are. But I don't know at this point if we had an issue or not. If I'd come to the view that we have an issue then I probably would have pushed it. I may not have pushed it with her [Ms Golightly], I may have pushed it through Jonathan up to the Secretary. I don't think I would have been brave enough to confront Malisa directly.

Collection of advices in anticipation of Ombudsman's investigation

572. Before sending out her emails of 21 January 2017, Ms Musolino believed she had spoken to Mr Stipnieks to ascertain whether DHS Legal Services Division had any advices on OCI and he had replied that, although there were, there were only 'bits and pieces'. Hence the idea of end-to-end review with which Mr Stipnieks had assisted in composing the list of questions:⁶⁵⁵

MS MUSOLINO: ... I think I had spoken to Maris, and it's what's reflected in that last email, I think I'd asked the question: is there an advice on this program? An advice. Like is there something? And he said there'll be bits and pieces on debt recovery, but he didn't believe that there'd been advice on the program.

MR HEVEY: Hence the reference to end to end?

MS MUSOLINO: Yes. So that's the thing I was trying I think I knew by the time I sent that on 23 January, the first email, that there was no end to end, that's why I'm saying that's what we need to do. So I think I already knew there's not going to be the killer advice, or one advice that deals with it all.

MR HEVEY: So you're looking for a little piece that your advice may have been requested and given?

655 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T45-46.

MS MUSOLINO: Yes, and that was very much how advice it was quite transactional. I mean it's not an ideal way for lawyers to work, but often the way Legal was engaged was on a transactional, here's a question, and here's another question, as opposed to and we tried to change that over the years of having the lawyers come into the room at the beginning of the design of something so that they could get ahead of it, but that wasn't where we were at that point.

573. In order to check whether there were any advices in other branches of the Legal Services Division, and also because, by this stage, Ms Musolino anticipated that the Ombudsman would request any advices that DHS had on the subject, at 9.51am on 23 January 2017, Ms Musolino emailed the General Counsels of the Legal Services Division - Mr Brazel, Ms Carmody, Mr Tim Ffrench, Mr Menzies-McVey, Mr Stipnieks, Mr Robinson, and Mr Fiveash:⁶⁵⁶

Can you please check in your branches, and identify and provide to me any legal advices (internal or external) provided by Legal to the Business regarding debt recovery of Centrelink overpayments and specifically about the on-line Compliance system. This should include any privacy advice and PLAs prepared and any advices on application for review of debts in particular cases.

574. In her evidence before the Royal Commission Ms Musolino stated:⁶⁵⁷

I sent out the request for legal advices to all the General Counsels, asking them to investigate and identify any material relevant, as I set out in that email ... I got a lot of responses back. I think on the first day – on the day that I sent the email, I got 13 emails back, which had substantial attachments in them. My recollection is that I put a process in place with my office to print any responses and provide them as a collated set to Mr Stipnieks and his branch to analyse and consider ...

575. Among the 13 responses that Ms Musolino received on the first day, at 9.56 am, Mr Fiveash replied to Ms Musolino (copying in 'Chief Counsels Office'), attaching the Fiveash advice, that:⁶⁵⁸

I wrote an information piece for the Strategic Analysis section a couple of weeks ago, attached.

656 GF3, CTH.3007.0004.3599_R, Email, 'URGENT Online Compliance Intervention – Debt system', 23 January 2017, 1.

657 RRC Transcript, 1 March 2023, Annette Musolino, T4146.

658 GF3, CTH.3007.0004.3601_R, Email, 'RE- URGENT Online Compliance Intervention – Debt system', 23 January 2017, 1.

I can't imagine that anyone else in this Branch would have had any involvement with this issue.

576. At 9:58 am, Ms Carmody replied to Ms Musolino, asking:⁶⁵⁹

does this include the work I did while acting CC from 9 to 13 Jan or are you looking for evidence of any earlier advice?

577. Ms Musolino responded:⁶⁶⁰

For that week I think I have everything that was printed. I am more interested in anything done previously.

578. Nevertheless, on 11:23 pm on 23 January 2017, Ms Carmody forwarded to Ms Musolino a note of advice (regarding the potential for a Robodebt class action or actions) which Ms Carmody said she had prepared for Mr Jackson while Ms Carmody was acting Chief Counsel. The note stated (in part):⁶⁶¹

... there is some risk that a class action might be commenced however it is also possible that while the concept is raised in the media, further consideration will lead to a view that it is not an appropriate avenue. I note that if a class action is proposed to be commenced, before commencing proceedings the plaintiff would need to try and resolve or settle the matter and in doing so the relevant law firm would contact the department. In any event we do need to be in a position to respond and we have relationships with appropriate experts in class action proceedings who are able to assist if this becomes necessary.

Recommendation: At this stage I recommend that we continue to monitor the media closely for any indication that a plaintiff firm is investigating the matter or intending to represent a class of individuals in respect of a class action. This is not apparent from the article and it would indicate an escalation in the process. At such a point we may wish to move ahead and instruct external lawyers to represent the department which we will be able to do rapidly.

659 LC4, CTH.3007.0004.3604_R, Email, 'RE- URGENT Online Compliance – Debt system', 23 January 2017, 1.

660 LC4, CTH.3007.0004.3604_R, Email, 'RE- URGENT Online Compliance – Debt system', 23 January 2017, 1.

661 LC3, CTH.3007.0004.3872_R, Email, 'Note of advice re class actions', 23 January 2017, 2.

579. In her evidence before the Royal Commission, Ms Musolino stated that she did not look at the responses as they came in but instead put a process in place with her office to print the responses and provide them as a collated set to Mr Stipnieks for him to consider:⁶⁶²

My recollection is that I put a process in place with my office to print any responses and provide them as a collated set to Mr Stipnieks and his branch to analyse and consider. So I wasn't looking at these emails as they came in. I wasn't reviewing the advices as they came in. I had put in place – my job was to facilitate obtaining the advices and getting information and getting advice about them. I allocated it to Mr Stipnieks because he was collating advices to provide to the Ombudsman's Office. So that was the process I put in place. I don't recollect seeing this email.

580. By contrast, Mr Stipnieks stated in his evidence before the Royal Commission:⁶⁶³

I have no recollection of Ms Musolino putting in place a process where hard copies of legal advices sent to her in response to her email request of 23 January 2017 were sent to me or my branch for analysis or consideration.

In the historical records made available to me, I was unable to locate any documents which refer to such a process.

581. It is clear enough, however, that Ms Musolino did task Mr Stipnieks with collating advices to provide to the Ombudsman's office:⁶⁶⁴

MR HEVEY: But we can see that there was apparently a meeting on 3 February 2017 between the Ombudsman's representatives and various representatives from DHS?

MR STIPNIEKS: Correct.

MR HEVEY: And one of the tasks that is listed on this meeting is that which is at number 5 in particular?

MR STIPNIEKS: Yep.

MR HEVEY: Any legal advices and that you were to provide those by 8 February, and of course that's what we've done and gone through?

662 RRC Transcript, 1 March 2023, Annette Musolino, T4146.

663 Statement of Maris Stipnieks, 9 March 2023, MAS.9999.0001.0003_R, 2-3 [13]-[14].

664 NACC Transcript, 11 September 2025, Maris Andris Stipnieks, T57-58.

MR STIPNIEKS: Yep.

...

MR HEVEY: But can I ask this: When this task is allocated to you, is there any discussion about it? Do you discuss it with Ms Musolino or anyone else within your peer group to say, 'What's happening here'?

MR STIPNIEKS: Look, I'm sure there were discussions but, um, this occurred approximately – that request occurred approximately a week or 10 days after Ms Musolino's original request for people to provide advice, and I had no expectation that anyone would have relevant advice outside of my branch or the litigation branch. The litigation branch may well have 'cause obviously they were running matters at the time. So I would have, um, I expect I would have had no indication from anyone that there were any other advices other than the ones that I had located seven days previous, and that I would have discussed with Ms Musolino the advices that I would provide to the Ombudsman, which were the – I can't recall whether it was three or four that were provided formally in response to that request. I think it was around about maybe the 10th of February.

582. At 9 am on 24 January 2017, Mr Stipnieks emailed Ms Musolino in response to her email of 9:51 am on 23 January 2017 attaching, among other things, an 'Issues Brief to the Chief Counsel' titled 'PAYG Project – Appeal Process and Tribunal Feedback'.⁶⁶⁵ The Issues Brief states:⁶⁶⁶

... While in one decision the AAT1 has inferred that in the absence of evidence of fortnightly earnings a debt cannot be raised it has said, more sensibly, in another decision that 'The Centrelink methodology could potentially be unfair, as it does not conform to the legislation. That said, in some cases, if payroll information cannot be obtained, the averaging method is acceptable.

665 JB3, CTH.3007.0004.3878_R, Email, 'FW- URGENT Online Compliance Intervention – Debt system', 24 January 2017, 1; JB3, CTH.3007.0004.4112_R, Email, 'FW- URGENT Online Compliance Intervention – Debt system', 24 January 2017, 1.
666 CTH.3007.0004.4187_R, Issue Brief, 'payg brief version 2', 24 January 2017, 3.

Ombudsman investigation

DHS early involvement

583. At 12:18 pm on 22 December 2016 Amie Meers (Social Services Projects and Senior Investigation Officer, Commonwealth Ombudsman) had emailed DHS's 'Ombudsman Liaison' generic email inbox seeking answers to the following questions:⁶⁶⁷

...

What briefings has the minister received in relation to the Online Compliance Platform? Please provide copies.

What consideration did DHS give to the potential impact of the introduction of the Online Compliance Platform on the accuracy of debts? Please provide copies of relevant documents. (This may include briefings, risk assessment documents, correspondence, project management documents and other relevant documents).

...

Did the framework include an assessment of possible risks and ways to manage these risks? If yes, please provide details.

What consultation did DHS undertake with stakeholders before implementing this measure

584. At 12:27 pm on 22 December 2016 Ms Meers sent the following further email:⁶⁶⁸

Further to my email below, DHS has advised us in previous briefings that it is initially focussing on the PAYG data matched with the ATO but that from January 2017 it would also expand to include other employment income data. I am therefore adding a further question:

Does DHS still intend to expand the Online Compliance Platform activity to include non-PAYG ATO data from January 2017?

667 LM6, CTH.1000.0006.9025_R, Email, 'Further s 8 questions under IOI:2016-400007', 22 December 2016, 1.
668 CTH.1000.0006.9027_R, Email, 'RE- Further s 8 questions under IOI:2016-400007', 22 December 2016, 1.

585. At 4:54 pm on 22 December 2016, Ms Spokes emailed Ms Collins (copying in Mr Ryman and Mr Gary Clarke, as well as some of the 'CCD' lists within the Department) requesting Ms Collins complete the Ombudsman 'Issue of Interest' (IOI) template in respect of several of the questions.⁶⁶⁹
586. At 4:26 pm on 2 January 2017 Ms Collins emailed to Ms Spokes a draft response to the Ombudsman and attaching 'legal advice'. The legal advice was advice prepared by Ms Sophie Heithersay of DHS for Mr Ryman dated 17 April 2015.⁶⁷⁰
587. At 4:10 pm on 3 January 2017, Ms Katrina Collins emailed Mr Clarke (copying in Ms Rachel Elsworthy, Ms Marie-Antoinette Assenza, Mr Robinson, Ms Helen-May Timiney and DHS CCD lists) information regarding the Ombudsman's IOI request of 22 December 2016 with the following note:⁶⁷¹

Can Compliance Risk please respond to all questions in this investigation.

Rachael – Could you please also escalate this request to Karen Harfield. Karen has been liaising with our National Manager, Michael Robinson, in relation to the Ombudsman's investigation concerning the online compliance platform.

588. On 6 January 2017, DHS officers provided a briefing to the Office of the Ombudsman which included a walk-through of the OCI platform. Ms Collins, Mr Robinson, Mr Lumley and Mr Blackmore of DHS attended. According to the notes of meeting⁶⁷² taken by Ms Louise Macleod:⁶⁷³

DHS provided some background on the OCP including that:

- Methodology for raising debts has not changed. Rather, they have automated the debt calculation part of the process.

669 LM6, CTH.3027.0004.5419_R, Email, 'RE- 12 Jan 2017 #CCD0411 – Ombudsman Issue of interest – ONLINE COMPLIANCE PLATFORM AND CENTRELINK DEBT RECOVERY – DUE 17 JANUARY 2017', 2 January 2017, 1.

670 LM6, CTH.3027.0004.5419_R, Email, 'RE- 12 Jan 2017 #CCD0411 – Ombudsman Issue of interest – ONLINE COMPLIANCE PLATFORM AND CENTRELINK DEBT RECOVERY – DUE 17 JANUARY 2017', 2 January 2017, 1; JR25, CTH.3027.0046.5345_R, Advice, '19594 JB SH', 17 April 2015. The advice related to the decision-making process under the OCI program, including providing and obtaining information to and from customers, notifying customers of a debt and using data matching with ATO data to raise a debt.

671 CTH.3502.0001.0912_R, Email, 'FW: FURTHER REQUEST: Ombudsman Issue of Interest – ONLINE COMPLIANCE PLATFORM AND CENTRELINK DEBT RECOVER – DUE 19 JANUARY 2017', 30 January 2017, 3.

672 KH2, LMA.1000.0001.2084, File Note, 'Notes from 6 January 2017 meeting with DHS on Online Compliance Platform copy', 6 January 2017, 1, 3.

673 Acting Senior Assistant Ombudsman, Social Services, Indigenous and Disability Branch, Commonwealth Ombudsman.

- They are not making assumptions about existence of overpayment, the process is to identify overpayment via datamatch

...

Other

- DHS asserts that averaging is not new. They used to average where they were unable to ascertain fortnightly information from employer or customer.

...

Amie's ACTIONS

DHS to send us the legislation provision which it says allows averaging.

Amie to contact Paul (Acting counsel) to get clarification around legislative interpretation

589. At 11:08 am on 10 January 2017, Ms Collins received an email from Ms Anna Rothberg (Acting Executive Officer to Ms Harfield) regarding an enquiry from the Ombudsman's office. Ms Harfield requested that Ms Collins assist the Ombudsman Liaison Officer within DHS to respond to questions regarding information for customers on the agency website.⁶⁷⁴

DSS early involvement

590. At 11:17 am on 11 January 2017, Ms Macleod sent a notice of an own motion investigation of the Commonwealth Ombudsman to the Secretary of DHS, Ms Campbell, the Secretary of DSS, Mr Pratt, Minister Tudge and Minister Porter pursuant to section 8 of the *Ombudsman Act 1976* (Cth), of the Ombudsman's determination to conduct an own motion investigation into the OCI program.⁶⁷⁵ That notice was then forwarded within DSS to Ms McGuirk, Ms Kath Paton, Ms Verity Hughes, Mr Matthew Roper, Mr Robert Hurman and Mr Gary Knox of DSS.⁶⁷⁶

⁶⁷⁴ Annexure B to Statement of Tenille Collins, 19 February 2017, TCO.9999.0001.0007_R2, 19-20.

⁶⁷⁵ LM8, LMA.1000.0001.3109_R, Email, 'Commonwealth Ombudsman own motion investigation notice', 11 January 2017, 1.

⁶⁷⁶ EM4, DSS.5113.0001.0052_R, Email, 'FW: Commonwealth Ombudsman own motion investigation notice', 11 January 2017, 1.

591. At 11:22 am on 15 January 2017, Ms McGuirk emailed Ms Halbert, Mr Wilson, Mr Kimber and Mr McBride the 2014 DSS Legal Advice and the 2014 DSS Policy Advice.⁶⁷⁷
592. In evidence before the Royal Commission, Ms McGuirk said that, because Mr Kimber was on leave,⁶⁷⁸ she obtained the 2014 DSS Policy Advice and the 2014 DSS Legal Advice by asking Mr Kimber's Executive Assistant to undertake a search of Mr Kimber's emails (to which the EA had access), so that the DSS officers to whom she sent the advices had relevant background information:⁶⁷⁹
- to assist them to understand the issues, in particular, the advice that the department had previously provided to the Agency, having regard to terms of reference to the inquiry conducted by the Commonwealth Ombudsman.
593. At 1:34 pm on 15 January 2017, Mr Kimber replied 'all' to Ms McGuirk's email, attaching correspondence dated 4 March 2015 that enclosed the draft DHS NPPs for the 2015-2016 Budget:⁶⁸⁰

This morning I have gone back thru what material I could access from late 2014 and early 2015 when these measures were first being considered and also had a think about what was discussed at the meeting of 27 February with DHS. Unfortunately with the change of jobs I disposed of all of my notebooks from SSPAB days; so I am basing this on memory primarily.

MK

Background

As per EKs note and attachments; DSS had provided commentary to DHS during January and February '15 that the proposed method to use annual income to calculate and raise a debt was not likely to withstand scrutiny and if was to be used then legislative changes would have to be made.

As fortnightly payment calculations are the basis for a significant majority of social security; it was unlikely that we would agree to such a change as payment rates and any subsequent over/under payments are calculated on a fortnightly basis.

27th February meeting

677 CH11, DSS.5023.0002.2163_R, Email 'Background to issue', 15 January 2017, 1.

678 In fact, he had also moved to a new job in a different branch.

679 Statement of Emma Kate McGuirk, 21 October 2022, EKM.9999.0001.0002_R, 4 [21].

680 SB12, DSS.5023.0002.2174_R, Email, 'RE- Background to issue', 15 January 2017, 1.

From memory Mark Withnell, Scott Britton, Murray Kimber and Paul McBride attended. At the 27 February meeting DHS outlined a revised proposals that would use newly available data sources and analytical tools; such that the new approach will not change how income is assessed or overpayments calculated. It had the following key components

- DHS would target identified discrepancies based on analysis of the Pay as You Go (PAYG) file obtained from the Australian Taxation Office compared with the reported earnings data that DHS holds.
- Where a significant discrepancy is detected this information will be presented to the recipient. This would not be a debt notice but rather the recipient would be afforded the opportunity to explain, correct, update or challenge the information.
- Any subsequent debt raised would take into account the information provided by the recipient.
- DHS also advised that there would be no change to how income is assessed or overpayments calculated as part of this proposal.

Subsequent to that meeting, DSS received an email from DHS (4 March) to which all the DHS 2015-16 Budget NPPs were attached. In the NPP for Strengthening the Integrity of Welfare Payments, DHS has advised that this new approach would not change the way debts are calculated. The measure would commence roll-out in July 2015 with a more automated delivery from July 2016 once ICT developments were undertaken.

I can't find a specific reference – it may be in the SBD/BMC minutes/archives – but DHS did advise that the measure had been progressing well.

There had been a significant success rate of debts identified, with limited negative response. This led to the expansion of the measure (I think it was 2015-16 MYEFO) and also the Government announced further expansion during the 2016 election.

594. In his evidence before the Royal Commission, Mr Kimber said that he recalled being on leave and receiving a telephone call from Ms McGuirk a day or two before 15 January 2017 and that there was going to be a meeting between the DSS executive and the Ombudsman's office very soon. He assumed that the Deputy Secretary, Group Manager and Branch Manager would be involved. As he was by then managing a different Branch, and was not involved in the Ombudsman investigation, he believed that he must have been asked to share any background information he could provide resulting from his experience from late 2014 to early 2015.⁶⁸¹

595. At 2:35 pm on 15 January 2017, Ms McGuirk emailed Ms Halbert, Ms Wilson, Mr Kimber and Mr McBride attaching samples of correspondence sent to recipients under the OCI, being as follows:⁶⁸²

- Letter 1 - Initial Contact Letter
- Letter 2 - Reminder Letter
- Letter 3 - Review Finalisation Letter
- Letter 4 - Automated Account Payable
- Letter 5 - Reminder Letter

596. Ms McGuirk noted:

you might also find these useful to considerations, particularly the initial letter.

597. At 2:58 pm on 15 January 2017, Ms Harfield emailed Ms Golightly (copying in Mr Britton and Ms Wilson):⁶⁸³

As requested please find a simple explanation for DSS reference explaining that the methodology to assess employment income has not changed.

681 Statement of Murray Keith Kimber, 11 November 2022, MKI.9999.0001.0002_R, 18-19 [101]-[102].

682 EM6, DSS.5023.0002.2242_R, Email, 'Sample Letters', 15 January 2017.

683 SW15, CTH.3001.0033.3350_R, Email, 'FW: Response to DSS – Employment Income Compliance Process', 15 January 2017.

In respect of the current on-line compliance system there has been no change to the methodology used for the assessment of employment income. It remains the same and has been used for many many years. An individual is required to report their employment income fortnightly and it/s applied to the period worked. The averaging of employment income over the period worked is only used as a last resort if other information is unavailable. Over time the department has changed way it engages with the customer to confirm their employment information.

As per the Social Security Act (Part 3.6 Benefit Rate Calculator).

598. At 3 pm on 15 January 2017, there was a teleconference between Ms Golightly, Ms Harfield, Mr Britton of DHS and Ms Wilson, Ms Halbert, Mr McBride, Ms McGuirk and Mr Kimber of DSS.⁶⁸⁴
599. In her evidence before the Royal Commission and this investigation, Ms Wilson stated that the meeting was scheduled in preparation for an initial meeting to be held the following day with the Commonwealth Ombudsman's office in relation to the Ombudsman's Own Motion Investigation into the Online Compliance Intervention (OCI). The reason for holding the teleconference on 15 January 2017, which was a Sunday, was that Ms Golightly had indicated that she would not be able to attend the meeting with the Ombudsman and that Ms Wilson would therefore be the most senior officer present and expected to carry the meeting.⁶⁸⁵
600. The only written record of the teleconference is some notes made by Ms McGuirk:⁶⁸⁶

get a letter asking to confirm → online just been introduced

now no need to provide documents, variance accepted if 'close' (1%)

not averaging all the time

if left with no other option, average

NOT income smoothing → using averaging where no other info

684 EM7, DSS.5063.0001.0003_R, Email, 'RE: Teleconference details', 15 January 2017; SB18, DSS.5035.0001.0001, File Note, 'Notes from 1501017 and 180117' 15 January 2017 and 18 January 2017, 1.

685 Supplementary statement of Serena Judith Wilson, 8 November 2022, SWI.9999.0001.0005_R, 7 [38]-[39]; Further supplementary statement of Serena Judith Wilson, 21 February 2023, SWI.9999.0001.0006_R, 4 [22]. NACC Transcript, 22 August 2025, Serena Judith Wilson, T93, T98-100.

686 SB18, DSS.5035.0001.0001, File Note, 'Notes from 1501017 and 180117' 15 January 2017 and 18 January 2017, 1-2.

601. However, consistently with her notes, Ms McGuirk said in evidence that she recalled DHS advising during the conference that DHS's implementation of OCI:⁶⁸⁷

- (a) was not using income averaging all the time;
- (b) was using income averaging to trigger compliance reviews by inviting social security recipients to provide further information;
- (c) would only use income averaging to determine the existence of a debt where there was no other information available to the Agency; and
- (d) would not send notices where a person had a vulnerability indicator.

602. Ms Wilson stated in evidence before the Royal Commission and this investigation that during the teleconference she received assurances from Ms Golightly that there had been no change to the way in which PAYG income was assessed or debt calculated, but was also told, possibly by another DHS officer, that income averaging was being used as a 'last resort' in cases where no other information was available. Ms Wilson said that she was surprised to hear that income averaging was being applied, even if only as a 'last resort', because she believed that DHS had understood and accepted DSS' reservations with respect to income smoothing. She questioned it as contrary to her previous understanding that there was to be no change to the way in which earnings were assessed and debt was calculated, and either at that meeting or a subsequent meeting with the Ombudsman, she was told that DHS had developed relevant procedural guidelines and had been applying income averaging for some time in a small number of cases.⁶⁸⁸

687 Statement of Emma Kate McGuirk, 21 October 2022, EKM.9999.0001.0002_R, 4-5 [23]-[24].

688 Supplementary statement of Serena Judith Wilson, 8 November 2022, SWI.9999.0001.0005_R, 7-8 [39], [41]-[43]; Further supplementary statement of Serena Judith Wilson, 21 February 2023, SWI.9999.0001.0006_R, 4 [23]. NACC Transcript, 22 August 2025, Serena Judith Wilson, T104-106.

Scoping meeting

603. The initial meeting with the Ombudsman – a ‘scoping meeting’ – was held the following day, 16 January 2017, between 9:30 am and 10:30 am. It was attended by Ms Wilson, Ms Halbert, Ms McGuirk, Mr Roper and Mr Avery of DSS, Mr Britton of DHS, and Ms Macleod, Mr Masri and several other Ombudsman’s officers.⁶⁸⁹ Ms McGuirk’s notes of the meeting state:⁶⁹⁰

15-16 Budget, range of measures requested by Gov, DHS in particular on strengthening payment integrity + better debt.

→ opportunity to use ATO data levels of income and periods of employment → ‘test’, interim process while

MYEFO 15 and MYEFO 16 based on pilot experience

In NPP developed by DHS → no change to approach for assessing debt’

Ombo: [...]

no issue over broad policy of debts to Commonwealth being recovered

– what provisions were used? Were there other provisions that could have been used to recover

going back 6 years → concern people may not have documents

Serena : vulnerability → people excluded in our understanding

(yes, ombo knows, but interested in people above this, people with no capacity to verify)

Clarity over reviews, how does ODM work when ‘decision’ made by computer

Serena: SBDN + BMC meetings, line of site to appeals [?] data → this didn’t become an issue until late last year.

689 LM7, DSS.5051.0001.0001_R, Email, ‘Meeting between DSS and CO relating to Centrelink Debt Recovery Investigation’, 16 January 2017; CH12, DSS.5029.0001.0031, File Note, ‘Ombo meeting notes & Scott meeting notes’, 16 January 2017.

690 CH12, DSS.5029.0001.0031, File Note, ‘Ombo meeting notes & Scott meeting notes’, 16 January 2017, 2-3.

604. Ms Wilson said that she was given a note by DHS officers that summarised the OCI and she used it to provide an overview of OCI but, apart from that, she could not recall any of the substance of the meeting.⁶⁹¹
605. Consistently with Ms McGuirk's notes and Ms Wilson's recollection, in an email sent by Mr Britton to Ms Golightly at 4:40 pm on 16 January 2017, Mr Britton wrote:⁶⁹²

I attended the meeting this morning at DSS as planned with Serena Wilson, Cath Halbert, other DSS staff and the Ombudsman's Office reps. The meeting content was exactly what we discussed on Friday afternoon when George Masri met with Michael Robinson and I and covered the logistics of the review which includes;

- Ombudsman staff will be located in Louise Lawson from this Thursday morning sitting with Audit
- There is a meeting planned this Thursday afternoon at Doris with yourself and other relevant DHS SES and the acting Ombudsman to inform us of their intended scope and approach.
- The focus of the review will be on the implementation of the OCI. They informed DSS that they were comfortable with the policy position.
- Their plan is to prepare a preliminary report over the next 3-4 weeks and then focus on specific topics. It also sounded like they would take an audit like approach by discussing 'issues' with us early so that we can provide adequate and timely responses. They also talked about having separate public and departmental only reports.

Serena gave a general overview which was helpful and was generally accurate. We had a general discussion once the Ombudsman reps had gone and Serena asked if it was possible to give her a walkthrough of the OCI screens prior to your PM&C Dep Sec meeting this Friday. I explained that there were a number of updates being considered by the Minister and that I would need to check the availability of staff.

691 Further supplementary statement of Serena Judith Wilson, 21 February 2023, SWI.9999.0001.0006_R, 4 [24]. NACC Transcript, 22 August 2025, Serena Judith Wilson, T108.

692 SB19, CTH.3001.0033.3932_R, Email, 'Ombudsman Meeting – Serena has requested an OCI Walkthrough', 16 January 2017.

I wanted to check if you were happy for this to occur, if you wanted to attend or delegate to Mark, Karen or myself to attend with Dan Blackmore to give a similar walkthrough we did with the Minister last week.

2017 DSS Legal Advice

606. Ms Wilson said in evidence in this investigation that, at the end of the meeting of 15 January 2017, she was left uncertain, and to some extent concerned (although not highly concerned), by DHS revelations that DHS was using averaging ‘as a last resort’. She thought it appropriate to seek legal advice on whether ‘averaging could occur as a last resort’ and so she requested Ms McGuirk obtain that advice.⁶⁹³
607. On 16 January 2017, Ms McGuirk telephoned Ms Pulford and, according to Ms Pulford’s statement of evidence before the Royal Commission, referred in broad terms to using available income information to raise a debt where it was not clear over what period the income was earned and where no other information was available. Ms Pulford also stated in substance that Ms McGuirk conveyed to her that there was a departmental business need for some means of legally justifying taking action of that nature and sought Ms Pulford’s assistance as part of the legal branch to provide that justification.⁶⁹⁴
608. Ms Pulford’s evidence on the matter in this investigation was similar, if not as clear:⁶⁹⁵

As I said to the Royal Commission, I do have a vague memory of talking about needing to find a basis, a legal basis to support the use of averaged income as a last resort, but I don't recall the context that I was given or whether that was specifically discussed as being about Robodebt or online compliance or whatever it was being called at the time, or whether it potentially could have just been about the fact that the Ombudsman was looking into the use of averaged income and DHS's long standing practice was to use averaged income in last resort circumstances, so I, you know, unfortunately for me, I can't recall exactly what the context was.

693 NACC Transcript, 22 August 2025, Serena Judith Wilson, T104-105.

694 Statement of Anne Lorraine Pulford, 21 October 2022, APU.9999.0001.0001_R, 6 [54]-[58]. AP4, DSS.8001.0001.0376_R, Email, ‘Smoothing income re debt calculation’, 16 January 2017.

695 NACC Transcript, 19 August 2025, Anne Lorraine Pulford, T53.

609. Ms Pulford added that she believed that Ms McGuirk might have called her for advice, rather than calling any of the other principal lawyers, because:⁶⁹⁶

I had a relationship with her. We had spent a lot of time at Parliament House on a Bill not long before, you know, providing support to get something through Parliament and I suspect, although I'm not sure, that Alan [Grinsell-Jones] may have directed her to me as well.

610. At 3:46 pm on 16 January 2017, Ms Pulford emailed Ms Melanie Metz, a principal DSS lawyer who was 'acting in the SES Band 1 role at the time'⁶⁹⁷ and thus Ms Pulford's supervisor (copying in Mr Grinsell-Jones, who was the substantive SES Band 1) a message titled 'smoothing income re debt calculation':⁶⁹⁸

Melanie, I'll take the opportunity to go home. I've had a conversation with Emma Kate on the basis we can make an argument to support the position discussed. I'm happy to talk you through it tomorrow. Regards, Anne.

611. Two days later, at 12:40 pm on 18 January 2017, Ms McGuirk emailed Ms Pulford confirming her instructions for advice as to whether it is 'lawful to use an averaging method as a 'last resort':⁶⁹⁹

As discussed, am looking for advice please regarding a 'last resort' method of debt identification for income support recipients.

The SSAct details a fortnightly income test, which is applied for standard debt raising. However, in circumstances where there is available information about employment income and it appears an overpayment has been made but no available information from the recipient/ex- recipient about the period over which the income was earned, is it lawful to use an averaging method (as a 'last resort') to determine the debt?

696 NACC Transcript, 19 August 2025, Anne Lorraine Pulford, T53.

697 NACC Transcript, 19 August 2025, Anne Lorraine Pulford, T51.

698 AP4, DSS.8001.0001.0376_R, Email, 'Smoothing income re debt calculation', 16 January 2017.

699 AP5, DSS.8001.0001.1293_R, Email, 'Advice please', 18 January 2017.

612. Ms Pulford stated before the Royal Commission (and in effect confirmed in this investigation) that she treated that email as her ‘primary instruction’ and that she did not recall any further conversation with Ms McGuirk or other instruction until the provision of the advice.⁷⁰⁰
613. On 18 January 2017 Ms Wilson, Ms Halbert and Ms McGuirk were provided with the walk-through of the OCI that Ms Wilson had requested after the scoping meeting with the Ombudsman on 16 January 2017⁷⁰¹. The walk-through was provided by Ms Golightly, Mr Britton and Ms Harfield.⁷⁰²
614. At 3:30 pm on 19 January 2017 the DSS Business Support Unit emailed Ms Halbert seeking clearance of dot points ‘for Finn [Pratt]’s upcoming meeting with Kathryn Campbell on Monday, 23 January 2017’. Relevantly, they included:⁷⁰³

Payment Integrity and Debt Strategy

For information: Online Compliance Intervention (OCI)

- Senior departmental staff were given a run through of the Human Services online compliance system at TOP⁷⁰⁴ on Wednesday 18 January 2017 and are comfortable that the current process is lawful and clear.
- DHS are making enhancements to their online system to make it even clearer that the recipient can change the details about their earnings (eg. periods of employment and updating earnings for each pay cycle).
- The Department met with the Commonwealth Ombudsman on Monday 16 January 2017 and the full scope of their investigation into the Online Compliance Intervention will be provided by Friday 20 January 2017.

700 Statement of Anne Lorraine Pulford, 21 October 2022, APU.9999.0001.0001_R, 6 [62]–[63]. NACC Transcript, 19 August 2025, Anne Lorraine Pulford, T62–63.

701 See 605 above.

702 KH7, CTH.3001.0033.4395_R, Email, ‘Walk through the New Online Compliance System’, 18 January 2017; DSS.5035.0001.0001, File Note, ‘Notes from 1501017 and 180117’ 15 January 2017 and 18 January 2017, 3. Further supplementary statement of Serena Judith Wilson, 21 February 2023, SWI.9999.0001.0006_R, 4 [19].

703 CH13, DSS.6500.0001.0003_R, Email, ‘FW: FOR CLEARANCE: Request for dot points – Secretary meeting with Kathryn Campbell, 19 January 2017, 1.

704 Tuggeranong Office Park.

- The Social Security Act 1991 states that the 10 per cent recovery fee does not apply where the Secretary is satisfied that the person had a reasonable excuse for refusing or failing to provide information.
- Ministers Porter and Tudge asked DHS whether it is possible to not apply the recovery fee to OCI-related debts. Minister Porter has also asked whether the debtor needs to be informed of the recovery fee in writing.
- The Department has shared with DHS legal advice that says that the recovery fee must be applied unless there is a reasonable excuse and that the debtor must be informed that the fee has been applied.

615. At 3:41 pm on 19 January 2017, Ms Halbert cleared the comments with some minor amendments.⁷⁰⁵ Ms McGuirk gave evidence before this investigation that, by around this time, DSS had received Ms Pulford's advice 'verbally' as to where the issue of 'last resort' debt calculation 'was going to land' and that the advice was 'on track'.⁷⁰⁶
616. On 16 December 2025 Ms McGuirk provided by email a photograph of her notebooks, which included an entry stating 's 79 -> Anne Pulford'. That entry appeared directly after an entry dated '17/1'. Ms McGuirk explained, in an email received from her legal representatives, that she believed this entry meant that she had a conversation with Ms Pulford about the upcoming advice before it was received.
617. On or about the morning of 24 January 2017, Ms Pulford completed a draft of the advice on averaging as a 'last resort'. She then sent the draft to her fellow principal legal officer, Ms Djura, and requested Ms Djura to 'second counsel' the advice.⁷⁰⁷ In her evidence before the Royal Commission, Ms Pulford stated that she recalled speaking briefly with Ms Djura, who agreed with Ms Pulford's conclusion, and that Ms Pulford then produced the final advice which had some minor changes from the draft.⁷⁰⁸

705 CH13, DSS.6500.0001.0003_R, Email, 'FW: FOR CLEARANCE: Request for dot points – Secretary meeting with Kathryn Campbell, 19 January 2017, 1.

706 NACC Transcript, 1 October 2025, Emma-Kate McGuirk, T99-103.

707 AP6, DSS.8001.0001.1734_R, Email, 'RE: Advice please', 24 January 2017.

708 Statement of Anne Lorraine Pulford, 21 October 2022, APU.9999.0001.0001_R, 7, [74]-[77].

618. At 4:21 pm on 24 January 2017, Ms Pulford delivered the final advice (the 2017 DSS Legal Advice), in the form of an email response to Ms McGuirk's 'primary instruction' email of 18 January 2017, as follows:⁷⁰⁹

We are providing this advice on a general basis, without details as to what information source is being used and for what period. We would appreciate your treating this advice on this general basis.

With this proviso in mind, the answer is yes. The Secretary must be guided in their decision-making by the range of information they are able to obtain, and whether this casts sufficient doubt about the correctness of the rate of social security payment to justify taking action.

619. At 4:39 pm on 24 January 2017, Ms McGuirk forwarded the 2017 DSS Legal Advice to Ms Halbert, who in turn forwarded it to Ms Wilson.⁷¹⁰

Further developments

620. On 19 January 2017, there was a further scoping meeting with Mr Richard Glenn⁷¹¹ and other officers from the Ombudsman's office and Mr Hutson, Ms Golightly, Ms Musolino and some other DHS officers, to discuss the Ombudsman's own motion investigation into OCI.⁷¹²

621. At 12:30 pm on 30 January 2017, Ms Macleod emailed Mr Robinson and Mr Ryman attaching an outline of the 'OCI Own Motion investigation report' with the following note:⁷¹³

As flagged, please find attached the proposed outline for the own motion investigation report into the OCI

709 AP7, DSS.8001.0001.1736_R, Email, 'FW: Advice please', 24 January 2017.

710 CH14, DSS.5031.0001.0096_R, Email, 'FW: Advice please', 24 January 2017; CH14, DSS.5031.0001.0106_R, Email, 'FW: Advice please', 24 January 2017.

711 Acting Commonwealth Ombudsman.

712 Statement of Annette Musolino, 31 October 2022, AMU.9999.0001.0003_R, 27-28 [48].

713 LM13, CTH.1000.0007.0266_R, Email, 'Outline of OCI Own Motion investigation report (A444638)', 30 January 2017; LM13, CTH.1000.0007.0268, Report, 'Outline of OCI Own Motion investigation report', 30 January 2017.

This document reflects our initial observations and initial recommendations to be covered in the report. We're aiming to provide the department with the draft text for part 2 (Introduction and scope) and 3 (Background) of the report early next week. In the meantime, we'd welcome your initial comments, points of clarification or feedback on the outline and can meet later this week to discuss if this will assist.

Thanks for your assistance to date.

622. At 12:39 pm on 30 January 2017, Mr Robinson forwarded the proposed outline to Ms Harfield, Mr Britton and Mr Clarke of DHS (copying in Mr Hutson, Ms Golightly, Ms Musolino, Ms Assenza, Mr Ryman, Ms Collins and Ms Cathy Sear):⁷¹⁴

Karen et al

This attached has just arrived from the Ombudsman's office. We will read and be back in contact shortly to consider any initial response DHS might like to make and in the meantime would appreciate you considering the same.

623. At 5:20 pm on 30 January 2017, Mr Robinson followed up with a further email to the same recipients, noting the existence of an opportunity effectively to 'co-write' the Ombudsman's report:⁷¹⁵

Having read the report outline I think the department has been given a great opportunity to effectively co-write the report with the Ombudsman's office (OO). Given the time pressure the OO is under, any suggested wording you provide in response to their dot points will enable them to do a quick copy and paste in many instances where there is general agreement or at least not totally opposing views. Given the subject knowledge of people in Scott's Branch they could suggest wording that would both inform the OO and correct any misinterpretations the fieldwork team might have. For this to be effective DHS would need to provide some suggested wording/clarification sooner rather than later to help shape the report. The OO have suggested a meeting later this week to discuss. Do you think you could have something to suggest or discuss with them later this week?

For your advice pls

714 KH8, CTH.3007.0004.4949_R, Email, 'FW: Outline of OCI Own Motion investigation report (A444638), 30 January 2017, 1.
715 KH8, CTH.3007.0004.4949_R, Email, 'FW: Outline of OCI Own Motion investigation report (A444638), 30 January 2017, 1.

624. Then at 2:07 pm on 1 February 2017, Mr Robinson emailed Mr Hutson, Ms Musolino, Ms Harfield, Ms Collins and Mr Ryman that:⁷¹⁶

[f]ollowing this morning's discussion I have drafted some potential wording for discussion at Friday's meeting with the Ombudsman.

625. At 8:32 am on 2 February 2017 Mr Hutson replied to Mr Robinson (copying in, Ms Musolino, Ms Harfield, Mr Ryman, Ms Collins and Ms Golightly):⁷¹⁷

Our goal for tomorrow is to go through the paper and see if we can minimise areas of concern for the Ombudsman and take out problem areas (particularly the sections on accuracy and fairness. Richard [Glenn] has said he will be seeking to produce an evidence based report. The outline has remarks that are not based on evidence but, I think, on some incorrect press reporting.

Some of the comments in your draft, however, reflect our discussion yesterday about what might be done (in response to an Ombudsman pushing a point) rather than what is being done now. For Friday we have to stick with what is being done and what has been approved as amendments to the program (if not announced we should say 'under consideration'). Note that amendments to the program are BAU – we always make working improvements and amendments to systems and implementation as we go along.

In drafting the response paper, please focus not only on individual items in the outline but also on combinations. There is a view that this is the Ombudsman's office pursuing an agenda that people can select their own channels and opposing our service delivery move towards digital (including our pushing those able to do so in that direction). Also – words like 'improve' and 'clarify' make a suggestion that something is wrong with the system – our position is firstly that there is nothing wrong with it as designed although we are making process improvements as we do with everything.

716 CTH.3007.0004.5153_R, Email, 'Ombudsman OCI Report Recommendations 6A and B Draft Responses', 1 February 2017; CTH.3007.0004.5154, Report, 'Recommendations 6A and B of OCI Own motion investigation report – DHS comments (v1.0)', 1 February 2017.

717 KH9, CTH.3034.0033.4089_R, Email, 'FW: Ombudsman OCI Report Recommendations 6A and B Draft Responses', 2 February 2017, 1.

626. At 9:01 am on 2 February 2017, Mr Golightly responded to Mr Hutson's email:⁷¹⁸

I agree – it is absolutely imperative that we correct the many factual errors that appear throughout the whole draft as well as deal with the strategic issues which are that they seem to start from the basis that digital interaction per se is not good for customers and that this system is not working. All of these premises are incorrect and need to be challenged strongly. The draft also seems to go way beyond the remit of the Ombudsman in its comments in some areas – they need to stick to their scope and remit both for this exercise and more generally. It is disappointing that they seem to have relied on what they have read in the papers rather than use actual evidence.

627. Meanwhile, at 4:57 pm on 24 January 2017, Mr Ryman emailed Ms Macleod and Ms Suseela Durvasula of the Ombudsman's office (copying in 'Ombudsman Liaison', Mr Stipnieks, Ms Joanne Lambert, Ms Elisah Hodgson and Ms Rebecca Wetzell) attaching some of the DHS advices that Mr Stipnieks had gathered together:⁷¹⁹

Hi Louise & Suseela. You have requested legal advice relating to the Online Compliance Intervention. Please find attached the relevant advice as it relates to the Online Compliance Intervention.

628. At 1:33 pm on 2 February 2017 Mr Ryman emailed Mr Stipnieks (copying in Ms McCann) under the heading 'PAYG OCI legal advice':⁷²⁰

... The Ombudsman has come with a question regarding the attached advice ... They have advised that 'Legal advice assumes a person is making a decision. No specific legal advice on the process being fully automated'. Are you able to advise the context of this advice and whether you see a distinction.

718 KH9, CTH.3034.0033.4089_R, Email, 'FW: Ombudsman OCI Report Recommendations 6A and B Draft Responses', 2 February 2017, 1.

719 LM11, CTH.3052.0001.0608_R, Email, 'FW: PAYG OCI legal advice', 24 January 2017; CTH.3502.0001.0609_R, Email, 'FW: Raising Debts – Decision Making process – Third Party Information', 14 May 2015; LM11, CTH.3007.0004.5284_R, Advice, '1.3 Legal Advice EIM', 17 April 2017; LM11, CTH.3007.0004.5292_R, Email, 'Legal Advice – Proposed digital intervention process', 9 April 2015 attachment LM 11, CTH.3007.0004.5295, Advice, 'Lex 17990 – Online mandating – data matching etc – advice', 14 January 2015.

720 CTH.3007.0004.5281_R, Email, 'FW: PAYG OCI legal advice', 2 February 2017.

629. At 5:52 pm on 2 February 2017, Mr Robinson emailed Ms Golightly, Mr Hutson, Ms Musolino, Ms Harfield, Mr Ryman and Ms Collins asking:⁷²¹

What legal advice is the Ombudsman referring to?

630. At 10:22 pm on 2 February 2017, Mr Stipnieks emailed Ms Musolino attaching among other things the email from Mr Ryman to Mr Stipnieks of 1:33 pm on 2 February 2017, to which was attached the attachments to Mr Ryman's email to Ms Macleod of 4:57 pm on 24 January 2017.⁷²²
631. At some point at the end of the day, Mr Ryman said he was called by Mr Robinson into a meeting at the Doris Blackburn Building with Ms Golightly, Mr Hutson and Mr Robinson to work through DHS's draft response to the Ombudsman's report. Mr Ryman said that he was asked questions about the OCI and the Ombudsman's draft report and that during the meeting Ms Golightly rang Ms McCann and Ms Musolino. The meeting did not finish until the early hours of the next morning.⁷²³
632. At 12:05 am on 3 February 2017, Mr Robinson emailed Ms Musolino, attaching copies of the legal advices that had been provided by DHS to the Ombudsman's Office on 24 January 2017:⁷²⁴

Jonathan [Hutson] is sending you the hard copies of these in the morning for you to look at and provide any advice on following the conversation tonight.

633. At 2:14 am, Ms Golightly emailed Ms Musolino and Mr Jason McNamara (General Manager, Audit, DHS), attaching a copy of DHS's comments on the Ombudsman's outline of the 2017 Own Motion Investigation.⁷²⁵

721 CTH.3001.0034.6807_R, Email, 'RE- Ombudsman OCI Report Recommendations 6A and B Draft Responses', 2 February 2017, 1; CTH.3001.0034.6809, Report, 'Outline of OCI Own Motion investigation report (DHS Comments V1.3)', 2 February 2017.

722 CTH.3007.0004.5281_R, Email, 'FW: PAYG OCI legal advice', 2 February 2017; CTH.3502.0001.0609_R, Email, 'FW: Raising Debts – Decision Making process – Third Party Information', 14 May 2015; LM11, CTH.3007.0004.5284_R, Advice, '1.3 Legal Advice EIM', 17 April 2017; LM11, CTH.3007.0004.5292_R, Email, 'Legal Advice – Proposed digital intervention process', 9 April 2015 attachment LM 11, CTH.3007.0004.5295, Advice, 'Lex 17990 – Online mandating – data matching etc – advice', 14 January 2015.

723 Statement of Jason Ryman, 27 October 2022, JRY.9999.0001.0002_R, 20 [145]-[147].

724 AM4, CTH.3007.0004.5322_R, Email, 'FW- PAYG OCI legal advice', 3 February 2017; CTH.3502.0001.0609_R, Email, 'FW: Raising Debts – Decision Making process – Third Party Information', 14 May 2015; LM11, CTH.3007.0004.5284_R, Advice, '1.3 Legal Advice EIM', 17 April 2017; LM11, CTH.3007.0004.5292_R, Email, 'Legal Advice – Proposed digital intervention process', 9 April 2015 attachment LM 11, CTH.3007.0004.5295, Advice, 'Lex 17990 – Online mandating – data matching etc – advice', 14 January 2015.

725 CTH.3001.0034.6942, Email, 'Fwd: Outline of OCI Own Motion investigation report' (DHS Comments V1.3) GM update', 3 February 2017; CTH.0001.0034.6943, Report, 'Outline of OCI Own Motion investigation report (DHS Comments V1.3) GM update', 3 February 2017.

Annette – Jonathan is going to touch base with you in the morning re reviewing the various pieces of legal advice provided to the Ombudsman re OCl to check whether there are any issues we need to be aware of.

634. At 5:54 pm on 3 February 2017, Mr Robinson emailed Ms Collins, Mr Stipnieks, Ms Jerrim, Ms Lorna Andrews,⁷²⁶ Ms Harfield, Ms Musolino, Mr Jim McMahon,⁷²⁷ Ms Assenza and Mr Ryman setting out a table of items to be provided to the Ombudsman and the person responsible for tracking down each item. The person responsible for 'Item no 5: Any legal advices that the department thinks would be useful for the Ombudsman's investigation' was denoted as being Mr Stipnieks.⁷²⁸

635. At 6 pm on 3 February 2017, Ms Musolino emailed Mr Stipnieks, attaching Mr Robinson's email:⁷²⁹

Maris See item 5 below for discussion on Monday.

636. On 7 February 2017 at 11:09 am, Ms Golightly emailed Ms Musolino, for comment, a proposed email to a ministerial adviser regarding privacy concerns.⁷³⁰

726 National Manager, Customer Service, Service Delivery Operations Branch, DHS.

727 National Manager, Appeals, Integrity and Information Branch, DHS.

728 KH11, CTH.3007.0004.5417_R, Email 'URGENT – Ombudsman OCI Own Motion Investigation Update Meeting 3 February 2017, Action Items', 3 February 2017.

729 Fourth Statement of Annette Musolino, 13 December 2022, AMU.9999.0001.0010_R, 17 [41].

730 AM3, CTH.2001.0004.4421_R, Email, 'RE-', 7 February 2017.

Hi Mark – as per your request for a fact check of the statements you texted me (see attachment above) please find the department's response below. Responses 1 and 2 can remain the same. We have suggested changes for number 3 as currently it appears to link current methodology with the Data Matching Program Act 1990. While data matching originally started under that Act in 1990, the PAYG matching started in 2003. As time progressed since 1990, new data matching approaches were identified, which enabled the department to exchange data outside the DMP Act via other legislation such as the Social Security (Administration) Act 1999 and the Taxation Administration Act 1953 and under the Data Matching Guidelines issued by the Privacy Commissioner now as part of the Office of the Australian Information Commissioner (OAIC). These other exchanges allowed the department to more efficiently obtain data similar, and in addition to, the data obtained under the DMP Act. The PAYG measure announced in the 2015-16 Budget continues to be managed under the Data Matching guidelines. In addition, items that the department have taken into account for compliance reviews, over time have changed, for example employment bank and working credits. Therefore the department suggests wording for 3 along the following lines: 'The methodology for assessing income and calculating debts has fundamentally remained the same since data matching arrangements that came into place in the early 1990's, we are just completing more compliance interventions than before.'

637. At 11:28 am on 7 February 2017, Ms Musolino replied.⁷³¹

Malisa I think the statement below is broadly correct – the methodology for assessing income and calculating debts has always been based on looking at the available information to make the decision and where there is no information about payment periods it has always been opened [sic] to make a decagons [sic] averaging the amount received. We haven't been able t [sic] to fine [sic] anything in the Guides or the Op Blueprint that would suggest there was a direction NOT to average, and we wouldn't expect to find that kind of direction anyway (because it's always open to a decision maker to make a decision based on the best information they have). Annette

731 AM3, CTH.2001.0004.4421_R, Email, 'RE-', 7 February 2017.

The methodology for assessing income and calculating debts has fundamentally remained the same since data matching arrangements that came into place in the early 1990's, we are just completing more compliance interventions than before.

638. At 5:25 pm on 10 February 2017, Mr Stipnieks emailed Ms Musolino (copying in the 'Chief Counsels Office' generic email inbox) attaching a number of advices relating to OCI processes as opposed to the OCI methodology for calculating income):⁷³²

I have attached the legal advices which I think are directly relevant to development of the OCIs [sic] process, which I believe have already been provided to the Ombudsman's office.

For completeness, some advice connected with the OCI process was provided regarding letters proposed to be sent to partners and ex-partners of potential debtors, but this does not appear to be relevant given the nature of the Ombudsman's investigation. As discussed, there are likely to be many legal advices given over the years on debt recovery provisions in the social security law which are not specifically related to the OCIs process. However, again those advices are unlikely to be particularly useful in the context of the Ombudsman's current review. There are also likely to numerous legal advices which refer to data matching activities with the ATO which are not directly related to the OCI process, but I don't believe the matching process is at issue.

...

If the Ombudsman's office has particular questions about how the department's actions fit within the applicable legislative frameworks, I (and my team) would be happy to answer them.

639. At 12:43 pm on 16 February 2017, Ms Musolino's Executive Officer emailed on Ms Musolino's behalf from 'Chief Counsels Office' to Mr Robinson forwarding Mr Stipniek's email of 5:25 pm on 10 February 2017:⁷³³

Please refer to the below email and attached documents.

732 MS3, CTH.3007.0004.7224_R, Email, 'FW- URGENT – Ombudsman OCI Own Motion Investigation Update Meeting 3 February 2017 Action Items', 10 February 2017, 1. CTH.3502.0001.0609_R, Email, 'FW: Raising Debts – Decision Making process – Third Party Information', 14 May 2015; LM11, CTH.3007.0004.5284_R, Advice, '1.3 Legal Advice EIM', 17 April 2017; LM11, CTH.3007.0004.5292_R, Email, 'Legal Advice – Proposed digital intervention process', 9 April 2015 attachment LM 11, CTH.3007.0004.5295, Advice, 'Lex 17990 – Online mandating – data matching etc – advice', 14 January 2015.

733 Fourth Statement of Annette Musolino, 13 December 2022, AMU.9999.0001.0010_R, 19 [50].

640. At 11:30 am on 17 February 2017, there was a meeting of DHS officers and DSS officers including Ms Musolino, during which DHS officers gave a presentation to ‘demonstrate recent changes to the online system that had been made’.⁷³⁴
641. At 2:33 pm on 17 February 2017 Ms Assenza emailed Ms Musolino:⁷³⁵

Outlined below is the revised email with your amendments regarding the legal advice concerning the online compliance platform ...

In response to Action Item 5 from our meeting of 3 February 2017, we have attached the legal advices which are directly relevant to the OCI process and which I believe have already been provided to the Ombudsman's office.

There are likely many legal advices given over the years on debt recovery provisions in the social security law which are not specifically related to the OCI process.

Ombudsman’s first request for DSS legal advices

642. At 11:26 am on 19 February 2017, Ms Macleod emailed Ms Hughes and Mr Stephen Avery⁷³⁶ of DSS’s Ombudsman Liaison team, noting that the Ombudsman had identified an issue in the course of its investigation concerning the authority for averaging income across a full or part financial year where dates of employment cannot be verified, and requesting that, by 22 February 2017, DSS provide (the 19 February Ombudsman’s request):⁷³⁷
- further information about the authority to use averaging (in light of DHS’ confirmation ‘it has always used averaging as a last resort’)
 - copies of any legal advice DSS had received about averaging income for social security overpayment calculations (either in the past or in the context of the OCI)

734 Fourth Statement of Annette Musolino, 13 December 2022, AMU.9999.0001.0010_R, 19 [51].

735 Fourth Statement of Annette Musolino, 13 December 2022, AMU.9999.0001.0010_R, 19-20 [53].

736 Steven Avery, Director, DSS Feedback and Coordination Section, Assurance and Performance Branch, DSS.

737 AP8, DSS.8001.0001.3303, Email, ‘RE: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]’, 19 February 2017, 4.

643. At 9:46 am on 21 February 2017, Mr Hurman emailed the 'P&ICoord' generic email (which was the generic inbox for the Pensions and Integrity Branch of DSS), attaching the 2017 DSS Legal Advice as a proposed response to the 19 February Ombudsman's request, and seeking Mr de Burgh's clearance.⁷³⁸

644. At Mr de Burgh's suggestion, at 9:58 am on 21 February 2017 Mr Hurman emailed Ms Pulford attaching the 19 February Ombudsman's request and the 2017 DSS Legal Advice:⁷³⁹

We were proposing to provide the attached legal advice you sent through in late January [the 2017 DSS Legal Advice] in response. However, we just wanted to check that was ok and that there was nothing more recent/better suited or anything else you thought should be done.

645. At 11:52 am on 21 February 2017, Ms Pulford responded:⁷⁴⁰

I have identified earlier advice provided by this team in late 2014, relating to the same issue (attached). This advice would seem to be within scope for the request. Can you consider, and we then discuss how this goes back to the Ombudsman?

646. At 4:27 pm on 21 February 2017, Mr Hurman forwarded his email exchange with Ms Pulford to Mr de Burgh, expressing disagreement with Ms Pulford's response:⁷⁴¹

See below information and attachments from Anne.

Anne has advised that she considers that the older advice [the 2014 DSS Legal Advice] is in scope. I can see how she would draw that conclusion given the sentence that says:

– 'any legal advice it has received about averaging income for social security overpayment calculations (either in the past or in the context of the OCI).'

738 AP8, DSS.8001.0001.3303, Email, 'RE: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]'; 21 February 2017, 3.

739 AP8, DSS.8001.0001.3303, Email, 'RE: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]'; 21 February 2017, 3.

740 AP8, DSS.8001.0001.3303, Email, 'RE: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]'; 21 February 2017, 3.

741 AP8, DSS.5018.0001.9402, Email, 'FW: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]'; 21 February 2017, 1-2.

However, I think this looks at this sentence in isolation only and ignores the earlier context. In the earlier parts of the email they say:

‘DHS has told us it has always used averaging as a last resort. We would like to understand more about the authority to do this.’

As such, I think the Ombudsman’s office is not seeking the other piece of information that Anne has provided.

I suggest that we provide a response along the following lines:

‘In response to your request regarding any legal advice about the use of income averaging as a last resort, we provide the attached legal advice.’

Anne has also asked to discuss how this goes back to the Ombudsman.

647. After conferring with Mr de Burgh, who concurred with Mr Hurman’s analysis, Mr Hurman told Ms Pulford that it had been resolved not to send the 2014 DSS Legal Advice. Ms Pulford replied that she would discuss the matter with Mr Grinsell-Jones.⁷⁴²
648. At 1:15 pm on 22 February 2017, Mr Hurman emailed Ms Pulford forwarding Mr Hurman’s email to Mr de Burgh of 4:27 pm on 21 February 2017, as follows:⁷⁴³

As discussed, the background to how we reached our conclusion is included below. It may assist you in your discussions. Let us know if there are any issues in releasing to the Ombudsman or any special requirements in terms of how we provide it.

649. At 3:15 pm on 22 February 2017, Mr Grinsell-Jones emailed Ms Pulford in response to her request for guidance as to how she should respond to Mr Hurman:⁷⁴⁴

742 AP8, DSS.8001.0001.3303, Email, ‘RE: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]’, 21 February 2017, 1-2; NACC Transcript, 8 September 2025, Robert Hurman, T35; RRC Transcript, 2 November 2022, Anne Pulford, T244.

743 DSS.5018.0002.4233, Email, ‘RE: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]’, 22 February 2017; AP8, DSS.5018.0001.9402, Email, ‘FW: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]’, 21 February 2017.

744 DSS.5018.0002.4233, Email, ‘RE: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]’, 22 February 2017.

I guess if the line area is being asked to provide any legal advice that is within the scope of the request ultimately it would be their decision although we can advise on that. For what it's worth I think both advices are in scope. I don't think the reason why documents are being sought can be used to read down the plain language of the request.

650. At 3:35 pm on 22 February 2017, Mr Hurman forwarded the 19 February Ombudsman's request to Ms Halbert (copying in Mr de Burgh), noting:⁷⁴⁵

Cath, [y]ou may not be aware of this one. We are liaising with Legals re: our response.

651. At 3:49 pm on 22 February 2017, Ms Pulford replied to Mr Hurman's email of 1:15 pm on 22 February 2017 (copying in Mr de Burgh and Mr Grinsell-Jones):⁷⁴⁶

I have discussed this matter with my branch manager. He is of the view that the reason why documents are being sought should not be used to read down the plain language of the request, and, as such, we think both advices are in scope.

Ultimately though, the decision as to what is in scope to release is one for you. The Ombudsman is only giving an informal request at this stage, although this is subject to protections under the Ombudsman Act 1976. It would be open to the Ombudsman to give a formal notice requiring the furnishing of information or disclosure of documents under this Act, if they so choose, and then there are only very limited bases upon which information can be withheld.

When providing legal advice to the Ombudsman, we recommend mentioning that the advice is provided in response to a written request pursuant to section 8 of the Ombudsman Act 1976, and as such, legal professional privilege in the advice is not waived. The document is disclosed on the basis it will be kept private by the Ombudsman, and not disclosed to any person or included or mentioned in any report which may result from the investigation.

745 RH5, DSS.5023.0002.2781, Email, 'FW: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]'; 22 February 2017.

746 DSS.5113.0001.0596, Email, 'FW: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]'; 22 February 2017.

Let me know if you need any help giving context for the advice(s) or similar.

652. At 4:05 pm on 22 February 2017, Mr Hurman replied to Ms Pulford (copying in Mr de Burgh and Mr Grinsell-Jones):⁷⁴⁷

I've just spoken with Russell [de Burgh] and, given your view below, we are inclined to provide both pieces of legal advice to the Ombudsman. Given the two pieces of advice may appear to come to different conclusions, would it be possible for you to provide a joining paragraph that could be forwarded or that outlines why they appear different but don't contradict each other? We would then include this with the information we provide to the Ombudsman along with the two pieces of advice.

653. At 4:34 pm on 22 February 2017, Ms Pulford responded (copying in Mr de Burgh and Mr Grinsell-Jones):⁷⁴⁸

The 2014 advice relates to the process of rate calculation under the social security law, and indicates the method of generating an accurate debt amount on the basis of full information. By contrast, the 2017 advice identifies circumstances in which the Secretary would be obliged by the social security law to take action to adjust a rate of social security payment, despite not having full information to generate an accurate debt amount. The advices are consistent but address different levels of available information to ground administrative decision making by the Secretary.

654. At 5:34 pm on 22 February 2017, Ms Halbert forwarded Mr Hurman's email of 3:35 pm on 22 February 2017 to Ms Wilson and Ms Gayle Murray, stating: 'I wasn't aware of this.'⁷⁴⁹ Ms Wilson responded at 7:45 pm:⁷⁵⁰

I am outraged that this has come to us with this timing & in this fashion. I will raise with Malisa.

747 AP8, DSS.8001.0001.3303, Email, 'RE: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]'; 22 February 2017.

748 AP8, DSS.8001.0001.3303, Email, 'RE: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]'; 22 February 2017.

749 RH5, DSS.5023.0002.2781, Email, 'FW: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]'; 22 February 2017.

750 DSS.5023.0002.2783_R, Email, 'Re- URGENT ACTION- Due Wednesday, 22 February 2017- Request for meeting and/or documents'; 22 February 2017.

655. At 11 am on 23 February 2017, Mr Hurman emailed the DSS 'P&ICoord' inbox (copying in Mr de Burgh) a draft email for sending to 'our Ombudsman people [which] We should probably discuss'. The draft was as follows:⁷⁵¹

Dear Louise,

Please find attached two emails containing legal advice that are within scope of your request. One advice is from 2014 and the second is from earlier this year.

The 2014 advice relates to the process of rate calculation under the social security law, and indicates the method of generating an accurate debt amount on the basis of full information. By contrast, the 2017 advice identifies circumstances in which the Secretary would be obliged by the social security law to take action to adjust a rate of social security payment, despite not having full information to generate an accurate debt amount. The advices are consistent but address different levels of available information to ground administrative decision making by the Secretary.

The advice is provided in response to a written request pursuant to section 8 of the Ombudsman Act 1976, and as such, legal professional privilege in the advice is not waived. The document is disclosed on the basis it will be kept private by the Ombudsman, and not disclosed to any person or included or mentioned in any report which may result from the investigation.

656. At 3:35 pm on 23 February 2017, Ms Halbert's executive assistant, Ms Kuleas,⁷⁵² emailed Ms Wilson (copying in Ms Lea Freund)⁷⁵³ attaching a draft response to the 19 February 2017 Ombudsman's request, being a copy of the DSS 2017 Legal Advice, with the covering email stating: 'Please see enclosed.'⁷⁵⁴
657. At 4:10 pm on 23 February 2017, Ms Wilson replied to Ms Kuleas (copying in Ms Lea Freund): 'Thanks – fine to go.'⁷⁵⁵

751 SW9, DSS.5113.0001.0588, Email, 'FW: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]'; 23 February 2017.

752 Judy Kuleas, Executive Assistant to Catherine Halbert, DSS.

753 Lea Freund, DSS.

754 SW10, DSS.5051.0001.0052, Email, 'Ombudsman [SEC=UNCLASSIFIED]'; 23 February 2017; SW10, DSS.5051.0001.0053, Email, '20170223144130153.pdf'; 23 February 2017.

755 SW10, DSS.5051.0001.0072, Email, 'RE: Ombudsman [SEC=UNCLASSIFIED]'; 23 February 2017.

658. At 4:17 pm on 23 February 2017, Ms Colette Neumann⁷⁵⁶ emailed Mr Steven Greene⁷⁵⁷ and Ms Hughes (copying in Mr Avery and Mr Hurman) asking them to ensure that the following message be provided to Ms Macleod 'with the information attached' (being a freestanding copy of the 2017 DSS Legal Advice) (the DSS Response):⁷⁵⁸

Please find attached information containing legal advice from earlier this year, that is within scope of your request. This advice identifies circumstances in which the Secretary would be obliged by the social security law to take action to adjust a rate of social security payment, despite not having full information to generate an accurate debt amount.

The advice is provided in response to a written request pursuant to section 8 of the Ombudsman Act 1976, and as such, legal professional privilege in the advice is not waived. The document is disclosed on the basis it will be kept private by the Ombudsman, and not disclosed to any person or included or mentioned in any report which may result from the investigation.

659. At 4:21 pm on 23 February 2017, Ms Hughes forwarded the DSS Response to Ms Macleod.⁷⁵⁹

Ombudsman's second request for DSS legal advices

660. At 4:47 pm on 24 February 2017, Ms Macleod replied (the Ombudsman's second request):⁷⁶⁰

I refer to our notice to DSS under section 8 of the Ombudsman Act 1976 advising of our own motion investigation into the Centrelink online compliance intervention system.

On 20 January 2017, DHS provided our office with the attachment which is an Executive minute briefing the Minister for Social Services and Minister for Human Services dated 12 February 2015. On page 10 of the document it states:

756 Colette Neumann, Branch Coordination Officer, Pensions and Integrity Branch, DSS.

757 Steven Greene, DSS Feedback and Coordination, Assurance and Performance Branch, Homelessness, Housing and Assurance Group, DSS.

758 RH6, DSS.5051.0001.0068, Email, 'Request for meeting and/or documents [SEC=UNCLASSIFIED]', 23 February 2017; SW12, DSS.5051.0001.0070, Advice, 'Ombudsmans request for advice - 23 Feb 2017 - Cleared.docx.', 23 February 2017.

759 LM14, DSS.5005.0001.0530, Email, 'RE: Request for meeting and/or documents [SEC=UNCLASSIFIED]', 23 February 2017.

760 AP9, DSS.5051.0001.0146, Email, 'FW: Request for information/documents [SEC=UNCLASSIFIED]', 24 February 2017, 2.

There may be a need to be [sic] a change of policy to enable the use of the ATO data in this way. DSS has also advised that legislative change would also be needed to implement this initiative. As a result, we have been working with DSSS [sic] on developing this proposal and will continue to do so.

To aid our understanding, please provide a copy of the following by 1 March 2017:

- the advice from DSS about the legislative change that would be needed
- any other notes, documents or emails that relate to this advice

661. At 5:02 pm on 24 February 2017, Mr Avery forwarded the Ombudsman's second request to Ms Neumann.⁷⁶¹
662. At 6:22 pm on 28 February 2017, Mr Hurman forwarded the email chain to Ms Halbert (copying in Mr de Burgh),⁷⁶² attaching a draft response to the Ombudsman's second request, titled 'Background to DSS Position on Online Compliance'. It included the following:⁷⁶³

Given the passage of time, it is unclear whether DSS's understanding of the measure in late 2014 was incorrect or DHS later amended the measure to address DSS concerns. By early 2015, DSS understood that the intended implementation model provided recipients with the opportunity to correct any information presented to them based on ATO data matching, particularly smoothing of income data obtained from the ATO. As such, DSS no longer considered that legislation would be required to implement the measure and advice regarding specific legislative changes was not sought.

761 AP9, DSS.5051.0001.0146, Email, 'FW: Request for information/documents [SEC=UNCLASSIFIED]', 24 February 2017, 1-2.
762 CH16, DSS.5051.0001.0174, Email, 'FW: Request for information/documents [SEC=UNCLASSIFIED]', 28 February 2017.
763 CH16, DSS.5051.0001.0187, Memo, 'Background to DSS Position on Online Compliance.docx', 28 February 2017.

663. In evidence in this investigation, Mr Hurman said that the draft response was composed by him and his team but that he did not have any personal knowledge of the matters referred to in the draft, and he did not think that his team did either. He said he thought it possible that he and the team may have relied on Ms Halbert's 'background'. But his evidence as to that was evidently based on no more than his present-day interpretation of emails sent and received in 2017:⁷⁶⁴

I think we sort of, I mean my reading of these emails is that we sort of relied on her background on the issue a little bit and so I guess just you mentioned earlier an email trail where there was that sort of as just discussed just now, and so I'm wondering if the background to DSS's position document might have been informed by that discussion. I'm not saying it was, but, you know, it's possible that Ms Halbert gave some of her background and that's how we formed some of the background to DSS's position.

664. The notion that Mr Hurman and his team might have relied on Ms Halbert's 'background' also requires some qualification. Ms Halbert relevantly had no background in how DSS came to be satisfied in 2015 that legislative amendment was not required.⁷⁶⁵ Following Ms Wilson's return from leave on 9 February 2015,⁷⁶⁶ Ms Halbert had nothing more to do with OCI until near to Christmas 2016.⁷⁶⁷ Until then, as she said in her evidence, she remained in her substantive position as Group Manager, Payments Policy, in which she did not have direct input into the NPP,⁷⁶⁸ and if she thought about the PAYG Clean Up proposal at all she:⁷⁶⁹

... assumed that the people responsible for this from the Policy's perspective were doing what they had to do to get the proposal through the budget in a legal manner.

665. Three weeks before Christmas 2016, responsibility for compliance policy and, hence, for the media storm and the Ombudsman's investigation, was transferred to Ms Halbert's group:⁷⁷⁰

764 NACC Transcript, 8 September 2025, Robert Hurman, T35, T42-44.

765 NACC Transcript, 20 August 2025, Catherine Halbert, T3.

766 RRC Transcript, 9 September 2022, Serena Wilson, T817; Statement of Catherine Halbert, 22 November 2022, DSS.9999.0001.0022, 2[14(a)].

767 NACC Transcript, 20 August 2025, Catherine Halbert, T76.

768 Statement of Catherine Halbert, 22 November 2022, DSS.9999.0001.0022, 2[13]; RRC Transcript, 8 December 2022, Catherine Halbert, T1431.

769 NACC Transcript, 20 August 2025, Catherine Halbert, T96.

770 NACC Transcript, 20 August 2025, Catherine Halbert, T99-100.

I think I got this three weeks before Christmas, it was transferred to my group as a responsibility. We were aware of the media, but unfortunately a lot of the media was being generated by Ministers getting in the media saying how great this was, and I have not yet been briefed on this measure at all [before] Christmas. So we were aware. I don't know when the Ombudsman said they were going to [investigate]. I don't know now, I would have known then, but certainly I was aware of the media attention. I don't think I was fully aware that this thing had come into my area of responsibility at that point, I was just getting across, you know, what was involved here.

...

I was told [the transfer of responsibility to my group was] because they needed to dedicate resources to welfare reform, so it needed to be transferred to me.

...

But essentially we didn't get all the resources that had been dedicated to the topic in Mr McBride's group, we just got some of them, and they weren't very good ones and the information being made available to me from those staff was very inadequate, put it that way.

666. Consequently, at around Christmas 2016, Ms Halbert (with Ms McGuirk's assistance) set about finding out how DSS had come to be satisfied that legislative amendment was not required. They sought relevant documents and were provided with, among other things, the 2014 DSS Legal Advice and the 2014 DSS Policy Advice.⁷⁷¹ But there appeared to be no explanation of why DSS had concluded that the 2014 DSS Legal Advice was inapplicable. Ms Wilson was away on leave at the time and uncontactable; and so, shortly after Christmas, Ms Halbert telephoned Mr McBride. But Mr McBride answered that he could not remember:⁷⁷²

771 NACC Transcript, 20 August 2025, Catherine Halbert, T92, T136.

772 NACC Transcript, 20 August 2025, Catherine Halbert, T100.

He, I think – well, I don't know when he went on leave, but he was on leave after Christmas. I rang him and I asked him could he explain to me how this thing got through the budget process. He said, 'I don't remember'. I thought he was angry that I was ringing him up in his holidays (indistinct words) he's proceeded to not be helpful and he's never remembered, and he didn't say, 'I'll go and look at my notes' or anything.

667. In or around the week ending Sunday 15 January 2017, Ms McGuirk telephoned Mr Kimber, who was also away on leave at the time, and asked him if he could explain how DSS had come to be satisfied that legislative amendment was not required.⁷⁷³ Some days later, after researching emails and such other records as were available, he responded with the email of 15 January 2017 which is referred to above.⁷⁷⁴
668. In the result, the best information that Ms Halbert and Ms McGuirk were able to get on the matter was information provided by Mr Kimber to Ms McGuirk – who Ms Halbert said was helpful⁷⁷⁵ – so that, ultimately, the DSS response to the Ombudsman's second request was based on information provided by Mr Kimber and his staff to Ms McGuirk.⁷⁷⁶

MS HALBERT: I think Emma Kate rang Murray.

QUESTION: Okay.

QUESTION: And that explanation that you ultimately formulated for the Ombudsman was one given to you by Mr Kimber, was it?

MS HALBERT: Kimber and his staff.

773 NACC Transcript, 1 October 2025, Emma-Kate McGurik, T49, T53; Statement of Murray Kimber, 11 November 2022, MKI.9999.0001.0002, 18-19[101].

774 See 593 above; SB12/MK30, DSS.5023.0002.2174, Email, 'RE- Background to issue', 15 January 2017; Exhibit 2-2103, DSS.5023.0002.2176, Email, 'FW- DHS NPPs for inclusion in the 2015-16 PB Sub', 4 March 2015.

775 NACC Transcript, 20 August 2025, Catherine Halbert, T99.

776 NACC Transcript, 20 August 2025, Catherine Halbert, T101.

669. At 3:35 pm on 27 February 2017, Ms Neumann had forwarded the Ombudsman's second request to Mr Hurman⁷⁷⁷ and, at 5:53 pm on 27 February 2017, Mr de Burgh had forwarded on the Ombudsman's second request to Ms Halbert, noting that: 'Here's what we were just talking about.'⁷⁷⁸ In turn, at 5:54 pm on 27 February 2017, Ms Halbert had forwarded Mr de Burgh's email of 5:53 pm to Ms Janean Richards,⁷⁷⁹ Chief Legal Counsel and Group Manager, DSS (copying Mr de Burgh), noting that Ms Halbert would speak to Ms Richards about Mr de Burgh's email 'this morning [sic]'.⁷⁸⁰
670. At some time after 5:54 pm on 27 February 2017, Ms Halbert had a telephone discussion with Ms Richards, during which she told Ms Richards that DSS were:⁷⁸¹

looking for advice that bridges/explains why our approach has changed, from the view that legislative change was as required, to the view that it wasn't.

671. At 8:43 am on 28 February 2017, Ms Richards emailed Mr Grinsell-Jones (copying in Mr Roper) requesting that Mr Grinsell-Jones contact Ms Halbert, and locate the 'relevant advices' to explain why DSS's approach had changed as to the need for legislative change to implement OCI.⁷⁸²
672. At 8:56 am on 28 February 2017, Mr Grinsell-Jones emailed Ms Pulford forwarding Ms Richards's email from 8:43 am the same day (dropping all other recipients off the chain), seeking to discuss Ms Halbert's request.⁷⁸³
673. At 11:39 am on 28 February 2017, Ms Pulford emailed Mr Hurman (copying Mr de Burgh) pointing out, in effect, that she had already provided the explanation in her email to Mr Hurman of 4:34 pm on 22 February 2017:⁷⁸⁴

777 DSS.5051.0001.0119, Email, 'FW: Request for information/documents [SEC=UNCLASSIFIED]', 27 February 2017.
778 AP9, DSS.5051.0001.0146, Email, 'FW: Request for information/documents [SEC=UNCLASSIFIED]', 27 February 2017.
779 Janean Richards, Chief Legal Counsel and Group Manager, Corporate Services Group, DSS.
780 AP9, DSS.5051.0001.0146, Email, 'FW: Request for information/documents [SEC=UNCLASSIFIED]', 27 February 2017.
781 AP9, DSS.5051.0001.0146, Email, 'FW: Request for information/documents [SEC=UNCLASSIFIED]', 27 February 2017.
782 AP9, DSS.5051.0001.0146, Email, 'FW: Request for information/documents [SEC=UNCLASSIFIED]', 28 February 2017.
783 AP9, DSS.5051.0001.0146, Email, 'FW: Request for information/documents [SEC=UNCLASSIFIED]', 28 February 2017.
784 AP9, DSS.8001.0001.3405, Email, 'FW: Request for information/documents [SEC=UNCLASSIFIED]', 28 February 2017.

I understand it was decided (at Deputy Secretary level) not to provide the 2014 advice to the Ombudsman when our more recent advice was provided. For completeness, the 2014 advice does not suggest legislative change, but you believe DHS was advised by DSS's policy area in the context of subsequent discussions that legislative change would be needed to support the proposal. DHS's brief, provided in early 2015, mentions this.

Since then, DSS policy has become more comfortable with DHS's approach of using smoothed income, giving it is being applied as a mechanism of last resort when no more accurate income information is available. This appears to represent a change in DSS's position, although it doesn't represent a change in the legal position.

You believe our 2014 advice may now be provided to the Ombudsman. If so, I previously gave Russell a brief paragraph explaining the different contexts of the advices, and why they may appear inconsistent, which you may wish to use.

674. And so, at 6:22 pm on 28 February 2017, Mr Hurman emailed Ms Halbert and Mr de Burgh attaching the draft 'Background to DSS Position on Online Compliance',⁷⁸⁵ and also noting that:⁷⁸⁶

The Ombudsman request is based on a premise that we have advice about legislative changes that would be made for Online Compliance (which we do not). The 'Background to DSS Position.' document explains why that is not the case. It is also proposed to send the document that combines 2017 legal advice (already provided) with the 2014 legal advice referenced in the background.

675. The attached draft Background to DSS Position on Online Compliance was as follows:⁷⁸⁷

In late 2014, DSS considered an early version of a proposal that has since developed to become the Online Compliance Initiative, which is the subject of the Ombudsman investigation.

785 CH16, DSS.5051.0001.0187, Memo, 'Background to DSS Position on Online Compliance.docx', 28 February 2017.
786 CH16, DSS.5051.0001.0174, Email, 'FW: Request for information/documents [SEC=UNCLASSIFIED]', 28 February 2017.
787 CH16, DSS.5051.0001.0187, Memo, 'Background to DSS Position on Online Compliance.docx', 28 February 2017.

As we do for many proposals, DSS considered the need for legislative change to implement the proposal. This is referred to in the DHS Ministerial Brief provided by the Ombudsman's office. DSS had some concerns at that time about whether the proposal was consistent with legislative arrangements. Specifically, DSS considered implications for the use of annual ATO income data for the purposes of calculating fortnightly payment entitlements (and, as such, potential debts). At that time, DSS sought internal legal advice about the legality of using this income data to determine entitlement. The advice received (attached) in December 2014, indicated that this approach would not be supported by the legislation. This was communicated to DHS primarily verbally, and that appears to be reflected in the advice from DHS to their Minister. It is understood that DSS also indicated to DHS that legal changes would be necessary to allow the measure, as DSS understood it at that time, to be implemented.

A key difference between the measure, as DSS originally understood it, and the approach that was ultimately implemented, is that averaged income is only used for the purposes of calculating entitlement (and, therefore, debt) where no other information is available and attempts have been made to seek information from the individual. This was not what DSS understood to be the proposal when it raised concerns over the legislative basis for the measure. This is evident in the advice that was sought at the time.

More recent advice specific to the current implementation approach, which has already been provided to the Ombudsman's office, indicates that:

1. It would be preferable for the Secretary to give the person an opportunity to provide information to allow an accurate rate to be determined prior to raising an overpayment;
2. If the person does not respond and provide accurate income information it would be open to the Secretary to proceed to raise and recover the debt;
3. If the Secretary is later made aware that the averaged income was received in a particular pattern, the Secretary would be required to amend the rate of payment to accurately apply the income test.

The elements described in 1-3 above are all features of the current DHS implementation of the OCI.

Given the passage of time, it is unclear whether DSS's understanding of the measure in late 2014 was incorrect or DHS later amended the measure to address DSS concerns. By early 2015, DSS understood that the intended implementation model provided recipients with the opportunity to correct any information presented to them based on ATO data matching, particularly smoothing of income data obtained from the ATO. As such, DSS no longer considered that legislation would be required to implement the measure and advice regarding specific legislative changes was not sought.

676. At 6:40 pm on 28 February 2017, Ms Halbert replied to Mr Hurman:⁷⁸⁸

Thanks. I agree that this is the answer (it is true). We did however provide written advice in commenting on their brief so I am not sure we should say mostly verbal'. I don't think the last paragraph is quite right. I think two things happened – DHS took on our concerns and adjusted the process AND we got a better understanding of how the revised process would satisfy the legislative requirements.

EK and I, being new to it around Christmas, weren't able to access the whole paper trail and so therefore sought confirmation of how the measures complied with legislation (the 2017 advice). I am happy to talk to the Ombudsman's office about this, but maybe adjust the brief a little. Thanks.

677. At 7:32 am on 1 March 2017, Mr Hurman emailed Ms Kristin Lumley,⁷⁸⁹ Assistant Director, Payment Integrity, Payment Conditionality Design and Policy Branch, forwarding his own email of 6:22 pm on 28 February 2017.⁷⁹⁰

678. At 9:34 am on 1 March 2017, Ms Lumley emailed Mr Hurman attaching suggested changes to the draft 'Background to DSS Position on Online Compliance',⁷⁹¹ which she explained as follows:⁷⁹²

788 SW11, DSS.5026.0001.0004, Email, 'RE: Request for information/documents [SEC=UNCLASSIFIED]', 28 February 2017.
789 Kristin Lumley, Assistant Director, Payment Integrity, Payment Conditionality Design and Policy Branch, DSS (June 2015 – March 2019); Assistant Director, Strategy Analysis and Briefing Unit, Integrity Strategy, Engagement and Policy Branch, Services Australia (March 2019 – August 2020).
790 CH19, DSS.5031.0001.0062, Email, 'FW: Request for information/documents [SEC=UNCLASSIFIED]', 1 March 2017.
791 CH19, DSS.5031.0001.0076, Memo, 'Background to DSS Position on Online Compliance.docx', 1 March 2017.
792 CH19, DSS.5031.0001.0062, Email, 'FW: Request for information/documents [SEC=UNCLASSIFIED]', 1 March 2017.

Suggested changes taking Cath's feedback into account, hopefully I haven't broken it. I think it flows better with the bottom para moved up and I thought new point 3 was an important part of the 2017 legal advice.

679. The document as so changed by Ms Lumley was as follows:⁷⁹³

In late 2014, the Department of Social Services (DSS) considered an early version of a proposal that has since developed to become the Online Compliance Initiative (OCI), which is the subject of the Ombudsman investigation.

As we do for many proposals, DSS considered the need for legislative change to implement the proposal. This is referred to in the Department of Human Services (DHS) Ministerial Brief provided by the Ombudsman's office.⁷⁹⁴ DSS had some concerns at that time about whether the proposal was consistent with legislative arrangements. Specifically, DSS considered implications for the use of annual ATO income data for the purposes of calculating fortnightly payment entitlements (and, as such, potential debts). At that time, DSS sought internal legal advice about the legality of using this income data to determine entitlement. The advice received (attached) in December 2014, indicated that this approach would not be supported by the legislation. This was communicated to DHS, ~~primarily verbally~~, and that appears to be reflected in the advice from DHS to their Minister. It is understood that DSS also indicated to DHS that legal changes would be necessary to allow the measure, as DSS understood it at that time, to be implemented.

Following this, DHS took DSS' concerns into account and made adjustments to the process. By early 2015, In particular, DSS gained a better understanding of how the revised process would satisfy the legislative requirements. In particular, DSS understood that the intended implementation model provided recipients with the opportunity to correct any information presented to them based on ATO data matching, particularly smoothing of income data obtained from the ATO. As such, DSS no longer considered that legislation would be required to implement the measure and advice regarding specific legislative changes was not sought.

793

CH19, DSS.5031.0001.0076, Memo, 'Background to DSS Position on Online Compliance.docx', 1 March 2017.

A key difference between the measure, as DSS originally understood it at the time, and the approach that was ultimately implemented, is that averaged income is only used for the purposes of calculating entitlement (and, therefore, debt) where no other information is available and attempts have been made to seek information from the individual. This was not what DSS understood to be the proposal at the time it when the Department originally raised concerns over the legislative basis for the measure. This is evident in the 2014 legal advice ~~that was sought at the time~~.

Given a departmental restructure and a change to the Executive Officers with responsibility for social security compliance and debt, officers sought legal advice in early 2017 to clarify the legality of the OCI. More recent legal This advice, specific to the current implementation approach, which has already been provided to the Ombudsman's office, indicates that:

1. It would be preferable for the Secretary to give the person an opportunity to provide information to allow an accurate rate to be determined prior to raising an overpayment;
2. If the person does not respond and provide accurate income information it would be open to the Secretary to proceed to raise and recover the debt;
3. Reliable income information which makes it likely that a person has been overpaid, even where the information has been taken at an 'averaged' rate, may lawfully justify the Secretary taking action;
4. If the Secretary is later made aware that the averaged income was received in a particular pattern, the Secretary would be required to amend the rate of payment to accurately apply the income test. The elements described in 1-43 above are all features of the current DHS implementation of the OCI. Given this, DSS is satisfied that the OCI system meets legislative requirements.

680. At 9:55 am on 1 March 2017, Mr Hurman emailed Mr de Burgh (copying in Ms Lumley)⁷⁹⁴ attaching 'for clearance' the draft Background to DSS Position on Online Compliance as amended by Ms Lumley.⁷⁹⁵

794 CH19, DSS.5031.0001.0062, Email, 'FW: Request for information/documents [SEC=UNCLASSIFIED]', 1 March 2017.
795 CH19, DSS.5031.0001.0076, Memo, 'Background to DSS Position on Online Compliance.docx', 1 March 2017.

681. At 12:20 pm on 1 March 2017, Mr de Burgh emailed Ms Halbert providing the proposed Background to DSS Position on Online Compliance as settled by Mr Hurman and Ms Lumley, and attaching a document which included both the 2014 DSS Legal Advice and the 2017 DSS Legal Advice (Combined DSS Legal Advice),⁷⁹⁶ and noting as follows:⁷⁹⁷

Cath

Below is the response for the Ombudsman due today. The Attachment includes both the 2014 and 2017 advice. Do you want to pass this to Serena before it goes?

682. At 12:43 pm on 1 March 2017, Ms Halbert forwarded the proposed Background to DSS Position on Online Compliance and the Combined DSS Legal Advice⁷⁹⁸ to Ms Wilson.⁷⁹⁹
683. At 3:33 pm on 1 March 2017, Ms Wilson emailed Ms Halbert stating that she was happy with the document subject to:⁸⁰⁰

can we use the term apportioning rather than smoothin [sic] in the 3rd sentence [sic] of the 3rd para.

684. At 3:36 pm on 1 March 2017, Ms Halbert emailed the 'Ombudsmanscomplaints' generic email inbox (addressed to Mr Avery, copied to Mr Hurman, Mr de Burgh, Ms Wilson and Ms Murray) the response to the Ombudsman's second request as 'cleared by Serena'.⁸⁰¹ Apart from the substitution of 'apportioning' for 'smoothing' in accordance with Ms Wilson's request of 3:33 pm on 1 March 2017, the text provided was in the same terms as the proposed response that Ms Halbert had sent to Ms Wilson at 12:43 pm on 1 March 2017 and had been cleared by Ms Wilson at 3:33 pm.
685. At 3:56 pm on 1 March 2017, Ms Hughes emailed Ms Macleod conveying the cleared response (the 1 March 2017 Response) in the same terms as the response as 'cleared by Serena',⁸⁰² and attaching the Combined DSS Legal Advice.⁸⁰³

796 SW14, DSS.5005.0001.0534, Email, 'Combined 2014 and 2017 advice', 1 March 2017.

797 CH21, DSS.5045.0001.0004, Email, 'FW_ Request for information_documents [SEC=UNCLASSIFIED].pdf', 1 March 2017.

798 SW14, DSS.5005.0001.0534, Email, 'Combined 2014 and 2017 advice', 1 March 2017.

799 SW13, DSS.5023.0002.2547, Email, 'FW: Request for information/documents [SEC=UNCLASSIFIED]', 1 March 2017.

800 SW13, DSS.5023.0002.2557, Email, 'RE: Request for information/documents [SEC=UNCLASSIFIED]', 1 March 2017.

801 CH20, DSS.5023.0002.2560, Email, 'FW: Request for information/documents [SEC=UNCLASSIFIED]', 1 March 2017.

802 SW14, DSS.5005.0001.0534, Email, 'Request for information/documents [SEC=UNCLASSIFIED]', 1 March 2017.

803 SW14, CTH.3023.0006.8897, Advice, 'Combined 2014 and 2017 advice.docx', 1 March 2017.

686. At 5:16 pm on 1 March 2017, Mr de Burgh emailed Mr Stipnieks (copying in Ms Halbert and Mr Hurman), thanking Mr Stipnieks for a conversation they had had earlier that day, and setting out verbatim the text of the 1 March 2017 Response as ‘the information that we will forward to the Ombudsman’.⁸⁰⁴

687. At 6:09 pm on 1 March 2017, Mr Stipnieks replied to Mr de Burgh (copying in Ms Halbert, Mr Hurman, Ms Musolino, the ‘CHIEFCOUNSEL OFFICE’ generic email inbox and Mr Robinson):⁸⁰⁵

... Noting the quite detailed information you intend to provide to the Ombudsman, I'm not sure there would be any utility in organising a discussion between DHS, DSS and the Ombudsman's office at this point in time. Please let me know if you disagree.

688. On 10 April 2017, the Ombudsman published the final report, in which it was included that:⁸⁰⁶

... We are satisfied the data matching process itself [involved in the raising of debts under the OCI] is unchanged ...

We are also satisfied that if the customer can collect their employment income information and enter it properly into the system, or provide it to DHS to enter, the OCI can accurately calculate the debt. After examination of the business rules underpinning the system, we are satisfied the debts raised by the OCI are accurate, based on the information which is available to DHS at the time the decision is made.

804 CH21/AM5, DSS.5086.0001.1110, Email, ‘RE- Issue re brief’, 1 March 2017.

805 CH21/AM5, DSS.5086.0001.1110, Email, ‘RE- Issue re brief’, 1 March 2017.

806 JH5/LM16, CTH.3044.0003.7539, Report, ‘Ombudsman Report – Centrelink’s automated debt raising and recovery system containing letters’, 7 April 2017, 1.

Advice given by Ms Musolino

8 March 2017 Carney decision

689. Prior to publication of the Ombudsman's final report, on 8 March 2017, AAT member Professor Terry Carney AO⁸⁰⁷ published his decision and reasons for decision in AAT review number 2016/S104681 (the 8 March Carney decision). He concluded that the application of income averaging was insufficient to establish the existence or amount of a debt. The essence of his reasoning was that:⁸⁰⁸

55. The reason [income averaging] does not establish either an overpayment or its quantum is due both to the lack of sufficient strength of evidence and to simple mathematics.

56. The lack of strength of evidence flows from my characterisation of the overpayment 'methodology' (actually an administrative algorithm as I understand) – involving extrapolation of ATO employment income information over a period, divided to produce an average fortnightly, and then applied to YA payment periods to raise a debt – as, at best, raising no more than the sufficient doubt about the accuracy of past payments as to warrant the exercise of powers of enquiry held by Centrelink (or indirectly by this Tribunal: see paragraph 42 of these Reasons above). It is too uncertain, and too slight a basis to satisfy the *Briginshaw* standard in a fortnightly rate debt matter.

690. On 24 March 2017, Mr Aaron Baril,⁸⁰⁹ one of the lawyers in the FOI and Litigation Branch of DHS whose function it was to peruse AAT decisions adverse to DHS and advise whether they should be appealed or reviewed, advised that:⁸¹⁰

807 Emeritus Professor Terry Carney AO, Member, Administrative Appeals Tribunal, Social Services and Child Support Division.

808 CTH.3761.0001.0223, AAT Review, '1569 [REDACTED]'; 8 March 2017, [55]–[56].

809 Seconded Lawyer, FOI and Litigation Branch, DHS.

810 CTH.0010.0001.0020, Advice, '17.03.23–[REDACTED]–AAT1GeneralAFAR'; 24 March 2017, 2.

The AAT1 found [in the 8 March Carney decision] that Centrelink was unable to advance sufficiently convincing proofs of a debt or debt amount (based on annualised ATO data), so the debt did not arise at law (at [52]). It found that it was not for the alleged debtor to advance further information but for Centrelink to establish the proposition it was required to establish (at [52]). Here, the AAT1 found that the methodology used to establish the debt was incapable of doing so (at [52]). On the basis that there was no reliable earnings information before it, the AAT1 found that there was no provable overpayment (at [54]-[60], [70]).

691. And further, under the heading ‘Determination’:⁸¹¹

...

[X] The matter does not involve an error of law or manifest error of fact.

[X] The matter does not involve an important legal or policy principle.

...

No appeal is recommended. In accordance with standing directions issued by the relevant Practice Director, Litigation Principles and the relevant Standing Operational Statement, the decision is to be accepted and implemented.

692. At 1:01 pm on 24 March 2017, Mr Geoff Fisher⁸¹² emailed Ms Liz Bundy⁸¹³ and Mr Darren Zogopoulos⁸¹⁴ with the subject line ‘A third ‘Set Aside’ OCI case at AAT1 Level’, referring to Appeal ID A249460 in which the Tribunal had set aside the decision under review on the basis that:⁸¹⁵

... The Tribunal is not satisfied that this is an accurate calculation of the employment income earned by [REDACTED] in each fortnight. Rather, this allocation of income results in most unlikely and improbable fortnightly earnings ...

811 CTH.0010.0001.0020, Advice, ‘17.03.23-[REDACTED]-AAT1GeneralAFAR’, 24 March 2017, 2-3.

812 Geoff Fisher, Assistant Director, Business Strategy and Support, Appeals Branch, Customer Payment Services Division, DHS.

813 Elizabeth Bundy, National Manager Appeals, DHS (10 February 2017 – 30 April 2017).

814 Darren Zogopoulos, Acting Director, Business Strategy and Support, Appeals Branch, Customer Payment Services Division, DHS.

815 CTH.3044.0003.3783, Email, ‘RE- A third ‘Set Aside’ OCI case at AAT1 Level (now there’s a fourth!)’, 24 March 2017, 3.

693. At 7:46 pm on 25 March 2017, Ms Bundy replied, thanking Mr Fisher for 'keeping an eye on this' and advising that she had 'let legals know, Jim and Malisa know'.⁸¹⁶
694. At 8:35 pm on 25 March 2017, Mr Zogopoulos replied to Ms Bundy and others:⁸¹⁷

This one is very interesting, id [sic] be concerned of [sic] legal services didn't contest this. If they don't, it will open up Pandora's box.

695. At 11:13 am on 26 March 2017, Mr Bundy replied:⁸¹⁸

Yes agree that very careful consideration will need to be given to it. I discussed with Malisa last night – she was very pleased we had let her know as she has a meeting with the Minister on Monday.

We will see what legals think.

696. At 10:58 am on 27 March 2017, Mr Fisher emailed Ms Bundy and Mr Zogopoulos with the subject line 'A third "Set Aside OCI case at AAT1 Level (now there's a fourth!)":⁸¹⁹

Well don't look now, but a fourth 'Set Aside' case has just hit the books ...

697. At 8:38 pm on 27 March 2017, Ms Bundy forwarded the email chain to Mr Brazel, adding:⁸²⁰

I think you will want to be across whether or not we are going to appeal these decisions as I will be writing up in SDRT report. Can you let me know for the two recent ones what the thinking is.

698. At 9:15 pm Mr Brazel replied, attaching the 8 March Carney decision and asking whether Ms Bundy was aware of that, too,⁸²¹ to which Ms Bundy responded at 9:17 pm:⁸²²

816 CTH.3044.0003.3783, Email, 'RE- A third 'Set Aside' OCI case at AAT1 Level (now there's a fourth!); 24 March 2017, 3.
817 CTH.3044.0003.3783, Email, 'RE- A third 'Set Aside' OCI case at AAT1 Level (now there's a fourth!); 24 March 2017, 2.
818 CTH.3044.0003.3783, Email, 'RE- A third 'Set Aside' OCI case at AAT1 Level (now there's a fourth!); 24 March 2017, 2.
819 CTH.3044.0003.3783, Email, 'RE- A third 'Set Aside' OCI case at AAT1 Level (now there's a fourth!); 24 March 2017, 1.
820 CTH.3044.0003.3783, Email, 'RE- A third 'Set Aside' OCI case at AAT1 Level (now there's a fourth!); 24 March 2017, 1.
821 CTH.3044.0003.3783, Email, 'RE- A third 'Set Aside' OCI case at AAT1 Level (now there's a fourth!); 24 March 2017, 1.
822 CTH.3044.0003.3783, Email, 'RE- A third 'Set Aside' OCI case at AAT1 Level (now there's a fourth!); 24 March 2017, 1.

Nope – that must be a manual process one as we are only specifically tracking OCI. When did this come in and does Malisa etc know?

699. In turn, Mr Brazel responded at 9:20 pm:⁸²³

I'll look into where this is at. Was brought to my attention on Friday, but have not escalated.

700. And at 9:21 pm, Ms Bundy replied:⁸²⁴

We need to escalate this ASAP.

701. Meanwhile, at 2:23 pm, Mr Zogopoulos had replied separately to Mr Fisher's email of 10:58 am (to Mr Fisher, Ms Bundy and others, thereby creating a separate email chain), that:⁸²⁵

And here it is. Essentially, the tribunal have determined there is no debt as they don't believe the customer worked through the debt period.

702. At 9:51 pm, Ms Bundy forwarded that email chain to Mr Brazel and Ms Musolino, adding:⁸²⁶

I think this decision (another set aside of OCI) suggests the rate calculators at least in this case does not support apportioning income across a period.

703. At 10:38 am on 19 April 2017, Mr Zogopoulos emailed Ms Bundy, saying:⁸²⁷

Please find attached mark and no mark-up versions of this week's SDRT [Service Delivery Round Table] report.

There have been an additional 3 set aside OCI cases by the AAT1. One I would suggest is of concern as the AAT1 have questioned why the department has provided an ADEX and MultiCal Debt calculations demonstrating different amounts.

823 CTH.3044.0003.3783, Email, 'RE- A third 'Set Aside' OCI case at AAT1 Level (now there's a fourth!); 24 March 2017, 1.
824 CTH.3044.0003.3783, Email, 'RE- A third 'Set Aside' OCI case at AAT1 Level (now there's a fourth!); 24 March 2017, 1.
825 CTH.3039.0021.4507, Email, 'FW- A third 'Set Aside' OCI case at AAT1 Level (now there's a fourth!); 24 March 2017.
826 CTH.3039.0021.4507, Email, 'FW- A third 'Set Aside' OCI case at AAT1 Level (now there's a fourth!); 24 March 2017.
827 CTH.2001.0006.1296, Email, 'FW- SDRT weekending 14 April 2017, 19 April 2017.

704. At 11:50 am, Ms Bundy forwarded Mr Zogopoulos's email, including attachments, to Mr Brazel, Ms Musolino and Ms McCann (copying in Mr Jim McMahon) adding:⁸²⁸

See this week's SDRT report – still being updated. We are going to pull together the list of the 10 set aside decision relating to OCI. We need to have a better feedback loop with these I think where we aren't appealing and how we are going to manage and then ensure feedback goes back down regarding decisions. If we aren't appealing then we are accepting the decision is correct which means there is either new evidence (that's ok) but if there has been something we should or shouldn't have done along the way from the ARO down we need to address.

Annette – FYI – I think these were discussed at SDRT and we will need to be across for the Inquiry [Senate Community Affairs References Committee Inquiry into Centrelink's Compliance Program] I think.

705. At 3:14 pm on 19 April 2017, Ms Bundy emailed Mr Brazel, Ms Musolino and Ms McCann (copying in Ms Quynh Coulter⁸²⁹ and Ms Emma Tillman-Ryan⁸³⁰) with the subject line 'SDRT week ending 14 April 2017'⁸³¹ and attaching a document titled 'AAT Case Summaries.docx':⁸³²

Please see attached summary of cases re OCI related debts. We will set up meeting for next week to discuss approach to managing in the context of a broader decision quality framework. You can see some of the more recent cases that raise the issue around us relying on averaging without obtaining other information

Damien – I also know there is a non OCI related debt case⁸³³ that discusses this in detail.

706. The attached AAT Case summaries document included a summary of case '2016/S103893' of 15 March 2017 that was as follows:⁸³⁴

828 CTH.2001.0006.1296, Email, 'FW- SDRT weekendening 14 April 2017', 19 April 2017.

829 Quynh Coulter, DHS.

830 Emma Tillman-Ryan, DHS.

831 AM6, CTH.2001.0006.1353, Email, 'FW- SDRT weekendening 14 April 2017', 19 April 2017.

832 AM6, CTH.2001.0006.1354, Attachment, 'AAT Case Summaries', 19 April 2017.

833 Presumably, the 8 March 2017 decision.

834 AM6, CTH.2001.0006.1354, Attachment, 'AAT Case Summaries', 19 April 2017.

Tribunal finds no debt exists, questions method of income averaging over the financial year into weekly amounts, suggesting this process does not comply with section 1073 of the Social Security Act 1991 ...

707. Conscious of the need to understand the summarised cases and in order to give evidence at the Senate Community Affairs Reference Committee on 18 May 2017, Ms Musolino requested an overview and copies of the cases.⁸³⁵

708. In response, at 9:47 am on 18 May 2017, Mr Brazel emailed Ms Musolino (copying in the 'CHIEFCOUNSEL OFFICE' generic email inbox) with the subject line 'OCI debt cases',⁸³⁶ attaching an updated copy of the 'AAT Case Summaries' document that included the following summary of the 8 March Carney decision:⁸³⁷

No grounds for an appeal.

Debt of \$7452 based on averaging of ATO reported income.

Tribunal reports that the Department said that in the absence of payslips retained by the applicant averaging of income was appropriate. Evidence given by applicant that at times she did not work during the debt period and Tribunal accepted that income was variable over the debt period. There had been no evidence gathering by the Department.

Remitted with the direction, in effect, that averaging income was insufficient to establish a debt but that any debt subsequently raised was recoverable.

Decision to be implemented. The AAT2 would not decide differently

709. It may be inferred that Ms Musolino read and comprehended the 8 March Carney decision.

AIAL National Administrative Law Conference

710. At 4:51 pm on 1 June 2017, Ms Carmody emailed Ms Musolino with the subject line 'AIAL National Administrative Law Conference':⁸³⁸

835 Statement of Annette Musolino, 31 October 2022, AMU.9999.0001.0003, 33-34 [55].

836 AM6, CTH.3007.0006.1940, Email, 'OCI debt cases', 18 May 2017.

837 AM6, CTH.3007.0006.1949, Attachment, 'AAT Case Summaries LSD comments', 18 May 2017, 4.

838 LC6, CTH.3007.0006.6333, Email, 'RE- AIAL National Administrative Law Conference', 1 June 2017.

For info – I have just reviewed the conference brochure for the Australian Institute of Administrative Law (AIAL) Conference being held in July and note that a couple of the sessions relate to Centrelink and debt recovery (as below).

20 July 2017, 3:45 pm

Peter Sutherland, Convenor, Legal Aid Clinic, ANU Legal Workshop

Social security overpayments and debt recovery

21 July 2017, 11.00 am

Louise Macleod, acting Deputy Ombudsman Commonwealth Ombudsman's Office

Lessons learnt about digital transformation and public administration: Centrelink's online compliance intervention

Just thought it would be worth flagging – you may already be aware.

711. At 4:06 pm on 20 June 2017, Ms Carmody's executive assistant, Ms Sue Gough,⁸³⁹ emailed Mr Stipnieks (copying in Ms Carmody and the 'CHIEFCOUNSEL OFFICE' generic email inbox), forwarding Ms Carmody's email to Ms Musolino of 1 June 2017:⁸⁴⁰

Annette is unable to attend this conference as it clashes with her Band 2 Leadership training. Annette would like you to attend or send someone from your branch and report back noting the sessions of particular interest to DHS.

712. Between 3 and 9 July 2017, Ms Musolino was absent on leave and Mr Timothy Ffrench acted as Chief Counsel, DHS in her place.⁸⁴¹
713. At 4:28 pm on 6 July 2017, Ms Carmody forwarded Ms Gough's email of 20 June 2017 to Mr Stipnieks, Mr Ffrench and Mr Gladman (copying in the 'CHIEFCOUNSEL OFFICE' generic email inbox, Ms Gough, Ms Musolino and Mr Stipnieks), including the AIAL 2017 Conference Program:⁸⁴²

839 Sue Gough, Executive Assistant to Lisa Carmody, DHS.

840 LC6, CTH.3007.0006.6333, Email, 'RE- AIAL National Administrative Law Conference', 1 June 2017.

841 Statement of Annette Musolino, 31 October 2022, AMU.9999.0001.0010, 11 [11(f)]; Statement of Annette Musolino, 13 December 2022, AMU.9999.0001.0010, 108 [270(a)].

842 LC6, CTH.3007.0006.6333, Email, 'RE- AIAL National Administrative Law Conference', 6 July 2017.

Further to the below email from Sue, passing on Annette's request that Maris (or a delegate) attend the upcoming AIAL conference, I had a telephone discussion today with Cain Sibley, Clayton Utz — who is also the current AIAL President.

Cain was calling to touch base with Annette and ascertain whether there is anything she would like to discuss or anything he might be able to offer to alleviate any concerns the department may have with the line-up of speakers at the AIAL Conference

There are 4 sessions which will be addressing the OCI issue:

...

- Peter Hanks QC, Barrister, Owen Dixon Chambers West, Melbourne: *Administrative law and welfare rights: the 40-year story from Green v Daniels to 'robot debt recovery'* [This is the main lecture of the conference, the National Lecture]

...

I thanked Cain for reaching out and have advised that Annette (or someone in her absence) may be in touch should they wish to discuss ...

714. Ms Musolino replied to Ms Carmody at 4:47 pm, copying in other DHS personnel:⁸⁴³

... Can you please make sure Jonathan and Malisa have been advised of the conference and that we have people attending. I also want to be sure that none of our attendees are out [sic] on the spot to talk about OCI as that works [sic] not be appropriate. I wonder if we could ask the ombudsman office [sic] for an advance copy of the speech so that we can prepare for any follow up media – Tim can you ask Louise McLeod if that is possible

715. Between 10 and 17 July 2017, Mr Stipnieks acted as Chief Counsel, DHS in place of Ms Musolino.⁸⁴⁴

843 LC6, CTH.3007.0006.6341, Email, 'Re- AIAL National Administrative Law Conference [SEC=UNCLASSIFIED]'; 6 July 2017.
844 Statement of Annette Musolino, 31 October 2022, AMU.9999.0001.0010, 11 [11(f)]; Statement of Annette Musolino, 13 December 2022, AMU.9999.0001.0010, 108 [270(b)].

716. At 4:45 pm on 10 July 2017, Ms Gough emailed Mr Robinson, copying in Mr McNamara, Ms Bundy, the 'CHIEFCOUNSEL OFFICE' generic email inbox and Mr Stipnieks, saying: 'We potentially have 8 lawyers going including 3 SES officers.'⁸⁴⁵

717. At 4:46 pm, Mr Stipnieks emailed Mr Hutson and Ms Golightly (copying in the 'CHIEFCOUNSEL OFFICE' generic email inbox and Ms Sear, and including the AIAL conference schedule:⁸⁴⁶

... We intend to send staff from the Legal Services Division to attend the conference. We will ensure that our attendees refrain from commenting on online compliance issues at the conference. The Legal Services Division has not been approached to speak at the conference ...

718. On 11 July 2017, Ms Golightly replied to all (copying in Mr McNamara and Ms Bundy):⁸⁴⁷

Jonathan – will you let the Secretary know? Also, is it worth you call [sic] the Ombudsman to get a feel for what they are going to say in there [sic] address and try to impress on them that further negativity at this stage or discussion beyond what is in their public report, will not be helpful to anyone?

This is likely to generate more media so we will have to be ready.

719. At 10:33 am on 13 July 2017, Mr Stipnieks emailed Mr Hutson (copying in the 'CHIEFCOUNSEL OFFICE' generic email inbox) seeking feedback on a draft email to the Secretary about the conference (which was similar to his email of 10 July 2017 at 16:46 pm).⁸⁴⁸

720. At 10:37 am on 20 July 2017, Mr Stipnieks emailed Ms Sear (copying in the 'CHIEFCOUNSEL OFFICE' generic email inbox and Ms Musolino):⁸⁴⁹

845 CTH.3005.0005.6029, Email, 'RE- RESPONSE REQ'D BY 4PM TODAY - AIAL conference [DLM=For-Official-Use-Only]', 10 July 2017.

846 MS4, MAS.0001.0583.2156, Email, 'RE- PRINTED FOR INFORMATION- Australian Institute of Administrative Law Conference - OCI sessions [DLM=For-Official-Use-Only]', 10 July 2017, 3.

847 MS4, MAS.0001.0583.2156, Email, 'RE- PRINTED FOR INFORMATION- Australian Institute of Administrative Law Conference - OCI sessions [DLM=For-Official-Use-Only]', 10 July 2017, 2.

848 MS4, MAS.0001.0583.2156, Email, 'RE- PRINTED FOR INFORMATION- Australian Institute of Administrative Law Conference - OCI sessions [DLM=For-Official-Use-Only]', 10 July 2017, 1.

849 MS5, CTH.3007.0006.7240, Email, 'RE- AIAL conference [DLM=For-Official-Use-Only]', 20 July 2017.

As discussed, Annette has asked me to communicate to you and her anything that might be particularly controversial during the OCI related sessions. I will email you Annette, and Bevan via my iphone if there is anything concerning or unexpected.

721. Ms Sear replied all at 11:52 am:⁸⁵⁰

Many thanks Maris.

Looking forward to NOT hearing from you! 😊

722. The 2017 AIAL Conference was conducted at Hotel Realm, Canberra over the days of 20 and 21 July 2017.⁸⁵¹ Nine DHS officers were registered to attend, including 3 general counsel: Mr Matthew Roser,⁸⁵² Mr Stipnieks and Mr Ffrench.⁸⁵³ On the first day of the conference, Mr Peter Hanks QC⁸⁵⁴ gave the National Lecture on Administrative Law, which was entitled 'Administrative law and welfare rights: the 40-year story from Green v Daniels to 'robot debt recovery''.⁸⁵⁵ Notes prepared by Mr Daly,⁸⁵⁶ who attended the conference, record:⁸⁵⁷

Critical question – does dhs have legal authority to proceed to raise debt while using the system

723. During the presentation by Mr Hanks QC, Mr Stipnieks sent a series of emails to Ms Musolino and Ms Sear (copying Mr Hannan), providing in effect a 'real time' commentary on what was being said. Thus:⁸⁵⁸

- At 5:22 pm: 'Peter Hanks QC's main lecture has commenced and introductory remarks suggest it will be quite critical of the department's actions re OCI.'
- At 5:56 pm: 'The main thrust is a suggestion that raising of debts using averaging is not consistent with the terms of the social security law. Further that the law provides no scope to put the onus on the customer to provide information that they do not owe a debt.'

850 MS5, CTH.3007.0006.7240, Email, 'RE- AIAL conference [DLM=For-Official-Use-Only]'; 20 July 2017.

851 MS5, IAL.9999.0001.0001, Conference program, 'AIAL Conference Program FINAL', 20 July 2017.

852 Matthew Roser, General Counsel, Litigation, Subpoena and FOI Teams, DHS (22 May 2017 – September 2018); General Counsel, Litigation, Subpoena and Information Release Teams, DHS (October 2018 – 15 November 2019).

853 IAL.9999.0001.0002, Spreadsheet, 'Registration Database New 2017'.

854 Peter Hanks QC, Barrister, Owen Dixon Chambers West, Melbourne Bar.

855 MS5, IAL.9999.0001.0001, Conference program, 'AIAL Conference Program FINAL', 20 July 2017, 2.

856 Matthew Daly, acting Senior Government Lawyer, Program Advice and Privacy, DHS.

857 CTH.3007.0006.7291, Conference notes, 'AIAL Conference', 20 July 2017, 15.

858 MS5, CTH.3007.0006.7286, Email, 'Re- AIAL conference'; 20 July 2017.

- At 6:02 pm: ‘Critical of ombudsmans [sic] report for not questioning whether the process was consistent with the social security law.’
- At 6:08 pm: ‘Critical of Secretary's characterisation of letters as merely clarification letters when customers are forced to engage or have debts raised against them. Says secretary's statement in that regard is 'implausible'. Again suggests the process is not consistent with social security law. Again critical of ombudsmans [sic] report.’
- At 6:17 pm: ‘Ended by suggesting that someone should look to test the matter in the Federal Court.’

724. The presentation was subsequently published in edited form as an article of the same name.⁸⁵⁹ At page 11 of the article, Mr Hanks wrote:

To my mind, again, there is at least a possibility that the OCI system proceeds on a basis, and adopts a series of steps, that contradicts the requirements of s 1222A(a) and s 1223(1) of the Social Security Act.

725. And at page 13 Mr Hanks stated:

I suggest that the critical question presented by the OCI system is a question of law: does DHS have the legal authority to proceed to the raising of a debt by using the OCI system? Judicial review, ‘the enforcement of the rule of law over executive action’,^[footnote omitted] is the ideal means of answering that question.

726. At 8:41 pm on 20 July 2017, Ms Musolino emailed the ‘SECRETARYS.OFFICE’ generic email inbox (copying in Mr Hutson, Ms Sear and the ‘DHS.ENABLING.SUPPORT’ generic email inbox):⁸⁶⁰

Update on AIAL Conference: Mr Peter Hanks QC spoke at today's conference. His speech was extremely critical of the OCI program. The key criticisms are summarised below.

None of the criticisms are new, however noting that organisations such as ACOSS and Legal Aid were present, the comments may end up in a press release or in the media.

859 MS5, DSS.5059.0001.0171, Article, ‘Tab 15 - Peter Hanks, Administrative Law and Welfare Rights, AIAL Foru.pdf’, 20 July 2017.

860 JH6, CTH.3007.0006.8430, Email, ‘RE- Australian Institute of Administrative Law Conference - OCI sessions [DLM=For-Official-Use-Only]’, 20 July 2017.

The media team is monitoring social media and other outlets to see if this gets picked up.

Summary of criticisms

- Mr Hanks suggested that someone should look to test the matter in the Federal Court.
- Critical of Secretary's characterisation of letters as merely clarification letters when customers are forced to engage or have debts raised against them. Says secretary's statement in that regard is 'implausible'.
- Critical of ombudsmans [sic] report for not questioning whether the process was consistent with the social security law.
- Suggests that raising of debts using averaging is not consistent with the terms of the social security law.
- Suggests that the law provides no scope to put the onus on the customer to provide information that they do not owe a debt.

I will keep you updated.

727. At 7:36 am on 21 July 2017, Mr Daly emailed Mr Stipnieks, Mr Roser and Mr Gladman (copying in Ms Musolino)⁸⁶¹ attaching his draft notes from the AIAL conference.⁸⁶²

728. At 7:57 am on the same day, Mr Daly sent a further email to Mr Stipnieks, Mr Roser, Mr Gladman and Mr Ffrench (copying in Ms Musolino), providing 'key tweets' from the AIAL Conference, including tweets from various Twitter handles referring to statements by 'Hanks QC' in relation to the legality of '#Robodebt' (among other topics).⁸⁶³

729. At 5:36 pm on 24 July 2017, the 'SECRETARYS.OFFICE' generic email replied to Ms Musolino's email of 8:41 pm on 20 July 2017:⁸⁶⁴

The Secretary has noted this advice, please find a copy attached for your records.

861 CTH.3007.0006.7290, Email, 'DRAFT AIAL Conference Notes', 21 July 2017.

862 CTH.3007.0006.7291, Conference notes, 'AIAL Conference', 20 July 2017.

863 CTH.3007.0006.7308, Email, 'FW- DRAFT AIAL Conference Notes [DLM=Sensitive-Legal]', 21 July 2017.

864 JH6, CTH.3007.0006.8430, Email, 'RE- Australian Institute of Administrative Law Conference - OCI sessions [DLM=For-Official-Use-Only]', 24 July 2017.

730. A printed copy of Ms Musolino's email with the handwritten words 'Noted Thanks K Campbell 24 July 2017' was attached.⁸⁶⁵
731. At 11:01 pm on 27 July 2017, Mr Stipnieks emailed Ms Nicole Clark⁸⁶⁶ (Senior Government Lawyer, DHS) (copying in the 'CHIEFCOUNSELISOFFICE' generic email inbox and Ms Linda Navarro⁸⁶⁷),⁸⁶⁸ attaching a document with the heading 'Weekly Report: Program Advice & Privacy Branch up to 19 July 2017' (dated 26 July 2017). The document records under the heading 'Centrelink':⁸⁶⁹

Consideration of OCI related issues following AIAL conference where legislative authority for debt recovery was question in main conference lecture by Peter Hanks QC.

732. The practice in the DHS Legal Services Department at that time was for each General Counsel to provide the Chief Counsel with a weekly report in dot point form on the key work undertaken in the branch during the past week.⁸⁷⁰ Thus, it may be inferred from Mr Stipnieks's report emailed on 27 July 2017 that he and other legal officers in his Branch had reviewed, or were continuing to review, the issues raised at the AIAL Conference.
733. Between 28 July and 7 August 2017, Ms Musolino acted as Acting Deputy Secretary, Enabling Services, DHS, and Mr Ffrench filled the role of Acting Chief Counsel.⁸⁷¹
734. On 1 August 2017, Ms Musolino was provided with a further version of the draft AIAL conference notes prepared by Mr Daly and screenshots from Twitter (now 'X') in relation to the AIAL Conference.⁸⁷²
735. On 18 August 2017, Mr Daly forwarded to Mr Stipnieks, copying in other DHS personnel including Ms Musolino, the 'final papers from the AIAL Conference'. They include the paper prepared by Mr Hanks QC.⁸⁷³

865 AM7, CTH.3009.0023.8761, Hand-annotated email, 'Sec noted A Musolino advice of 200717 re ALC Conf', 24 July 2017.

866 Nicole Clark, Senior Government Lawyer, DHS.

867 Executive Officer to Annette Musolino, DHS.

868 CTH.3024.0008.8330, Email, 'PA&P dot points [DLM=Sensitive-Legal]', 27 July 2017.

869 CTH.3024.0008.8331, Attachment, 'Weekly Dot Points 26.7.17', 27 July 2017.

870 Statement of Annette Musolino, 13 December 2022, AMU.9999.0001.0010, 113 [286].

871 Statement of Annette Musolino, 13 December 2022, AMU.9999.0001.0010, 113 [287].

872 CTH.3007.0006.8676, Email, 'FW- DRAFT AIAL Conference Notes [DLM=Sensitive-Legal]', 1 August 2017; CTH.3007.0006.8677, Conference Notes, 'AIAL Conference v0.2', 1 August 2017.

873 Statement of Annette Musolino, 13 December 2022, AMU.9999.0001.0010, 114 [289].

736. In evidence in this investigation, Ms Musolino said it was not her usual practice to read academic articles but that it was likely she read Mr Hanks' article.⁸⁷⁴ But she did not specifically instruct any of the officers of the Legal Services Division to investigate the merits of Mr Hanks' arguments.⁸⁷⁵ In accordance with usual practice, she relied on Mr Stipnieks, Mr Roser and others in the Legal Services Division, whose responsibility it was to undertake that work, to provide her with any further advice when and if they considered it to be appropriate.⁸⁷⁶
737. Mr Stipnieks's evidence was that he could not recall anything coming out of that consideration; or of having formed a considered view as to whether income averaging was lawful.⁸⁷⁷ And that is surprising, because Mr Stipnieks was not only General Counsel with principal responsibility for the Program Advice Branch (and so for advising on debt recovery)⁸⁷⁸ but also one of the 3 General Counsel who were sent to the AIAL conference specifically to hear Mr Hanks' presentation.⁸⁷⁹ Furthermore, in March 2018,⁸⁸⁰ the Program Advice Branch drafted advice for Ms Musolino⁸⁸¹ in which the conclusion was firmly expressed that averaging was defensible and reasonable.⁸⁸²
738. On 7 September 2017, Professor Carney handed down an AAT Tier 1 Earned Income Intervention Program decision. It involved the manual application of averaged PAYG income to assess earned income. In setting aside the assessment, Professor Carney applied similar reasoning to his 8 March Carney decision (the 7 September Carney decision).⁸⁸³

874 NACC Transcript, 12 September 2025, Annette Musolino, T110.

875 NACC Transcript, 12 September 2025, Annette Musolino, T112.

876 RRC Transcript, 1 March 2023, Annette Musolino, T4152.

877 NACC Transcript, 11 September 2025, Maris Stipnieks, T70-71, T74; RRC Transcript, 3 February 2023, Maris Stipnieks, T3206-3207.

878 NACC Transcript, 11 September 2025, Maris Stipnieks, T81-82.

879 IAL.9999.0001.0002, Spreadsheet, 'Registration Database New 2017'.

880 See paragraphs 744-745 below.

881 To provide to the Secretary, see paragraph 745 below.

882 AMU.9999.0001.0001, Annexure to statement, '20221031 NTG-0012, Annexure A(46258568.1)', 14-15; RL3, CTH.2001.0009.3942, Email, 'Secretary Question - [REDACTED] - Earned Income Intervention program debt and claim for compensation - potential media interest [DLM=Sensitive-Legal]', 2; NACC Transcript, 12 September 2025, Annette Musolino, T115.

883 Exhibit 4-6045, CTH.3000.0039.6398, AAT Decision, '- [REDACTED] - AAT1 decn Sept 2017', 7 September 2017.

Advice given to Ms Leon

739. In September 2017, Ms Campbell ceased to be Secretary of DHS and was appointed Secretary of DSS.⁸⁸⁴ Professor Renee Leon was appointed as Secretary of DHS to replace Ms Campbell and, following a period of leave, on 9 October 2017 she arrived at DHS to take up her duties.⁸⁸⁵
740. At or about the time of her arrival (and possibly some days in advance of that) Ms Leon received a brief titled 'Incoming Secretary Brief, October 2017'⁸⁸⁶ signed by the Acting Secretary, Caroline Edwards, on 28 September 2017. It included the following:⁸⁸⁷

2.3.3 Integrity measures

Data-matching, sending letters and calculating differences in income and payments has been at the core of the department's welfare compliance activities since the 1990s.

In 2016-17 the department introduced an online compliance portal to enable people to review, update and confirm their information in relation to their past earnings. Parts of the debt raising process were also automated.

The department launched the portal after a pilot program involving around 1,000 people.

The portal did not change how data-matching was undertaken or the way income was assessed and differences calculated. However, the initial rollout impacted many thousands of individuals and gave rise to unprecedented media criticism, sustained political commentary and community backlash. In hindsight, this is something the department could have anticipated and mitigated to some extent.

The department responded by introducing a range of enhancements to the portal in line with recommendations from the Commonwealth Ombudsman. The Ombudsman did, however, find that the system could accurately calculate debts, providing reassurance that debt calculations were consistent with the previous manual process.

884 Statement of Kathryn Campbell, 18 November 2022, KCA.9999.0001.0021, 3 [18].

885 RRC Transcript, 28 February 2023, Renee Leon, T3994.

886 Statement of Renee Leon, 23 November 2022, RLE.9999.0001.0002_R, 4[21].

887 RL1, CTH.3003.0001.0009, Brief, '_R - Incoming Secretary Brief FINAL', 9-10.

Throughout this process the Minister supported the department and remained firm in the commitment that only eligible people should receive welfare and other payments, that they should get the correct amount and that debts to the Commonwealth should be repaid.

The Minister remains keen for the department to take a proactive approach to identifying payment accuracy risks, applying compliance measures, and educating people about their obligations.

[REDACTED]

These changes will have a significant impact on the profile of estimated savings of these measures (previously estimated at some \$8 billion over the forward estimates). The department has the Minister's agreement to commence the ramping up of its compliance measures but notes that this may also draw media interest in the lead up to Christmas.

We will brief you further on the details.

LESSONS FROM ONLINE COMPLIANCE INITIATIVE (OCI) AND CITIZEN ENGAGEMENT

As part of the response to implementation of the OCI the department has appointed a Chief Citizen Experience Officer to encourage consultation and collaboration with citizens. An immediate priority will be to develop an understanding of citizen touchpoints and how they will be impacted by changes over the next six months.

Additional enhancements to the OCI portal continue with changes such as creating a simpler log in, making information uploads easier, giving people more opportunities to review their information and improved screen design.

The department is also embedding user experience in the design phase of processes and systems, developing funding models to encourage citizen centred design and ensuring all correspondence and major releases now undergo user testing prior to going live.

741. In her evidence before the Royal Commission (and, in substance, again in this investigation), Ms Leon said that, although she appreciated that OCI was an unpopular scheme, nothing was brought to her attention at that time which led her to believe that there were any doubts about the lawfulness of OCI.⁸⁸⁸
742. During February 2018, the 7 September Carney decision was escalated to Ms Musolino after the customer (whose debts had already been recalculated by DHS in accordance with the AAT's decision and who had been refunded the amount previously over-assessed)⁸⁸⁹ lodged a claim with DHS for compensation and stated that he would be speaking to media about the matter.⁸⁹⁰
743. At 5:54 pm on 26 February 2018, Ms Musolino emailed to 'SECRETARYS.OFFICE' generic email inbox (copying in Ms McCann, Mr Storen, Mr Andrew Wood,⁸⁹¹ the 'DEPSEC.ENABLINGSERVICES' generic email inbox, Ms Sear, Mr McNamara, Mr Ffrench, Mr McMahon and Ms Harfield), with the subject line 'Earned Income Intervention program debt and claim for compensation – potential media interest':⁸⁹²

Secretary

For information: I write to inform you of a matter that may raise issues in relation to the Employment Income Confirmation (OCI) process and may attract media attention. Mr [REDACTED] incurred 'Earned Income Intervention program' debts of \$9,342, raised in October 2015. On 7 September 2017, the AAT Tier 1 decided that the debts were to be recalculated in accordance with its directions. The department subsequently recalculated the debts to be \$551.19. As [REDACTED] had already repaid more than that amount, he was refunded the difference, which was \$5,730.81.

The Earned Income Intervention program involved a manual application of income data provided by the ATO over financial years. It was subsequently superseded by the Employment Income Confirmation (OCI) process which largely automated that previous process.

888 RRC Transcript, 28 February 2023, Renee Leon, T4002; NACC Transcript, 2 September 2025, Renee Leon, T14-15, T20-21.
889 RL3, CTH.2001.0009.3942, Email, 'Secretary Question - [REDACTED] - Earned Income Intervention program debt and claim for compensation - potential media interest [DLM=Sensitive-Legal]'; 26 February 2018.
890 Statement of Annette Musolino, 31 October 2022, AMU.9999.0001.0003, 34[57].
891 Andrew Wood, Deputy Secretary, Enabling Services, DHS.
892 RL3, CTH.2001.0009.3942, Email, 'Secretary Question - [REDACTED] - Earned Income Intervention program debt and claim for compensation - potential media interest [DLM=Sensitive-Legal]'; 26 February 2018, 2-3.

The matter has come to my attention because [REDACTED] is now seeking compensation for his time, costs and stress caused by the debt decisions; and is claiming that he was provided incorrect advice about claiming newstart allowance. A decision on his compensation claim will be made by 12 April 2018.

[REDACTED] has advised that *A Current Affair* is interested in his case and will interview him. Media has been alerted as has the Compliance Risk Branch and the Information, Debts and Appeals Branch.

The AAT Tier 1 decision is not published but it is possible that [REDACTED] could provide a copy of the decision to the media. That decision contains comments that are critical of the department and of the OCI process (notwithstanding that the debt was not in fact an OCI debt).

I will keep you updated on the progress of the compensation claim.

744. At 10:54 am on 1 March 2018, the 'SECRETARYS.OFFICE' generic email inbox emailed Mr Andrew Wood (copying in Ms McCann, Mr Storen, Ms Sear, Mr McNamara, Mr Ffrench, Ms Harfield, Mr McMahon, Ms Musolino, the 'SECRETARYS.OFFICE' generic email inbox and the 'CHIEFCOUNSEL.SOFFICE' generic email inbox:⁸⁹³

Mr Wood

On noting the below advice provided by Ms Musolino, the Secretary provided the following annotation:

Did we make an error?

Copy of decision please.

Please find a copy of the Secretary's annotations attached, for appropriate action and advice.

893 RL3, CTH.2001.0009.3942, Email, 'Secretary Question - [REDACTED] - Earned Income Intervention program debt and claim for compensation - potential media interest [DLM=Sensitive-Legal]', 26 February 2018, 2.

745. At 2:11 pm on 6 March 2018, Ms Musolino responded (copying in Mr Andrew Wood, the 'DEPSEC.ENABLINGSERVICES' generic email inbox, the 'CHIEFCOUNSELISOFFICE' generic email inbox, Mr Storen, Ms Sear, Mr McNamara, Ms Harfield, Mr McMahon and Mr Lumley), attaching the 7 September Carney decision:⁸⁹⁴

Secretary

Response to annotation on brief:

1. You asked for a copy of the 7 September 2017 decision of the AAT (Social Services and Child Support Division) (AAT Tier 1) in relation to [REDACTED] A copy of the AAT (Tier 1) decision is **attached** (and a hard copy will be delivered to your office).
2. You also asked whether the department made an error in its original decision to raise a debt of \$9,342 against [REDACTED] in October 2015 as a result of the Earned Income Intervention Program (a manual process which preceded the OCI process).

In my view, no error was made by the department in its original decision. The decision was based on the information the department had at a point in time. [REDACTED] did not produce any evidence of actual income for the debt period when initially approached by the department. The department therefore calculated [REDACTED] fortnightly income by:

- obtaining income information for a certain period from the ATO;
- dividing that total income by the number of fortnights in the relevant period; and
- assuming that to be regular fortnightly income for the purposes of determining whether there had been an overpayment of Newstart Allowance (i.e. 'averaging').

894 RL3, CTH.2001.0009.3942, Email, 'Secretary Question - [REDACTED] - Earned Income Intervention program debt and claim for compensation - potential media interest [DLM=Sensitive-Legal]'; 26 February 2018, 1-2.

The AAT Member who made the decision in this matter found that ‘during the alleged debt periods [REDACTED] was engaged in episodic or ongoing work with eight different employers of varying duration and employment conditions.’ The Member decided that because the department had calculated the debt on the basis of averages derived from the ATO, and had not used its compulsory powers to obtain actual fortnightly earnings figures (from employers), there was ‘insufficient evidence to establish an overpayment debt or its size’.

Is the practice of averaging defensible and reasonable?

Following the heightened interest in the OCI process in 2017, questions were raised by various commentators about the appropriateness of the department's decision-making with respect to overpayment debts. Of particular focus was the department's practice of ‘averaging’. Averaging is the process by which the department assumes that an income amount earned in a particular financial year (or part year) was earned on a fortnightly basis for the relevant financial year (or part year). Averaging has historically been used as the basis of a decision to raise a debt in the absence of other contrary information such as bank statements or payslips. The Commonwealth Ombudsman considered the practice of averaging in its Own Motion report on the OCI. While making recommendations regarding this practice, the Ombudsman did not conclude that this process was improper or unlawful.

In my view a decision to raise a debt on the basis of averaging is **defensible and reasonable**.

However a decision based on averaging is likely to be more vulnerable to successful challenge on review, because it is an assumption that can be displaced readily with actual evidence from an employer or bank. I do not consider that this renders such a decision improper or unreasonable.

In any event, following on from the Ombudsman recommendations, the department has now put in place measures to reduce the risks associated with averaging. In particular (in response to the Own Motion recommendations) the department has agreed that it will use its compulsory powers to request evidence from banks or employers in certain circumstances and will more clearly explain the concept of averaging in its communications to customers.

I have discussed this response with Mr Wood and he will discuss with you the inherent risks of limited management visibility of AAT (Tier 1) decisions that criticise the department.

746. That advice had been drafted by the Program Advice Branch, which was headed by Mr Stipnieks,⁸⁹⁵ and it reflected the Legal Services Division's view that, contrary to Professor Carney's reasoning, averaged income was sufficiently probative to found a defensible and reasonable decision.

Professor Carney's article

747. On 3 April 2018, Professor Carney published, on the UNSW Law Journal Forum, an article titled 'The New Digital Future for Welfare: Debts Without Proofs or Moral Authority?'. In effect, it repeated Professor Carney's reasoning in the 8 March Carney decision and the 7 September Carney decision in support of the conclusion that averaged income was not a sufficient evidential basis on which to assess debt (Professor Carney's article).⁸⁹⁶
748. On the same day, DHS Media emailed Ms Musolino, attaching a copy of Professor Carney's article:⁸⁹⁷

For your information, we have received a media enquiry from The Canberra Times (Doug Dingwall) about the Earned Income Confirmation system following an academic article about it. The full enquiry is copied below and the article is attached for reference.

We will work with General Managers Jason McNamara and Craig Storen and their teams to prepare a response. As the enquiry has legal questions, we will also work with your team to prepare a response for your review.

749. At 2:44 pm on 4 April 2018, an article appeared in *The Guardian* under the heading: 'Centrelink Robodebt program accused of enforcing illegal debts' (the April 2018 Guardian article). It included:⁸⁹⁸

895 NACC Transcript, 12 September 2025, Annette Musolino, T115.

896 MS6, TCA.9999.0001.0013, Article, 'Terry Carney, The New Digital Future for Welfare- Debts Without Legal Proofs or Moral Authority (UNSW Law Journal)', 3 April 2018.

897 Statement of Annette Musolino, 13 December 2022, AMU.9999.0001.0010, 117 [299].

898 RL4, CTH.3009.0011.0131, Email, 'Sec annot news alert of 040418 re debts', 4 April 2018.

... The scathing indictment of the program is contained in an academic paper by Prof Terry Carney that also accuses Centrelink of failing to defend the legality of debts in the AAT and suggests the tribunal should set aside debts until the agency has proved the amounts are correct.

750. At 4:03 pm on 4 April 2018, Ms Gough emailed Ms Musolino (copying in Mr Roser and the 'CHIEFCOUNSEL OFFICE' generic email inbox), attaching an email media alert regarding the April 2018 Guardian article:⁸⁹⁹

Craig Storen would like a quick word with you, when you are free, on this issue as it is hotting up ...

751. At 4:21 pm on 4 April 2018, Mr Storen emailed to Ms Rebecca Cross (copying in Mr McNamara and Mr Robert Hanlon):⁹⁰⁰

I have a call in with the General Counsel (Annette Mussolini) [sic] to follow-up some work I thought they were doing at the behest of media on some of the legal issues.

752. At 4:40 pm on 4 April 2018, Mr David Seale⁹⁰¹ emailed Ms Musolino and the 'CHIEFCOUNSEL OFFICE' generic email inbox (copying in Ms Navarro, the 'MEDIA' generic email inbox, Ms Sear, Ms Leonie Kolmar, Mr Jongen, Ms Melanie Leach, Mr Hannan and Mr Stipnieks) seeking Ms Musolino's urgent 'approval' of a proposed response to media inquiries regarding the Professor Carney article.⁹⁰²

753. At 5 pm on 4 April 2018, Mr Stipnieks responded (copying all recipients from the previous email):⁹⁰³

As discussed, Annette is not available to clear so I'm responding on her behalf.

I would suggest a slight change to the wording of the first dot point, as set out below:

899 Statement of Annette Musolino, 31 October 2022, AMU.9999.0001.0003, 118 [304].

900 CTH.2000.0007.5553, Email, 'FW- BREAKING NEWS ALERT- The Guardian reports Centrelink robo-debt program accused of enforcing 'illegal' debts [DLM=For-Official-Use-Only]', 4 April 2018.

901 David Seale, Director Media (Content), Communications Division, DHS.

902 AM8, CTH.3007.0008.3964, Email, 'RE For urgent approval Media response - The Canberra Times (Doug Dingwall) and The Guardian (Paul Karp and Christopher Knaus)', 4 April 2018.

903 AM8, CTH.3007.0008.3964, Email, 'RE For urgent approval Media response - The Canberra Times (Doug Dingwall) and The Guardian (Paul Karp and Christopher Knaus)', 4 April 2018.

The Department of Human Services strongly refutes any claims that it has conducted its compliance activities in a manner which is inconsistent with the legislation.

Otherwise, it's ok to go from my perspective.

754. In its original form, the 'first dot point' had been as follows:⁹⁰⁴

The Department of Human Services strictly adheres to legislation when conducting compliance activities, and refutes any claims to the contrary.

755. On 4 April 2018, Ms Leon marked a printed copy of the Professor Carney article in manuscript: 'for advice pls, RL 4/4'.⁹⁰⁵ In evidence before the Royal Commission, she stated that '[t]his was the first time I became aware there might be a question of the lawfulness of the scheme'.⁹⁰⁶ That does not appear to be correct, however. For, as was earlier noticed, a month before on 6 March 2018, Ms Leon had been provided (at her request) with a copy of the 7 September Carney decision and the advice prepared for Ms Musolino by the Program Advice Branch on the efficacy of the 7 September Carney decision. And as has been seen, the 7 September Carney decision turned directly on whether averaging was lawful, and the advice prepared by the Program Advice Branch was expressly directed to the question of whether the practice of averaging was defensible and reasonable.

756. Ms Leon also said in evidence before the Royal Commission (and in effect repeated in this investigation) that she had a practice of meeting individually with her Deputy Secretaries and Chief Counsel each month – to receive an update on matters in their responsibility⁹⁰⁷ – and that at the next such monthly meeting with Ms Musolino after 4 April 2018, she 'raised the issue' of 'the lawfulness of the scheme'. According to Ms Leon's evidence before the Royal Commission:⁹⁰⁸

I said 'Are we confident in the legal basis of this program?'

Ms Musolino said 'Yes we are'

I said 'Why? What do we think?'

904 AM8, CTH.3007.0008.3964, Email, 'RE For urgent approval Media response - The Canberra Times (Doug Dingwall) and The Guardian (Paul Karp and Christopher Knaus)', 4 April 2018, 2.

905 RL4, CTH.3009.0011.0131, Annotated email, 'Sec annot news alert of 040418 re debts', 4 April 2018.

906 RRC Transcript, 28 February 2023, Renee Leon, T4016-4017.

907 Statement of Renee Leon, 23 November 2022, RLE.9999.0001.0002, 12[69]; RRC Transcript, 28 February 2023, Renee Leon, T4013-4014; NACC Transcript, 2 September 2025, Renee Leon, T21.

908 Statement of Renee Leon, 23 November 2022, RLE.9999.0001.0002, 12-13[69].

Ms Musolino said 'It's a long-standing principle of administrative law that a decision-maker is entitled to rely on the best available evidence. Having done data matching and put the data to the customer, if they don't put anything different the decision-maker is entitled to rely on it as the best available evidence.'

I said 'Are we sure about that?'

Ms Musolino said 'Yes'.

757. In her evidence in this investigation, Ms Musolino frankly conceded that she would have said something to the effect recalled by Ms Leon, because she believed it to be correct.⁹⁰⁹

I accept that if I had my time again I would do things differently, but everything I did I did [was] based on what I believed to be the correct position as I'd been informed. I did not, I had no interest in misrepresenting anything to Secretary Leon.

PwC Report

758. During January 2017, Mr McNamara had become General Manager of the Integrity Modernisation Division, DHS to assist Ms Golightly with the implementation of the OCI.⁹¹⁰ Ms Campbell concluded that Mr McNamara would need expert assistance from outside DHS to undertake the task that he had been assigned to lead of identifying and rectifying emerging systemic faults in the implementation of the OCI, in order to improve the user experience and delivery of the program.⁹¹¹ To that end, Ms Campbell (with Minister Tudge's knowledge) determined that DHS should invite PricewaterhouseCoopers (PwC) (whom DHS had previously engaged to provide similar services in relation to other systems) to submit a proposal for the work required.⁹¹²
759. At 5 pm on 31 January 2017, Ms Campbell telephoned Mr Terry Weber,⁹¹³ a senior partner at PwC based in Canberra, and said in substance that she had concerns about the targets for the OCI debt recovery scheme and thought that OCI processes needed to be reviewed by an external organisation.⁹¹⁴

909 Statement of Shane West, 30 November 2022, PWC.9999.0001.0004, 3.

910 Statement of Jason McNamara, 1 December 2022, JMN.9999.0001.0012, 3[12]-[15]; NACC Transcript, 19 September 2025, Kathryn Campbell, T143.

911 NACC Transcript, 19 September 2025, Kathryn Campbell, T122-123; NACC Transcript, 16 September 2025, Jason McNamara, T10.

912 Statement of Kathryn Campbell, 3 March 2023, KCA.9999.0001.0039, 2[9]-[10].

913 Terrence Weber, Partner, PwC.

914 Statement of Terrence Weber, 23 February 2023, TWE.9999.0001.0002, 2[14]-[15].

760. Following the call, Mr Weber arranged for one of his partners, Mr Shane West⁹¹⁵ (who had specialist expertise and considerable experience in the fields required) to contact DHS and work out the scope of the proposed engagement.⁹¹⁶
761. At 7:10 am on 2 February 2017, Mr Weber emailed Mr West's contact details to Ms Campbell so that DHS could liaise directly with Mr West for submission of a proposal for 'The Business Process Improvement assignment'.⁹¹⁷
762. At 8:37 am on 2 February 2017, Ms Campbell replied to Mr Weber (copying in Ms Golightly and Mr McNamara)⁹¹⁸ and, at 8:59 am, Mr Weber forwarded the email chain on to Mr West.⁹¹⁹ That was followed by a telephone discussion between Mr McNamara and Mr West to identify more clearly DHS' requirements and thus enable Mr West to assess in broad outline what PwC should propose.⁹²⁰
763. Following detailed consideration of DHS' requirements within PwC, on 6 February 2017 Mr Weber reviewed and approved a draft proposal of work to be undertaken by PwC for submission to DHS (the draft Proposal)⁹²¹ and, at 6:21 pm on 6 February 2017, Mr West emailed the draft Proposal⁹²² to Mr McNamara (copying in Mr Weber).⁹²³
764. At 7:33 pm on 7 February 2017, Mr Van Hagen of PwC,⁹²⁴ who was to be one of the team members undertaking the work envisaged in the draft Proposal, emailed Mr West attaching a link to a *Guardian* article titled: 'Centrelink scandal Labor and Greens likely to force inquiry into debt recovery system', with the subject line 'The plot thickens'.⁹²⁵
765. At 9:30 am on 8 February 2017, Mr West forwarded Mr Van Hagen's email to Mr Lai who, at 10:13 am, responded (copying in Mr Weber and Mr Nugent, Mr McDougall and Mr Pearson):⁹²⁶

Everyone on the team should read this. It's critical that the scope of work is tight.

915 Shane West, Partner, PwC.

916 NACC Transcript, 3 October 2025, Shane West, T6-7; NACC Transcript, 17 September 2025, Terrence Weber, T8-9.

917 KC11, PWC.1007.0016.0004, Email, 'RE- Business process improvement [SEC=UNCLASSIFIED]'; 2 February 2017.

918 KC11, PWC.1007.0016.0004, Email, 'RE- Business process improvement [SEC=UNCLASSIFIED]'; 2 February 2017.

919 KC11, PWC.1007.0016.0005, Email, 'Fwd- Business process improvement [SEC=UNCLASSIFIED]'; 2 February 2017.

920 Statement of Shane West, 30 November 2022, PWC.9999.0001.0004, 3.

921 Statement of Terrence Weber, 23 February 2023, TWE.9999.0001.0002, 2[19]; JM1, PWC.1007.1001.0009, Letter, 'PwC - Centrelink business process improvement_final', 6 February 2017.

922 Denoted as 'PwC - Centrelink business process improvement'.

923 JM1, PWC.1007.1001.0008, Email, 'Business Process Improvement proposal', 6 February 2017.

924 Frank van Hagen, Senior Manager, PwC (March 2016 - February 2019).

925 TW2, PWC.1007.1003.0242, Email, 'Re- The plot thickens', 7 February 2017.

926 TW2, PWC.1007.1003.0242, Email, 'Re- The plot thickens', 8 February 2017.

766. At 2 pm on 8 February 2017, Mr West replied:⁹²⁷

Quick update. I've spoken to the client again who has given some feedback on the draft response. Basically she said:

- remove all reference to Centrelink (instead use welfare support payments)
- It's complicated. Lots of relevant systems to get across, as well as plenty of divisions within DHS
- they're interested in getting some perspectives from other organisations / industries (e.g. Banks and the UK)
- They want us to understand whether DHS made some assumptions that certain constraints couldnt [sic] be overcome in designing the current state, and to test whether they still hold. This may require the addition of someone with a legal perspective (as some of the constraints relate to legislation apparently). The example they keep giving is that the current process is based on not being allowed to use Medicare data as part of the matching, but this might not be accurate
- Extend the timeframe of the job. It's going to take a good amount of time to get around all the key stakeholders. They dont [sic] want to be presenting a timeline to the Secretary that they cant meet.
- They are hopeful of starting to get the team on-board from the end of next week.

767. It is apparent from subsequent correspondence that the reference to 'the client' in the first line of the email was a reference to Ms Kristen Foster of DHS.

768. After discussions within PwC extending over several hours, review, further conversation between Mr West and Ms Foster, and amendments to the draft Proposal to respond to DHS' 'feedback', at 5:32 pm on 8 February 2017 Mr West emailed to Ms Foster an 'updated version' of the draft Proposal⁹²⁸ that:⁹²⁹

927 TW2, PWC.10071003.0242, Email, 'Re- The plot thickens', 8 February 2017.

928 PWC.10071001.0047_R, Letter, 'PwC - Centrelink business process improvement_updated_draft_08022017', 8 February 2017.

929 PWC.10071001.0045, Email, 'RE- word version of draft proposal [SEC=UNCLASSIFIED]', 8 February 2017.

... factors in our earlier conversation. Most notably it extends the duration of the project by 3 weeks and also bolsters the team in regards of Systems expertise

769. This 'updated version' incorporated some of the amendments previously proposed by Ms Foster, including replacing references to 'compliance and debt establishment activities' with 'debt and compliance management activities'; replacing 'debt identification and recovery processes for individual Centrelink customers' with 'activities to deter, detect and investigate cases of suspected fraud and compliance'; and replacing references to 'individual debt' with 'customer compliance'.⁹³⁰
770. At 6:04 pm, Mr West emailed to Ms Foster 'an updated version [of the draft Proposal] that removes reference to debt'.⁹³¹ As Mr West explained in evidence, this 'updated version' responded to clarification provided by Ms Foster by email at 3:19 pm on 8 February 2017 that had not been included in the version sent at 5:32 pm.⁹³² It also included an amendment under the 'Limitations and Assumptions' section to clarify that 'activities that the department may undertake with regards to enforcement and/or maintenance of customer debt arrangements' were outside the scope of PwC's proposed engagement.⁹³³ As Mr West said in his statement before the Royal Commission:⁹³⁴
- My recollection is that the references to 'debt' were removed because the intended scope of PwC's engagement was not to include debt collection activities. Rather it was focussed on the review process that DHS undertook to determine whether an identified discrepancy was as a result of overpayment.
771. At 6:24 pm on 8 February 2017, Mr West emailed the final form 'PwC Proposal-business proposal improvement review' (the Proposal) to Ms Foster⁹³⁵ and Ms Foster forwarded the Proposal to Mr McNamara with an attached proposed agenda for a meeting of Ms Golightly, Mr McNamara, and the Secretary at 1:30 pm on 9 February 2017.⁹³⁶

930 Statement of Shane West, 6 December 2022, PWC.9999.0001.0005, 1-2[6]; PWC.1007.1001.0047_R, Letter, 'PwC - Centrelink business process improvement_updated_draft_08022017', 8 February 2017, 1, 9.

931 PWC.1007.1001.0057, Email, 'RE- word version of draft proposal [SEC=UNCLASSIFIED]', 8 February 2017.

932 PWC.1007.1001.0032, Email, 'RE- word version of draft proposal [SEC=UNCLASSIFIED]', 8 February 2017; PWC.1007.1001.0033, Markup of letter, 'PwC - DHS compliance and fraud activities business process improvement_final_draft KF', 8 February 2017.

933 Statement of Shane West, 6 December 2022, PWC.9999.0001.0005, 2[7]; PWC.1007.1001.0059, Letter, 'PwC - Centrelink business process improvement_updated_draft_08022017', 8 February 2017, 9.

934 Statement of Shane West, 6 December 2022, PWC.9999.0001.0005, 1[5].

935 JM10, JMN.9999.0001.0013, Annexures to Statement, '20230214 Second Statement of Jason McNamara (NTG-0181)', 11, row 3.

936 JM10, JMN.9999.0001.0013, Annexures to Statement, '20230214 Second Statement of Jason McNamara (NTG-0181)', 11, row 4.

772. At 8:55 pm on 8 February 2017, Ms Foster emailed the Proposal and meeting agenda to ‘the Secretary’s Office’ (and others). The meeting agenda included a summary of the objectives, deliverables, timing and cost of the PwC engagement and attached a copy of PwC’s signed engagement letter.⁹³⁷
773. There is little evidence of what occurred at the meeting. Handwritten notes on the agenda and discussion topics, which Ms Campbell agreed were in her handwriting,⁹³⁸ state: ‘Agreed to proceed’, and, next to the heading ‘Objective of the review’: ‘Needs to look at human errors we are seeing’.⁹³⁹ It is also apparent from subsequent events that it was ‘Agreed to proceed’. But there is no evidence of discussion at the meeting. Ms Campbell could not recall the meeting⁹⁴⁰ and Mr McNamara’s only recollection was that there had been a meeting at which Ms Campbell said: ‘Let’s just push ahead.’⁹⁴¹
774. It would be unsurprising, however, if there were little discussion at the meeting. As Ms Campbell said in her statement before the Royal Commission, apart from wanting PwC’s engagement to be a ‘find and fix’ engagement – for ‘PwC to get involved quickly and identify and help solve operational issues on an iterative basis as they were identified’ – she had no recollection of being involved in setting the scope of the engagement.⁹⁴² Likewise, it was Mr McNamara’s evidence in this investigation that it was he who set them:⁹⁴³

MR HEVEY: Who's deciding what you're actually going to purchase from PwC?

MR McNAMARA: It would have – it was probably me and – it was probably me, because they were working, they were essentially just my strategy and data team.

...

MR HEVEY: How were you able to decide what you want them to do?

937 Statement of Kristen Foster, 25 February 2023, KFO.9999.0001.0002, 4-5[27].

938 NACC Transcript, 19 September 2025, Kathryn Campbell, T125.

939 NACC Transcript, 16 September 2025, Jason McNamara, T15.

940 Statement of Kathryn Campbell, 3 March 2023, KCA.9999.0001.0039, 2[11].

941 NACC Transcript, 16 September 2025, Jason McNamara, T19.

942 Statement of Kathryn Campbell, 3 March 2023, KCA.9999.0001.0039, 2-3[11]-[13].

943 NACC Transcript, 16 September 2025, Jason McNamara, T15.

MR McNAMARA: Well, I mean it's a bit of a stop gap what we're asking them. I mean the issue – I would say we were more buying arms, legs and brains, we weren't necessarily buying outputs. So I accept that that's a bit unusual in public sector procurement, but that's the way I've always run consultancy recruitment, and this was no exception, which is I wasn't ever interested in outputs, interested in outcomes. And so what I needed from them was what I needed from them.

775. It is apparent, therefore, that the scope of the Proposal had been thoroughly worked out by Mr McNamara and Ms Foster with PwC before submission to the meeting and that discussion of the scope may have been perfunctory.
776. At 11:31 am on 10 February 2017, an email was sent by the ‘Secretary’s Office’ to Ms Golightly and Mr McNamara with the subject ‘Secretary annotated meeting brief – Business Process Improvement Review of Customer Compliance Management Process’. The email from the Secretary’s Office attached the ‘annotated meeting brief’ which was the annotated version of the meeting agenda earlier referred to.⁹⁴⁴
777. At 12:29 pm on 10 February 2017 Ms Foster emailed ‘S Dyer’ and ‘P Kennedy’ (whose full names are not available to the Commission) ‘FOR DS APPROVAL: Business process improvement review (spending approval)’ attaching the spending approval for the procurement of PwC to be signed by Ms Golightly.⁹⁴⁵
778. At 11:07 am on 13 February 2017, Ms Foster emailed Mr West (copying Mr Weber and Ms Julie Bowen)⁹⁴⁶ requesting confirmation of the correct amount of fees shown in the Proposal, noting that the figure had changed by \$800 since the version of ‘Wednesday pm’. She asked for Mr West to call her. Mr West responded at 12:56 pm attaching an ‘updated proposal that reconciles with the version on Wednesday PM’ (the updated proposal).⁹⁴⁷

944 JM10, JMN.9999.0001.0013, Annexures to Statement, ‘20230214 Second Statement of Jason McNamara (NTG-0181)’, 11, row 5.

945 JM10, JMN.9999.0001.0013, Annexures to Statement, ‘20230214 Second Statement of Jason McNamara (NTG-0181)’, 12, row 6.

946 Julie Bowen, PwC.

947 PWC.1007.1001.0101, Email, ‘RE- PwC proposal [SEC=UNCLASSIFIED]’, 13 February 2017; PWC.1007.1001.010, Letter, ‘PwC – Centrelink business process improvement_final_13022017’, 13 February 2017.

779. At 2:33 pm on 13 February 2017, Ms Foster emailed Mr West (copying Mr Weber and Ms Bowen) to confirm that DHS was preparing contracts based on the updated proposal and noted it would be helpful for key members of his team to meet with Mr McNamara to discuss the engagement.⁹⁴⁸ Thereafter, between 2:49 pm and 3:58 pm, Mr West and Ms Foster corresponded to set up a meeting for 10 am on Thursday 15 February 2017.⁹⁴⁹
780. Later, on 13 February 2017, Ms Foster was informed that Ms Golightly had approved the spending proposal and she requested that the procurement was recorded in the financial management system.⁹⁵⁰
781. The Proposal's description of the services that were to be provided by PwC is extensive. Relevantly, however, it included the following:

- The 'Background' section of the Proposal stated that 'you require an independent review of the compliance and fraud activities of [DHS], culminating in identification of areas for improvement, together with a high-level implementation plan.' There is further detail in the Proposal.⁹⁵¹
- In the 'Our Approach' section, in a graphic titled 'Figure 1: Approach Overview' and under the sub-heading 'Finalise recommendations reporting to steering group' there was a dot point list of items which included 'Presentation to steering group', 'Draft report', 'Feedback', and 'Final report'.⁹⁵²

The approach to the task that PwC would adopt was divided into four phases (the relevant two of which are set out below):

- Phase 1 contemplated that part of PwC's review framework would include 'Policies and compliance' – 'What is the legal basis for the rules and policies implemented as part of the department's compliance activities? Are policies clearly articulated and understood? Are any policies inconsistent with the desired business outcomes?'.⁹⁵³

948 PWC.1007.1001.0154, Email, 'RE- PwC proposal [SEC=UNCLASSIFIED]', 13 February 2017, 3.

949 PWC.1007.1001.0154, Email, 'RE- PwC proposal [SEC=UNCLASSIFIED]', 13 February 2017, 1-2.

950 Statement of Kristen Foster, 25 February 2023, KFO.9999.0001.0002, 7[37].

951 JM3, PWC.1007.1001.0174, Official Order, 'Work order_PwC_signed', 15 February 2017, 2.

952 PWC.1007.0001.0001_R, Letter, '1. 20170213 - DHS Business process improvement review - Engagement letter', 13 February 2017, 2.

953 PWC.1007.0001.0001_R, Letter, '1. 20170213 - DHS Business process improvement review - Engagement letter', 13 February 2017, 3-4.

- Phase 4, which was detailed under the subheading ‘Implementation roadmap and report’, envisaged provision of a ‘high-level implementation plan, or roadmap’, which would ‘capture [PwC’s] key recommendations around productivity initiatives, and synthesis [sic] all preceding analysis into a final report’.⁹⁵⁴
- The final report would ‘synthesise the key steps and findings of all preceding stages of work and analysis’ providing an ‘Artefact of key project steps and findings’; ‘An evidence base and ‘case for change’; ‘Analysis of options’; and ‘Final recommendations and implementation roadmap’.⁹⁵⁵
- The team included Mr Weber (described as the ‘Engagement Partner’) and Mr West (described as the ‘Delivery Partner’).⁹⁵⁶
- The total cost was \$853,859 exclusive of GST and PwC would invoice DHS twice during the engagement: ‘50% at the completion of Phase 2 current state analysis’ and ‘the remaining 50% upon completion of the implementation plan’.⁹⁵⁷

The scope of work did not involve examining the accuracy of debt calculation using income averaging or the impact of increased use of income averaging to assess or recover debts.

782. On 14 February 2017, Ms Foster emailed Mr West attaching the DHS Official Order for the services to be supplied by PwC⁹⁵⁸ and requested that it be signed and returned, after which it would be signed by a delegate.⁹⁵⁹
783. On the same day, Mr West returned the Official Order, signed by Mr West for PwC,⁹⁶⁰ whereafter it was signed by Ms Golightly as the DHS delegate.
784. Relevantly, the Official Order:

954 PWC.1007.0001.0001_R, Letter, ‘1. 20170213 - DHS Business process improvement review - Engagement letter’, 13 February 2017, 5.

955 PWC.1007.0001.0001_R, Letter, ‘1. 20170213 - DHS Business process improvement review - Engagement letter’, 13 February 2017, 5-6.

956 PWC.1007.0001.0001_R, Letter, ‘1. 20170213 - DHS Business process improvement review - Engagement letter’, 13 February 2017, 6.

957 PWC.1007.0001.0001_R, Letter, ‘1. 20170213 - DHS Business process improvement review - Engagement letter’, 13 February 2017, 9-10.

958 PWC.1007.1003.0505, Official Order, ‘Official Order D281020851 Final’, 14 February 2017.

959 PWC.1007.1003.0504, Email, ‘Fwd- Official Order D281020851 - business process review [SEC=UNCLASSIFIED]’, 14 February 2017.

960 PWC.1007.1001.0173, Email, ‘Re- Official Order D281020851 - business process review’, 14 February 2017; JM3, PWC.1007.1001.0174, Official Order, ‘Work order_PwC_signed’, 15 February 2017.

- identified the commencement date as 15 February 2017 and the completion date as 30 June 2017 (noting DHS had the discretion to extend for a further term of 6 months)
- outlined the objective and scope⁹⁶¹
- outlined ‘Deliverables’, which included: ‘Report that identifies and analyses options for improvement and considers the implementation of current budget measures (to be provided at the conclusion of Phase 4)’⁹⁶²
- stated: ‘Review to commence February and will take approximately 8 weeks to complete’⁹⁶³
- provided for the timing for invoices consistently with the Proposal.⁹⁶⁴

785. The ‘Kick-off Meeting’ between PwC and DHS was held on 16 February 2017⁹⁶⁵ and work began immediately, with the PwC team (other than Mr Weber and Mr West) located in DHS’ offices in close proximity to Ms Golightly and Mr McNamara, with Mr West attending as required.⁹⁶⁶

786. Requirements developed and changed over time and the time taken to complete the project extended beyond the 8 weeks envisaged up to early in June 2017.⁹⁶⁷ Day-to-day communications between DHS and PwC were in large part between Mr McNamara and his team and the PwC team located in DHS’ offices, but to a significant degree also involved Ms Golightly, who appears to have exercised a close supervisory authority over the project.⁹⁶⁸ For example, in an email from Mr McNamara to Ms Foster at 5:27 pm on 9 March 2017, Mr McNamara wrote:⁹⁶⁹

Malisa wants a meeting with PwC Tuesday afternoon. She mentioned 4 pm. Can you see if you can pull that together.

961 JM3, PWC.1007.1001.0174, Official Order, ‘Work order_PwC_signed’, 15 February 2017, 1.

962 JM3, PWC.1007.1001.0174, Official Order, ‘Work order_PwC_signed’, 15 February 2017, 1-2.

963 JM3, PWC.1007.1001.0174, Official Order, ‘Work order_PwC_signed’, 15 February 2017, 2.

964 JM3, PWC.1007.1001.0174, Official Order, ‘Work order_PwC_signed’, 15 February 2017, 3.

965 JM10, JMN.9999.0001.0013, Annexures to Statement, ‘20230214 Second Statement of Jason McNamara (NTG-0181)’, 13, row 9; Statement of Shane West, 6 December 2022, PWC.9999.0001.0005, 3[19].

966 NACC Transcript, 16 September 2025, Frank van Hagen, T10-11; NACC Transcript, 16 September 2025, Jason McNamara, T46; NACC Transcript, 3 October 2025, Shane West, T10.

967 NACC Transcript, 3 October 2025, Shane West, T13, T18-19; RRC Transcript, 6 March 2023, Jason McNamara, T4482-4483.

968 NACC Transcript, 3 October 2025, Shane West, T10-11; NACC Transcript, 16 September 2025, Jason McNamara, T37-38.

969 JMN.001.001.0319, Email, ‘Re- PwC [DLM=Sensitive]’, 9 March 2017.

In terms of what she wants to discuss Malisa is after answers/recommendations. She is particularly focused on the filters but really how we can increase revenue while minimising outlays in the next weeks. This is being driven by the Secretary/Minister not Malisa.

787. In an email sent by Mr West to Mr Weber at 10:22 pm on 9 March 2017, Mr West wrote:⁹⁷⁰

I had a conversation with Kristen tonight about a couple of things of interest that we might want to talk about tomorrow before the workshop.

Firstly, Malisa (depsec) has asked to meet up with us on Tuesday afternoon. That will likely be Terry, Dave, Frank and me. She met with the Minister today who wants to know what they can do now to limit the outlays and increase the money they recover. That will be the main topic for discussion with Malisa.

It hasn't really come out yet, and as we discussed today, but they are expecting a significant shortfall relative to the savings targets they signed up for. Feels like they are desperate to stem the bleeding.

To facilitate that, we might want to really get under the covers of the current filters as well as what sort of analytics could drive a ramp up (eg higher value / higher probability discrepancies). This could involve a couple of people spending a bit of time in Adelaide next week.

Secondly, she gave me a heads up that Jason spoke to her today about potentially asking us for a Project Manager to oversee the implementation of anything that needs to happen now.

788. At 2:30 pm on 14 March 2017, Mr Van Hagen emailed Mr West and Mr Weber with the subject line 'Meeting with Malisa' and attaching a document summarising PwC's 'Initial Hypotheses',⁹⁷¹ stating:⁹⁷²

In advance of the meeting with Malisa this afternoon, I've summarised the current hypotheses on one A3 – outlining those that are focussed on the short term and those on the medium/long term ...

970 PWC.1007.1008.0516, Email, 'Re- Conversation with Kristen tonight', 9 March 2017.
971 Statement of Frank van Hagen, 23 February 2023, FVH.9999.0001.0002, 15 [81].
972 PWC.1007.1012.6657, Email, 'Meeting with Malisa', 14 March 2017.

789. At 10 am on 15 March 2017, Mr Van Hagen emailed to Mr West and Mr Weber a draft 'Email for Malisa' in relation to their meeting with Ms Golightly the previous day.⁹⁷³
790. At 12:13 pm on 15 March 2017, Mr Weber sent the 'Email for Malisa' in final form to Ms Golightly. It included:⁹⁷⁴

Personally, I really appreciated the opportunity to discuss the work at hand and your views on the expectations of the work in the short-term. I believe the direction is in line with the initial findings and focus of our team today, however, I realise we will have to make an concerted [sic] effort over the coming days to provide you with a roadmap for revised prioritisation by Friday. For today and tomorrow various workshops have been organised with representation from Customer Compliance division, CIO group and the Strategic Information and Redesign division. We will work closely with your teams to analyse available data and identify and validate a revised set of priority criteria by COB Thursday.

791. At 3:22 pm on 22 March 2017, Ms Golightly emailed Mr McNamara, forwarding an email from one of Minister Tudge's ministerial advisers:⁹⁷⁵

Thanks for taking Mark through our approach to the questions below in our phone hook up with him yesterday. As discussed, while the info requested below is very dependent on what the PwC work finds and recommends, we do need to give the Minister some sort of schedule of the work to be done this year both in terms of this year's savings targets for Employment Income Matching and Non-employment Income Matching as well as the work that will be done to prepare for implementation of the measures that are due to commence on 1 July 2017.

973 PWC.1007.1003.2483, Email, 'Email for Malisa', 15 March 2017.

974 CTH.3001.0039.1965, Email, 'RE- Our meeting yesterday [SEC=UNCLASSIFIED]', 15 March 2017.

975 JMN.001.001.0110, Email, 'RE- Approach to 1 July measures [DLM=For-Official-Use-Only]', 22 March 2017.

As also discussed, we should get PwC to pull at least a draft of this together for us ASAP as well as provide the information we asked for by the end of last week – not sure that they have delivered on that yet? Can you let me know if they haven't as I may need to escalate to Terry. We need to get a pretty comprehensive brief including this info and also the schedule of work to be done as per the first para above later this week or early next week at the latest.

792. At 3:46 pm on 24 March 2017, Mr Weber emailed Ms Golightly:⁹⁷⁶

Just a brief update on our progress and work to date. We have worked with Customer Compliance, CIO and Strategic Information and Redesign staff to develop a revised set of selection criteria to prioritise individuals with a higher probability of debt, based on statistical analysis, which formed part of your brief to the Minister.

Our team have also been working closely with the relevant business areas in the development of the current PCRs (automating the registered mail process, getting people back on-line). This has included bringing a Project Manager on board from yesterday to help drive the delivery of these short term changes.

Concurrently, we have continued to map the current state processes which are now largely complete.

We will now be completing the current state mapping, development of further recommendations (in addition to those currently being implemented) and provide an implementation roadmap.

In terms of recommendations, our thinking includes:

- Enhancing the use of data analytics throughout the end to end process, supported by improvements in how data is managed, and incorporating feedback loops to drive continuous learning and improvement
- Greater use of multi-disciplinary teams at appropriate times
- Enhanced governance arrangements to monitor progress, change control and drive improvement initiatives

976 PWC.10071001.1447, Email, 'Fwd- PwC Update', 2 March 2017.

My plan is that, recommendations will be put into an implementation roadmap. I will update you further in the next week.

793. In his statement before the Royal Commission, which he repeated in this investigation,⁹⁷⁷ Mr Van Hagen stated that on 7 April 2017 there was a meeting during which:⁹⁷⁸

Jason [McNamara] provided us with his understanding of the key messages which Malisa Golightly expected the Presentation to the Minister's Office to cover. I understood this was based on a discussion that Jason had had with Malisa ...

794. At 5:20 pm on 10 April 2017, Mr Bowe of PwC emailed Mr Weber and others:⁹⁷⁹

Please find attached the draft DHS report (as it currently stands) for your review.

...

In parallel to writing this report we are developing a presentation for the Minister's Office. The intent is to review this with the Dep-Sec on Wednesday morning, prior to the meeting with the Minister's Office on Wednesday afternoon.

795. At 11:17 am on 11 April 2017, Mr Van Hagen emailed Ms Foster and Mr McNamara:⁹⁸⁰

Please find below the proposed outline for the presentation with the Minister's Office tomorrow afternoon. We propose that the meeting with the Deputy-Secretary Information and Integrity in the morning follows the same format, noting that we will be able to make updates prior to the afternoon session if required.

796. At 7:39 am on 12 April 2017, Ms Golightly emailed Ms Foster and Mr McNamara in relation to PwC's proposed meeting outline:⁹⁸¹

977 NACC Transcript, 16 September 2025, Frank van Hagen, T21.

978 Statement of Frank van Hagen, 23 February 2023, FVH.9999.0001.0002, 15[81].

979 FH1, PWC.1007.1013.4706, Email, 'Draft DHS report for review', 10 April 2017; PWC.1007.1013.4707, Draft report, '170410 DHS BPI Final Report v0.03_JP', 10 April 2017.

980 JMN.001.001.0099, Email, 'Proposed meeting outline', 11 April 2017.

981 JMN.001.001.0083, Email, 'Proposed meeting outline [DLM=For-Official-Use-Only]', 12 April 2017.

This looks ok – we will need to make sure slide 1 gives all the key messages re conclusions and recommendations and roadmap up front to set the scene properly. Then we can go in to the detail after that.

Also re PwC Query in slide 2 – we will have to solve this problem before going to the MO. Not sure what it is that we haven't given them?

797. At 7:23 am on 13 April 2017, Mr McNamara emailed Ms Golightly:⁹⁸²

PwC sent through revised slides late last night. They still need some numbers. Looking on the phone a lot closer to what you suggested yesterday. I am meeting them this morning to discuss and get an update. Should be to you early afternoon along with our draft minute.

798. Ms Golightly responded at 8:05 am:⁹⁸³

Thanks Jason – could we actually all meet this morning. I will be the one presenting next week so need to talk through the slides with them.

Can they come to my office at 9.30 am if possible but no later than 10.00.

799. At 12:24 pm on 14 April 2017, Mr Weber emailed Ms Golightly (copying in Mr McNamara and Ms Foster):⁹⁸⁴

Please find attached the latest draft version of the presentation.

Over the course of the day the team has revised the presentation to reflect your feedback and suggestions from this morning's discussion.

We would be grateful for your feedback on the current version. We will incorporate this over the weekend, in parallel to progressing further refinements to the presentation. We will aim to have a final draft for your review on Monday afternoon ...

982 JMN.001.001.0001, Email, 'Re- PwC', 13 April 2017.

983 JMN.001.001.0001, Email, 'Re- PwC', 13 April 2017.

984 FH1, PWC.1007.1013.6970, Email, 'Fwd- Updated Draft Presentation', 14 April 2017.

800. At 5:57 pm on 15 April 2017, Ms Golightly responded in elaborate detail in part as follows:⁹⁸⁵

... many thanks for this. I think this is looking a lot better and is very nearly there. I have some suggestions as noted below. Many of my comments are more presentational than anything. ...

Comments:

Slide 2

Can we add a fourth dot point which says that short, medium and long term strategies have been developed to adjust the case selections, refocus high probability of debt reviews this year and the first half of next year, while enhancements are made to the online system and data analytics is improved in order to build customer profiles to inform selections from xx date on. These strategies will provide the rephrasing of debt raising (fiscal saves) needed and confirmation of achievement of overall saves. If we can say this more succinctly that would be great but wanted to give you a flavour of what I meant. We need to have a dot point which goes to the practicalities of the overall strategy.

Slide 3 [...]

Slide 4

Re the headings across the top of the right hand side of the slide – can we include some indication of dates under the each of the headings eg Short term is now till 30 June 2017 etc. Need to give some indication of time scale on this slide even though it is explained on the following slides.

[...]

985 CTH.3001.0042.2276, Email, 'Fwd- Updated Draft Presentation [DLM=For-Official-Use-Only]'; 15 April 2017.

can we also add a row to the table at the bottom which shows the research work, analysis, and development work needed to achieve and confirm our medium to long term strategies and also the work to confirm the preventative saves. That is, we need to clearly articulate what this work is and the timeframes it will be complete in. For example, we will research and analyse the revision of the preventative saves between now and June and confirm end of June. Another example would be to describe the steps needed and timeframes involved in researching, designing and building the enhancements to the online platform. Same goes for the research, analysis and design etc involved in building our data analytics capability to inform the customer profiling depicted at the bottom of the slide.

Slide 5 [...]

Slide 6 [...]

We need to explain somewhere on the slide that the average debt this will achieve is higher than the original budget forecast for two reasons – experience to date has shown that EIM is achieving a higher average debt and also by targeting the 90% probability debts this will also give us a higher average debt – at least I think that is what we mean. If so, we could perhaps include the relevant words in the points on the right hand side of the slide.

Slide 7

Can we add a second table and second waterfall diagram to illustrate what would happen if we or the Minister were to decide to not do the Vulnerable and indigenous groups at all (ie not even do them in the staff assisted process). I don't think the numbers are very big and it may not be worth the angst. We would also need to show what that would do to the \$\$\$ debt raised.

[...] Once we have the next version on Monday afternoon, my aim would be to send that to the Secretary under a cover email that explains that there a [sic] more detailed data sets and work plans/timelines that sit behind these slides and we would take Andrew through these on Wednesday – just want to check that that is a correct statement.

Finally, I think Jason will have passed on the arrangements for the 10:00 am Wednesday meeting but will mention them again just to be safe. The Secretary will want to go through the slides with Andrew and the rest of us first – these will need to be on paper slides as they like to make notes as they go along. Also Jason will be joining us by telecon as he is on leave. Therefore, the first part of the meeting needs to take place in a meeting room where we can sit around a table and have telecon facilities. Would it be possible to book such a room at your offices? Following this, the Secretary may or may not want to stay on but in any case, at that point we could take Andrew upstairs to the area we were in the other day and take him through the more detailed datasets, work plans and timelines and also the business process mapping, customer experience illustrations etc. [...]

801. Following further email exchanges in which Ms Golightly made repeated requests for further extensive revisions, at 10:30 pm on 17 April 2017, Ms Golightly emailed Mr Weber:⁹⁸⁶

I have just one last query. I think during several of our discussions last week your team mentioned that the approach of using an online solution for most customers was sound, however, the online tool would need to be enhanced to suit different customer profiles. The second part of this statement (ie enhancing the tool and doing further work on customer profiles) is a key strategy which is clearly highlighted in the presentation. However, we don't explicitly say the first part of the statement (ie that online was and still is the way to go) anywhere. I think it is important to make this statement – if it is PwC's view – as there has been some questions as you know in the media re doing anything online.

If you are comfortable, I would suggest a clear statement on slide 2 straight after the first dot point re overall saves.

802. At 10:43 pm, Mr Weber responded that PwC would make the comment.

986 PWC.1007.1013.7095, Email, 'Re- Revised presentation for your review', 17 April 2017.

803. On 18 April 2017, Ms Golightly attended at PwC's offices to discuss the draft Presentation. Mr Van Hagen undertook a detailed review of the Presentation, with Ms Golightly requesting further information in relation to elements of the Presentation, and reviewed the supporting documentation that PwC had prepared to display to the Minister's office.⁹⁸⁷
804. On 19 April 2017, the results of PwC's analysis and recommendations for improvement arising from the Business Process Improvement Review were presented to Ms Golightly, Ms Campbell and the Minister's chief of staff at PwC's offices.⁹⁸⁸
805. At 8:02 pm on 19 April 2017 Mr Weber emailed the PwC members congratulating them on the way in which the presentation had gone the previous day. His message included:⁹⁸⁹

Spoke to the secretary on the way down and she was very impressed and said you guys 'know your stuff' ...

806. At 1:21 pm on 24 April 2017, Ms Golightly emailed Ms Foster to check the arrangements for a meeting to be held in May 2017 at the Minister's office where PwC should take the Minister through the same presentation as they had given to the Minister's chief of staff and Ms Campbell on 19 April 2017.⁹⁹⁰
807. On 28 April 2017, PwC rendered their invoice for the first 50% of their fees, which was addressed to Ms Foster. It was as follows:⁹⁹¹

Business Process Improvement Review – Interim invoice (50%) for deliverables:

- Business process maps documenting the current state
- Process maps documentation the customer experience.'

808. The total amount inclusive of GST was \$469,622.45.
809. In an email exchange between Mr West and Mr Weber on 28 April 2017, Mr West wrote that he wanted a catch-up on, amongst other things, whether PwC was now selling Ms Golightly's message rather than presenting PwC's own analysis and views:⁹⁹²

987 Statement of Frank van Hagen, 23 February 2023, FVH.9999.0001.0002, 17[95].

988 FH1, PWC.1007.1013.7368, Email, 'PWC compliance process improvement review presentation', 19 April 2017; Statement of Terrence Weber, 23 February 2023, TWE.9999.0001.0002, 5[38]-[39], 6[46].

989 JM5, PWC.1007.1003.3723, Email, 'DHS robo', 19 April 2017.

990 CTH.3001.0042.6329, Email, 'RE- PwC Briefing with the Minister re OCI [DLM=For-Official-Use-Only]', 24 April 2017.

991 PWC.1007.0002.0038, Invoice, '1. 20170428_Invoice37033779_DHS'.

992 PWC.1007.1003.3862, Email, 'Re- Catch up prior to pipeline RE- DHS', 28 April 2017.

It's a DHS catch up, see what conversations you had about the next phase while I was away.

There's also a question about how the brief to the Secretary and Minister's office relates to the work we've done (ie the extent to which we're selling the message of Malisa in particular versus presenting our analysis and views).

Conscious that DHS seems to be looking at us to do a lot more than we're going to be funded for to start with.

We're also a bit concerned that they aren't actually going to do things that should, to actually change the way the compliance program works, so we need to form a view as to how we'll handle that.

810. The meeting with the Minister where PwC would deliver the presentation was scheduled for 11 May 2017, but did not proceed on that day.⁹⁹³ Meanwhile PwC made further changes to the presentation and continued with preparation of its final report.⁹⁹⁴
811. On 9 May 2017, Mr McNamara approved a brief to the Secretary prepared by Ms Foster on 8 May 2017 and to which was attached the amended Presentation. The brief included 'Points you may wish to raise' in relation to PwC's strategy, and noted that the strategy structured the implementation and suggested enhancements into 3 stages: short-term, medium term and long-term strategy. The brief stated that Minister Tudge, the Secretary of DHS, Ms Golightly, Mr McNamara, Mr Weber, Mr West and Mr Van Hagen were invited to the meeting with the Minister scheduled for 11 May 2017.⁹⁹⁵
812. At 11:08 pm on 10 May 2017, Ms Golightly emailed Mr Weber that the Minister had had to cancel the compliance measures meeting for the following day, but that the Secretary would still like to have a meeting at the same time in her office.⁹⁹⁶
813. On 12 May 2017, a ministerial brief was forwarded to the Minister's office.⁹⁹⁷

993 Statement of Frank van Hagen, 23 February 2023, FVH.9999.0001.0002, 18[99].

994 NACC Transcript, 3 October 2025, Shane West, T14.

995 CTH.3007.0006.0789, Brief, '11 May - MO meeting - Sec Brief - PwC Implementation strategy', 9 May 2017.

996 PWC.1007.1014.6093, Email, 'Re- Meeting with the Secretary tomorrow', 10 May 2017.

997 The brief is not available to the Commission.

814. The meeting with the Minister proceeded on 22 May 2017 attended by Ms Golightly, Ms Campbell and Mr McNamara from DHS, and Mr Weber, Mr West and Mr Bowe from PwC.⁹⁹⁸

Final report

815. At 9:40 am on 23 May 2017, Mr Bowe emailed Mr West with subject line 'DHS *report':⁹⁹⁹

Last week we discussed the plan to have the DHS*report ready by the end of this week to allow for any reviews by Liza / Frances / others. Did you have any feedback from the report that we need to incorporate for this?

816. On or about the same day, DHS issued a second work order to PwC for 'phase 2' which focussed on implementation and was separate from the Business Process Improvement Review.¹⁰⁰⁰

817. In an email chain on 24 May 2017 between Mr Bowe and Mr West in relation to the work order and PwC's related processes, Mr West stated:¹⁰⁰¹

... I've also gone through another 20 or so pages of the non-report. Hoping to get to the end today.

818. Mr West referred to the report as a 'non-report' because either Ms Golightly or Mr McNamara had previously issued instructions that it was to be titled the DHS 'Integrity Modernisation Implementation Strategy'.¹⁰⁰²

819. At 12:03 pm on 30 May 2017, Mr Bowe emailed Mr Weber (copying Mr West) 2 draft versions of the DHS Integrity Modernisation Implementation Strategy, with subject line 'For review: DHS Implementation Strategy':¹⁰⁰³

998 PWC.1007.1001.1783, Email, '8.00am Kathryn-Malisa-Jason-PwC Officials-Minister re- Minister Briefing on Compliance Process Improvement Review [SEC=UNCLASSIFIED]'; 22 May 2017; Statement of Thai Bowe, 22 February 2023, TBO.9999.0001.0001, 10[74]-[75].

999 PWC.1007.1003.4993, Email, 'DHS -report', 23 May 2017.

1000 PWC.1007.1003.5090, Draft report, 23 May 2017, i.

1001 PWC.1007.1003.5015, Email, 'Re- DHS - phase 2 proposal and JBT', 24 May 2017.

1002 NACC Transcript, 17 September 2025, Thai Bowe, T18-19.

1003 JM8, PWC.1007.1003.5089, Email, 'For review- DHS Implementation Strategy', 30 May 2017.

A few weeks ago we agreed with DHS that we would provide the DHS Implementation Strategy document to them around the 2nd June. This is intended by DHS to be marked as 'PROTECTED / Sensitive: Cabinet'.

We have made some updates to the Implementation Strategy document over the last few weeks, and have incorporated feedback from Shane on the latest draft. I have attached the latest version for your review (both Word and PDF versions).

820. One of the attached draft reports was 106 pages long. The executive summary of the report included the following key assessment insights:¹⁰⁰⁴

- The overall intent of the budget measures is sound, however the implementation approach requires a redesign.
- As a result of the issues with implementation to date, a robust revision of the budgeted savings profile is required to address recent changes.
- To enable a successful redesign, the department will need to be able to leverage a strong data and analytics capability, supporting value identification, continual learning and management reporting needs.
- To drive customer engagement and ensure uptake, the customer experience will need to be at the core of the compliance intervention.
- To undertake the volume of interventions required as part of the budget measures, the redesigned solution will need to scale effectively while ensuring consistent outcomes.
- To effectively manage the considerable effort involved in the redesign, a concerted program of work will be required.
- In the meantime the current system can be iteratively improved in order to scale the current intervention processes and enable the department to continue undertaking interventions.

Informed by these insights, PwC has identified five strategic priorities for the department to focus on in the implementation of current and future budget measures.

1004 PWC.1007.1003.5090, Draft report, 30 May 2017, i.

821. In the events which occurred however, this report, although completed, was not delivered to DHS, and neither DHS nor PwC has any written record of why it was not delivered.
822. At 10:03 am on 3 June 2017, Ms Foster forwarded to Mr McNamara an email from Ms Judy Woutersz¹⁰⁰⁵ with subject line ‘PwC Official Order expiring on 30 June 2017’, and asked: ‘Ok for PwC to invoice us?’ Ms Woutersz’ email included:¹⁰⁰⁶

Gentle reminder that the PwC Official Order is due to expire on **30 June 2017**.

Attached is the template for spending proposal contract variation in case you need to get a contract variation.

823. In oral evidence before the Royal Commission, Ms Foster said that Mr McNamara answered ‘yes, ok’;¹⁰⁰⁷ and, although Mr McNamara said in evidence before the Royal Commission that he could not recall PwC seeking confirmation DHS still wanted the report, it was ‘entirely possible’ he asked Ms Golightly if it was ‘going to be okay’ for PwC to invoice them, because he did not think he would have given approval without asking Ms Golightly, at least orally.¹⁰⁰⁸
824. At 8:56 am on 5 June 2017, Ms Foster emailed Mr West requesting him to invoice DHS for the remaining amount for the contract.¹⁰⁰⁹
825. At 11:25 am on 7 June 2017, Mr Bowe emailed Ms Foster (copying in Mr West) with the subject line ‘PwC Invoice’¹⁰¹⁰ and attaching the second invoice for ‘BPI – Phase 1 work’. It was as follows:¹⁰¹¹

Business Process Improvement Review

Final invoice (50%) for Phase 4 deliverables:

- Implementation strategy
- Implementation roadmap

826. The amount of the invoice inclusive of GST was \$469,622.45 and was paid.¹⁰¹²

1005 Judy Woutersz, Executive Assistant to Jason McNamara, DHS.
1006 CTH.3007.0006.4448, Email, ‘Fwd- PwC Official Order expiring on 30 June 2017 [DLM=For-Official-Use-Only]’, 3 June 2017.
1007 RRC Transcript, 6 March 2023, Kristen Foster, T4460.
1008 RRC Transcript, 6 March 2023, Jason McNamara, T4499-4499.
1009 PWC.1007.1008.1392, Email, ‘Fw- Invoice’, 5 June 2017.
1010 PWC.1007.1001.1825, Email, ‘PwC Invoice’, 7 June 2017.
1011 PWC.1007.1001.1826, Email, ‘Tax Invoice Number NAT37047704_DHS_20170607’, 7 June 2017.
1012 KFO.0001.0001.0923, Email, ‘RE- PwC Invoice [SEC=UNCLASSIFIED]’, 7 June 2017.

Findings

Definition of corrupt conduct

827. Section 8 of the NACC Act defines 'corrupt conduct' in part as follows:

- (1) Each of the following is **corrupt conduct**:
 - (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly:
 - (i) the honest or impartial exercise of any public official's powers as a public official; or
 - (ii) the honest or impartial performance of any public official's functions or duties as a public official;
 - (b) any conduct of a public official that constitutes or involves a breach of public trust;
 - (c) any conduct of a public official that constitutes, involves or is engaged in for the purpose of abuse of the person's office as a public official;
 - (d) any conduct of a public official, or former public official, that constitutes or involves the misuse of information or documents acquired in the person's capacity as a public official.
- (2) ...
- (3) To avoid doubt, paragraph (1)(a) covers a public official's own conduct, if it has, or could have, the specified adverse effects in relation to the public official's powers, functions or duties.

Application of the definition to conduct that occurred

828. For reasons which follow later in this section of the report, the investigation has concluded that 2 of the referred persons acted dishonestly in the exercise or performance of their powers, functions or duties as public officials and thus engaged in corrupt conduct within the meaning of subsection 8(1)(a) and further or alternatively subsection 8(1)(b). None of the referred persons engaged in corrupt conduct within the meaning of subsections 8(1)(c) or (d).
829. This is the first time the Commission has made a finding that a public official has engaged in corrupt conduct within the meaning of subsection 8(1)(a) and/or alternatively s8(1)(b). A short explanation of the Commission's interpretation of these subsections is set out below.

How section 8(1)(a) has been interpreted

830. Section 8(1)(a) is drafted in terms which reflect the decision of the majority of the High Court of Australia in *Independent Commission Against Corruption v Cunneen*¹⁰¹³ that the expression 'adversely affects' in section 8(2) of the *Independent Commission Against Corruption Act 1988* (NSW)¹⁰¹⁴ should be construed as limited to conduct which adversely affects the probity (or, in other words, the honesty or integrity) of the exercise or performance of any public official's powers, functions or duties (as opposed to merely the efficacy of the exercise or performance).
831. Standing alone, section 8(1)(a) might be seen as confined to conduct of one person (whether or not a public official) that affects or could adversely affect the honesty or impartiality of the exercise or performance by *another person* (who is a public official) of the latter's powers, functions or duties. If so, the provision would not apply to conduct by a public official that adversely affects the honesty or integrity of *that* public official's exercise or performance of a power, function or duty, unless the conduct also adversely affected the honesty or impartiality of the exercise by *another* public official of a power, function, or duty.

1013 (2015) 256 CLR 1 at [3].

1014 On which section 8(1)(a) of the NACC Act is largely based.

832. But section 8(1)(a) does not stand alone. It falls to be construed in conjunction with section 8(3) as part of the Act as a whole,¹⁰¹⁵ and so *as extending to a public official's conduct that adversely affects the public official's own exercise or performance of a power, function, or duty.*
833. On one possible construction of section 8(3), the provision would apply only to conduct that is different from the exercise or performance of the power, function, or duty which the conduct 'adversely affects'.
834. That is to say, inasmuch as section 8 begins in paragraph 8(1)(a) with a person's conduct that 'adversely affects' the honesty or impartiality of a public official's exercise or performance of a power, function, or duty (and is, therefore, implicitly directed to conduct of a person that is different from the public official's exercise or performance of the power, function or duty that the conduct 'adversely affects'), there is an inclination to regard the section 8(3) extension to a public official's own conduct as limited to conduct of the public official that is different from the public official's exercise or performance of a power, function, or duty that the conduct adversely affects.¹⁰¹⁶ On that view of section 8(3), section 8(1)(a) would not apply to a public official's dishonest or impartial exercise or performance of a power, function, or duty unless it 'adversely affect[ed]' the honesty or integrity of the public official's exercise or performance of another power, function, or duty.
835. On the other hand, it is inherently unlikely that Parliament intended to proscribe conduct that adversely affects the honesty or impartiality of a public official's exercise or performance of a power, function, or duty while not at the same time proscribing conduct comprised of a public official's dishonest or partial exercise of a power, function, or duty.

1015 Metropolitan Gas Co v Federated Gas Employees' Industrial Union (1924)35 CLR 449 at 455; Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation (1981) 147 297; 35 ALR 151 at 156-7; K & S Lake City Freighters Pty Ltd v Gordon & Gotch Ltd (1985) 60 ALR 509 at 514.

1016 See and compare Patman v Fletcher's Fotographics Pty Ltd (1984) 6 IR 471 at 474-5.

836. Given the nature and purpose of the NACC Act, it presents as more likely that the expression ‘the specified adverse effects in relation to the public official’s powers, functions or duties’ in section 8(3) is designed to make clear that section 8(1)(a) applies to a public official’s dishonest or partial exercise or performance of a power, function, or duty regardless of such if any adverse effect as it may have on the honesty or impartiality of any further or other exercise or performance of a power function or duty.

837. After all, honesty and impartiality are the core and consistent requirements of public office and thus of the exercise or performance of official powers, functions, and duties. As Vanderbilt CJ notably observed in his delivery of the opinion of the Supreme Court of New Jersey in *Driscoll v Burlington-Bristol Bridge Co.*¹⁰¹⁷

[Public Officers] stand in fiduciary relationship to the people whom they have been elected or appointed to serve ... they are under an inescapable obligation to serve the public with the highest fidelity. In discharging the duties of their office, they are required to display such intelligence and skill as they are capable of, to be diligent and conscientious, to exercise their discretion not arbitrarily, **and above all to display good faith, honesty and integrity** ... [Emphasis added.]

838. Given that the evident nature and purpose of the NACC Act is to prevent the dishonest or impartial exercise of official power, function or duty, it is unlikely that section 8 was not intended to embrace a public official’s dishonest or partial exercise or performance of official power, function or duty regardless of such if any effect as it might have on the honesty or impartiality of any other exercise or performance of power, function or duty. It is more likely that section 8(3) was intended to, and thus should be construed purposively¹⁰¹⁸, as making clear that section 8(1)(a) includes such conduct.

839. The Explanatory Memorandum accompanying the *National Anti-Corruption Commission (Consequently and Transitional Provisions) Bill 2022* is consistent with that view of the provision. In dealing with section 8(3), it provides among other things that:

1017 8 NJ 433 (1952); 86 A 2d 2015 at 222-223 (1952) (US), referred to by Professor Finn in *The Forgotten Trust, the People and the State*, in Cope M, Ed, *Equity, Issues and Trusts* (1995) 131 at 142.

1018 *Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation* (1984) 147 CLR 297 at 304.

2.29 There are limited circumstances where it is within the functions or duties of certain public officials to engage in conduct that may involve dishonesty or partiality—for example, an undercover police officer using an assumed identity in accordance with Part IAC of the Crimes Act 1914 may mislead persons as to their identity, such as when undertaking an undercover police operation. Paragraph 8(1)(a) applies only to conduct that could adversely affect the honest or impartial exercise of powers, or the performance of functions or duties by a public official—it does not apply to conduct constituting the proper exercise of a power, or the proper performance of function or duty, merely because that conduct involves dishonesty or partiality.

2.30 A member of the AFP would not engage in corrupt conduct, within the meaning of paragraph 8(1)(a), where the member:

- works with an organised criminal group to purportedly import a controlled substance as part of a controlled operation under Part IAB of the Crimes Act 1914;
- authorises the use of, or uses an assumed identity in accordance with Part IAC of the Crimes Act 1914; or
- provides a payment or benefit to a human source in exchange for information as part of a criminal investigation.

840. The assumption implicit in those observations (and particularly the observations in paragraphs 2.29 and 2.30) is that, apart from limited exceptional circumstances of the kinds identified, the dishonest or partial exercise or performance of official functions, powers, or duties is corrupt conduct regardless of its effects on any subsequent exercise or performance of official power, function, or duty.

841. To say so is not to overlook the possibility of a statutory intention to deal with corrupt conduct comprised of a public official's dishonest or partial exercise of a power, function, or duty as a breach of public trust within the meaning of section 8(1)(b); or, hence, the possibility that section 8(1)(b) should be construed *expressum facit tacitum cessare* as excluding such conduct from the ambit of section 8(1)(a). As Mahoney JA observed in effect in *Greiner v Independent Commissioner Against Corruption*¹⁰¹⁹, the most common signification of 'breach of public trust' is the exercise or performance of official power, function or duty for an improper purpose or for a purpose other than the purpose for which the power, function or duty was conferred. But depending on seriousness, the responsibilities of the office of the officeholder, the importance of the public objects which the officeholder serves, and the nature of the officeholder's deceit and extent to which it departs from his or her responsibilities, deliberate deceit in pretended exercise or performance of official power function or duty is likely to amount to a grave breach of public trust and a criminal offence of misfeasance in public office¹⁰²⁰.
842. Even if, however, conduct comprised of the dishonest or partial exercise or performance of official functions, powers, or duties (without adverse effect on the honesty or impartiality of any separate exercise or performance of official power, function or duty) should be regarded as a breach of public trust within the meaning of section 8(1)(b), it does not necessarily or even likely follow that it should not also be conceived of as corrupt conduct within the meaning of section 8(1)(a) (read with section 8(3))¹⁰²¹. As is observed in the Explanatory Memorandum, paragraphs 8(1)(a) to (d) of the definition of corrupt conduct are intended to be complementary and mutually reinforcing rather than mutually exclusive. Hence, a particular instance of corrupt conduct may be covered by more than one paragraph of the section.
843. By contrast, the dishonest or impartial exercise or performance of an official power, function or duty would be unlikely to fall within section 8(1)(c) as conduct of a public official that constitutes, involves or is engaged in for the purpose of abuse of the person's office as a public official, unless committed with intention to gain a benefit for the public official or another person, or to cause detriment to another person.

1019 (1992) 28 NSWLR 125 at 165.

1020 Attorney-General's reference (No 3) of 2003 [2004] 2 Cr App R 23, CA; Archbold, *supra* at 25-381.

1021 See and compare *Minister for Immigration and Multicultural and Indigenous Affairs v Nystrom* (2006)228 DLR566 at 586-592.

Mark Withnell

Did Mr Withnell mislead the Expenditure Review Committee of Cabinet?

844. Based on findings that:

- a. Mr Withnell knew that automatic default averaging was intended to be a feature of Online Compliance Intervention (OCI)¹⁰²²
- b. Mr Withnell knew of the 2014 DSS Legal Advice,¹⁰²³ and
- c. Mr Withnell was aware of the language used in the New Policy Proposal (NPP) to describe OCI
- d. the Royal Commission inferred that Mr Withnell knew at the time of the Cabinet Expenditure Review Committee (ERC) meeting that the description of OCI in the NPP was apt to mislead ERC as to the true nature of OCI.¹⁰²⁴

845. The Royal Commission also found there was no evidence of Mr Withnell taking any steps to ensure that ERC was properly informed of the true nature of OCI.¹⁰²⁵ To the contrary, as the Royal Commission observed, Mr Withnell was a central figure in formulating the language of the description of OCI in the NPP. On that basis, the Royal Commission concluded that Mr Withnell engaged in deliberate conduct designed to mislead ERC.¹⁰²⁶

846. I agree the evidence establishes that Mr Withnell engaged in deliberate conduct designed to mislead.

847. As the evidence shows, Mr Withnell was central to the development and drafting of the PAYG Clean Up proposal and he knew that averaging was the essence of it.

1022 CTH.2004.0002.0346, Draft Executive Minute, 'Revised new draft brief to Minister Morrison', 21 January 2015, 14; SB6, CTH.3034.0032.7254_R, Email, 'Some reading.....', 23 January 2015; SB2, CTH.2004.0001.9608, Email, 'For your reading pleasure - DO NOT FORWARD', 9 January 2015; SB2, CTH.2004.0001.9609, Draft Brief, 'Min Morrison brief', 9 January 2015; Final Report of the Royal Commission into the Robodebt Scheme, Chapter 2, 'Articulations of the Scheme and the New Policy Proposal', 89-90.

1023 NACC Transcript, 4 September 2025, Mark Denis Withnell, T80-81; RRC Transcript, 9 December 2022, Mark Withnell, T1509; SB3, CTH.2004.0002.0332_R, Email, 'FW- DSS comments on DHS Welfare integrity options (2)', 21 January 2015; CTH.2004.0002.0333, Draft attachment to brief, 'DSS comments on DHS Welfare integrity options (2).pdf', 21 January 2015; Final Report of the Royal Commission into the Robodebt Scheme, Chapter 2, 'Articulations of the Scheme and the New Policy Proposal', 89.

1024 Final Report of the Royal Commission into the Robodebt Scheme, Chapter 2, 'Articulations of the Scheme and the New Policy Proposal', 86, 89-90.

1025 Final Report of the Royal Commission into the Robodebt Scheme, Chapter 2, 'Articulations of the Scheme and the New Policy Proposal', 90-91.

1026 Final Report of the Royal Commission into the Robodebt Scheme, Chapter 2, 'Articulations of the Scheme and the New Policy Proposal', 90-91.

848. After DSS advised that the proposal could not be implemented without legislative amendment, Mr Withnell misrepresented to Mr Kimber and Mr McBride that DHS had developed a new ‘revised proposal’ that did not involve averaging.¹⁰²⁷ Thereafter, he directed Mr Ryman to make cosmetic changes to the proposal to make it appear as if the proposal had become a new ‘revised proposal’ which did not involve averaging.¹⁰²⁸ As Mr Withnell well knew, there was no substantive difference between the proposal and the so-called ‘revised proposal’. Automatic default averaging remained of the essence.
849. Mr Withnell stated in his evidence before the Royal Commission that, to his knowledge, the use of averaging to determine social security benefits was not part of OCI at the time the proposal was put to the ERC meeting, and he said that he did not thereafter become aware that averaging was part of OCI.¹⁰²⁹ He claimed that, although it had been contemplated at the outset that averaging would be used, he believed that averaging was ‘abandoned’ before OCI was implemented.¹⁰³⁰
850. By contrast in his evidence in this investigation, Mr Withnell eschewed any suggestion that averaging was ‘abandoned’ before OCI was implemented and said that at the time of the ERC meeting he believed the ‘revised proposal’ submitted to ERC excluded the use of default averaging, albeit allowing a compliance officer to apply averaging to a customer who failed to respond if, after carrying out a thorough examination of all available sources of evidence of the recipient’s income, the compliance officer was unable to find sufficient evidence to make a better-informed determination of the recipient’s income.¹⁰³¹ Mr Withnell said that averaging in those circumstances was averaging ‘as a last resort’ of a kind that DHS had used for decades, and for that reason he had believed that OCI did not involve any change to the way in which income was assessed or require legislative amendment.¹⁰³²

1027 RRC Transcript, 24 February 2023, Mark Withnell, T3757-3761; NACC Transcript, 5 September 2025, Mark Withnell, T152; NACC Transcript, 13 August 2025, Paul McBride, T31-32.

1028 NACC Transcript, Jason Ryman, 6 August 2025, T 20-21; NACC Transcript, Scott Britton, 7 August 2025, T17; NACC Transcript, Mark Withnell, 5 September 2022, T24-25 and T152; JR14, CTH.3023.0001.5381_R, Draft NPP, ‘Strengthening the Integrity of Welfare Payments NPP (6)’, 27 February 2015.

1029 RRC Transcript, 9 December 2022, Mark Withnell, T1504, 1514-1515.

1030 RRC Transcript, 9 December 2022, Mark Withnell, T1504, 1514-1515; Final Report of the Royal Commission into the Robodebt Scheme, Chapter 2, ‘Articulations of the Scheme and the New Policy Proposal’, 89-90.

1031 NACC Transcript, 5 September 2022, Mark Denis Withnell, T166-169.

1032 NACC Transcript, 5 September 2022, Mark Denis Withnell, T228-230.

851. I do not accept that Mr Withnell's state of mind was as he deposed before the Royal Commission. For the reasons given by the Royal Commission, it is incredible. Nor do I accept that Mr Withnell's state of mind was as he deposed in this investigation. I reject it for the following reasons.
852. First, on Mr Withnell's own admission, what he represented to Mr Kimber and Mr McBride at the meeting of 27 February 2015 was that there would be no averaging; not that there would be no averaging apart from averaging 'as a last resort' after a compliance officer had investigated all available sources of evidence of the recipient's income and come up wanting.¹⁰³³
853. Secondly, even if the effect of Mr Withnell's representations were that there would be no averaging apart from averaging 'as a last resort' after a compliance officer had investigated all available sources of evidence of the recipient's income and come up wanting, the representation would still have been misleading because that was not what was intended nor what Mr Withnell believed was intended.
854. Mr Withnell knew that to exclude automatic, default averaging in favour of manual investigation followed by averaging only as a 'last resort' would render OCI physically and economically untenable.¹⁰³⁴
855. Under arrangements extant at the time the NPP was presented to ERC, DHS' capacity to carry out manual investigations was limited to less than 30,000 investigations per annum.¹⁰³⁵ By contrast, the NPP envisaged approximately 867,000 'interventions' over a period of 3 years; a more than tenfold increase.¹⁰³⁶ As Mr Withnell had told Mr Whitecross during their teleconference on 22 January 2015, DHS did not have sufficient resources to collect and manually evaluate the information involved in that number of interventions. To do so would have required a massive increase in the number of compliance officers, which was neither contemplated nor likely to occur. To the contrary, all the OCI cost estimates that DHS had generated in support of the financial efficacy of OCI were predicated on the application of automatic, default averaging to customers who failed to respond. Without that, the estimated savings of \$1.2 billion could not possibly be achieved.¹⁰³⁷

1033 NACC Transcript, 5 September 2022, Mark Denis Withnell, T166-167.

1034 NACC Transcript, 5 September 2022, Mark Denis Withnell, T165.

1035 MW3, CTH.3061.0002.8190_R, Email, 'Re: new compliance measure', 12 November 2014, 1.

1036 CTH.4000.0308.2442_R, NPP, 'NPP Strengthening the Integrity of Welfare Payments 110315', 12 March 2015, 3.

1037 RRC Transcript, 8 December 2022, Andrew Whitecross, T1375-1377; NACC Transcript, 14 August 2025, Andrew Whitecross, T33-35; NACC Transcript, 4 September 2025, Mark Denis Withnell, T100-101; Statement of Andrew Whitecross, 21 November 2022, AWI.9999.0001.0005, 9-10, [57].

856. Thirdly, although Mr Withnell said in evidence in this investigation that, at the time of the ERC meeting, it was contemplated that OCI would commence with a manual pilot program – as if that somehow implied that the pilot program would not involve default averaging¹⁰³⁸ – the evidence is that it was always intended that the pilot program would involve default averaging.¹⁰³⁹ The very point of the manual pilot program was to apply default averaging manually to customers who failed to respond.¹⁰⁴⁰
857. The only difference between the pilot program and the automated OCI program that followed was that the pilot program applied the process manually rather than automatically because the design and construction of the ICT and other elements necessary to execute the process automatically were still to be completed. Once the online compliance environment had been constructed, the OCI compliance process became fully automated.¹⁰⁴¹
858. Fourthly, in a draft brief to the Secretary of DHS of 2 July 2015, which was extensively reviewed and edited by Mr Withnell (albeit that Ms Golightly later determined the brief should not be provided to the Secretary), it was stated that one of the results of the pilot program to that point was that customers had failed to respond in 60 per cent of cases and that, in those cases, ‘debts [were] raised based on matched PAYG data and [the customers] are sent a debt notice’.¹⁰⁴² As Mr Withnell accepted in evidence in this investigation, that statement was manifestly contrary to his representations to Mr Kimber and Mr McBride that ‘there wouldn’t be the use of averaging to calculate debt’.¹⁰⁴³ Asked why that did not show that he knew and intended that default averaging would be used, Mr Withnell’s only response was to say in effect that he must not have noticed that part of the draft brief at the time of settling it.¹⁰⁴⁴

1038 NACC Transcript, 5 September 2022, Mark Denis Withnell, T173, 189-190, 217.

1039 NACC Transcript, 5 September 2022, Mark Denis Withnell, T193, Final Report of the Royal Commission into the Robodebt Scheme, Chapter 2, ‘Implementation of the Scheme’, 123, 125.

1040 Report of the Royal Commission into the Robodebt Scheme, p 476; NACC Transcript, 5 September 2025, Mark Denis Withnell, T193; CTH.3002.0009.4465, PAYG Compliance Manual, ‘PAYG CT Manual Compliance Intervention v03’, 2 September 2015, 21.

1041 Report of the Royal Commission into the Robodebt Scheme, 7 July 2023, ‘Automation and data matching’, 474-476; RBD.9999.0001.0451_R, 3 March 2023, Deloitte Report, ‘Use of data and automation in the Robodebt Scheme Final Report’, 23, 37-38.

1042 MW16, CTH.3023.0002.0503, Draft Secretary Brief, ‘GM feedback’, 2 July 2015, 2.

1043 NACC Transcript, 5 September 2025, Mark Denis Withnell, T192-196.

1044 NACC Transcript, 5 September 2022, Mark Denis Withnell, T192, 195-197.

859. I conclude that, at all relevant times, Mr Withnell knew and intended that automatic default averaging would be central to OCI, and I am satisfied that, by representing to Mr Kimber and Mr McBride on 27 February 2015 that OCI would not involve averaging, Mr Withnell engaged in deliberate conduct that was designed to mislead Mr Kimber and Mr McBride, and, through them, DSS.
860. The question of whether Mr Withnell intended to mislead ERC is more complex.
861. Mr Withnell gave evidence before the Royal Commission, and in effect repeated in this investigation, that he was always of the view that automatic default averaging would be unlawful without legislative amendment.¹⁰⁴⁵ If that admission stood alone there would be no reason to doubt it, and hence no reason not to be satisfied that, by facilitating the submission of the ‘revised proposal’ to ERC, Mr Withnell intended to mislead ERC regarding the need for legislative amendment.
862. But Mr Withnell also said in evidence that he told Ms Golightly he believed that default averaging was unlawful without legislative amendment and that it should not be used.¹⁰⁴⁶ That seems less than likely and, paradoxically inasmuch as it is unlikely, it tends to throw doubt on Mr Withnell’s evidence that he was always of the view that default averaging was unlawful.
863. There is no suggestion in any of Mr Withnell’s many written communications with Ms Golightly that he told her that he considered averaging would be unlawful without legislative amendment. To the contrary, although his written communications up until 26 February 2015 acknowledge DSS’ view that legislative amendment would be required,¹⁰⁴⁷ thereafter they bespeak belief in the legality of OCI under existing legislation.

1045 Supplementary statement of Mark Withnell, 21 October 2022, MWI.9999.0001.0002_R, 9 [75]-[77]; NACC Transcript, 5 September 2025, Mark Denis Withnell, T193; NACC Transcript, 4 September 2025, Mark Denis Withnell, T122.

1046 RRC Transcript, 9 December 2022, Mark Withnell, T1485; Supplementary statement of Mark Withnell, 21 October 2022, MWI.9999.0001.0002_R, 9 [75]-[77]; NACC Transcript, 4 September 2025, Mark Denis Withnell, T82; NACC Transcript, 5 September 2025, Mark Denis Withnell, T193-196.

1047 For example, MW12, CTH.3095.0001.4993_R, Email, ‘RE- New version of draft brief on fraud and compliance’, 23 January 2015, 1; see also RRC Transcript, 9 December 2022, Mark Withnell, T1511.

864. Nor is there any evidence or other indication that Mr Withnell told Mr Britton¹⁰⁴⁸ or Mr Ryman¹⁰⁴⁹ that he believed default averaging was unlawful without legislative amendment. And if that were his belief, he would almost certainly have told Mr Britton or Mr Ryman, because it would have been directly contrary to their view (on which OCI was based) that the application of default averaging to customers who failed to respond to a notification of possible debt was no different in principle from applying averaging as a ‘last resort’ following full investigation, involved no change to the way income was calculated, and required no legislative amendment. Both Mr Britton and Mr Ryman gave evidence that, as best they recalled, Mr Withnell never said any such thing.¹⁰⁵⁰
865. Moreover, despite Mr Withnell’s admission that he always believed that default averaging would be unlawful without legislation, it seems to me at least reasonably possible that by 26 February 2015 Mr Withnell was persuaded by Mr Ryman’s and Mr Britton’s view that legislation was not required. If so, he did not intend to mislead ERC.

Motive – why did Mr Withnell act as he did?

866. Just as motive is not an essential element of an offence of acting with the intention of dishonestly influencing a public official in the exercise of duties as a public official (or of giving information known to be false or misleading to a person exercising or performing functions under or in connection with a law of the Commonwealth), motive is not an essential element of ‘corrupt conduct’ comprised of intentionally misleading DSS about the true nature of OCI.
867. But in each case motive is circumstantial evidence in the nature of a ‘link in the chain of evidence’ which, if established to the requisite standard, assists to establish the intention with which an act is alleged to have been committed, or, where there is an absence of credible motive, tends towards an absence of intent. One of the important questions in this investigation, therefore, has been what was it that motivated Mr Withnell intentionally to mislead Mr Kimber and Mr McBride and, through them, DSS.

1048 NACC Transcript, 7 August 2025, Scott James Edward Britton, T106.

1049 NACC Transcript, 3 September 2025, Jason Ryman, T141-142, 146.

1050 See footnotes 1048 and 1049 above.

868. Mr Withnell did not say that Ms Golightly or any other officer of DHS instructed him to mislead DSS. Nor is there any documentary evidence that he was instructed to do so. But at some points in this investigation, I was inclined to suspect that Ms Golightly may have instructed him to go that far. It is a remarkable coincidence that Mr Withnell's misrepresentations of 27 February 2015 and the production of the 'revised proposal' followed so shortly after Ms Wilson articulated DSS' 'bottom line' to Ms Golightly on 26 February 2015.¹⁰⁵¹
869. There is, too, evidence that Ms Golightly was extraordinarily driven to succeed in all that she did, and hence it is possible she was so driven to achieve the implementation of OCI that she was prepared to deceive DSS. But at best that is speculation.
870. Given the inherent improbability of a public servant as senior as Ms Golightly conniving in the deliberate deceit of DSS, and having regard to the evidence of several credible witnesses that, whatever Ms Golightly's shortcomings may have been, she was honest, it is more likely that Mr Withnell relevantly acted alone.
871. Evidence was given by Mr Withnell and several other witnesses that the Business Integrity Division, including the Customer Compliance Branch of DHS, was in effect a career-ending 'grave yard' populated by a significant cohort of incompetent, burnt-out or broken public servants, suffused with a smaller number who, although competent, had been sent there after falling out of favour with those above them in the hierarchy.¹⁰⁵²

1051 See NACC Transcript, 22 August 2025, Serena Wilson, T47-52; Supplementary Statement of Serena Judith Wilson, 8 November 2022, SWI.9999.0001.0005_R, 5 [25].

1052 NACC Transcript, 6 August 2025, Scott James Edward Britton, T12; NACC Transcript, 5 September 2025, Mark Denis Withnell, T158-159.

872. Other believable evidence was that Ms Golightly was an irascible and frightening senior public servant who zealously ‘delivered’ regardless of the toll it imposed on her subordinates. Her management style was described by many witnesses as controlling and febrile and unconstrained by those above her in the hierarchy who were prepared to turn a blind eye to her behaviour because of the results she achieved. She routinely harangued and bullied subordinates for what she unfairly judged to be their failure to do a job in the way she would have done it or produce results in the time she required. One senior and most believable witness characterised the lived experience of Ms Golightly’s modus operandi as a ‘shit show’. Others agreed.¹⁰⁵³
873. Thus, in fearful of reprisal, few if any of her subordinates were prepared to express a contrary opinion or deliver news they sensed she did not wish to hear. Instead, they either did whatever seemed necessary to provide her with the outcomes she required or kept their heads down and hoped it would pass. As Mr Withnell put it in his evidence in this investigation: ‘Look, put it succinctly, she was extremely difficult to work with and more difficult to work for.’¹⁰⁵⁴ In such an environment, mistakes were bound to occur and, when they occurred, to often go unchecked.
874. In substance, that seems to be what led to Mr Withnell’s misleading DSS.
875. One of the manifestations of the relative incompetence of the Customer Compliance Branch at the time was its apparent, widespread ignorance of relevant law. As the documentary evidence establishes, there was little familiarity with relevant statutory provisions or accurate comprehension of their significance, even among the upper echelons of the branch. None of Ms Golightly, Mr Withnell, Mr Britton or Mr Ryman had sufficient understanding about the provisions of the Social Security Act that required income from employment to be assessed on a fortnightly basis according to each fortnight in which it was first earned, derived or paid. In place of an informed understanding of the law, they operated sometimes by reference to the Social Security Guide¹⁰⁵⁵ and, more often, according to their perceptions of what had always been done.

1053 NACC Transcript, 2 September 2025, Karen Mary Harfield, T11-14; NACC Transcript, 3 September 2025, Karen Mary Harfield, T78-79; NACC Transcript, 12 September 2025, Annette Lillian Musolino, T46-47; NACC Transcript, 5 September 2025, Mark Denis Withnell, T212-213.

1054 NACC Transcript, 4 September 2025, Mark Denis Withnell, T8.

1055 See for example, JR11, CTH.3027.0003.9827_R, Email, ‘FW- Legal Advice - Proposed digital intervention process’, 18 March 2015; JR12, CTH.3023.0013.3028_R, Email, ‘FW- DSS Response Dot Points’, 21 January 2021.

876. That is what led Mr Ryman and Mr Britton to the view that, because averaging had long been applied as a last resort in cases where, after full investigation, the compliance officer was left with insufficient information to make an informed assessment of fortnightly income, there was no reason not to apply automatic default averaging ‘as a last resort’ to recipients whose failure to respond left DHS with insufficient information to make an informed assessment of fortnightly income.¹⁰⁵⁶
877. Ms Golightly, too, appears to have embraced that point of view. For unless she were so Machiavellian as to contrive all her actions and correspondence between December 2016 and September 2019 to give a false impression of her belief, it is manifest she accepted that applying default averaging ‘as a last resort’ to customers who failed to respond was no different from applying averaging as a last resort after full investigation.¹⁰⁵⁷ Hence the conclusion that no change to legislation was required.
878. Looked at in hindsight, the problems in that reasoning are now obvious. But without hindsight, it led Mr Ryman, Mr Britton and Mr Withnell to confidently develop the PAYG Clean-Up proposal (which later became OCI), and to DHS, with the avid involvement and drive of Ms Golightly, putting it forward as one of the options in the Executive Minute of 12 February 2015.
879. Certainly by that date DSS had raised the need for legislative amendment with DHS and, to begin with, DHS appeared prepared to abide by that view. But by 25 February 2015, Ms Golightly had seemingly arrived at the view that Minister Morrison wanted the PAYG Clean-Up proposal implemented in a way that did not require legislation,¹⁰⁵⁸ and she possibly concluded that, if legislation were required, the proposal would be rejected.
880. What informed the idea that Minister Morrison wanted to find a way to proceed without legislative amendment is less than clear. There is no evidence that Minister Morrison expressed a preference of that kind and, in his evidence, which I accept, he denied it.¹⁰⁵⁹

1056 Report of the Royal Commission into the Robodebt Scheme, Chapter 2, ‘Articulations of the Scheme’, 89.

1057 See, for example, CTH.3001.0032.6581_R, Email, ‘FWD – UPDATE – FINAL – OCI Talking Points, 7 January 2017; and its attachment at CTH.3001.0032.6582, ‘OCI Ministerial TPs – draft 1’; and Statement of Barry Jackson, 3 March 2023, BAJ.9999.0001.0001_R [23]–[29].

1058 NACC Transcript, 22 August 2025, Serena Wilson, T47–52.

1059 NACC Transcript, 2 October 2025, Scott Morrison, T37.

881. Possibly, Ms Golightly based her view on her perception of Minister Payne's preference as expressed in Ms Golightly's meeting with Minister Payne on 2 February 2015. More likely, it emanated from a general understanding within senior ranks of the public service at that time that, because of the composition of the Senate crossbench and the government's chariness towards the effects of Senate rejection of proposed legislation, a compliance intervention proposal that required legislative amendment was unlikely or less likely to proceed.
882. Regardless, however, Ms Golightly invoked the proposition that Minister Morrison wanted the proposal implemented in a way that did not require legislation when she sought to persuade Ms Wilson to find ways to enable that to be done. Then, when Ms Wilson responded with DSS's 'bottom line' that without legislation there could be no change to the way in which income was calculated, it is probable that Ms Golightly turned to Mr Withnell and demanded in customary fashion that he find a way for that to be done.
883. According to Mr Withnell's evidence in this investigation the way it occurred was as follows:¹⁰⁶⁰

Okay. The agreement between Ms Golightly and Ms Wilson came about in, I think on the day before that meeting, that's why the meeting was called. Since the Minister's brief had come back Ms Golightly had undertaken to, and I don't know which words she used, but basically to resolve the issue around the legislation with Ms Wilson and in that she told me to get on with all the other things, because there were still a number of other issues to deal with. She was going to deal with the legislative issue. She, as I understand it, had various conversations or meetings with Ms Wilson. On the, I think it must have been the 26th, I'm not sure on the dates here, she, I imagine, rang me, I can't remember exactly and instructed me to put in the statement, 'The new approach will not change how income is assessed and over payments calculated', because that was the parameters or the agreement that had been reached between her and Ms Wilson.'

1060 NACC Transcript, 5 September 2025, Mark Denis Withnell, T152.

884. Some of that evidence should be regarded as doubtful, if only because it contradicts other evidence that Mr Withnell gave before the Royal Commission. It is also evidently speculative in critical respects and, as with the evidence of many witnesses in this investigation, much of Mr Withnell's testimony was apparently informed by what occurred at the Royal Commission and subsequent reflections and efforts to revive his recollections by reference to that.
885. Nevertheless, to repeat, it is likely that, when Ms Golightly returned from her meeting with Ms Wilson on 26 February 2015, she told Mr Withnell of Ms Wilson's 'bottom line' and told him to do something about it. The likelihood of that being so is confirmed by the fact that he did. On his own admission, he intentionally misrepresented to Mr Kimber and Mr McBride that the supposedly 'revised proposal' would not involve averaging nor change the way in which income was calculated; and thereafter he crafted the amendments to the proposal which pretended to reflect that.
886. Of course, that does not entirely explain why Mr Withnell was prepared to take actions that he knew would be deceitful. After all, he was a senior public servant with a long and distinguished career and, hence, it may be inferred that he customarily did what he considered to be right. Why he descended to deceit on this occasion instead of standing up to Ms Golightly is problematic. But ultimately, I think the most likely answer is that he was so worn down by her demands that he gave up insisting on integrity in favour of a quieter life. As Mr Withnell explained in evidence:¹⁰⁶¹

By 2014, as I say, I was already pretty tired ...

...

1061 NACC Transcript, 5 September 2025, Mark Denis Withnell, T158-159.

At the same time we were moved to work with Ms Golightly, which led to her effectively disrupting everything I'd done the previous six years, and making it extremely difficult to work and led into a lot of anger and frustration by people in the division who'd been a part of the cultural and organisational change that we'd made. So by the time we get to 2015 I'm pretty tired, in fact even more tired than at the end of 2014, and suddenly out of the blue we get asked to come up with this budget measure which is, in the scheme of things, extraordinarily huge. We'd already had in my time, I think, 11 or 12 budget measures that combined were nowhere near as complex and broad ranging as this particular measure became and we were still in the process of delivering half a dozen of those in that context as well. There are over 3,000 staff in Business Integrity at this time and we've had multiple programs, small niche programs, big programs like the last program. So there's a level of exhaustion.

As we move into 2015 and we end up back with Ms Golightly and the madness that ensued during January, February and beyond, things just got worse. On a personal level, in terms of my exhaustion, tiredness, just the relentless pressure from her, micro management, effectively constant interference, having to change all the structures and organisation we had to fit in with her, people becoming frustrating and angry with all of that. We've seen some of the results of that in some of the documents we've seen, documents going all over the place, no real control, her jumping in and out and the level of those sorts of things happening.

Mr Withnell's submissions

887. In written submissions filed in response to a Notice of Proposed Findings served on Mr Withnell on 18 November 2025, it was contended that it should be accepted that Mr Withnell gave his evidence in this investigation forthrightly and in a manner that reflected a genuine attempt to assist the Commission with an honest and truthful account of the facts.¹⁰⁶²

¹⁰⁶² Submissions of Mark Withnell in response to Notice of Proposed Findings, NACC, 2 December 2025, 1 [3].

888. I reject the contention. Mr Withnell’s evidence in this investigation was to my observation hesitant and dissembling and punctuated by notable pauses as he seemingly attempted to recollect what he had already said and fashion what he was about to say to accord with it. The result was anything but the appearance of a witness frankly doing his best to tell the whole truth as he knew it. Having determined to give a version of events in this investigation that was in material respects different from the version he gave before the Royal Commission – I infer because, having since seen what other witnesses said before the Royal Commission and considered the Royal Commission’s findings against him, he perceived that the latter version of events would paint his actions in a better light – he encountered the difficulty of differences between the 2 versions that cast doubt and disbelief on both.
889. For example, in his evidence before the Royal Commission, he stated without qualification that the formulation of the new revised proposal on or about 27 February 2015 was the point at which DHS moved away altogether from averaging; and he acknowledged that, if that had not been so, the way in which the new revised proposal was drafted would have been in large part misleading.¹⁰⁶³
890. By contrast, in this investigation he said that the new revised proposal contemplated going back to the model that existed before the PAYG Clean Up proposal was conceived, and hence that the only averaging that would be used would be exceptional application of averaging as a last resort after a full manual investigation had failed to yield sufficient information to make a fully-informed assessment of income. He claimed it was on that basis that he had had no hesitation in representing, ‘more than once’ at the meeting of 27 February 2015, that averaging would not be used.¹⁰⁶⁴ And then yet in the submissions filed on his behalf in response to the Notice of Proposed Findings, it was contended that there was insufficient evidence to determine what he had said at the meeting of 27 February 2015 and, therefore, no basis to conclude that it was misleading.¹⁰⁶⁵

1063 RRC Transcript, 24 February 2023, Mark Withnell, T3766.

1064 NACC Transcript, 5 September 2025, Mark Withnell, T164, 167.

1065 Submissions of Mark Withnell in response to Notice of Proposed Findings, NACC, 2 December 2025, 7-8 [20].

891. Furthermore, apart from the obvious difficulties inherent in advancing 3 different versions of events and expecting to be believed in any one of them, Mr Withnell also ran into the problem that, if the proposal were in truth that the only averaging to be used was averaging as a last resort after full manual investigation, it would mean that the new revised NPP ultimately put up to ERC for approval on 25 March 2015 was an empty pretence masking an unformulated and uncoded scheme, which, to Mr Withnell's admitted knowledge, would have been a gross deception of ERC.¹⁰⁶⁶

QUESTION: It was your understanding that there would be no averaging?

MR WITHNELL: Certainly, the implication of going back to the model as it existed, the rules as it existed, would preclude income averaging other than in exceptional cases.

QUESTION: Which is to say, after all the manual investigations had been undertaken as they had been in the past?

MR WITHNELL: Yes.

QUESTION: And it was upon that basis that you were satisfied that the changes you were making to this document were not misleading?

MR WITHNELL: That's right.

QUESTION: All right. Now, do I also understand your evidence to be that although there had been a deal, as you inferred, to take out averaging and not change the way in which income would be calculated, there had been no resolution between Ms Wilson and Ms Golightly as to the mechanism that would be substituted for averaging?

MR WITHNELL: Correct.

QUESTION: That still remained to be worked out?

MR WITHNELL: That's right.

QUESTION: It had not been worked out by 27 February?

MR WITHNELL: No.

QUESTION: It had not been worked out by the time the proposal was put to Cabinet for signature on 25 March?

MR WITHNELL: No.

1066 NACC Transcript, 5 September 2025, Mark Withnell, T164-166.

QUESTION: Is that to say that the Department of Human Services, through DSS, put up to Cabinet for its approval a proposal that had not been worked out and for which there were no costings?

MR WITHNELL: Um (indistinct) the first part, I'm just thinking through the costings part. Um, there were costings. Depending on what the business process was, those costings may have changed. Um - -

QUESTION: Well, all of those costings were predicated on the automatic application of averaging if the customer did not respond, were they not?

MR WITHNELL: Yes, yes.

QUESTION: If you take away that, the costings are going to increase very significantly, if not by a gargantuan amount?

MR WITHNELL: Yes, depending on how much you use the online process would determine how high the costing, administrative costs would go.

QUESTION: Okay. So the answer to my question of whether a proposal was put to the Cabinet that had not been worked out and for which costings had not been undertaken, the answer is yes?

MR WITHNELL: Yes.

QUESTION: Are you serious about that?

MR WITHNELL: Well I don't know that, um, Ms Golightly, um, realised, um, in making that change that there was actually no process then to substitute for what had been the original proposal.

QUESTION: Well doubtless, you would have pointed that out to her. As her loyal lieutenant you would have indicated that to her immediately, surely.

MR WITHNELL: I would have. I would have.

...

QUESTION: To be clear about this, you adhere to the evidence that you have given, do you, that DHS put up to the Cabinet for its approval a proposal that had not been decided and for which there were no costings?

MR WITHNELL: Yes, a business process that hadn't been decided because -

QUESTION: And for which there were no costings?

MR WITHNELL: Not specifically for any new process, yes.

QUESTION: And yet surely it would have been apparent to the Cabinet from the document that was put to them, that what was being put to them was a fully developed proposal for which there were fully developed costings which, as you have pointed out, had been put to the Department of Finance and approved by them on the basis that they were submitted.

MR WITHNELL: Yes.

QUESTION: Well, that was a gross deception of the Cabinet, was it not?

MR WITHNELL: Um, I'm only hesitating because, um - -

QUESTION: You have difficulty with the fact that putting a proposal to the Cabinet on the basis that it is fully developed and costed when it is neither, is a gross deception of the Cabinet?

MR WITHNELL: Yes it would be.

QUESTION: Do you agree with that?

MR WITHNELL: Yes, yeah.

892. The idea that DHS would put up to Cabinet for approval an unformulated, uncostered plan to recover more than a billion dollars of suspected overpayments of social security benefits, and intentionally misrepresent the proposal to Cabinet as a fully developed, fully costed plan of recovery that had been examined and approved by all interested Commonwealth agencies (but which in truth consisted of nothing more than a vague hope that someday, somehow a way might be discovered to achieve the desired recoveries without averaging and yet within cost parameters developed on the basis of the application of automatic default averaging) is so fanciful as to be ridiculous.
893. I am unable to resist the conclusion that Mr Withnell's evidence on the point was a deliberate lie told in an unsuccessful attempt to avoid the otherwise ineluctable conclusion that he knew full well, and at all relevant times intended, that automatic default averaging would be the essence of OCI. Indeed, were it not so, Mr Withnell would be guilty of intentionally misleading ERC.

894. It was further contended on behalf of Mr Withnell that there was an insufficient evidential basis to conclude that Mr Withnell represented at the meeting on 27 February 2015 that averaging would not be used.¹⁰⁶⁷

895. I reject that contention. Quite apart from the other evidence that bears upon the subject, Mr Withnell's own admissions put the matter beyond doubt.

896. In his evidence before the Royal Commission, Mr Withnell stated as follows:¹⁰⁶⁸

COMMISSIONER: Alright. But were you telling the DSS people essentially that there wouldn't be averaging?

MR WITHNELL: I don't recall the specific discussion, but we were certainly saying that there wouldn't be the use of any averaging of the ATO data to calculate the debt.

897. In his evidence in this investigation he said this:¹⁰⁶⁹

QUESTION: Can I also be clear about something else. As at 27 February 2015 do you say that you were clear in your mind and honestly believed that averaging would not be used?

MR WITHNELL: Um other than, as I said earlier, in the –

QUESTION: In the exceptional circumstances of manual processing of the kind that had always existed?

MR WITHNELL: That was my understanding, that that's how we would need to design the process.

QUESTION: And you had no hesitation therefore in representing that to the personnel of DSS who attended the 27 February 2015 meeting?

MR WITHNELL: That's right.

QUESTION: You told them that there would be no averaging?

MR WITHNELL: Yes.

QUESTION: And told them more than once?

MR WITHNELL: Yep.

1067 Submissions of Mark Withnell in response to Notice of Proposed Findings, NACC, 2 December 2025, 7-8 [20].
1068 RRC Transcript, 24 February 2023, Mark Withnell, T3760-3761.
1069 NACC Transcript, 5 September 2025, Mark Withnell, T166-167.

898. It was contended on behalf of Mr Withnell that it was to be doubted that the changes that he made to the draft NPP in order to create the new revised proposal were intended to or did in fact persuade DSS that the Scheme had radically changed.¹⁰⁷⁰
899. I reject that contention. Whatever the effects on Mr Kimber's and Mr McBride's perceptions of OCI, I have no doubt that Mr Withnell intended the changes that he made to the NPP to mislead DSS, and no doubt that they did in fact mislead Ms Wilson to the view that the new revised proposal constituted a 'drastic change'. As Mr Withnell said in his evidence in the Royal Commission:¹⁰⁷¹
- COMMISSIONER: Sorry, can I just ask another question. Did you communicate this new way of doing things to Mr Britton and Mr Ryman?
- MR WITHNELL: Well, certainly Mr Britton and I were at the meeting jointly. So he would have heard that there. And I would have discussed it with him and Mr Ryman before we - we went to the meeting, I imagine.
- COMMISSIONER: So they would have been entirely clear there was a drastic change in this proposal.
- MR WITHNELL: As far as I'm aware, yes.
900. It was contended on behalf of Mr Withnell that, so far from intending to mislead DSS, the better view was that Mr Withnell did no more than convey Ms Golightly's intention to resolve the issue raised by Ms Wilson's 'bottom line' of no averaging and no change to the way in which income was assessed, without actual resolution of the way in which OCI would operate.¹⁰⁷²
901. I reject that contention, too. Evidently, it depends on acceptance of Mr Withnell's evidence that DHS knowingly put to ERC an unformulated, uncoded plan deceptively presented as a fully formulated and fully coded plan. For the reasons I have given, I consider that evidence to be a lie.
902. It was submitted on behalf of Mr Withnell that, despite Mr Withnell's misrepresentations at the meeting of 27 February 2015 and the changes he made to the NPP to create the new revised proposal, it was apparent that DSS was not thereby misled.¹⁰⁷³

1070 Submissions of Mark Withnell in response to Notice of Proposed Findings, NACC, 2 December 2025, 5-6 [14].

1071 RRC Transcript, 24 February 2023, Mark Withnell, T3761.

1072 Submissions of Mark Withnell in response to Notice of Proposed Findings, NACC, 2 December 2025, 6 [17].

1073 Submissions of Mark Withnell in response to Notice of Proposed Findings, NACC, 2 December 2025, 7 [19].

903. The submission is misconceived. It is clear from Mr Withnell's own admissions that his representations of 27 February 2015 (that there would be no averaging and no change to the way in which income was assessed) and the changes he made to the NPP to create the new revised proposal, were misleading and calculated to persuade DSS that the PAYG Clean Up proposal had undergone a 'drastic change' from the automatic default averaging plan that had previously applied to one in which income averaging would play no part at all.
904. Regardless of what, if any, effect that may have had on any officer or officers of DSS, it was dishonest conduct in the performance of a function or duty and, further or alternatively, the dishonest performance of a function or duty for the improper purpose of deceiving DSS, and so, therefore, was corrupt conduct within the meaning of section 8 of the NACC Act.
905. It was submitted on behalf of Mr Withnell that his representations at the meeting of 27 February 2015 and his misleading changes to the NPP to create the new revised proposal were made on the instructions of Ms Golightly – as if that somehow should be conceived of as relieving Mr Withnell of personal responsibility.¹⁰⁷⁴
906. That idea, too, is misconceived. I have elsewhere concluded it is more likely than not that Ms Golightly left it to Mr Withnell to 'do something' about Ms Wilson's 'bottom line' in implementing the Scheme, and thus that it was Mr Withnell who formulated the no averaging misrepresentation and the no change declaration.¹⁰⁷⁵ But even if Ms Golightly were the author of those statements, it would make no relevant difference. For regardless of who devised them, it is clear for the reasons already stated that Mr Withnell knew that those statements were intended to deceive; and thus, if Ms Golightly were the author of them and instructed Mr Withnell to convey them to DSS, it would have been clear to Mr Withnell that Ms Golightly intended thereby for Mr Withnell to mislead DSS. In those circumstances, Ms Golightly's complicity in the attempted deception would not excuse Mr Withnell from personal liability for carrying out her unlawful command. The common law of Australia, like the common law of England, eschews any general defence of superior orders.¹⁰⁷⁶ As Murphy J observed in *A v Hayden*:¹⁰⁷⁷

1074 Submissions of Mark Withnell in response to Notice of Proposed Findings, NACC, 2 December 2025, 8 [21].

1075 See paras 32–35 of s 153 statement of 18 November 2025.

1076 *A v Hayden* (No 2) (1984) 156 CLR 532; *Yip v Chiu-Cheung* [1995] AC 111 PC; *R v Howe* (No 2) [1987] AC 417 (HL); Williams G, *Criminal Law: The General Part* (2nd ed) at 296; Richardson PJ, Archbold: *Criminal Pleading, Evidence and Practice* 2010 at 17–134.

1077 *A v Hayden* (No 2) (1984) 156 CLR 532 at 562.

In Australia it is no defence to the commission of a criminal act or omission that it was done in obedience to the orders of a superior or the government. Military and civilians have a duty to obey lawful orders, and a duty to disobey unlawful orders.

907. It was contended on behalf of Mr Withnell that my findings concerning Mr Withnell's communication to DSS on 27 February 2015 and his revisions to the NPP were not essential to my conclusion regarding whether or not Mr Withnell intended to mislead ERC, and it was submitted that, although the events of 27 February 2015 and the changes made to the NPP may be critical to consideration of the Royal Commission's referral, the evidence concerning those events can and should be identified without forming any conclusion as to whether they were intended to mislead DSS.¹⁰⁷⁸
908. That contention evidently proceeds upon a misconception that the only issue that the Royal Commission referred to the Commission in relation to Mr Withnell is the question of whether Mr Withnell intentionally misled ERC. That was not the limit of the referral. To the contrary, what the Royal Commission relevantly referred was the 'information and evidence that forms the basis for the [Royal Commission's] finding' against Mr Withnell on the basis that it 'may give rise to a 'corruption issue' in the sense contemplated by s 9 of the NACC Act and accordingly relates to the function of the National Anti-Corruption Commissioner'.¹⁰⁷⁹
909. As is recognised in the submissions made on behalf of Mr Withnell, the evidence of what Mr Withnell said and did at the meeting of 27 February 2015, and of his actions in amending the NPP by removing reference to averaging and including the no change declaration, is critical to this Commission's task and the Commission must evaluate the consequence of those actions.¹⁰⁸⁰ It is evidence that has been referred to the Commission as potentially giving rise to a corruption issue and must be considered as such.
910. And for the reasons now several times explained, it does give rise to a corruption issue of whether, by his actions at the meeting of 27 February 2015 and in amending the NPP to exclude reference to averaging and include the no change declaration, Mr Withnell intended to mislead DSS. That is a corruption issue which requires determination and it is essential that it be determined; as it has been.

1078 Submissions of Mark Withnell in response to Notice of Proposed Findings, NACC, 2 December 2025, 8-9 [22].

1079 Report of the Royal Commission into the Robodebt Scheme - Confidential Chapter, 7 July 2023, 21.

1080 Submissions of Mark Withnell in response to Notice of Proposed Findings, NACC, 2 December 2025, 8-9 [22].

911. Finally, it was contended on behalf of Mr Withnell that my findings against him should not be published pursuant to section 156(1)(b) of the NACC Act because that may expose him to further public attention and to potential proceedings in relation to the findings.¹⁰⁸¹
912. That contention, like the preceding submission, was premised on the misconception that the only issue referred to the Commission in relation to Mr Withnell was the question of whether he intentionally misled ERC. Hence, it was submitted that because my findings against Mr Withnell in relation to the meeting of 27 February 2015 and his actions in amending the NPP by removing reference to averaging and including the no change declaration were ‘not essential’, it would be unfair and not in the public interest to disclose them.¹⁰⁸²
913. But as I have explained, the question of whether Mr Withnell attempted to mislead DSS is a corruption issue that has had to be determined; and for the reasons which I have set out more generally elsewhere in this report, it is in the public interest that the outcome be published.¹⁰⁸³

Conclusion

914. I conclude that, at all relevant times, Mr Withnell knew and intended that automatic default averaging would be central to OCI, and I am satisfied that, by representing to Mr Kimber and Mr McBride that OCI would not involve averaging, Mr Withnell engaged in deliberate conduct that was designed to mislead Mr Kimber and Mr McBride, and, through them, DSS.
915. I am not satisfied that Mr Withnell intended to mislead ERC. For the reasons previously expressed, I think it possible that, by 26 February 2015, Mr Withnell was persuaded by Mr Ryman’s and Mr Britton’s view that legislation was not required.

1081 Submissions of Mark Withnell in response to Notice of Proposed Findings, NACC, 2 December 2025, 10-11 [28].

1082 Submissions of Mark Withnell in response to Notice of Proposed Findings, NACC, 2 December 2025, 10-11 [28]-[29].

1083 Paragraph references in investigation report to be inserted.

916. But even so, by engaging in deliberate conduct designed to mislead Mr Kimber and Mr McBride, Mr Withnell engaged in conduct amounting to the dishonest performance by him of his official functions or duties as a public official, and further or alternatively the performance of his functions and duties for an improper purpose and thus a breach of public trust, and that was corrupt conduct within the meaning of section 8 of the NACC Act.
917. Mr Withnell's moral culpability may be lessened by the circumstances in which that conduct was committed. But it was, nonetheless, serious corrupt conduct committed by a high-ranking public official. Accordingly, if there were sufficient admissible evidence to establish Mr Withnell's commission of the corrupt conduct beyond reasonable doubt, it would be appropriate to refer him to the Commonwealth Director of Public Prosecutions for consideration of whether he should be prosecuted for an offence of acting with the intention of dishonestly influencing a public official in the exercise of duties as a public official or of giving information known to be false or misleading to a person exercising or performing functions under or in connection with a law of the Commonwealth.
918. But there is not sufficient admissible evidence to establish either of those offences beyond reasonable doubt. Although Mr Withnell's evidence before the Royal Commission is admissible against him in criminal proceedings,¹⁰⁸⁴ his evidence in this investigation is not,¹⁰⁸⁵ and, without the contradictions which his evidence in this investigation disclose – his evidence in this investigation that it was he who crafted the amendments to the proposal to reflect pretendedly that there would be no averaging; and his evidence in this investigation that he always knew that the proposal involved averaging – there would remain reasonable doubt as to the extent of his involvement and state of mind.
919. I do not consider it is appropriate to refer Mr Withnell for prosecution.

1084 Royal Commission Act, s 6A(2).
1085 NACC Act, s 113(2).

Serena Wilson

920. The Royal Commission concluded that Ms Wilson engaged in misleading conduct, which she intended to mislead the Ombudsman, in 3 ways:¹⁰⁸⁶

- (1) By attempting to conceal ‘critical information’ from the Ombudsman by not informing the Ombudsman’s officers present at the meeting of 16 January 2017¹⁰⁸⁷ that the use of averaging to calculate social security entitlements might not be consistent with social security legislation.
- (2) By attempting to conceal ‘critical information’ from the Ombudsman by:
 - (i) failing to provide the 2014 DSS Legal Advice to the Ombudsman in response to the Ombudsman’s request of 19 February 2017¹⁰⁸⁸ for ‘any legal advice [DSS] has received about averaging income for social security overpayments’;
 - (ii) failing to provide the instructions for the 2014 DSS Legal Advice to the Ombudsman in response to the Ombudsman’s request of 24 February 2017 for a copy of: ‘the advice from DSS about the legislative change that would be needed’; and ‘any other notes, documents or emails that relate to this advice’; and
 - (iii) attempting to deceive the Ombudsman by making the following representations (‘the representations’) in the DSS response to the Ombudsman’s request of 24 February 2017:¹⁰⁸⁹
 - ‘That in response to concerns expressed by DSS to DHS in 2015, there had been some revision or adjustment to how income averaging was proposed to be used in the Robodebt Scheme
 - ‘That as a result of the asserted revision or adjustment, DSS had abandoned its former position that legislative change was required to implement the Scheme

1086 Final Report of the Royal Commission into the Robodebt Scheme, 7 July 2023, ‘Referrals’, 20.

1087 The ‘scoping’ meeting.

1088 The Ombudsman’s first request.

1089 The Ombudsman’s second request.

- ‘That the 2014 advice was premised on a proposal that was different to the Robodebt Scheme that was later implemented (a representation that can be seen was plainly false when regard is had to the instructions that informed the 2014 advice).’¹⁰⁹⁰

Did Ms Wilson mislead the Ombudsman on 16 January 2017?

Failing to inform the Ombudsman at the scoping meeting of the 2014 DSS Legal Advice and of doubts about legality

921. The Royal Commission’s conclusion that Ms Wilson attempted to conceal critical information from the Ombudsman was based on 2 findings:¹⁰⁹¹

- That all the DSS officers present at the scoping meeting had knowledge that the Scheme involved the use of averaging and knowledge of the 2014 DSS Legal Advice, and yet failed to disclose the 2014 DSS Legal Advice or that there were any doubts as to the legality of the Scheme.
- Ms Wilson represented that there had been no change to the assessment of debt under the Scheme; which was misleading because it did not inform the Ombudsman of the true nature of the Scheme or suggest there was any doubt about its lawfulness.

922. There is no question that Ms Wilson did not disclose at the scoping meeting the existence of the 2014 DSS Legal Advice or there suggest that there were any doubts about the legality of OCI. It is probable, too, that Ms Wilson stated something to the effect that averaging was being used as a last resort and that the use of averaging as a last resort involved no change to the way income was calculated. The question is whether Ms Wilson thereby intentionally engaged in misleading conduct. I am not persuaded she did.

¹⁰⁹⁰ Final Report of the Royal Commission into the Robodebt Scheme, 7 July 2023, ‘Referrals’, 20.

¹⁰⁹¹ Final Report of the Royal Commission into the Robodebt Scheme, 7 July 2023, Chapter 2, ‘2017, Part B – Inquiries and investigations’, 220-221; Final Report of the Royal Commission into the Robodebt Scheme, 7 July 2023, ‘Referrals’, 20.

923. The scoping meeting was just that – a scoping meeting to define the metes and bounds of the Ombudsman’s own motion investigation and assess the Ombudsman’s likely requirements during the investigation. As Ms Wilson put it in evidence and other witnesses confirmed: ‘it was a formal meeting with the Ombudsman's office ... on the approach that they would be taking to the own motion inquiry’.¹⁰⁹² There is no evidence or other sufficient basis to infer that the Ombudsman expected, or that Ms Wilson comprehended the Ombudsman might expect, that DSS would at the meeting voice any doubts DSS may have had about the legality of OCI or immediately produce such legal advices on the legality of OCI as DSS may have had.
924. It is true that Ms Wilson had some doubts about the legality of averaging ‘as a last resort’, because she had never heard of the concept of ‘averaging as a last resort’ until the previous day. As she said in evidence, DHS’ concept of averaging ‘as a last resort’ made her uncertain and to some extent concerned (although, she said, ‘not highly alert’). She thought it appropriate to seek legal advice as to whether ‘averaging could occur as a last resort’. She requested Ms McGuirk to obtain it.¹⁰⁹³ It was not until she received the advice¹⁰⁹⁴ on 24 January 2017 that her uncertainty and concern were allayed.¹⁰⁹⁵
925. But that does not mean that Ms Wilson’s failure to mention that she had some doubts or to produce the 2014 DSS Legal Advice was misleading or likely to mislead the Ombudsman.
926. As the Ombudsman’s office later signalled in Ms Macleod’s email of 11:26 am on 19 February 2017,¹⁰⁹⁶ the legislative basis of OCI was one of the matters that the Ombudsman proposed to determine as part of the investigation. The scoping meeting was relevantly not part of the investigation. It was a precursor to the commencement of it: to identify the scope of it and what the Ombudsman would likely require of DSS during the course of it. In such circumstances, why would the Ombudsman expect, or Ms Wilson perceive the Ombudsman’s officers to expect, that Ms Wilson should there and then confess to any doubts she may have had about the legislative basis of OCI or gratuitously produce the 2014 DSS Legal Advice or any other legal advice that DSS had on the subject? In my view, they would not.

1092 NACC Transcript, 2 October 2025, Serena Judith Wilson, T38.

1093 NACC Transcript, 22 August 2025, Serena Judith Wilson, T103-105.

1094 The 2017 DSS Legal Advice.

1095 NACC Transcript, 22 August 2025, Serena Judith Wilson, T111.

1096 AP8, DSS.8001.0001.3303_R, Email, ‘RE: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]’, 19 February 2017, 4.

927. It is not entirely clear what Ms Wilson said at the scoping meeting about the application of averaging as a last resort. But as she was working from a script written by DHS,¹⁰⁹⁷ and in view of DHS documents such as Ms Harfield's email to Ms Golightly of 15 January 2017¹⁰⁹⁸ and Mr Britton's email to Ms Golightly of 16 January 2017 which summarised the scoping meeting,¹⁰⁹⁹ it is probable Ms Wilson said something to the effect that OCI applied averaging 'as a last resort' to customers who failed to respond, and that doing so involved no change to the way income was assessed. If so, I do not accept that it would have misled or been likely to mislead the Ombudsman about the 'true nature of OCI'.¹¹⁰⁰
928. By the time of the scoping meeting, the nature of OCI had become well known through the media storm and Professor Carney's article. Ms Wilson's statement that DHS was applying averaging to customers who failed to respond could hardly have come as a revelation to the Ombudsman. Granted, Ms Wilson is likely to have described it as averaging 'as a last resort' and proclaimed that it did not change the way that income was assessed. But that did not misrepresent the facts of when and how of OCI applied averaging 'as a last resort', still less imply that they were identical to the when and how averaging was applied as a last resort under the pre-OCI process.
929. The Ombudsman knew that the 2 processes were not identical. The change from previous processes to the OCI process, and more particularly the widely criticised and publicised consequences of the change, were the cause and subject matter of the Ombudsman's investigation.¹¹⁰¹ In that context, Ms Wilson's statement that OCI made no change to the way income was assessed would likely have been understood, as I think I would have understood it, as an expression of opinion: that OCI's application of automatic default averaging to customers who did not respond was no different in principle from the kind of averaging as a last resort that DHS had used for years.

1097 Further supplementary statement of Serena Judith Wilson, 21 February 2023, SWI.9999.0001.0006_R, 4 [24]. NACC Transcript, 22 August 2025, Serena Judith Wilson, T108.

1098 SW15, CTH.3001.0033.3350_R, Email, 'FW: Response to DSS – Employment Income Compliance Process', 15 January 2017.

1099 SB19, CTH.3001.0033.3932_R, Email, 'Ombudsman Meeting – Serena has requested an OCI Walkthrough', 16 January 2017.

1100 Cf. Final Report of the Royal Commission into the Robodebt Scheme, 7 July 2023, Chapter 2, 2017, Part B – Inquiries and investigations', 214.

1101 JH5/LM16, CTH.3044.0003.7539, Report, 'Ombudsman Report – Centrelink's automated debt raising and recovery system containing letters', 7 April 2017, 1.

930. But even if the Ombudsman took the statement as one of fact: that there was no difference between the facts of when and how OCI applied averaging ‘as a last resort’ to a customer who failed to respond and the when and how of averaging as a last resort was applied under the former process, I find no sufficient reason to suppose that Ms Wilson intended thereby to mislead the Ombudsman. Given the very early stage of Ms Wilson’s engagement with the Ombudsman at that point, what is more probable is that she read out DHS’ characterisation of averaging ‘as a last resort’ assuming, even if not convinced, it was accurate.

Did Ms Wilson mislead the Ombudsman on 23 February 2017?

Failing to provide the 2014 DSS Legal Advice with the response to the Ombudsman’s first request

931. It is different with the failure to provide the 2014 DSS Legal Advice in response to the Ombudsman’s first request.
932. For a long time, one of the enduring mysteries of this investigation was what happened between 11.00am on 23 February 2017 when Mr Hurman emailed the first draft of the response¹¹⁰² to the ‘P&I Coord inbox’ (copying in Mr de Burgh),¹¹⁰³ and 4:21 pm on 23 February 2017 when Ms Verity Hughes¹¹⁰⁴ emailed the DSS Response and the 2017 DSS Legal Advice to Ms Macleod.¹¹⁰⁵
933. Self-evidently, at some time during the 5 and a half hours that separated the 2 events, someone (whether alone or in combination with another or others) decided to delete reference to the 2014 DSS Legal Advice. The mystery existed because none of the persons who might have been responsible had any recollection of what happened.

1102 Which referred to both the 2014 DSS Legal Advice and the 2017 DSS Legal Advice.

1103 SW9, DSS.5113.0001.0588, Email, ‘FW: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]’, 23 February 2017.

1104 DSS Feedback and Coordination Section.

1105 LM14, DSS.5005.0001.0530_R, Email, ‘RE: Request for meeting and/or documents’, 23 February 2017.

934. In Mr Hurman's email of 11.00am on 23 February 2017 to Mr de Burgh, he suggested that he and Mr de Burgh should speak about the first draft. But neither Mr Hurman nor Mr de Burgh could recall discussing the first draft during the 5 and half hours that separated the 2 events or remember anything else about what he might have done in that period.¹¹⁰⁶ The only thing Mr de Burgh could recall was that there might have been 'another email' from P&I Coord to Ms Halbert;¹¹⁰⁷ and even that evidence appeared to be possibly no more than speculation.
935. Mr Hurman could not remember discussing the first draft with either Ms Halbert or Ms Wilson.¹¹⁰⁸ He said that his only knowledge of what caused the deletion of reference to the 2014 DSS Legal Advice was the statement made by Ms Pulford in her email to him¹¹⁰⁹ at 11:39 am on 28 February 2017 that she understood it had been decided 'at Deputy Secretary level' not to provide the 2014 DSS Legal Advice to the Ombudsman.¹¹¹⁰ But Ms Pulford did not know that. Her evidence was that it was something she had been told by Mr Hurman or Mr de Burgh.¹¹¹¹
936. Ms Halbert said that she had no recollection of discussing the matter with Mr Hurman, Mr de Burgh, or Ms Wilson, and that, although it was possible she made the change, she believed that she did not.¹¹¹²

1106 NACC Transcript, 8 September 2025, Robert Alexander Hurman, T34-35; NACC Transcript, 10 September 2025, Russell Ian de Burgh, T22-23, 25.

1107 NACC Transcript, 10 September 2025, Russell Ian de Burgh, T26-27.

1108 NACC Transcript, 8 September 2025, Robert Alexander Hurman, T36-38, 47.

1109 NACC Transcript, 8 September 2025, Robert Alexander Hurman, T34, 36-37.

1110 AP9, DSS.8001.0001.3405, Email, 'FW: Request for information/documents [SEC=UNCLASSIFIED]'; 28 February 2017.

1111 NACC Transcript, 19 August 2025, Anne Lorraine Pulford, T74-77.

1112 NACC Transcript, 1 September 2025, Catherine Elizabeth Halbert, T170-171, 179.

937. Before the Royal Commission and early on her first day of giving evidence in this investigation, Ms Wilson said she could not recall making the change.¹¹¹³ And there is no documentary evidence of Ms Neumann¹¹¹⁴, Mr de Burgh, Mr Hurman, or Ms Halbert sending the draft for clearance to Ms Wilson. The only documentary evidence of what was sent to Ms Wilson is Ms Judith Kuleas'¹¹¹⁵ email to Ms Wilson of 3:35 pm on 23 February 2017 (copying in Ms Lea Freund¹¹¹⁶) to which was attached a copy of the 2017 DSS Legal Advice document.¹¹¹⁷ But later on the first day, and again on the second day of giving evidence, Ms Wilson conceded it appeared probable that she did make the change.¹¹¹⁸
938. It is unlikely that Mr Hurman or Mr de Burgh would have made the change of their own motion, having previously resolved in conjunction with Ms Pulford and Mr Grinsell-Jones that both advices should be included.
939. The fact that Ms Kuleas emailed Ms Wilson at 3:35 pm attaching the 2017 DSS Legal Advice document suggests that Ms Halbert may have been in some way connected with the change. If there were another email from P&I Coord to Ms Halbert, as Mr de Burgh suggested might be the case, it would tend to confirm that she was.
940. Equally, however, the fact that Ms Freund was copied in on Ms Kuleas' email of 3:35 pm to Ms Wilson, to which was attached a copy of the 2017 DSS Legal Advice document, suggests it is possible that Ms Wilson asked Ms Halbert or Ms Kuleas to prepare the 2017 DSS Legal Advice document and that Ms Kuleas sent a copy to Ms Freund for record-keeping purposes. To some extent, that is rendered more likely by Ms Susanne Lander's¹¹¹⁹ remarks in an interview with NACC investigators that the email was sent by Ms Kuleas to Ms Wilson during the time of the usual Thursday executive meeting, and that Ms Wilson may have instructed Ms Kuleas to scan the advice during that meeting.¹¹²⁰

1113 NACC Transcript, 22 August 2025, Serena Judith Wilson, T118-121.

1114 Payments and Integrity Coordination Officer, DHS.

1115 Ms Halbert's Executive Assistant.

1116 Ms Wilson's Executive Assistant at the time.

1117 SW10, DSS.5051.0001.0052, Email, 'Ombudsman [SEC=UNCLASSIFIED]', 23 February 2017; SW10, DSS.5051.0001.0053, Email, '20170223144130153.pdf', 23 February 2017.

1118 NACC Transcript, 22 August 2025, Serena Judith Wilson, T123-124; NACC Transcript 2 October 2025 Serena Judith Wilson, T57-58.

1119 Executive Officer to Ms Halbert.

1120 Notes of NACC interview with Susanne Lander, 9 October 2025, 2.

941. By contrast, Ms Kuleas had no recollection of the matter,¹¹²¹ and given the nature of her duties it is improbable that she would have sent the 2017 DSS Legal Advice to Ms Wilson except as directed by Ms Halbert or Ms Wilson. Ms Lander also indicated that she was not aware of the Ombudsman's investigation in 2017 and that she did not assist Ms Wilson or Ms Halbert with preparing the response.¹¹²²
942. In view of the uncertain state of that evidence, there appeared to be 3 possibilities:
- The DSS Response was created by Ms Neumann after discussion between Mr Hurman and Mr de Burgh of Mr Hurman's first draft and sent to Ms Halbert who then directed Ms Kuleas to forward only the 2017 DSS Legal Advice document to Ms Wilson for approval.
 - The first draft was sent to Ms Halbert who amended it to create the DSS Response, and Ms Halbert then directed Ms Kuleas to send the 2017 DSS Legal Advice document to Ms Wilson for approval.
 - The first draft was sent to Ms Halbert who sent it on to Ms Wilson for approval, Ms Wilson decided to send only the 2017 DSS Legal Advice to the Ombudsman and directed Ms Kuleas to provide her with only the 2017 DSS Legal Advice document for approval and Ms Neumann drafted the DSS Response to reflect Ms Wilson's decision.
943. The first possibility is unlikely. Although Mr Hurman and Mr de Burgh at first disagreed with Ms Pulford's advice that the 2014 DSS Legal Advice should be included in the response, after Mr Grinsell-Jones concurred in Ms Pulford's view¹¹²³ Mr Hurman and Mr de Burgh accepted that Ms Pulford's view should be followed.¹¹²⁴ Mr Hurman prepared the first draft on that basis. There is no apparent reason why Mr Hurman or Mr de Burgh should later have changed his mind again.

1121 Notes of NACC interview with Judith Kuleas, 18 September 2025, 1.

1122 Notes of NACC interview with Susanne Lander, 9 October 2025, 2.

1123 DSS.5018.0002.4233, Email, 'RE: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]'; 22 February 2017.

1124 AP8, DSS.8001.0001.3303, Email, 'RE: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]'; 22 February 2017.

944. The second possibility is more likely. Although Ms Halbert said she could not recall whether she was then aware of Mr Hurman's and Mr de Burgh's initial view that the 2014 DSS Legal Advice was beyond scope,¹¹²⁵ it is possible she became aware of it as a result of Mr Hurman's email to her of 3:35 pm on 22 February 2017.¹¹²⁶ By contrast, there is no documentary or other evidence that Ms Halbert was made aware that Mr Hurman and Mr de Burgh had subsequently agreed that the 2014 DSS Legal Advice was within scope. Consequently, if the first draft were sent to Ms Halbert, and she had learned earlier than that of Mr Hurman's initial disagreement with Ms Pulford, and of his reasons for disagreement, but Ms Halbert remained unaware that Mr Hurman and Mr de Burgh subsequently accepted Ms Pulford's position, it is possible Ms Halbert preferred Mr Hurman's initial reasoning, created the DSS Response by removing reference to the 2014 DSS Legal Advice, and then directed Ms Kuleas to send the 2017 DSS Legal Advice document to Ms Wilson for approval.
945. The third possibility is, however, the most likely and I think probable, because, despite there being no documentary evidence that the first draft was forwarded to Ms Wilson, and although Ms Wilson said she could not recall the first draft, or directing that it be changed, Ms Kuleas' email of 3:35 pm on 23 February 2017 to Ms Wilson (to which was attached the 2017 DSS Legal Advice document) and Ms Wilson's response by email at 4:10 pm on 23 February 2017: 'Fine to go',¹¹²⁷ implies that Ms Wilson was involved in approving a response that referred only to the 2017 DSS Legal Advice. Most importantly, late on the first day of giving evidence in this investigation, when Ms Wilson was taken to Ms Pulford's email of 11:39 am on 28 February 2017 to Mr Hurman, and on the second day of giving evidence in this investigation, when Ms Wilson was taken to her own email of 4:10 pm on 23 February 2017, she frankly conceded it was probable she made the change or directed that it be made.¹¹²⁸
946. The question then is whether by omitting reference to the 2014 DSS Legal Advice, Ms Wilson intended to conceal from the Ombudsman that DSS had legal advice, apart from the 2017 DSS Legal Advice, that Ms Wilson knew or believed to be in scope. It is convenient to delay consideration of that question until after dealing with the representations below.

1125 NACC Transcript, 22 August 2025, Catherine Elizaeth Halbert, T133-134; NACC Transcript, 1 September 2025, Catherine Elizaeth Halbert, T179.

1126 Which noted Mr Hurman was liaising with the Legal Services Division on the response.

1127 SW10, DSS.5051.0001.0072, Email, 'RE: Ombudsman [SEC=UNCLASSIFIED]'; 23 February 2017.

1128 NACC Transcript, 2 October 2025 Serena Judith Wilson, T57-58; NACC Transcript, 22 August 2025, Serena Judith Wilson, T124.

Did Ms Wilson mislead the Ombudsman on 1 March 2017?

Failing to provide the instructions for the 2014 DSS Legal Advice in response to the Ombudsman's second request

947. The Royal Commission found that the non-inclusion of the instructions for the 2014 DSS Legal Advice with the response to the Ombudsman's second request was the result of a deliberate decision by Ms Wilson, Mr de Burgh and Ms Halbert designed to conceal the falsity of the representations. So far as Ms Wilson was concerned, the Royal Commission based that conclusion on the following findings:

- (1) The Ombudsman's second request was not confined to the 2014 DSS Legal Advice but extended to 'any other notes, document or emails that relate to this advice'.
- (2) The instructions for the 2014 DSS Legal Advice would have revealed that there was no substantive difference between the PAYG Clean Up proposal which was the subject of the 2014 DSS Legal Advice and the OCI which was the subject of the 2017 DSS Legal Advice, in that both provided for a customer to be notified of a potential debt and given an opportunity to respond before a debt was raised.
- (3) Without access to the instructions, it was not possible for the Ombudsman to ascertain that there was no substantive difference between the PAYG Clean Up proposal and OCI.

948. The evidence in this investigation establishes the first and second of those findings but not the third. I do not consider there is sufficient information in this investigation to establish that non-provision of the instructions for the 2014 DSS Legal Advice in any way precluded the Ombudsman from ascertaining there was no substantive difference between the PAYG Clean Up proposal and OCI.

949. To the contrary, Appendix A to the Ombudsman’s draft report (which for reasons unexplained was excised from the report before the report was published) reveals that the Ombudsman was in no way deprived of the ability to ascertain the similarities between the PAYG Clean Up proposal and OCI.¹¹²⁹ In Appendix A, Ms Macleod and her legal team precisely identified the true nature and detail of the averaging process applied by OCI, identified each of its deficiencies in very much the same way that they had been identified by Professor Carney and Mr Martin, and was later reprised by Mr Hanks QC, determined that the averaging being applied was not authorised by statute, and concluded that, despite DHS contending that it was authorised by the Guide to Social Security Law, it was not.
950. Furthermore, even if non-provision of the instructions for the 2014 DSS Legal Advice had in some way hampered the Ombudsman’s investigation (and, to repeat, there is no evidence of that being so) it would not justify drawing an inference to the requisite standard that Ms Wilson’s failure to ensure that the instructions for the 2014 DSS Legal Advice were provided with the response was driven by intent to deliberately mislead the Ombudsman.
951. To a lawyer like Ms Macleod, it would have been axiomatic that the 2014 DSS Legal Advice was given in response to instructions. Accordingly, if Ms Macleod had considered the instructions at all relevant, it may be assumed she would have asked specifically for the instructions for each advice (just as she had asked specifically for the 2014 DSS Legal Advice); and, if she had, that they would have been provided. Given, therefore, that Ms Macleod did not ask for the instructions, why should it be assumed that Ms Wilson considered them relevant? It is at least just as likely that Ms Wilson, as a non-lawyer, did not turn her mind to the relevance of them.

1129 CH23, DSS.8500.0001.1200_R, Draft Commonwealth Ombudsman Report, ‘Appendix A and B’, 10 March 2017.

952. Nor would she have been alone in failing to appreciate their relevance. Ms Pulford, who was a lawyer, was aware of the instructions and closely involved in preparing the response to the Ombudsman,¹¹³⁰ and yet she did not suggest that the instructions should be included. Likewise, Mr de Burgh sent the response to Mr Stipnieks (General Counsel, Program Advice and Privacy Branch, DHS), to which Mr Stipnieks responded that in view of the ‘quite detailed information you intend to provide’ he did not consider there would be any utility in organising a conference with the Ombudsman.¹¹³¹ He did not suggest that the instructions should be provided.
953. For reasons to which I shall come, I am persuaded that Ms Wilson attempted to mislead the Ombudsman by making the earlier identified representations in response to the Ombudsman’s second request. In one sense, that makes it more likely that Ms Wilson deliberately withheld the instructions for the 2014 DSS Legal Advice. But even so, I do not consider there is enough evidence to establish that was the case; still less that Ms Wilson was party to a decision with Ms Halbert and Mr de Burgh deliberately to withhold the instructions for the 2014 DSS Legal Advice. The probability is that Ms Wilson just did not think about their relevance.

Deceiving the Ombudsman by making the representations in the DSS response to the Ombudsman’s second request

Representation that DHS took DSS’ concerns into account and made adjustments

954. The paragraph of the response in point is this:¹¹³²

1130 AP8, DSS.5018.0001.9402, Email, ‘FW: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]’, 21 February 2017, 1-2; DSS.5018.0002.4233, Email, ‘RE: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]’, 22 February 2017; DSS.5113.0001.0596, Email, ‘FW: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]’, 22 February 2017; AP9, DSS.5051.0001.0146, Email, ‘FW: Request for information/documents [SEC=UNCLASSIFIED]’, 28 February 2017.

1131 CH21/AM5, DSS.5086.0001.1110, Email, ‘RE- Issue re brief’, 1 March 2017.

1132 SW14, DSS.5005.0001.0534, Email, ‘Request for information/documents [SEC=UNCLASSIFIED]’, 1 March 2017.

Following this, DHS took DSS' concerns into account and made adjustments to the process. By early 2015, DSS gained a better understanding of how the revised process would satisfy the legislative requirements. In particular, DSS understood that the intended implementation model provided recipients with the opportunity to correct any information presented to them based on ATO data matching, particularly smoothing of income data obtained from the ATO. As such, DSS no longer considered that legislation would be required to implement the measure and advice regarding specific legislative changes was not sought.

955. The statement that DHS took DSS' concerns into account and made adjustments to the process might not have been inaccurate in itself. Mr Ryman gave evidence that, as originally conceived in 2014, the PAYG proposal was to raise debts based on ATO data without customer engagement.¹¹³³ But Ms Collins gave seemingly contrary evidence to the Royal Commission that, at least by April 2014, the concept had developed to the point of including an option for customers to contact DHS in response to being warned of the discrepancy / possible debt.¹¹³⁴ And certainly by the time of preparation of an early version of the NPP/Executive Brief that was circulated internally within DHS in December 2014, it appeared clear that customers would have the opportunity to update their information prior to it being applied to their Centrelink record.¹¹³⁵ So, too, in the first draft brief to Minister Morrison on 9 January 2015 the process envisaged raising a notice of potential debt and an opportunity for the customer to respond and dispute the amount of the potential debt before the debt was raised.¹¹³⁶
956. Clearly enough, however, in the context in which the statement appeared in the DSS Response to the second request, it was misleading because it implied, falsely, that DHS took DSS' concerns into account and made adjustments *after* Minister Morrison signed the Executive Minute on 20 February 2015.

1133 NACC transcript, Jason Ryman, 5 August 2025 at T33-35.

1134 Statement of Tenille Collins, 19 February 2023, TCO.9999.0001.0008_R2, 31-32 [108]-[110]; CTH.3023.0009.1158_R, Email, 'FW- Process Simplification – Reduced Verification Activity', 1 April 2014; CTH.3023.0009.1160, Proposal Paper, 'Reduced Verification Proposal Paper V4', 1 April 2014, 5-8.

1135 JR9, CTH.3002.0006.5492 dated 12 December 2014.

1136 SB2, CTH.2004.0001.9609, Draft Brief, 'Min Morrison brief', 9 January 2015, 8; MW4, CTH.3008.0007.6436, Draft Executive Minute, 9 January 2015.

Representation that it was as a result of the asserted revision or adjustment that DSS had abandoned its former position that legislative change was required

957. Inasmuch as the DSS Response to the second request falsely represented that DHS took DSS' concerns into account and made adjustments after Minister Morrison signed the Executive Minute on 20 February 2015, it further implied, falsely, that the adjustments were the reason that by early in 2015 (*scil.* after 20 February 2015) 'DSS gained a better understanding of how the **revised** process would satisfy the legislative requirements'.¹¹³⁷ [Emphasis added.]

Representation that the 2014 advice was premised on a proposal that was different from the Robodebt Scheme that was later implemented

958. The paragraph of the response in point is:¹¹³⁸

A key difference between the measure, as DSS originally understood it, and the approach that was ultimately implemented, is that averaged income is only used for the purposes of calculating entitlement (and, therefore, debt) where no other information is available and attempts have been made to seek information from the individual. This was not what DSS understood to be the proposal when it raised concerns over the legislative basis for the measure. This is evident in the advice that was sought at the time.

1137 SW14, DSS.5005.0001.0534, Email, 'Request for information/documents [SEC=UNCLASSIFIED]', 1 March 2017.
1138 SW14, DSS.5005.0001.0534, Email, 'Request for information/documents [SEC=UNCLASSIFIED]', 1 March 2017.

959. Although that paragraph appeared in the first draft of the DSS Response to the second request,¹¹³⁹ Mr Hurman could not recall the source of it other than to say that, as well as ‘background’ from other persons in the Payments Integrity and Debt Strategy Branch, he derived some assistance from the Legal Services Division.¹¹⁴⁰ Some of the contents of the paragraph bear a resemblance to Ms Pulford’s email of 11:39 am on 28 February 2017¹¹⁴¹ and to Ms Harfield’s email to Ms Golightly of 2:58 pm on 15 January 2017.¹¹⁴² But the last 2 sentences were either of Mr Hurman’s own making or based on something he took from another source; and they were incorrect and misleading.
960. They were incorrect because, with the possible exception of Ms Wilson, at least by the time of the ERC meeting on 25 March 2015 DSS knew that the new ‘revised’ proposal applied default averaging to customers who failed to respond, just as the previous proposal had done. Ms Wilson may have then still believed that the new ‘revised’ proposal eschewed averaging. But by 25 March 2015, other DSS officers such as Mr McBride, Mr Kimber, Mr Barford, Ms Dalton, and DSS Legal Services were in no doubt that averaging was of the essence.¹¹⁴³ The reason DSS changed its view about the need for legislative amendment was because, by 25 March 2015, some or all of those officers, or perhaps other, more senior DSS officers, came to accept or acquiesce in DHS’ view that, provided customers were given the opportunity to dispute the existence and quantum of debts before the debts were raised, the application of automatic default averaging to customers who did not respond was no different in principle from the kind of averaging as a last resort that DHS had used for years (and therefore there was no need for legislation) (the DHS view).
961. The last 2 sentences of the paragraph of the response in point were misleading because they implied, falsely, that there was a key difference between the proposal as it had been at the time of the 2014 DSS Legal Advice and as it was as implemented, and it was because of the key difference that DSS had come to the view that legislation was not required.

1139 CH16, DSS.5051.0001.0174, Email, ‘FW: Request for information/documents [SEC=UNCLASSIFIED]’, 28 February 2017; CH16, DSS.5051.0001.0187, Memo, ‘Background to DSS Position on Online Compliance.docx’, 28 February 2017.

1140 NACC Transcript, 8 September 2025, Robert Hurman, T35, T42-44.

1141 AP9, DSS.8001.0001.3405, Email, ‘FW: Request for information/documents [SEC=UNCLASSIFIED]’, 28 February 2017.

1142 SW15, CTH.3001.0033.3350_R, Email, ‘FW: Response to DSS – Employment Income Compliance Process’, 15 January 2017.

1143 See, for example: RRC Transcript, 8 December 2022, Andrew Whitecross, T1375-1377; NACC Transcript, 14 August 2025, Andrew Whitecross, T33-35; Statement of Andrew Whitecross, 21 November 2022; MJ8, DSS.5067.0001.0007, Email, ‘FW-DSS comments on DHS proposals’, 20 January 2015; MJ8, DSS.5067.0001.0008, Draft attachment to brief, ‘DSS comments on DHS Welfare integrity options’, 20 January 2015; DSS.5022.0001.0488, Draft attachment to brief, 20 January 2015.

Representations that DHS took DSS' concerns into account and as a result of the revisions or adjustments DSS abandoned its former position; and the 2014 advice was premised on a proposal that was different from the Robodebt Scheme that was later implemented

962. It assists to deal with both representations together. The paragraphs of the DSS Response to the second request in point are those set out in paragraphs 954 and 958 above.

963. As may be seen in the evidence earlier set out, the first draft of the response did not include the statement 'DHS took DSS' concerns into account'. As the relevant paragraph then appeared it was:¹¹⁴⁴

Given the passage of time, it is unclear whether DSS's understanding of the measure in late 2014 was incorrect or DHS later amended the measure to address DSS concerns. By early 2015, DSS understood that the intended implementation model provided recipients with the opportunity to correct any information presented to them based on ATO data matching, particularly smoothing of income data obtained from the ATO. As such, DSS no longer considered that legislation would be required to implement the measure and advice regarding specific legislative changes was not sought.

964. The statement that 'DHS took DSS' concerns into account', which was wrong, was added by Ms Lumley as part of what she called 'suggested changes taking Cath's feedback into account';¹¹⁴⁵ and the 'feedback' to which Ms Lumley referred was Ms Halbert's email of 6:40 pm on 28 February 2017, which included this:¹¹⁴⁶

I don't think the last paragraph is quite right. I think two things happened - DHS took on our concerns and adjusted the process AND we got a better understanding of how the revised process would satisfy the legislative requirements.

1144 CH16, DSS.5051.0001.0174, Email, 'FW: Request for information/documents [SEC=UNCLASSIFIED]'; 28 February 2017; CH16, DSS.5051.0001.0187, Memo, 'Background to DSS Position on Online Compliance.docx', 28 February 2017.

1145 CH19, DSS.5031.0001.0062, Email, 'FW: Request for information/documents [SEC=UNCLASSIFIED]'; 1 March 2017; CH19, DSS.5031.0001.0076, Memo, 'Background to DSS Position on Online Compliance.docx', 1 March 2017.

1146 SW11, DSS.5026.0001.0004, Email, 'RE: Request for information/documents [SEC=UNCLASSIFIED]'; 28 February 2017.

965. Ms Halbert had no personal knowledge of what had happened. She had ceased to be involved with the PAYG Clean Up proposal before 26 February 2015 and had had nothing further to do with the matter until about Christmas 2016. As will be explained in more detail later in this report, her suggestion that DHS took on DSS' concerns and adjusted the process was thus likely based on information she, Ms McGuirk, Mr Hurman, and Mr de Burgh, derived following Christmas 2016 while attempting to establish the facts.¹¹⁴⁷ The information available to them included Mr Kimber's email of 15 January 2017 in which he wrote 'from memory' of the meeting of 27 February 2015 where Mr Withnell outlined a 'revised proposal' and identified its 'key components';¹¹⁴⁸ and the email and NPPs of 4 March 2015 in which DHS advised that 'this new approach will not change how income is assessed or overpayments calculated'.¹¹⁴⁹ There was also a sequence of DSS emails between 3 March 2015 and 24 March 2015 that, at least on one view of the matter, mark the progressive change of view on the part of DSS officers such as Mr McBride, Mr Kimber, Mr Barford, Ms Dalton, and DSS Legal Services Division from their stance that legislation was required to DSS' acceptance of, or acquiescence in, the DHS' view it was not.¹¹⁵⁰
966. Although Ms Halbert had no recollection of making the suggestion or of what she based it on, it was possibly the result of interpreting Mr Kimber's email in light of the sequence of DSS emails as meaning that 'the key components' of the revised proposal were not part of the previous proposal and it was their inclusion in the revised proposal that enabled or resulted in DSS getting a better understanding of how the revised proposal would satisfy legislative requirements.¹¹⁵¹ That was wrong. But once included in Ms Lumley's reformulation of Ms Halbert's feedback it remained in all subsequent drafts including the final draft submitted to Ms Wilson for approval at 12:43 pm on 1 March 2017.
967. In the result, the response did falsely represent that DHS took on DSS' concerns and produced a revised proposal that was different from the previous proposal. That was misleading.

1147 NACC Transcript, 1 September 2025, Catherine Elizabeth Halbert, T164-166.

1148 SB12, DSS.5023.0002.2174_R, Email, 'RE- Background to issue', 15 January 2017, 1.

1149 PM1, DSS.8500.0001.1928_R2, Email, 'DHS NPPs for inclusion in the 2015-16 PB Sub', 4 March 2015; PM1, DSS.8500.0001.1936_R, Draft NPP, '[NPP B.35] - 204 Strengthening the integrity of Welfare payments (v.8)', 4 March 2015.

1150 MJ16, DSS.5060.0001.0551, Email, 'FW- New version of draft brief on fraud and compliance', 4 March 2015; MK24, DSS.5006.0002.4093, MK24, DSS.5006.0002.4093, Email, 'FW- 11779 - Strengthening the Integrity of Welfare Payments - PAYG component', 4 March 2015; DSS.5006.0002.3934, Email, 'FW- update DHS NPP legislative change checklist', 20 March 2015; AB3, DSS.5006.0002.3936, NPP, 'DHS NPP potential legislative change and operations checklist', 20 March 2015; JR20, DSS.5081.0001.9154, Email, 'RE- NPP', 5 March 2015.

1151 NACC Transcript, 1 September 2025, Catherine Elizabeth Halbert, T164-166.

Ms Wilson's involvement in preparing the response

968. The Royal Commission found that Ms Wilson was involved in preparing the DSS Response to the second request; knew that each of the representations was false; and the representations were designed to mislead the Ombudsman in the exercise of his duties.¹¹⁵²
969. It is appropriate to deal in turn with the questions of whether Ms Wilson was involved in preparing the DSS Response to the second request, whether she knew the representations were false, and whether she intended the representations to mislead.
970. There is no direct evidence that Ms Wilson drafted any part of the DSS Response to the second request or was the source of any of the representations. But she was involved in preparing the DSS Response to the second request to the extent that she approved it. Ms Wilson said in evidence that she may not have read the response closely or properly comprehended its meaning.¹¹⁵³ But given the inherent improbability of a very senior executive officer approving a response to an Ombudsman's request for information (in a high profile own motion investigation) without first ensuring the accuracy of the information that was being provided by her department, and what I have inferred was her role in removing reference to the 2014 DSS Legal Advice from the DSS Response to the Ombudsman's first request, it may be inferred to the requisite standard that she did read and understand it.

1152 Final Report of the Royal Commission into the Robodebt Scheme, 7 July 2023, 'Referrals', 20.
1153 NACC Transcript, 22 August 2025, Serena Judith Wilson, T117, 120, 128-129.

Did Ms Wilson know or believe that the representations were misleading?

971. It may also be inferred that Ms Wilson knew that the representations were misleading. Possibly, she did not know why Mr Kimber and the other DSS officers earlier mentioned were persuaded to adopt or acquiesce in the DHS view. But she knew from Mr Kimber's email of 15 January 2017 what Mr Kimber said or implied were his and others DSS officers' reasons; she must have realised that what he said in that regard was different from what was stated or implied by the representations; she knew what her reasons had been for accepting that legislative amendment was not required (which she said in evidence were that she believed at the time (and until 15 January 2017) that OCI did not involve averaging and did not change the way income was assessed); and she must have realised that those reasons were in effect diametrically opposed to what was stated or implied by the representations.
972. I conclude that Ms Wilson knew that the representations were misleading.

Intention to mislead the Ombudsman

973. Before the Royal Commission and again in this investigation, it was forcefully, repeatedly put to Ms Wilson that she could not possibly have construed the Ombudsman's first request as limited to advice about income averaging as a last resort;¹¹⁵⁴ therefore, she must have realised that the 2014 DSS Legal Advice was in scope; and, therefore, she must have intended to deceive the Ombudsman by not disclosing to the Ombudsman advice she believed was in scope. On each occasion she denied it.

¹¹⁵⁴ For example, RRC Transcript, 9 November 2022, Serena Wilson, T807.

974. But for the misrepresentations in the response to the Ombudsman's second request, I would be inclined to accept her denial. Contrary to the questions put to her in the Royal Commission and in this investigation, I doubt it is so obvious the first request extended beyond advice about averaging as a last resort that Ms Wilson was bound to have realised the 2014 DSS Legal Advice was in scope. To repeat, Ms Wilson is not a lawyer, and although it may appear obvious to a lawyer that the request is for all forms of advice about averaging, it is not necessarily so for a layman. After all, Mr Hurman and Mr de Burgh independently reached the view that the request was limited to advice about averaging as a last resort, and initially they resisted Ms Pulford's contrary opinion. It was only later, after Ms Pulford appealed to Mr Grinsell-Jones and obtained his concurrence that they were persuaded to comply.
975. Additionally, although Ms Wilson said that she could not recall, and there is no other evidence of it, it is possible that Ms Halbert received and showed Ms Wilson a copy of Mr Hurman's email of 4:27 pm on 21 February 2017 (in which he expressed his reasoned disagreement with Ms Pulford's response);¹¹⁵⁵ and that Ms Wilson - being aware of Mr Hurman's reasoning but unaware that Mr Hurman and Mr de Burgh were later persuaded to the contrary - preferred Mr Hurman's analysis.
976. That said, however, when Ms Wilson's omission of the 2014 DSS Legal Advice from the response to the Ombudsman's first request is considered in light of the representations, both the omission and the representations assume a different and greater significance¹¹⁵⁶ which bespeaks more clearly an intention to deceive.
977. In evidence, Ms Wilson stated several times she had no reason to mislead the Ombudsman and therefore no intention to do so.¹¹⁵⁷ But after watching and listening to her give her evidence over 2 days, and particularly her cross-examination on the point, I am persuaded that she did have reason.

1155 AP8, DSS.5018.0001.9402, Email, 'FW: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]'; 21 February 2017, 1-2.

1156 *Shepherd v The Queen* (1990) 170 CLR 573 at 579-580.

1157 NACC Transcript, 22 August 2025, Serena Judith Wilson, T121-122, 129; NACC Transcript, 2 October 2025, Serena Judith Wilson, T57-58.

978. On balance, I accept her evidence that, because of her discussion with Ms Golightly on 26 February 2015, Ms Golightly's assurance that the new revised proposal would not involve averaging or change the way in which income was assessed, and the terms of the new revised proposal compared to the previous proposal, as at 25 March 2015 Ms Wilson believed that the new revised proposal did not involve averaging and did not change the way income was assessed.
979. Other things being equal, that might appear an unlikely conclusion. But in face of Mr Withnell's admissions of what he said at the meeting of 27 February 2015; the fact that immediately after the meeting he made amendments to the proposal, at Ms Golightly's instigation, which created the new revised proposal; and that the amendments consisted of deleting reference to averaging and adding the declaration that the new revised proposal would not change the way income was assessed, it is probable.
980. I do not accept, however, that Ms Wilson remained, until 15 January 2017, confident in the belief that OCI did not involve averaging. To begin with, it is clear from the evidence earlier set out that none of Mr McBride, Mr Kimber, Mr Barford or Ms Dalton (among other DSS officers who were involved) were in any doubt that OCI involved averaging. Their correspondence with each other and with DHS manifests that they all well understood the new revised proposal involved averaging; and, hence, they continued after 27 February 2015 to warn DHS that the new revised proposal required legislative amendment.¹¹⁵⁸ As best can be ascertained, it was not until a point close to 24 March 2015 (only a day or so before the ERC meeting) that they or possibly another, more senior DSS officer, were either persuaded by, or acquiesced in, the DHS' view. There is no direct evidence that any of that was communicated to Ms Wilson before 15 January 2017. But it is improbable that some news of it did not percolate up to 'Deputy Secretary level' well before then.

1158 For example: MK21, DSS.5006.0002.4235, Email, 'RE New version of draft brief on fraud and compliance', 4 March 2015, 3-4; DSS.5105.0001.8847_R, Email, 'Tony - Comments on DHS NPP', 2 March 2015; DSS.5105.0001.8848_R, Email, 'Tony - Comments on DHS NPP', 2 March 2015; JR20, CTH.4700.0002.0001, Email, 'FW- Comments DHS NPP', 6 March 2015; MK24, DSS.5006.0002.4093, Email, 'FW- 11779 - Strengthening the Integrity of Welfare Payments - PAYG component', 4 March 2015, 1.

981. In written submissions dated 16 December 2025 on behalf of Ms Wilson in response to a Notice of Proposed findings served on her on 25 November 2025 (the **written reply submissions**) it was submitted that the idea that some news of Mr McBride's, Mr Kimber's, and other DSS officers' concerns regarding the legality of OCI may have percolated up to Deputy Secretary level was but mere speculation untethered from the evidence, and as such should be rejected.¹¹⁵⁹
982. I do not accept the submission. Ms Wilson was the Deputy Secretary of DSS to whom Mr McBride reported and with whom Mr Kimber was directly engaged in formulating DSS' responses to the OCI proposal and conveying those concerns to DHS. As appears from the documentary evidence to which reference has already been made, there is no question that Mr McBride, Mr Kimber, and members of Mr Kimber's branch, Mr Barford and Ms Dalton (among other DSS officers), harboured significant concerns about the legality of the OCI proposal and no question that their concerns continued past 4 March 2015 until apparently as late at least as 24 March 2015. Even allowing for the slim possibility that Ms Wilson was so convinced by Ms Golightly's entirely undocumented oral assurance of 26 February 2015, and so senior, busy, or otherwise indifferent as to make no inquiry of Mr McBride, Mr Kimber or any other relevant DSS officer in the Social Policy Group as to whether Ms Golightly's oral assurance had been adequately translated into the final form OCI proposal before its submission to ERC on 25 March 2015, it is objectively likely that somehow, in some fashion, some hint of her officers' enduring concerns reached her hearing at some time before 15 January 2017.
983. Admittedly, it is impossible to say precisely how likely that is. But it is more than mere speculation. For the reasons already stated, I consider the possibility of it being so is at least sufficiently likely to regard it as a material circumstantial fact relevant to proof of the issue.¹¹⁶⁰

1159 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December 2025, 6 [28].

1160 See and compare *The Queen v Hillier* (2007) 228 CLR 618 at 637 [46]; *The Queen v Baden-Clay* (2016) 258 CLR 308 at [47].

984. In further written submissions on behalf of Ms Wilson submitted on 27 January 2026 (**the further written reply submissions**) the contention was reprised that there was no evidence to support a finding it was objectively likely that some hint of Ms Wilson’s officers’ enduring concerns reached Ms Wilson’s hearing at some time before 15 January 2017. It was submitted that to conclude it did would be a ‘startling conclusion’ falling far short of the *Briginshaw* test and thus incapable of bolstering the improbability of Ms Wilson remaining, until 15 January 2017, confident in the belief that OCI did not involve averaging.¹¹⁶¹
985. I reject that contention by repeating that, although it is impossible to say precisely how likely it is that some hint of Mr Kimber’s, Mr McBride’s and Ms Dalton’s enduring concerns reached Ms Wilson’s perception at some time before 15 January 2017, the facts that Ms Wilson was the Deputy Secretary of DSS to whom Mr McBride reported and with whom Mr Kimber was directly engaged in formulating DSS’ responses to the OCI proposal and conveying those concerns to DHS are circumstantial facts, and therefore circumstantial evidence, which have been established on the balance of probabilities, that militate against the probability of Ms Wilson having remained until 15 January 2017 confident in the belief that OCI did not involve averaging.¹¹⁶²
986. It was contended in the written reply submissions dated 16 December 2025 that a careful reading of the transcript of Ms Wilson’s evidence in this investigation shows that she denied having had any conversation with Mr Kimber in relation to MYEFO that caused her to ponder the possibility that DHS might be ‘rolling back’ what she believed to be their commitment not to use averaging; and that there is no other evidence that Ms Wilson contemplated that possibility.¹¹⁶³

1161 Further Submissions of Serena Wilson in response to Notice of Proposed Findings Responding to Submissions of Ms Wilson, NACC, 27 January 2026, [7] –[8].

1162 See further the explanation of the standards of proof applicable to the assessment of circumstantial evidence, in paragraph 1016 below.

1163 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December, 6-7 [33]-[36].

987. I reject the contention. Ms Wilson admitted in her evidence in this investigation (as she had admitted in her evidence before the Royal Commission) that Mr Kimber raised with her ‘Whether DSS should be raising ... concerns for the Minister about the MYEFO proposals’.¹¹⁶⁴ She admitted in her evidence before the Royal Commission that she guessed Mr Kimber’s concerns were ‘whether there was some rolling back of ... how the 15-16 Budget measure was going to be implemented which would not include income averaging’, in the sense that he was concerned about ‘whether DHS was seeking again to resurrect the earlier proposal’.¹¹⁶⁵ She also admitted in her evidence before the Royal Commission that she understood Mr Kimber to be ‘allud[ing] to the prospect’ that there ‘was a risk’ DHS’ avoidance of the use of averaging ‘might not be the case going forward’.¹¹⁶⁶
988. Consequently, despite Ms Wilson’s oft-repeated asseverations of unflagging belief in the verity of Ms Golightly’s undocumented oral assurances, and despite Ms Wilson’s evidence that she repudiated Mr Kimber’s concerns because she remained confident that DHS ‘got it, that they accepted our advice and information that they were not going to proceed in a way that ... would use income averaging’,¹¹⁶⁷ it is undeniable that Ms Wilson had at least one conversation with Mr Kimber that caused her to contemplate the possibility that DHS might be ‘rolling back’ what she said she had believed was DHS’ commitment not to use averaging. And it is apparent that she did nothing about it.
989. Thirdly, at the time of the government’s announcement that it was minded to extend OCI to more years of income, Mr Kimber asked Ms Wilson whether DSS should warn the Minister of the possible need for legislative amendment. She replied that they should not because ‘the Government wants to do it’.¹¹⁶⁸
990. It was submitted in the written reply submissions dated 16 December 2025 that there is nothing in Ms Wilson’s Royal Commission statement of 8 November 2022 which supports the conclusion that in or about late 2015 Mr Kimber raised the possibility of a need for legislative amendment.¹¹⁶⁹ I reject that submission.

1164 RRC Transcript, 9 November 2022, Serena Wilson, T826; NACC Transcript, 2 October 2025, Serena Judith Wilson, T22.
1165 RRC Transcript, 9 November 2022, Serena Wilson, T826.
1166 RRC Transcript, 9 November 2022, Serena Wilson, T826.
1167 RRC Transcript, 9 November 2022, Serena Wilson, T827-T828.
1168 SW6, Statement of Serena Wilson, 8 November 2022, SWI.9999.0001.0005, 6 [33].
1169 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December, 7 [37]-[38].

991. Ms Wilson's statement of 8 November 2022 does not stand alone. It is to be read in light of her evidence before the Royal Commission, and her evidence in this investigation, that:
- after the MYEFO was published in December 2015 and she had reported its contents to Mr Kimber, 'he queried whether DSS should be raising any concerns for the Minister';¹¹⁷⁰
 - 'It's a possibility that Mr Kimber was concerned about there potentially being features of the proposal that we thought we'd got rid of from the budget proposal';¹¹⁷¹ and
 - 'I didn't take on board his concerns and, you know, it is pretty confronting to recognise now that I didn't do that'.¹¹⁷²
992. Understood against the undisputed background of Ms Wilson's ultimatum to DHS that the 'bottom line' was that there could be no averaging without legislative amendment,¹¹⁷³ and Ms Wilson's evidence before the Royal Commission that 'I really believed that they [DHS] got it, that they had accepted our advice and information, and that they were not going to proceed in a way that required legislation, that would use income averaging as the proposition [sic] for people',¹¹⁷⁴ Mr Kimber's expression of concern could not have meant to Ms Wilson anything other than concern that the Minister should be warned that the use of averaging going forward would be unlawful without legislative amendment.
993. Contrary to the submissions advanced on behalf of Ms Wilson, the evidence therefore establishes that Ms Wilson's dismissal of Mr Kimber's concerns - with the admonishment that 'Government wants to do it'¹¹⁷⁵ - was in direct response to Mr Kimber's identification of the possibility of a need for legislative amendment.

1170 RRC Transcript, 9 November 2022, Serena Wilson, T826.

1171 NACC Transcript, 2 October 2025, Serena Judith Wilson, T22.

1172 NACC Transcript, 2 October 2025, Serena Judith Wilson, T22.

1173 SW6, Statement of Serena Wilson, 8 November 2022, SWI.9999.0001.0005, 5 [25(d)].

1174 RRC Transcript, 9 November 2022, Serena Wilson, T827-T828.

1175 SW6, Statement of Serena Wilson, 8 November 2022, SWI.9999.0001.0005, 6 [33].

994. The further written reply submissions for Ms Wilson dated 27 January 2026 emphasised that the only evidence of Ms Wilson’s conversation with Mr Kimber in which Mr Kimber queried whether the Minister should be warned of the need for legislative amendment was Ms Wilson’s evidence of the conversation, and it was argued in effect that it was, therefore, not open to reject Ms Wilson’s evidence that the conversation did not cause her to ponder the possibility that DHS might be rolling back its commitment not to use averaging but rather that the MYEFO proposal was that:
- ‘the government wanted to expand what I then understood to be the 15-16 Budget measure with two further years, which at that time I believed would not involve averaging’.¹¹⁷⁶
995. There are 2 answers to that. The first is that, regardless of whether Ms Wilson then believed that the proposal would not involve averaging, on her own admission she had a conversation with Ms Kimber which she took to mean he was sufficiently concerned that DHS were ‘rolling back’ their commitment not to use averaging as to render it prudent to warn the Minister of the need for legislative amendment. Axiomatically, that caused Ms Wilson to contemplate the possibility that DHS might be rolling back their commitment not to use averaging.
996. The second reason is that, just as juries in criminal trials are routinely instructed that they may accept part of a witness’ evidence and reject other parts of it, I proceed on the basis that I accept, as an admission against interest, Ms Wilson’s evidence that she had the conversation with Mr Kimber in which he conveyed to her he was sufficiently concerned DHS might be rolling back their commitment not to use averaging that it was prudent to warn the Minister of the need for legislative amendment; but I reject as an improbable self-serving statement so much of Ms Wilson’s evidence as it is contended implies that Ms Wilson’s confidence that averaging would not be used remained unaffected by the conversation.

1176 Further Submissions of Serena Wilson in response to Notice of Proposed Findings Responding to Submissions of Ms Wilson, NACC, 27 January 2026, [13] – [16].

997. I am also fortified in that view of the matter by the submission that Ms Wilson's state of mind should be judged according to the 'expectations of the professional public service' that she would accept 'the information provided to her by the relevant senior officer of the responsible agency'.¹¹⁷⁷ To be sure, that submission was directed to the oral assurance which Ms Golightly was alleged to have given Ms Wilson on 26 February 2015 that averaging would not be used. But the essence of the submission applies *a fortiori* to Mr Kimber's expression of concern to Ms Wilson that DHS might be rolling back their commitment not to use averaging. For as has been seen, Mr Kimber was the senior officer of DSS who had been most closely involved in the negotiation with DHS of DSS' initial endorsement of the OCI proposal; most closely engaged in advising Ms Wilson on how to respond to the proposal; and principally concerned, in the months following implementation and operation of the proposal, in advising Ms Wilson on how to report to the Minister on the results of its implementation and operation. Judged by reference to the 'expectations of the professional public service' prayed in aid, it surpasses understanding that Ms Wilson would not have been gravely concerned as the result of her conversation with Mr Kimber that DHS might indeed be rolling back their commitment not to use averaging.
998. Fourthly, DHS were not hiding the fact that they were using averaging. The DSS Response to Minister Porter that Mr Withnell sent to Mr Kimber on 1 February 2016 left no room for doubt about it. Ms Wilson approved that brief, including DHS' detailed summary of how OCI was operating, and, although she said in evidence she might not have read it closely, it taxes credulity that it did not cause her to wonder.
999. It was contended in the written reply submissions that DHS did indeed hide the fact that they were using averaging; and further contended that there was not otherwise sufficient basis to conclude that Ms Wilson is likely to have wondered whether DHS was using averaging.¹¹⁷⁸

1177 Further Submissions of Serena Wilson in response to Notice of Proposed Findings Responding to Submissions of Ms Wilson, NACC, 27 January 2026, [17].

1178 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December, 8 [44]-[46].

1000. I do not accept that contention. Significantly, the only matter identified in the written reply submissions as showing DHS hid the fact it was using averaging was Ms Harfield's email to Ms Golightly of 15 January 2017 (copied to Ms Wilson) in which Ms Harfield stated that 'there has been no change to the methodology used for the assessment of income'.¹¹⁷⁹
1001. But Ms Harfield's email did not hide the fact that DHS were using averaging. To the contrary, her email was shared with Ms Wilson as part of an explicit discussion (that began during the teleconference of 15 January 2017) of the fact that DHS had been, and were, applying automatic default averaging to customers who failed to respond.¹¹⁸⁰ The email was offered to Ms Wilson in support for DHS' contention that the application of automatic default averaging to customers who failed to respond was no different in principle from the kind of averaging that DHS had been applying for years 'as a last resort'.¹¹⁸¹ So far from seeking to hide the fact that DHS was using averaging, the email proclaimed its use and unabashedly asserted its legality. Nor can there be any doubt that Ms Wilson understood that was so. Her request for the 2017 DSS Legal Advice, and her oral evidence as to why she sought the 2017 DSS Legal Advice, makes it particularly clear.
1002. The further written reply submissions, for Ms Wilson conceded that DHS had not hid the fact that DHS were using averaging but submitted that that was beside the point: because DHS staff had misled Ms Wilson that DHS were using averaging in a manner no different from the manner in which DHS had used averaging for many years.¹¹⁸² It was submitted that was exemplified by the statement in Ms Harfield's email that DHS were using 'averaging as a last resort' as DHS had for many years and had not changed the way it used PAYG data.¹¹⁸³

1179 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December, 8 [44(f)].

1180 EM7, DSS.5063.0001.0003_R, Email, 'RE: Teleconference details', 15 January 2017; SB18, DSS.5035.0001.0001, File Note, 'Notes from 1501017 and 180117' 15 January 2017 and 18 January 2017, 1.

1181 SW15, CTH.3001.0033.3350_R, Email, 'FW: Response to DSS – Employment Income Compliance Process', 15 January 2017.

1182 Further Submissions of Serena Wilson in response to Notice of Proposed Findings Responding to Submissions of Ms Wilson, NACC, 27 January 2026, [21].

1183 Further Submissions of Serena Wilson in response to Notice of Proposed Findings Responding to Submissions of Ms Wilson, NACC, 27 January 2026, [22].

1003. It is a sufficient response to that submission to repeat that Ms Harfield's email was offered to Ms Wilson in support of DHS' contention that the application of automatic default averaging to customers who failed to respond was no different *in principle* from the kind of averaging that DHS had been applying for years 'as a last resort'. There was no suggestion that the application of automatic default averaging to customers who failed to respond was the same *in fact* as the process of applying of averaging as a last resort that DHS had previously applied selectively following the failure of a full manual investigation of available sources to yield sufficient informed assessment of income. And there is no doubt Ms Wilson understood that was so.
1004. In case there should be any doubt about it, however, I also repeat that:
- a. If not before 15 January 2017, then certainly on 15 January 2017, 16 January 2017, and further or alternatively 17 January 2017, Ms Wilson was made aware that DHS were applying automatic default averaging to customers who failed to respond.
 - b. Indeed, such was Ms Wilson's then understanding of the facts that she was appointed to lead the discussion with Ombudsman's officers at the meeting of 16 January 2017 in explication of the operation of the OCI system – by reading out the script prepared by DHS in which the operation of the system was explained, just as it had been explained in Mr Britton's PowerPoint presentation of 9 March 2016 and in the attachment prepared by DHS and supplied to DSS for inclusion in DSS' response to the Minister's request for additional information (which Mr Kimber prepared and Ms Wilson reviewed on 1 February 2016).
 - c. As the result of her involvement with the PAYG proposal in early 2015, Ms Wilson well knew that the application of automatic default averaging to customers who failed to respond was the essence of the PAYG proposal that DSS had determined was unlawful.
 - d. According to Ms Wilson's evidence, it was because she was aware that the application of automatic default averaging to customers who failed to respond was unlawful that Ms Wilson had sought and obtained from Ms Golightly the undocumented oral assurance that the new 'revised proposal' would not include averaging.

- e. If not before 15 January 2017, then certainly on 15 January 2017, 16 January 2017, and further or alternatively 18 January 2017, Ms Wilson became aware that the so-called new revised proposal did involve the application of automatic default averaging to customers who failed to respond.
- f. At the same time, Ms Wilson became aware that DHS' only justification for so applying automatic default averaging to customers who failed to respond was DHS' assertion that it was no different from the averaging 'as a last resort' which DHS had been using for many years.
- g. Ms Wilson knew that, in point of fact, the application of automatic default averaging to customers who failed to respond was different from the averaging 'as a last resort' which DHS had been applying for many years – in that it involved the automatic application of default averaging to customers who failed to respond without first conducting a thorough examination of available sources for sufficient data with which to make an informed assessment of income;
- h. Consequently, as I find, Ms Wilson understood that DHS' assertion that the application of automatic default averaging to customers who failed to respond was no different from the kind of averaging DHS had been applying for many years was at best an argument of characterisation that the 2, while different in point of fact, were in principle no different.

1005. The written reply submissions for Ms Wilson contended that the following factors demonstrated that Ms Wilson was not caused to wonder before 15 January 2017 whether DHS were using averaging:

- the fact that the cover email 'sent at 12.10pm' on 1 February 2016 attaching the DSS Response for Minister Porter¹¹⁸⁴ (the 1 February 2016 DSS Response) sought 'a short turn around' and clearance that day¹¹⁸⁵
- the large number of compliance measures summarised in the document¹¹⁸⁶

1184 DSS.8500.0001.1188, Document, 'DSS Response for Minister Porter', 1 February 2016.

1185 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December, 8 [44(a)].

1186 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December, 8 [44(b)].

- none of the documents accompanying the 1 February 2016 DSS Response stated expressly that averaging was being used or indicated to Ms Wilson that the 1 February 2016 DSS Response itself indicated that income averaging was being used to raise a debt in a way inconsistent with social security law¹¹⁸⁷
- Ms Wilson understood that DHS had used PAYG data for years¹¹⁸⁸
- DHS did in fact continue to hide the true nature of OCI from Ms Wilson (as addressed above).¹¹⁸⁹

1006. It is a sufficient response to each of those considerations to repeat that the draft brief submitted to Ms Wilson for her approval on 1 February 2016 left no doubt that averaged PAYG income data was being used as the primary source of assessment of income and, in the absence of any response from a customer, as the only source of assessment of the customer's income.

1007. The further written reply submissions took issue with that conclusion on the basis that:

- a. 'Ms Wilson was not the only person to have failed to understand the full effect of the DHS attachment.'¹¹⁹⁰
- b. 'The attachment had been prepared by DHS and was not DSS' document. Ms Wilson's evidence was 'I wouldn't have said I cleared it because it wasn't my document. I believe what I did was make a spelling correction ...'¹¹⁹¹
- c. 'Ms Wilson's evidence as to how she saw her role in relation to the 1 February 2016 DSS Response was 'it's something that came across my desk quickly. I thought is it giving me the information the Minister wants? Is there another way of giving him additional information which might be a face-to-face briefing? I picked up a couple of grammatical and typographical things, I asked a couple of questions and then it went off my desk. I dealt with lots of briefs every day.'¹¹⁹²

1187 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December, 8 [44(c)], [44(e)].
 1188 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December, 8 [44(d)].
 1189 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December, 8 [44(f)].
 1190 Further Submissions of Serena Wilson in response to Notice of Proposed Findings Responding to Submissions of Ms Wilson, NACC, 27 January 2026, [25].
 1191 Further Submissions of Serena Wilson in response to Notice of Proposed Findings Responding to Submissions of Ms Wilson, NACC, 27 January 2026, [25].
 1192 Further Submissions of Serena Wilson in response to Notice of Proposed Findings Responding to Submissions of Ms Wilson, NACC, 27 January 2026, [25].

- d. 'Ms Wilson was not reading the DHS attachment with an eye to interrogating what DHS was doing, rather she was reading it from the perspective of whether it provided the information the Minister was after.'¹¹⁹³
- e. 'Within the context outlined above, and the fact that in her mind DHS had understood DSS' previously expressed concerns and implemented a different version of the OCI which did not use averaging to raise a debt, it is far more probable that Ms Wilson did not realise that the DHS attachment described an OCI measure that involved averaging to raise a debt.'¹¹⁹⁴

1008. I am not persuaded. As it appears to me, the supposed distinction between 'Ms Wilson ... reading the DHS attachment with an eye to interrogating what DHS was doing' and reading the document 'from the perspective of whether it provided the information the Minister was after' is, in this context, devoid of substance. To say so is not to deny the theoretical possibility that Ms Wilson was so derelict in the discharge of her duties that she failed to read and comprehend what was sent to her for approval. But to repeat, it taxes credulity that Ms Wilson did not read and comprehend the significance of a document which she was required, as a Deputy Secretary, to review before it was provided to the Minister for Social Services.

1009. Finally on this aspect of the matter, it was contended in the written reply submissions that, even if Ms Wilson were caused to wonder before 15 January 2017 if averaging was being used, it did not demonstrate that Ms Wilson knew that before 15 January 2017, or hence demonstrate that she later sought to mislead the Ombudsman by withholding the 2014 DSS Legal Advice from the response to the Ombudsman's first request and by allowing the misrepresentations to remain in the response to the Ombudsman's second request.¹¹⁹⁵

1010. Those contentions are misplaced. I have not found that Ms Wilson necessarily knew before 15 January 2017 that averaging was being used, or that, it was because she did, she later sought to mislead the Ombudsman. What I have found is that, having regard to each of the factors outlined in paragraphs 980, 982, 988, 989, 992, and 993 above, by the time Ms Wilson came to respond to the Ombudsman's first request and second request, it is probable she had motive enough to intend to mislead the Ombudsman.

1193 Further Submissions of Serena Wilson in response to Notice of Proposed Findings Responding to Submissions of Ms Wilson, NACC, 27 January 2026, [25].

1194 Further Submissions of Serena Wilson in response to Notice of Proposed Findings Responding to Submissions of Ms Wilson, NACC, 27 January 2026, [26].

1195 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December, 8 [46].

1011. Fifthly, it is at least possible that Ms Wilson was in the DSS Payment Forum meeting of 9 March 2016 when Mr Britton delivered his PowerPoint presentation on OCI. The minutes of the meeting record that she was.¹¹⁹⁶ If she were, it is improbable that it did not reveal to her or confirm her suspicion that averaging was involved.
1012. It was contended in the written reply submissions dated 27 January 2026 there was no reason to reject Ms McLarty's evidence and therefore no basis to conclude that Ms Wilson was present at the DSS Payments Forum when Mr Britton delivered his PowerPoint presentation on the operation of OCI.¹¹⁹⁷
1013. I reject that contention. Even if Ms McLarty's evidence were to be accepted – and there are doubts about its reliability in view of the fact that it was solicited by a witness after giving evidence before the Royal Commission in an effort to shore up his evidence – it was equivocal at best. It raised the possibility (which has been acknowledged) that Ms Wilson did not see the presentation. But it left open the objectively, likely possibility (which is corroborated by the minutes) that Ms Wilson was present and saw the presentation. And while the latter possibility is not a certainty, I regard it as sufficiently probable to rate as a circumstantial fact which, taken in combination with the other identified circumstantial facts, assumes material significance.
1014. It was contended in the further written reply submissions that 'the mere possibility that Ms Wilson could have attended the DSS Payments Forum and heard Mr Britton deliver his PowerPoint presentation on the OCI measure 'was not a sufficient circumstantial basis for a finding of corruption to the *Briginshaw* standard', and that, in circumstances where 'it was "equally" possible that Ms Wilson attended the forum as that she did not' one could not properly be 'satisfied on the balance of probabilities that she attended the forum at the relevant time'.¹¹⁹⁸
1015. I reject that contention, for 2 reasons. The first, which is semasiological, is that to say it is at least possible that Ms Wilson attended the forum does mean it is equally possible that she did not. For the reasons I have stated, I think it is more likely than not that she did attend.

1196 MK28, DSS.5023.0001.6194, Minutes, 'Minutes, DSS Payments forum – Meeting 31', 9 March 2016.

1197 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December, 8-9 [47].

1198 Further Submissions of Serena Wilson in response to Notice of Proposed Findings Responding to Submissions of Ms Wilson, NACC, 27 January 2026, [27]-[28].

1016. The second, which is forensic, is that the question of Ms Wilson’s attendance at the forum is not the same as the ultimate issue of whether Ms Wilson intentionally misled the Ombudsman, nor an essential intermediate fact in the process of reasoning leading to my conclusion as to the ultimate issue. Consequently, there is no requirement for me to be satisfied to the *Briginshaw* standard of Ms Wilson’s attendance at the forum – as opposed to being satisfied to the *Briginshaw* standard that Ms Wilson intentionally misled the Ombudsman. To the contrary, just as a jury may properly be satisfied to the requisite standard that an ultimate issue has been established on the basis of the whole of the evidence despite not all individual pieces of evidence relied upon having been proved to that standard, so, too, it is appropriate for me to have regard to what is established by the probative force of the mass of evidence in preference to assessing the probability of each item of evidence separately as if standing alone.¹¹⁹⁹
1017. Sixthly, it is unlikely that the growing volume of complaints about averaging sufficient to attract the Ombudsman’s attention by at least October 2016¹²⁰⁰ did not in one way or other come to Ms Wilson’s attention.
1018. It was contended in the written reply submissions that Ms Wilson’s evidence that complaints about the OCI program and its use of averaging did not come to her attention should be regarded as reasonable and understandable, and, hence, that the fact of the complaints was not a sufficient basis to conclude that Ms Wilson learned of the complaints.¹²⁰¹
1019. I reject that contention. Like the contentions dealt with in paragraph 1010 above, it seeks to set up a straw man in order to avoid the issue. It is not suggested that the fact of the complaints alone is sufficient basis to conclude that Ms Wilson learned of the complaints. Rather, to repeat, I am satisfied that the likelihood of the complaints having come to Ms Wilson’s attention, seen in the light of and taken in combination with the other considerations I have identified above¹²⁰², renders it probable that Ms Wilson did not remain ‘until 15 January 2017 confident in her belief that OCI did not involve averaging’.¹²⁰³

1199 Chamberlain v R (No 2) (1984) 153 CLR 521 at 535-9, 570 and 599; Cross on Evidence Australian Edition at [90-040]; Shepherd v R [1990] HCA 56; (1990) 170 CLR 573 at 579-50. (Dawson J).

1200 LM17, Statement of Louise Macleod, 22 February 2023, LMA.9999.0001.0011, 7-8 [40]-[43].

1201 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December, 9 [48]-[49].

1202 See and compare Chamberlain v R (No 2) (1984) 153 CLR 521 at [15].

1203 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December, 3 [11].

1020. Seventhly, asked why, after finding out on 15 January 2017 that DHS were using averaging she did not tell the Ombudsman that she had been deceived, Ms Wilson answered:¹²⁰⁴
4. 'Well I don't think I fully appreciated that we'd been double crossed at that point. I do now, or I think now. I didn't really understand what was happening in terms of how DHS was administering the measure.'
1021. Yet as has been seen and is emphasised in greater detail below, it is plain that Ms Wilson must then have realised that she had been 'double-crossed'.
1022. Finally, if Ms Wilson had continued until 15 January 2017 confident in the view that DSS were adhering to what she considered to be their commitment not to use averaging, her reaction when told on that day that DHS were using averaging would surely have been one of justified outrage and dismay. It is also most improbable that she would not have forthwith documented what had occurred and reported it to Mr Pratt. But instead, from all appearances, the very next day she calmly and co-operatively joined with DHS in presenting what was in effect a unified front calculated to convince the Ombudsman that OCI's application of automatic default averaging to customers who did not respond was no different in principle from the kind of averaging as a last resort that DHS had used for years, and therefore was lawful.
1023. I infer that, regardless of what had happened up to that point, Ms Wilson was very keen to persuade the Ombudsman to the DHS view. Logically, she must also have been conscious that, if the Ombudsman learned of the 2014 DSS Legal Advice, and that OCI was in substance no different from the proposal at the time of the 2014 DSS Legal Advice, the Ombudsman would more likely reject the DHS view and declare OCI invalid. And thus, although there are other possibilities, I consider the most likely reason for Ms Wilson withholding the 2014 DSS Legal Advice is that she so feared the consequences of the Ombudsman finding OCI to be invalid, and so feared the effect the 2014 DSS Legal Advice might have in leading the Ombudsman to that determination, she intentionally withheld it from him.

1204 NACC Transcript, 2 October 2025, Serena Judith Wilson, T46.

1024. I do not overlook the evidence Ms Wilson gave that she had a significant history of advising that programs or practices must not be implemented or must cease whenever she considered them to be unlawful, and of doing so despite significant political pressure to maintain the programs or processes and the adverse personal consequences of that for her.¹²⁰⁵ I treat that evidence as relevant in the same way that it would be in a criminal proceeding: as character evidence in disproof of intent to deceive.¹²⁰⁶ But the circumstances of this matter are different.

1025. For whether by allowing herself to be deceived, or as the result of insouciance, or because she considered the government wanted OCI to continue, in this matter Ms Wilson had, at best, permitted DSS to sleep-walk negligently into acceptance of the DHS view, contrary to the 2014 DSS Legal Advice and without further distinguishing legal advice or any other documented analysis; and, to make matters worse, even after learning of or suspecting the dangers of what had occurred, she did nothing about it for possibly more than a year.

1026. In those circumstances, Ms Wilson must have appreciated that, if the Ombudsman were to reject the DHS view and declared OCI invalid, as the Deputy Secretary responsible for social security policy and legislation she would very likely be found at fault and highly likely be excoriated. Viewed in anticipation, the consequences for her would have seemed disastrous. Therein lay her motive.

1027. It was submitted in the written reply submissions that:¹²⁰⁷

5. ‘Having regard to all of the evidence, it can be seen that Ms Wilson’s conduct on 15–16 January 2017 was entirely consistent with her evidence. She had concerns and immediately sought legal advice. That alone is hardly consistent with someone seeking to, in the words of the Deputy Commissioner at A1[68], *‘join with DHS in presenting what was in effect a unified front calculated to convince the Ombudsman that OCI’s application of automatic default averaging’* was lawful. Someone seeking to arrange such a coverup would hardly, as a first step, arrange the provision of immediate legal advice in light of the information that she had just received.’

1205 NACC Transcript, 22 August 2025, Serena Judith Wilson, T120–121; NACC Transcript, 2 October 2025, Serena Judith Wilson, T65–67.

1206 *Attwood v The Queen* (1960) 102 CLR 353 at 359.

1207 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December, [53].

1028. That submission, too, misses the point. The point is that, if Ms Wilson had continued until 15 January 2017 confident in the view that DHS were adhering to what she considered to be their commitment not to use averaging as an automatic default means of assessment, and she had learned for the first time on 15 January 2017 that DHS had been using automatic default averaging as the operative means of assessment for customers who failed to respond, it is naturally to be expected that her immediate response would have been one of dismay and outrage that she had for so long been deceived, and she would forthwith have documented what had occurred and brought it to the attention of Mr Pratt.

1029. Instead, as the evidence establishes, from the very next day she joined in what can only be described as a unified front with DHS to convince the Ombudsman that the application of automatic default averaging to customers who failed to respond was lawful. And as I infer, the most likely reason for that behaviour – in contrast to what one would naturally expect her behaviour to have been if the circumstances were as she deposed – is that Ms Wilson so feared the consequences of the Ombudsman learning that DHS’ application of automatic default averaging to customers who failed to respond was no different from the kind of automatic default averaging that DSS had determined in December 2014 was unlawful, Ms Wilson intentionally withheld the 2014 DSS Legal Advice from the DSS response to the Ombudsman’s first request and intentionally allowed the identified misrepresentations to be included in the DSS response to the Ombudsman’s second request.

1030. The further written reply submissions argued that the notion that, were Ms Wilson truly surprised by the revelations of 15, 16 and 17 January 2017, she would have responded with dismay and outrage, was but:

6. ‘an unproven assumption, formulated without knowledge of Ms Wilson and/or evidence or knowledge as to how Australian Public Service executives, who are required to routinely deal with multiple difficult issues on a daily basis, might be expected to act’.¹²⁰⁸

1208 Further Submissions of Serena Wilson in response to Notice of Proposed Findings Responding to Submissions of Ms Wilson, NACC, 27 January 2026, [30].

1031. It was submitted that Ms Wilson gave cogent evidence explaining her reactions, to the effect that:
- ‘DSS and DHS were expected to work in a cooperative and collaborative fashion.
 - ‘Mr Pratt would have expected Ms Wilson to act cooperatively.
 - ‘Ms Wilson was also required by the APS Code of Conduct to treat her colleagues at DHS with respect and courtesy and to behave in a way that upheld the integrity and good reputation of the Australian Public Service.
 - ‘Ms Wilson had to be at the Ombudsman
 - meeting the next day in any event.’¹²⁰⁹
1032. On that basis, it was contended that the fact Ms Wilson attended the scoping meeting with the Ombudsman on 16 January 2017 and ‘presented professionally, even in the face of information which came as a surprise to her’, should be seen as ‘both unremarkable and consistent with her obligations as a Deputy Secretary’.¹²¹⁰
1033. I disagree. Judged as a matter of common sense and ordinary human experience it defies logical probability that a senior public servant deceived in the way that Ms Wilson was said to have been deceived up to that point would not have been severely dismayed and outraged by the then revelation that she, and through her, the Minister and Government it was her duty to advise, had been gravely misled by a senior executive of another department in a matter of fundamental importance to the efficacy of the social security system, with consequences productive of widespread public concern, the Ombudsman’s intervention, and potential political uproar.
1034. Furthermore, any obligation to work in a co-operative and collaborative fashion and to treat colleagues in a way that upheld integrity and good reputation must surely have applied just as much to DHS as to DSS. Thus, upon disclosure of the deceit, Ms Wilson was bound to have recognised that DHS had not only deceived her and her Department, the Minister, and the Government, but also had fundamentally repudiated the obligations of collaboration, integrity, and the upholding of reputation to which DHS was also subject under the Australian Public Service Code of Conduct.

1209 Further Submissions of Serena Wilson in response to Notice of Proposed Findings Responding to Submissions of Ms Wilson, NACC, 27 January 2026, [31].

1210 Further Submissions of Serena Wilson in response to Notice of Proposed Findings Responding to Submissions of Ms Wilson, NACC, 27 January 2026, [31].

1035. So far from detracting from the likelihood of dismay and outrage, the fact of those obligations renders it even more likely that, if Ms Wilson had remained until 15 January 2017 confident in the view that OCI did not involve averaging, Ms Wilson would in all likelihood have been so distraught and dismayed by revelation of the deceit practised on her, her Department, her Minister, and the Government, as forthwith (at the very least) to make a written record of what had occurred and report it to Mr Pratt.

1036. The written reply submissions also advanced 6 further arguments in support of the contention that it was not open to infer Ms Wilson knew that the representations were misleading.¹²¹¹

1037. In substance those arguments were that:

- The DSS response to the Ombudsman's second request was not a representation of Ms Wilson's personal experience or understanding of what had occurred in relation to OCI but of the collective understanding of DSS, for the articulation of which Ms Wilson relied on those of her staff who drafted it.¹²¹²
- Mr Kimber's email of 15 January 2017¹²¹³ was not inconsistent with the response, and, further or alternatively, it was not clear that Mr Kimber's email of 15 January 2017 provided a sufficient basis to conclude that Ms Wilson knew that the representations were false; it was in any event open to Ms Wilson to rely on the draft proposed response as being accurate; and Ms Wilson received and dealt with so many emails that she may well have forgotten about the contents of Mr Kimber's email by the time she came to settle the response to the Ombudsman's second request.¹²¹⁴
- Having regard to the clear terms of Mr Kimber's email of 15 January 2017,¹²¹⁵ there was no basis for concluding it implied anything as to Mr Kimber's, or any other DSS officer's, views 'about the operation of OCI'.¹²¹⁶

1211 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December, [56]–[67].

1212 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December, [57]–[59].

1213 SB12, DSS.5023.0002.2174_R, Email, 'RE- Background to issue', 15 January 2017, 1.

1214 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December, [60]–[62].

1215 SB12, DSS.5023.0002.2174_R, Email, 'RE- Background to issue', 15 January 2017, 1.

1216 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December, [63].

- In Ms Halbert’s email of 12:43 pm on 1 March 2017,¹²¹⁷ Ms Halbert offered to speak to the Ombudsman in explication of the response. There is no evidence that Ms Wilson discouraged Ms Halbert from adopting that course. If Ms Wilson had been seeking to mislead the Ombudsman, it is unlikely that Ms Wilson would not have discouraged Ms Halbert from adopting her suggested course of speaking to the Ombudsman.¹²¹⁸
- Ms Wilson had a very short period of time in which to clear the email to be sent to the Ombudsman, and thus in effect no time to reflect upon it.¹²¹⁹
- It is unlikely Ms Wilson anticipated attracting criticism in the event the Ombudsman found that OCI was invalid. Ms Wilson gave evidence that she had nothing to gain or lose by OCI ‘going ahead’.¹²²⁰ And since OCI had been designed and implemented by DHS, the consequences of OCI being found invalid would have accrued to DHS.¹²²¹

1038. The first argument is unconvincing. Regardless of whether the response was supposed to reflect Ms Wilson’s understanding of what had occurred, or to reflect other DSS officers’ understandings of what had occurred, the response purported to constitute DSS’ recitation of what had occurred, and it is probable that Ms Wilson realised it was false.

1039. The response expressly stated that DHS had taken DSS’ concerns into account and made adjustments.¹²²² According to the natural and ordinary meaning of the response, it implied that those changes enabled, or at least assisted, DSS to conclude that what was proposed following the changes would be lawful (in contradistinction to what had been proposed before the changes, which it was considered would be unlawful).

1217 SW13, DSS.5023.0002.2547, Email, ‘FW: Request for information/documents [SEC=UNCLASSIFIED]’, 1 March 2017.
 1218 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December, [64].
 1219 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December, [65].
 1220 NACC Transcript, 22 August 2025, Serena Wilson, T121-122.
 1221 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December, [66].
 1222 SW14, DSS.5005.0001.0534, Email, ‘Request for information/documents [SEC=UNCLASSIFIED]’, 1 March 2017.

1040. More particularly, the way in which the response conjoined the proposition that ‘Following this [*scil* the adjustments made in response to DSS’ concerns]’ with the assertion ‘DSS gained a better understanding of how the revised process would satisfy the legislative requirements [and] [i]n particular, DSS understood that the intended implementation model provided recipients with the opportunity to correct any information presented to them based on ATO data matching, particularly apportioning of income data obtained from the ATO’,¹²²³ naturally and ordinarily implied that it was as a consequence of the adjustments supposedly made in response to DSS’ concerns that customers were provided with an opportunity to make adjustments and the introduction of that opportunity was a consideration that had enabled or assisted DSS to conclude the OCI proposal was lawful.
1041. Contrary, however, to the meaning which the response thus conveyed, by the time of Ms Wilson’s approval of the response on 1 March 2017 Ms Wilson well knew that no changes had been made in response to DSS’ concerns, and hence well knew that it was not as a consequence of any such changes that DSS were able to conclude that the proposal, as so changed, would be lawful.
1042. As a result of the revelations of 15, 16 and further or alternatively 18 January 2017 Ms Wilson knew that, despite the oral assurance which Ms Wilson said Ms Golightly gave her on 26 February 2015,¹²²⁴ there had been no change made to the manner of application of automatic default application of averaging to customers who failed to respond that had been proposed in the PAYG proposal and DSS had determined in December 2014 was unlawful, and reiterated throughout January and February 2015 would be unlawful. Concomitantly, Ms Wilson learned that the only justification that DHS could and did offer for reneging on its assurances that averaging would not be so used was its assertion that the application of automatic default averaging to customers who failed to respond was no different in principle from the kind of averaging that DSS had been using for years ‘as a last resort’ after full manual investigation failed to uncover sufficient information to make a fully-informed assessment of income.

1223 SW14, DSS.5005.0001.0534, Email, ‘Request for information/documents [SEC=UNCLASSIFIED]’, 1 March 2017.
1224 NACC Transcript, 22 August 2025, Serena Wilson, T47-52.

1043. Although Ms Wilson may not have drafted the response but rather just approved it,¹²²⁵ she was by any measure a highly intelligent, highly educated, very senior, career public servant who had been intimately involved in formulating DSS' concerns as to the legislative invalidity of the PAYG proposal and in conveying those concerns to DHS in early 2015. In my view, therefore, she is bound to have understood those concerns. And understanding them as she must have, and having learned at least on or after 15 January 2017 that they had not been dealt with, in my estimation she cannot have been in any doubt that the response to the Ombudsman's second request was in each of the identified respects both false and misleading.
1044. I consider the second argument to be equally unpersuasive. Mr Kimber's email¹²²⁶ did not assert or imply that there were any changes made in response to DSS' concerns that enabled DSS to conclude that the way in which the OCI proposal would be implemented would not require legislative amendment. Nor did Mr Kimber's email suggest that any changes made in response to DSS' concerns introduced a previously unavailable procedure for customers to dispute the facts of a tentative assessment. And tellingly, Ms Wilson did not suggest in her evidence that she believed it did. To the contrary, the evidence is that by 1 March 2017 Ms Wilson well knew that DHS had not made any changes in response to DSS' expressions of concern and rather instead relied for the asserted validity on the argument that the application of automatic default averaging to customers who failed to respond was no different in principle from the kind of averaging that DHS had applied 'as a last resort' for many years. Hence to repeat, to a woman of Ms Wilson's intelligence and experience, the response cannot have appeared as anything but misleading.

1225 SW13, DSS.5023.0002.2547, Email, 'FW: Request for information/documents [SEC=UNCLASSIFIED]'; 1 March 2017; CH20, DSS.5023.0002.2560, Email, 'FW: Request for information/documents [SEC=UNCLASSIFIED]'; 1 March 2017.

1226 SB12, DSS.5023.0002.2174_R, Email, 'RE- Background to issue'; 15 January 2017, 1.

1045. There is no basis for the contention that Ms Wilson was or conceived herself entitled to rely upon the draft response as accurate. She gave no evidence to that effect and the objective facts belie it. She knew that Ms Halbert and Ms Halbert's subordinate officers had no personal knowledge of Ms Wilson's dealings with Ms Golightly in February 2015, in particular of the oral assurance Ms Wilson said Ms Golightly gave her on 26 February 2015 that averaging would not be used, and no personal knowledge that Ms Golightly's oral assurance was in truth the sole basis on which Ms Wilson had given her and thus DSS' imprimatur to the OCI proposal. Equally, on Ms Wilson's evidence, she knew that Ms Golightly's assurance had been fundamentally breached and that DHS' only justification for so fundamentally reneging on its word was an argument that the averaging it was using in breach of Ms Golightly's assurance was in principle no different from the kind of averaging that DHS had applied 'as a last resort' for many years. As must therefore have been plainly apparent to Ms Wilson, the contents of the draft response were entirely at odds with those facts.
1046. Nor is there any basis for the suggestion that Ms Wilson may have forgotten about the contents of Mr Kimber's email by the time she came to approve the DSS response to the Ombudsman's second request, or, hence, that she may not have realised that the contents of the draft response were misleading.
1047. Ms Wilson gave no evidence to that effect, and, even if it be assumed for the sake of argument that by the time Ms Wilson came to approve the draft response that she had forgotten about the contents of Mr Kimber's email, there can be no doubt that she would still have understood that the contents of the draft response were misleading. For *ex hypothesi* in the absence of knowledge of the contents of Mr Kimber's email, Ms Wilson would necessarily have conceived that the sole basis on which she, and thus DSS, had given their approval to the OCI proposal was Ms Golightly's undocumented oral assurance that averaging would not be used. And by reason of the events of 15, 16 and further or alternatively 18 January 2017, Ms Wilson knew that DHS had fundamentally repudiated that assurance by routinely applying the very kind of automatic default averaging that DSS had determined in 2015 was unlawful. Given that state of knowledge, the contents of the draft response would have presented *ex facie* as an abject fantasy.
1048. It was contended in the further written reply submissions that:

- ‘it was never Ms Wilson's evidence that by 1 March 2017 Ms Wilson knew that DHS had not made changes to the version of the OCI it had proposed in January 2015’¹²²⁷
- Mr Kimber's email says ‘DHS outlined a revised proposal’ and identifies 4 components including that ‘where a significant discrepancy is detected information will be presented to the customer. This would not be a debt notice but rather afford the opportunity to explain, correct, update or challenge the information’ and ‘any subsequent debt raised would take into account the information provided by the recipient’.¹²²⁸

1049. On that basis, it was submitted that, within the context of Ms Wilson's previous discussions with Ms Golightly, and the advice provided to DHS in January 2015, Ms Wilson should be taken to have believed that those components had been reworked in the revised proposal different from the PAYG proposal that DSS had rejected as unlawful.¹²²⁹

1050. I reject the argument. It might not have been Ms Wilson's evidence that she knew by March 2017 that DHS had not made changes to the application of automatic default averaging to customers who failed to respond. But it is clear beyond peradventure that she knew by 1 March 2017 that DHS were applying automatic default averaging to customers who failed to respond – in exactly the same way that DHS had proposed in the PAYG proposal and DSS had rejected as unlawful – and she knew that DHS' only supposed justification for doing so, contrary to the oral assurance which Ms Golightly was said to have given Ms Wilson on 26 February 2015, was DHS' assertion that the application of automatic default averaging to customers who failed to respond was averaging ‘as a last resort’ in principle no different from the kind of averaging as a last resort that DHS had been using for years.

1227 Further Submissions of Serena Wilson in response to Notice of Proposed Findings Responding to Submissions of Ms Wilson, NACC, 27 January 2026, [32(d)].

1228 Further Submissions of Serena Wilson in response to Notice of Proposed Findings Responding to Submissions of Ms Wilson, NACC, 27 January 2026, [32(d)].

1229 Further Submissions of Serena Wilson in response to Notice of Proposed Findings Responding to Submissions of Ms Wilson, NACC, 27 January 2026, [32(d)].

1051. It was then further contended that:

- ‘using averaging to raise debts as a “last resort” was a new concept to Ms Wilson, and one that DHS had confidently asserted since 15 January 2017 had not changed the way income was assessed for social security purposes and it had used for many years.
- ‘Ms Wilson did not understand income averaging as a ‘last resort’ to be part of the originally proposed OCI measure. Legal advice from DSS Legal concluded that this approach was lawful.¹²³⁰

1052. I reject those contentions, too. I accept that Ms Wilson did not learn until 15 January 2017 of the idea of characterising the application of automatic default averaging to customers who failed to respond as averaging ‘as a matter of last resort’ no different in principle from the kind of averaging that DHS had been using for years. And for argument’s sake, I accept that Ms Wilson had not until then understood that DHS were applying automatic default averaging to customers who failed to respond, or that DHS was seeking to justify their actions on the basis that to apply automatic default averaging to customers who failed to respond was no different in principle from the kind of averaging that DHS had been using for years. But to repeat, it is clear that by 1 March 2017 Ms Wilson understood that DHS were engaging in the very kind of automatic default averaging in relation to customers who failed to respond that DHS had proposed to DSS in the PAYG proposal, and DSS had rejected as unlawful; and understood that DHS’ only proffered justification for so departing from the oral assurance that Ms Golightly was said to have given Ms Wilson was DHS’ assertion that the application of automatic default averaging to customers who failed to respond was no different in principle from the kind of averaging that DHS had for many years applied ‘as a last resort’. For a woman of Ms Wilson’s intelligence and experience with that state of knowledge, DSS’ response to the Ombudsman’s second request cannot have appeared as anything but misleading.

1053. The third argument is misconceived. I do not suggest that Mr Kimber’s email of 15 January 2017 gave rise to any implication about the operation of OCI. What I have concluded is that the response falsely implied that DHS had made changes in response to DSS’ concerns that enabled DSS to conclude that OCI complied with legislative requirements.

1230 Further Submissions of Serena Wilson in response to Notice of Proposed Findings Responding to Submissions of Ms Wilson, NACC, 27 January 2026, [32(d)].

1054. The fourth argument is unpersuasive. The fact there is no evidence of Ms Wilson seeking to discourage Ms Halbert from explicating the response to the Ombudsman is at best equivocal. As Ms Wilson was aware, Ms Halbert had no personal knowledge of what it was that resulted late in March 2015 in DSS changing its view about, or at least in acquiescing in, DHS' view of the validity of the OCI proposal.¹²³¹ Unlike Ms Wilson, Ms Halbert was dependent on such information as she was able to piece together from the documents and the limited oral information she was able to derive from other DSS officers.¹²³² The result was the draft response which, although it may have been honestly composed by Ms Halbert and her staff, was, to Ms Wilson's knowledge, false and misleading.
1055. In those circumstances, there is no particular reason why Ms Wilson would have wished to dissuade Ms Halbert from advocating the response to the Ombudsman. It is just as likely that Ms Wilson would have been content to have Ms Halbert honestly but erroneously emphasise Ms Halbert's belief in it.
1056. I reject the fifth argument. As is explained above, Ms Halbert emailed the draft response to Ms Wilson at 12:43 pm on 1 March 2017¹²³³ and Ms Wilson took the better part of 3 hours to consider and respond to it at 3:33 pm on 1 March 2017.¹²³⁴ To say the least, that was more than adequate time for mature reflection. And importantly, Ms Wilson did not suggest in her evidence that there was any reason why she could not have taken at least a further hour or two to consider and reflect upon the document if she had needed it.
1057. It was contended in the further written reply submissions that I had overlooked paragraph 57 of the written reply submissions and failed to capture sufficiently the essence of paragraph 61 of those submissions.¹²³⁵
1058. I reject those contentions. Paragraphs 57 of the written reply submissions is dealt with in paragraphs 1038 to 1043 above, and for the reasons there stated, is rejected. Paragraph 61 of the written reply submissions is dealt with at paragraphs 1044 to 1048 above, and for the reasons there stated, is rejected.

1231 NACC Transcript, 20 August 2025, Catherine Halbert, T121-123; 131-132.

1232 NACC Transcript, 20 August 2025, Catherine Halbert, 131-132.

1233 SW13, DSS.5023.0002.2557, Email, 'RE: Request for information/documents [SEC=UNCLASSIFIED]'; 1 March 2017.

1234 SW13, DSS.5023.0002.2557, Email, 'RE: Request for information/documents [SEC=UNCLASSIFIED]'; 1 March 2017.

1235 Further Submissions of Serena Wilson in response to Notice of Proposed Findings Responding to Submissions of Ms Wilson, NACC, 27 January 2026, [32(b)].

1059. Additionally, it was contended in the further written reply submissions that:

8. ‘There is no evidence as to how long Ms Wilson considered and reflected on the Proposed Response to the Ombudsman’s

9. Second Request. The evidence - which includes that Ms Wilson received hundreds of emails each day, and that the March period was a frenetic time for Ms Wilson because of the budgetary process for new policy proposals (for which she was responsible) – suggests that she had very limited time to review it.’¹²³⁶

1060. I reject the argument. I accept Ms Wilson’s evidence that she had to deal with many emails in a day and that March 2017 was a busy time in the lead up to the budget. But it is only to be expected that Ms Wilson, as a Deputy Secretary, would have had systems, procedures, and assistance in place to isolate more important communications from the dross, and thus to devote to the former the time and attention they deserved. Ms Wilson did not suggest otherwise during any of her references to the burdens of her office. Nor did she depose that she had found that she had not had sufficient time to devote to the approval of the response. And obviously, she was the only witness who could have given first-hand evidence about that. Hence in the absence of direct evidence of the kind, I am not prepared to infer that she lacked the necessary time.¹²³⁷ As the evidence stands, I remain of the view that Ms Wilson had adequate time in which to consider the email and no reason why she could not have taken more time if she considered that it was required.

1236 Further Submissions of Serena Wilson in response to Notice of Proposed Findings Responding to Submissions of Ms Wilson, NACC, 27 January 2026, [32(g)].

1237 See and compare *Jones v Dunkell* (1959) 191 CLR 298.

1061. I reject the sixth argument. As has been explained, Ms Wilson's reason to fear excoriation in relation to OCI was not that OCI would not proceed if found to be invalid. It was that, because Ms Wilson had allowed herself to be deceived, or because of her insouciance, or because she had been so committed to the idea the Government wanted to proceed with OCI, she had, at best, permitted DSS to sleep-walk negligently into acceptance of the DHS view, contrary to the 2014 DSS Legal Advice and without obtaining further distinguishing legal advice or other documented analysis of why the proposal should be regarded as lawful. And even after being confronted with reason to suspect that DHS was proceeding in a manner that DSS had determined was unlawful, she had done nothing about it.
1062. In those circumstances, Ms Wilson must have appreciated that, if the invalidity of OCI were discovered and her actions and inactions were revealed, the best she could hope for was that the gravity of her incompetence would result in nothing worse than the strictest censure.
1063. Finally, it was contended in the written reply submissions that, even if Ms Wilson engaged in conduct that was intended to mislead the Ombudsman, it was not corrupt conduct because it did not or could not have caused the Ombudsman to act dishonestly or partially.

1064. For the reasons set out in paragraphs 827 to 843 above, I reject that contention. I also reject the submission made in the written reply submissions that Ms Wilson's conduct is not 'serious corrupt conduct' within the meaning of the NACC Act.¹²³⁸ The corrupt conduct alleged in each referral was potentially 'serious' corrupt conduct within the meaning of section 41(3) of the NACC Act because, if proved beyond reasonable doubt, it could render the referred person liable to conviction of an offence contrary to section 135.1 of the Commonwealth Criminal Code (Criminal Code) of dishonestly influencing a public official in the exercise of the official's duties as a public official (which is punishable on conviction by a penalty of up to 5 years' imprisonment),¹²³⁹ or an offence contrary to section 137 of the Criminal Code of giving information to a Commonwealth entity, or a person exercising or performing functions under or in connection with a law of the Commonwealth, knowing that the information was false or misleading or omitted any matter or thing without which the information was misleading (which is punishable on conviction by a penalty of up to 12 months' imprisonment).

Conclusion

1065. I conclude that Ms Wilson intentionally misled or attempted to mislead the Ombudsman by:
- a. omitting the 2014 DSS Legal Advice from the response to the Ombudsman's first request; and
 - b. making the following representations to the Ombudsman in the Response to the Ombudsman's second request, knowing each representation to be misleading:
 - i. That in response to concerns expressed by DSS to DHS in early 2015, there had been some revision or adjustment to how income averaging was proposed to be used in OCI.
 - ii. That as a result of the revision or adjustment, DSS had abandoned its former position that legislative change was required to implement the Scheme.
 - iii. That the 2014 advice was premised on a proposal that was different from OCI.

1238 Submissions of Serena Wilson in response to Notice of Proposed Findings, NACC, 16 December 2025, [82]-[86].
1239 For offences committed before 25 August 2018.

1066. Ms Wilson's conduct in so misleading or attempting to mislead the Ombudsman amounted to dishonest performance by Ms Wilson of her official functions or duties as a public official and further or alternatively the dishonest exercise of her official functions or duties as a public official for the improper purpose of misleading the Ombudsman, and thus was serious corrupt conduct within the meaning of section 8(1)(a) and further or alternatively section 8(1)(b) of the NACC Act.
1067. If there were sufficient admissible evidence to establish Ms Wilson's commission of the corrupt conduct beyond reasonable doubt, it would be appropriate to refer her to the Commonwealth Director of Public Prosecutions for consideration of whether she should be prosecuted for an offence of acting with the intention of dishonestly influencing a public official in the exercise of duties as a public official or of giving information known to be false or misleading to a person exercising or performing functions under or in connection with a law of the Commonwealth.
1068. I do not consider, however, that there is sufficient admissible evidence to establish either of those offences beyond reasonable doubt. Although Ms Wilson's evidence before the Royal Commission would be admissible in criminal proceedings,¹²⁴⁰ her evidence in this investigation would not be.¹²⁴¹ And without her admissions in this investigation that it is probable she omitted the 2014 DSS Legal Advice from the response to the first Ombudsman's request, or her evidence in this investigation that she believed that OCI did not involve averaging, or her evidence in this investigation of her discussions with Mr Kimber late in 2015 and in 2016 when he questioned whether the DSS should warn the Minister that legislation might be required, I do not consider that a rational jury properly instructed could exclude as reasonable possibilities that Ms Wilson did not delete the 2014 DSS Legal Advice from the 23 February 2017 response and did not believe that the representations in the 1 March 2017 response were misleading.

1240 Royal Commission Act, s 6A(1A).
1241 NACC Act, s 113(2).

Catherine Halbert

Did Ms Halbert mislead the Ombudsman on 16 January 2017?

1069. The Royal Commission concluded that Ms Halbert knowingly engaged in conduct that was designed to mislead or have the effect of misleading the Ombudsman in relation to the Ombudsman's investigation, by:¹²⁴²

- a. Failing to disclose to the Ombudsman at the scoping meeting on 16 January 2017 the existence of the 2014 DSS Legal Advice;¹²⁴³
- b. Making representations in the DSS response to the Ombudsman's second request that Ms Halbert knew to be false;¹²⁴⁴
- c. Not including as part of the DSS response to the Ombudsman's second request the instructions for the 2014 DSS Legal Advice.¹²⁴⁵

Failing to inform the Ombudsman of the 2014 DSS Legal Advice and of doubts about legality

1070. The Royal Commission based its conclusion that Ms Halbert engaged in misleading conduct with intent to deceive the Ombudsman on the following findings:

- a. Ms Halbert was present at the scoping meeting on 16 January 2017¹²⁴⁶
- b. Ms Halbert knew that the OCI involved the use of averaging to determine social security entitlement¹²⁴⁷
- c. Ms Halbert 'had knowledge of the 2014 DSS legal advice that, in clear terms said that the use of averaging in this way was unlawful'¹²⁴⁸
- d. DSS had been made aware that the scope of the Ombudsman's investigation included, among other things, the Scheme's 'adherence to legislative requirements'¹²⁴⁹
- e. Ms Halbert failed to disclose at the meeting the 2014 DSS Legal Advice or that there were any doubts about the legality of OCI.¹²⁵⁰

1242 Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 9.

1243 Royal Commission into the Robodebt Scheme, Final Report, 214; Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 10.

1244 Royal Commission into the Robodebt Scheme, Final Report 221; Confidential Chapter, 10.

1245 Royal Commission into the Robodebt Scheme, Final Report 221; Confidential Chapter, 11.

1246 Royal Commission into the Robodebt Scheme, Final Report, 214.

1247 Royal Commission into the Robodebt Scheme, Final Report, 214.

1248 Royal Commission into the Robodebt Scheme, Final Report, 214.

1249 Royal Commission into the Robodebt Scheme, Final Report, 214.

1250 Royal Commission into the Robodebt Scheme, Final Report, 214.

1071. The Royal Commission reasoned that in those circumstances Ms Halbert's failure to disclose the 2014 DSS Legal Advice or that there were any doubts about the legality of the Scheme was 'in and of itself, misleading behaviour by ... Ms Halbert ...'¹²⁵¹ The Royal Commission made findings that Ms Halbert 'knowingly engaged in conduct that was intended to mislead, and/or had the effect of misleading, the Ombudsman in relation to the Ombudsman's 2017 investigation into the Scheme.'¹²⁵²
1072. There is no issue that Ms Halbert was present at the scoping meeting; knew that OCI involved the use of averaging to determine social security benefits; and knew that the 2014 DSS Legal Advice was that the use of averaging to calculate income from employment for the purpose of determining social security benefits was not in accordance with legislation. There is also no issue that DSS had been made aware that the investigation would include among other things OCI's adherence to legislative requirements; and no issue that Ms Halbert did not disclose at the scoping meeting the 2014 DSS Legal Advice or that there were any doubts about the legality of OCI.
1073. The issue is whether in those circumstances Ms Halbert's failure to mention the advice or that there were doubts about the legality of OCI was misleading and, if it were, whether Ms Halbert knew and intended that it would mislead or be likely to mislead the Ombudsman.
1074. For reasons like those I have given in relation to Ms Wilson's participation in the scoping meeting, I am not persuaded that Ms Halbert's failure to mention at the scoping meeting the 2014 DSS Legal Advice or that there were doubts about the legality of OCI was misleading or likely to mislead the Ombudsman.
1075. The scoping meeting was a 'formal meeting with the Ombudsman's office ... on the approach that they would be taking to the own motion inquiry'.¹²⁵³ The nature of the meeting belies the idea that the Ombudsman's officers could reasonably have expected DSS would at that meeting produce DSS legal advices about the legality of OCI or disclose such doubts as DSS may have had about the legality of OCI at that time. All that was yet to come, in the investigation.

1251 Royal Commission into the Robodebt Scheme, Final Report, 214.

1252 Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 9.

1253 NACC Transcript, Serena Wilson, 2 October 2025, 38.

1076. Furthermore, even if it were rational to suppose that the Ombudsman's officers could reasonably have expected DSS at that meeting to produce the 2014 DSS Legal Advice or to disclose such doubts about the validity of OCI as DSS may then have had, why should it be thought that, by failing to do so there and then, Ms Halbert intended to mislead the Ombudsman? The Royal Commission made no finding that she did, and I am not persuaded there is sufficient evidence to do so either.
1077. Ms Halbert was not a lawyer.¹²⁵⁴ She was reliant on lawyers to advise her on the legality of OCI. Like Ms Wilson, she had become aware of the 2014 DSS Legal Advice; although in Ms Halbert's case only recently through her attempts to ascertain the basis on which DSS had approved OCI.¹²⁵⁵ She understood the effect of the advice was that averaging without legislative amendment was unlawful.¹²⁵⁶ But equally, just the day before she had participated in a meeting where DHS had expressed the DHS view regarding averaging as a 'last resort'.¹²⁵⁷ Like Ms Wilson, Ms Halbert was waiting on legal advice whether the DHS view should be accepted.¹²⁵⁸ She admitted that she had some doubts about it because she could not see there was much difference between averaging as contemplated in the 2014 DSS Legal Advice and averaging 'as a last resort' in the sense of the DHS view.¹²⁵⁹ But as she said in effect in this investigation, legality was for her an issue for lawyers to decide, and as she had done on previous occasions when there were doubts about legality, she would abide by the lawyers' decision regardless of whether it went one way or another.¹²⁶⁰
1078. In the circumstances, I consider it unrealistic to think Ms Halbert imagined she was misleading the Ombudsman by failing to disclose, there and then, issues so nascent.

1254 NACC Transcript, 20 August 2025, Catherine Elizabeth Halbert, T6.

1255 NACC Transcript, 20 August 2025, Catherine Elizabeth Halbert, T29.

1256 NACC Transcript, 20 August 2025, Catherine Elizabeth Halbert, T106.

1257 NACC Transcript, 20 August 2025, Catherine Elizabeth Halbert, T77; Statement of Emma Kate McGuirk, 21 October 2022, EKM.9999.0001.0002_R, 0004-5 [23]-[24].

1258 NACC Transcript, 20 August 2025, Catherine Elizabeth Halbert, T125-127, 129; NACC Transcript, 1 September 2025, Catherine Elizabeth Halbert, T3-4.

1259 NACC Transcript, 1 September 2025, Catherine Elizabeth Halbert, T10.

1260 NACC Transcript, 20 August 2025, Catherine Elizabeth Halbert, T115, T132; NACC Transcript, 1 September 2025, Catherine Elizabeth Halbert, T143-144, T174.

Did Ms Halbert mislead the Ombudsman on 1 March 2017?

Response to Ombudsman's second request

1079. The representations are set out in the consideration of Ms Wilson's conduct earlier in this report. The Royal Commission found that Ms Halbert knew that the representations were false and that her 'behaviour' in making the representations was designed to and did mislead the Ombudsman in the exercise of his functions.¹²⁶¹ The behaviour to which the Royal Commission referred was Ms Halbert's amending and settling of the first draft of the response prepared by Mr Hurman.¹²⁶²

Representation that DHS took DSS' concerns into account and made adjustments

1080. In considering whether Ms Halbert knew the representations were wrong, it is important to keep in mind that Ms Halbert had no personal knowledge of how DSS had come to approve OCI, and in particular how DSS came to change their mind from the view that legislation was required to the view it was not.¹²⁶³ Indeed, Ms Halbert did not know there had been a change of mind until after she was handed responsibility for OCI 3 weeks before Christmas 2016.¹²⁶⁴ Nor was she able to get much information about it even then.¹²⁶⁵ She asked Ms Wilson but found that she seemed not to know or remember.¹²⁶⁶ She asked Mr McBride but he, in effect, refused to help.¹²⁶⁷ She got some assistance from Mr Kimber, but it went no further than his email of 15 January 2017.¹²⁶⁸ Mr Kimber had left and gone to another branch within DSS.¹²⁶⁹

1261 Royal Commission into the Robodebt Scheme, Final Report, 221.

1262 Royal Commission into the Robodebt Scheme, Final Report, 219.

1263 NACC Transcript, 20 August 2025, Catherine Elizabeth Halbert, T125.

1264 NACC Transcript, 20 August 2025, Catherine Elizabeth Halbert, T100.

1265 NACC Transcript, 20 August 2025, Catherine Elizabeth Halbert, T101.

1266 NACC Transcript, 20 August 2025, Catherine Elizabeth Halbert T102.

1267 NACC Transcript, 20 August 2025, Catherine Elizabeth Halbert T101.

1268 NACC Transcript, 20 August 2025, Catherine Elizabeth Halbert, T101-102; SB12, DSS.5023.0002.2174_R, Email, 'RE- Background to issue', 15 January 2017.

1269 Statement of Murray Keith Kimber, 15 January 2015, MKI.9999.0001.0002, 0018 [102]; SB12, DSS.5023.0002.2174_R, Email, 'RE- Background to issue', 15 January 2017.

1081. She was and remained ignorant of Ms Wilson’s dealings with Ms Golightly in late February 2015 and the latter’s assurance that there would be no averaging or change to the way in which income would be assessed.¹²⁷⁰ The first she heard of that was at the Royal Commission.¹²⁷¹ She knew nothing of the meeting of 27 February 2015 between Mr Kimber, Mr McBride, Mr Withnell and Mr Britton.¹²⁷² She was ignorant of what thereafter occurred in the lead up to 25 March 2015. She was left to work it out from the documents as best she could with the assistance of Ms McGuirk, Mr Hurman, and Mr de Burgh, and to some extent DSS’ Legal Services Division.¹²⁷³
1082. It is also important to be aware that none of Ms McGuirk, Mr Hurman, or Mr de Burgh had any personal knowledge of what had occurred. Ms McGuirk had been with DHS at the time and Mr Hurman and Mr de Burgh had been with the Department of Health.¹²⁷⁴ Like Ms Halbert, their sources of information were in effect limited to the documents, Mr Kimber’s email of 15 January 2017, and such assistance as they were able to get from DSS’s Legal Services Division – principally in the form of Ms Pulford’s bridging paragraph. Mr Hurman’s first draft of the response is redolent of the limitations.¹²⁷⁵
1083. As the Royal Commission found, Ms Halbert was ‘involved in settling’ Mr Hurman’s first draft of the response, although, as will be seen from the evidence earlier set out, her involvement was limited to the suggestion in her email of 6:40 pm on 28 February 2017 that she did not think that the last paragraph of Mr Hurman’s draft of 6:22 pm on 28 February 2017 was ‘quite right’.¹²⁷⁶

I don't think the last paragraph is quite right. I think two things happened - DHS took on our concerns and adjusted the process AND we got a better understanding of how the revised process would satisfy the legislative requirements.

1270 NACC Transcript, 20 August 2025, Catherine Elizabeth Halbert, T120-121.
 1271 NACC Transcript, 20 August 2025, Catherine Elizabeth Halbert, T120-121.
 1272 NACC Transcript, 20 August 2025, Catherine Elizabeth Halbert, T90.
 1273 NACC Transcript, 20 August 2025, Catherine Elizabeth Halbert, T98; NACC Transcript, 1 September 2025, Catherine Elizabeth Halbert, T28; SW11, DSS.5026.0001.0004, Email, ‘RE: Request for information/documents [SEC=UNCLASSIFIED]’, 28 February 2017.
 1274 Statement of Emma Kate McGuirk, 21 October 2022, EKM.9999.0001.0002_R, [7]; Statement of Robert Alexander Hurman, 16 January 2023, RHU.9999.0001.0003_R, [13]; Statement of Russell Ian de Burgh, 27 October 2022, RDB.9999.0001.0003, [13].
 1275 SW9, DSS.5113.0001.0588, Email, ‘FW: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]’, 23 February 2017.
 1276 SW11, DSS.5026.0001.0004, Email, ‘RE: Request for information/documents [SEC=UNCLASSIFIED]’, 28 February 2017.

EK and I, being new to it around Christmas, weren't able to access the whole paper trail and so therefore sought confirmation of how the measures complied with legislation (the 2017 advice). I am happy to talk to the Ombudsman's office about this, but maybe adjust the brief a little.

1084. Although Ms Halbert cannot now recall making the suggestion, it appears likely that the notion 'DHS took our concerns into account and adjusted the process' originated in the following section of Mr Kimber's email:¹²⁷⁷

[...] during January and February '15 that the proposed method to use annual income to calculate and raise a debt was [considered to be] not likely to withstand scrutiny and if was to be used then legislative changes would have to be made.

As fortnightly payment calculations are the basis for a significant majority of social security; it was unlikely that we would agree to such a change as payment rates and any subsequent over/under payments are calculated on a fortnightly basis.

27th February meeting

From memory Mark Withnell, Scott Britton, Murray Kimber and Paul McBride attended. **At the 27 February meeting DHS outlined a revised proposals** [sic] that would use newly available data sources and analytical tools; **such that the new approach will not change how income is assessed or overpayments calculated. It had the following key components**

- DHS would target identified discrepancies based on analysis of 'the Pay as You Go (PAYG) file obtained from the Australian Taxation Office compared with the reported earnings data that DHS holds.
- Where a significant discrepancy is detected this information will be presented to the recipient. This would not be a debt notice but rather the recipient would be afforded the opportunity to explain, correct, update or challenge the information.
- Any subsequent debt raised would take into account the information provided by the recipient.

1277 SB12, DSS.5023.0002.2174_R, Email, 'RE- Background to issue', 15 January 2017, 1.

- DHS also advised that there would be no change to how income is assessed or overpayments calculated as part of this proposal.

Subsequent to that meeting, DSS received an email from DHS (4 March) to which all the DHS 2015-16 Budget NPPs were attached. In the NPP for Strengthening the Integrity of Welfare Payments, **DHS has advised that this new approach would not change the way debts are calculated.** The measure would commence roll-out in July 2015 with a more automated delivery from July 2016 once ICT developments were undertaken. [Emphasis added.]

1085. Likewise, although Ms Halbert cannot recall, the thought that, after the new revised proposal was developed, DSS ‘got a better understanding of how the revised process would satisfy legislative requirements’ appears based in Ms Halbert’s understanding of what she referred to in her email of 6:40 pm on 28 February 2017 as ‘the paper trail’.¹²⁷⁸ Presumably, it included the following.

1086. In Ms Dalton’s email of 4:29 pm on 3 March 2015 to Ms Hong, Ms Dalton stated among other things:¹²⁷⁹

We have raised the proposed measure with our Public Law Branch (PBL). PBL aims to provide preliminary advice tomorrow. However, **it may be a case of needing to better understand how DHS proposes to implement the measure within existing legislation.** [Emphasis added.]

1087. In Mr Barford’s email to Mr Jones of 4:42 pm on 4 March 2015, he stated among other things:¹²⁸⁰

DSS Legal advise (**noting that this advice may change as more information becomes available**)

...

... **DSS is unsure** whether current social security law would support a concept of primary evidence through data matching ... [Emphasis added.]

1278 SW11, DSS.5026.0001.0004, Email, ‘RE: Request for information/documents [SEC=UNCLASSIFIED]’, 28 February 2017.

1279 JR20, CTH.4700.0002.0001, Email, ‘FW- Comments DHS NPP’, 6 March 2015.

1280 MJ16, DSS.5060.0001.0551, Email, ‘FW- New version of draft brief on fraud and compliance’, 4 March 2015.

1088. In Mr Kimber's email of 5:05 pm on 4 March 2015 to Mr McBride, he stated among other things:¹²⁸¹

... based on preliminary legal advice we believe there **may** be some lego changes required. [Emphasis added.]

1089. In Mr Jones's email of 4 March 2015 to Ms Kukban, he stated among other things:¹²⁸²

... some components of this measure **will require legislative amendment to implement, depending on how each component is designed**, according to DSSs preliminary legal advice. Therefore DSS recommend the NPP checklist note that some legislative amendment **may** be required ... [Emphasis added.]

1090. At 1 pm on 20 March 2015, Mr Barford emailed Ms Dalton an 'update DHS NPP legislative change checklist' with the following note:¹²⁸³

Here is an update checklist following this morning's discussion with Jason at DHS ...

David L has sent the payment inclusions for #9 — Case Cleansing — doesn't really say much. I'm inclined to think that unless Jan Bailey's team say otherwise, that DHS should be able to meet the review process for these under existing provisions.

1091. Under the heading 'Customer reporting and declarations' and 'DHS detailed advice', the document stated:

'DHS assume no legislative impediment to trials [...] DSS note that if reporting program is implemented under existing notification provisions, and a failure to confirm, report or respond by the recipient does not result in automatic cancellation (not imposed as a condition of payability), then no impediment. If program does impose as a condition of payability, then legislative change will be needed to proceed ...'¹²⁸⁴

1092. In Ms Dalton's email of 11:24 am on 24 March 2015 to Mr Barford, she stated among other things:¹²⁸⁵

1281 MK24, DSS.5006.0002.4093, Email, 'FW- 11779 - Strengthening the Integrity of Welfare Payments - PAYG component', 4 March 2015, 1.
1282 MK24, DSS.5006.0002.4093, Email, 'FW- 11779 - Strengthening the Integrity of Welfare Payments - PAYG component', 4 March 2015, 3.
1283 DSS.5006.0002.3934, Email, 'FW- update DHS NPP legislative change checklist', 20 March 2015, 4.
1284 AB3, DSS.5006.0002.3936, NPP, 'DHS NPP potential legislative change and operations checklist', 20 March 2015, 3.
1285 DSS.5006.0002.3934, Email, 'FW- update DHS NPP legislative change checklist', 24 March 2015, 1-2.

This is a good summary. Please forward to Anne Pulford to inform her understanding of the DHS Budget measure. I think this would be good to send back to Jason **as confirming our understanding** ... [Emphasis added.]

1093. Taken together by a reader informed by Mr Kimber's email advice of 15 January 2017 (that in response to DSS concerns DHS produced a new revised proposal)¹²⁸⁶ and who was looking for an explanation of how and why DSS later approved the new revised proposal, the succession of emails set out above could well be taken to imply that, despite DSS' initial view that legislative amendment was required to implement the new revised proposal, during the period 3 to 24 March 2015 DSS progressively changed their view: first, to that it may be a case of needing to better understand how DHS proposed to implement the measure within existing legislation; then to that DSS' Legal Services Division was unsure whether current social security law would support the measure and that this 'may change as more information becomes available',¹²⁸⁷ and therefore DSS recommend a 'checklist [that] notes that some legislative amendment[s] may be required';¹²⁸⁸ and then, finally, to explicit approval of an update checklist that stated that legislative amendment was *not* required, and the sending of the update checklist to Ms Pulford to inform her understanding of the DHS Budget measure and to Mr Ryman as confirming DSS and DHS's *understanding* that legislative amendment was not required.
1094. Granted, that would not have defined what better understanding DSS had derived of the way OCI was implemented sufficient to persuade DSS to the view that legislative amendment was not required. All that Ms Halbert could ascertain from Mr Kimber's email was that DHS produced a new revised proposal in response to DSS' concerns, as well as the content of 'key components' of the new revised proposal;¹²⁸⁹ and all that she could have ascertained from the succession of emails outlined above was that, following development of the new revised proposal with the key components identified in Mr Kimber's email, DSS was progressively persuaded to the view that the new revised proposal could be implemented without legislative amendment.

1286 SB12, DSS.5023.0002.2174_R, Email, 'RE- Background to issue', 15 January 2017.

1287 MJ16, DSS.5060.0001.0551, Email, 'FW- New version of draft brief on fraud and compliance', 4 March 2015.

1288 MK24, DSS.5006.0002.4093, Email, 'FW- 11779 - Strengthening the Integrity of Welfare Payments - PAYG component', 4 March 2015, 1.

1289 SB12, DSS.5023.0002.2174_R, Email, 'RE- Background to issue', 15 January 2017, 1.

1095. Nor is it to say that the way in which Ms Halbert derived her understanding that ‘two things happened’ was precisely or at all the way suggested.¹²⁹⁰ Logically, there are many possibilities, including that Ms Halbert artfully created or conspired in the creation of the ‘two things happened’ conception with intent to deceive the Ombudsman.
1096. Yet of all the possibilities that might be conjectured, that is surely the least likely: for why would a senior, career public servant with an unsullied record of integrity and achievement so much wish to deceive the Ombudsman as to descend to complicity in an act of criminal deceit. Absent a compelling motive, it is very unlikely.
1097. In contrast to Ms Wilson, Ms Halbert had no involvement in DSS’ change of view in 2015 and was in no way responsible for what had occurred thereafter. Nor, therefore, did she have any apparent reason to wish to cover it up. As she said in evidence before the Royal Commission and in this investigation, she did not feel any sense of obligation to persuade the Ombudsman that OCI was lawful.¹²⁹¹ And in terms of self-interest, Ms Halbert had nothing to gain by deceiving the Ombudsman and everything to lose.
1098. I am not persuaded that Ms Halbert knew that the response was wrong or that she intended it should deceive the Ombudsman.

Representation that it was as a result of the asserted revision or adjustment that DSS changed its mind

1099. As this representation is an implication drawn from the representation that ‘two things happened’,¹²⁹² Ms Halbert could not have known it was wrong unless she believed that the latter was false. For the reasons already given, I am not persuaded she did.

1290 SW11, DSS.5026.0001.0004, Email, ‘RE: Request for information/documents [SEC=UNCLASSIFIED]’, 28 February 2017.

1291 RRC Transcript, 9 December 2022, Catherine Halbert, T1468; NACC Transcript, 3 October 2025, Catherine Elizabeth Halbert, 17.

1292 SW11, DSS.5026.0001.0004, Email, ‘RE: Request for information/documents [SEC=UNCLASSIFIED]’, 28 February 2017.

Not including the instructions for the 2014 DSS Legal Advice with the response to the Ombudsman's second request

1100. The Royal Commission found that the non-inclusion of the instructions for the 2014 DSS Legal Advice with the response to the Ombudsman's second request was the result of a deliberate decision by Ms Wilson, Mr de Burgh and Ms Halbert designed to conceal the falsity of the representations.¹²⁹³ It based that conclusion on the following findings:

1. The Ombudsman's second request was not confined to the 2014 DSS Legal Advice but extended to 'any other notes, document or emails that relate to this advice'.¹²⁹⁴
2. The instructions for the 2014 DSS Legal Advice would have revealed that there was no substantive difference between the PAYG Clean Up proposal which was the subject of the 2014 DSS Legal Advice and the OCI which was the subject of the 2017 DSS Legal Advice,¹²⁹⁵ in that both provided for a customer to be notified of a potential debt and given an opportunity to respond before a debt was raised.
3. Without access to the instructions, it was not possible for the Ombudsman to ascertain that there was no substantive difference between the PAYG Clean Up proposal and OCI.¹²⁹⁶
4. Ms Halbert accepted before the Royal Commission that DSS had the opportunity to provide the instructions with the response but 'offered little in terms of a coherent explanation for DSS's behaviour' and 'admitted that DSS may not have considered the matter' but thought it possible it 'may have been informed by the Ombudsman '[having] access to those documents anyway''.¹²⁹⁷
5. Ms Halbert said she relied on information provided to her about the contents of Mr Hurman's draft.¹²⁹⁸
6. Ms Halbert said she did not feel any sense of obligation to justify the legality of OCI to the Ombudsman.¹²⁹⁹

1293 Royal Commission into the Robodebt Scheme, Final Report, T214.

1294 Royal Commission into the Robodebt Scheme, Final Report, T221.

1295 Royal Commission into the Robodebt Scheme, Final Report, T219.

1296 Royal Commission into the Robodebt Scheme, Final Report, T219.

1297 Royal Commission into the Robodebt Scheme, Final Report, T220.

1298 Royal Commission into the Robodebt Scheme, Final Report, T220.

1299 Royal Commission into the Robodebt Scheme, Final Report, T220.

1101. The evidence before the Royal Commission, like the evidence in this investigation, establishes each of the findings except for finding (3). I do not accept that there was sufficient evidence before the Royal Commission, and I do not consider there is sufficient information in this investigation, to establish that, without Ms Halbert producing the instructions in response to the second request, it was impossible for the Ombudsman to ascertain there was no substantive difference between the 2 proposals.
1102. To a lawyer like Ms Macleod, it would have been axiomatic that the 2014 DSS Legal Advice was given in response to instructions. If Ms Macleod had been at all interested in identifying whether there was any substantive difference between the instructions in relation to the PAYG Clean Up proposal the subject of the 2014 DSS Legal Advice and the instructions in relation to the OCI the subject of the 2017 DSS Legal Advice, it may be assumed she would have asked specifically for the instructions for each advice (just as she had asked specifically for the 2014 DSS Legal Advice); and, if she had, that they would have been provided.
1103. But even assuming all 6 findings were open on the evidence, I am unable to see how they justify drawing an inference to the requisite standard that Ms Halbert's failure to ensure that the instructions for the 2014 DSS Legal Advice were provided with the response was driven by intent to deliberately mislead the Ombudsman.
1104. To conclude that Ms Halbert was party to a deliberate decision by Ms Wilson, Mr de Burgh and Ms Halbert to withhold production of the instructions to conceal the falsity of the representations, one would have to be satisfied to the requisite standard that Ms Halbert knew the representations were false and wished to withhold the instructions to conceal their falsity.
1105. For the reasons already given, I am not persuaded that Ms Halbert knew that the representations were false. And on the evidence before the Royal Commission and the evidence in this investigation, I am not persuaded that Ms Halbert wished to withhold the instructions to conceal the falsity of the representations, or for any other purpose.

1106. It is just as possible, and I think more likely, that neither Ms Halbert nor Mr de Burgh turned their minds to the question of whether the instructions should be provided. They were not lawyers and there is nothing to show that they understood the instructions were relevant. Nor is there much reason to suppose that they should have. Ms Pulford was aware of the instructions and closely involved in preparing the response to the Ombudsman.¹³⁰⁰ She did not suggest that they should be included. Mr de Burgh sent the response to Mr Stipnieks (General Counsel, Program Advice and Privacy Branch, DHS), to which Mr Stipnieks responded that in view of the ‘quite detailed information you intend to provide’ he did not consider there would be any utility in organising a conference with the Ombudsman.¹³⁰¹
1107. Moreover, and although it is not directly relevant to whether Ms Halbert animadverted that, by not including the instructions, she would or might mislead the Ombudsman, it is not without significance that the draft Appendix A to the Ombudsman’s final report (which for reasons unexplained was excised from the report before the report was published) reveals that the Ombudsman was in no way relevantly misled. To the contrary, in that draft Appendix, Ms Macleod and her legal team precisely identified the true nature and detail of the averaging process applied by OCI, identified each of its deficiencies in very much the same way that they had been identified by Professor Carney and Mr Martin, and were later reprised by Mr Hanks QC, determined that the averaging being applied was not authorised by statute, and concluded that, despite DHS contending that it was authorised by the Guide to Social Security Law, it was not.
1108. I do not consider that Ms Halbert was party to any decision deliberately to withhold the instructions for the 2014 DSS Legal Advice from the response to the Ombudsman’s second request with intent to conceal the falsity of the representations.

Conclusion

1109. I am not satisfied that Ms Halbert engaged in corrupt conduct.

1300 AP8, DSS.5018.0001.9402, Email, ‘FW: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]’, 21 February 2017, 1-2; DSS.5018.0002.4233, Email, ‘RE: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]’, 22 February 2017; DSS.5113.0001.0596, Email, ‘FW: URGENT ACTION: Due Wednesday, 22 February 2017: Request for meeting and/or documents [SEC=UNCLASSIFIED]’, 22 February 2017; AP9, DSS.5051.0001.0146, Email, ‘FW: Request for information/documents [SEC=UNCLASSIFIED]’, 28 February 2017.

1301 CH21/AM5, DSS.5086.0001.1110, Email, ‘RE- Issue re brief’, 1 March 2017.

Annette Musolino

1110. The Royal Commission found that Ms Musolino engaged in dishonest conduct in the exercise of her duties as Chief Counsel of DHS in 2 ways:¹³⁰²

In 2017, by dishonestly refraining from giving proper legal advice to Senior Executives of DHS about the lawfulness of OCI, ‘because of an expectation’ that advice to that effect was unwanted by those executives.

In 2018, by dishonestly overstating to the Secretary of DHS, Ms Leon, the strength of arguments about the lawfulness of income averaging, for fear that Ms Musolino’s previous failures to give proper advice to Senior Executives might be exposed.

Dishonestly refraining from giving proper advice

1111. The Royal Commission based its finding of dishonestly refraining from giving proper advice on the following:¹³⁰³

1. events that the Royal Commission found to have occurred in the few weeks following Ms Musolino’s return from leave on 16 January 2017
2. questions asked by DHS Senior Executives as to whether DHS should seek AGS advice
3. the Fiveash advice
4. the DSS response to the Ombudsman’s second request
5. the 2014 DSS Legal Advice and the 2017 DSS Legal Advice
6. the 8 March 2017 Carney article and cognate AAT decisions
7. Mr Hanks’ presentation at the July 2017 AIAL conference.

1112. The Royal Commission found:¹³⁰⁴

1. When Ms Musolino returned from leave on 16 January 2017, she received the draft Gladman advice from Ms Carmody or alternatively saw it because Mr Gladman emailed it to her.
2. The arguments which the draft Gladman advice offered in support of averaging were ‘markedly tentative’.

1302 Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 13.

1303 Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 13-17.

1304 Report of the Royal Commission into the Robodebt Scheme, Chapter 6, Section 13.5, 189-190.

3. It was ‘Ms Carmody’s perception’ that she informed Ms Musolino that the arguments in support of averaging were unconvincing and that a view had been formed within the Legal Services Division that there was a need for AGS advice.
 4. Ms Carmody ‘broadly recalled’ discussing with Ms Musolino that this matter had consumed most of the previous week, that the Legal Services Division had been asked a range of questions and had prepared a range of advice and draft advice in response, and that the extent to which the Legal Services Division had existing relevant legal advice was not yet resolved.
 5. It was ‘implausible’ Ms Carmody did not ‘fully brief’ Ms Musolino about: Mr Jackson’s request; the draft Gladman advice; the draft instructions for AGS to advise; the fact that an appropriate AGS lawyer had been contacted and was ready and willing to advise; and the fact that lawyers within the Legal Services Division were of the view that the legal arguments in favour of averaging ‘were weak and unconvincing’.
1113. The Royal Commission reasoned that, having been so briefed by Ms Carmody, and further or alternatively having received the documents provided by Ms Carmody, Ms Musolino ‘must also have appreciated that the legal arguments in favour of averaging were weak and unconvincing’.¹³⁰⁵

Did Ms Musolino dishonestly refrain from giving proper legal advice in 2017?

Ms Musolino’s response to Ms Golightly’s email of 21 January 2017

1114. The Royal Commission found:¹³⁰⁶
1. Mr Hutson responded to Ms Golightly’s email at 6:11 pm on 21 January 2017 with an email to Ms Golightly and Ms Musolino in which he queried whether DHS should obtain AGS advice for ‘reassurance’.
 2. Ms Musolino responded by email at 9:04 pm on 21 January 2017 and ‘chose her words carefully in responding’.
 3. Ms Musolino failed to acknowledge in her response that the legal arguments in favour of averaging were weak and unconvincing.

1305 Report of the Royal Commission into the Robodebt Scheme, Chapter 6, Section 13.5, 190.

1306 Report of the Royal Commission into the Robodebt Scheme, Chapter 6, Section 13.6, 190-191.

4. Ms Musolino's failure to so acknowledge was intentional. She knew that DHS Senior Executives, particularly Ms Campbell and Ms Golightly, did not wish to be told that DHS should seek independent legal advice, because: (a) of the likelihood of it confirming that income averaging was unlawful; and (b) they feared the professional consequences they would face in that event.

Ms Musolino's response to the Fiveash advice

1115. The Royal Commission found:¹³⁰⁷

1. Mr Fiveash emailed the Fiveash advice to Ms Musolino at 9:56 am on 23 January 2017 in response to Ms Musolino's request of 9:51 am on 23 January 2017 for all Legal Services Division branches to produce any advices they had regarding debt recovery of Centrelink overpayments and specifically OCI.
2. Having made the request and received the Fiveash advice in response, it is likely Ms Musolino read the Fiveash advice after she received it.
3. The Fiveash advice could have only reinforced in Ms Musolino's mind the weakness and legal risk of the DHS position on averaging and the need to clearly advise DHS Senior Executives to that effect.
4. At no stage did Ms Musolino do so.

Ms Musolino's response to the DHS response to the Ombudsman's second request

1116. The Royal Commission found:¹³⁰⁸

1. At 6:09 pm on 1 March 2017, Mr Stipnieks forwarded to the 'Chief Counsel's Office' generic email address Mr de Burgh's email to Mr Stipnieks of 5:16 pm on 1 March 2017 and attachments which included the 2014 DSS Legal Advice and the 2017 DSS Legal Advice.
2. In his email to the 'Chief Counsel's Office' generic email address, Mr Stipnieks advised that DSS proposed to forward the response and attachments to the Ombudsman.

1307 Report of the Royal Commission into the Robodebt Scheme, Chapter 6, Section 13.6, 190-191.
1308 Report of the Royal Commission into the Robodebt Scheme, Chapter 7, Section 2.11, 221-222.

3. Ms Musolino thereby obtained knowledge of the 2014 DSS Legal Advice and the 2017 DSS Legal Advice.
4. Mr de Burgh's email to Mr Stipnieks revealed that, although DSS had the 2014 DSS Legal Advice which advised that averaging was unlawful, DSS did not seek further legal advice on the legality of averaging when OCI was implemented, because DSS had acquired a better understanding of the way in which OCI complied with legislative requirements (the better understanding assertion).
5. It would have been obvious to Ms Musolino as an 'experienced lawyer' that the better understanding assertion was 'dubious', highly qualified, and employed highly questionable legal reasoning as an attempted rationalisation for the commencement and continuation of OCI, contrary to the 2014 DSS Legal Advice.
6. Ms Musolino must also have suspected that the 2017 DSS Legal Advice had been sought and obtained by those involved in the development and implementation of OCI to gain legal cover in relation to the media storm and the Ombudsman's own motion investigation.
7. The foregoing could have only reinforced in Ms Musolino's mind that the legal arguments in support of averaging were weak and unconvincing and involved substantial legal risk.
8. Despite the foregoing, Ms Musolino did not advise DHS Senior Executives of the extent of the risk and the need to obtain independent advice, because of her expectation that they did not wish to receive that advice.

Ms Musolino's response to the 8 March 2017 Carney decision

1117. The Royal Commission found that Ms Musolino became aware of the 8 March 2017 Carney decision no later than 18 May 2017 when she received the further updated version of AAT OCI Case Summaries at 9:47 am on 18 May 2017. It stated that there were no grounds for appeal against the decision.¹³⁰⁹

Ms Musolino's response to the Hanks' AIAL presentation

1118. The Royal Commission found:¹³¹⁰

¹³⁰⁹ Report of the Royal Commission into the Robodebt Scheme, Chapter 7, Section 5.2, 239-240.
¹³¹⁰ Report of the Royal Commission into the Robodebt Scheme, Chapter 7, Section 6, 241-242.

1. Ms Musolino first became aware of Mr Hanks' AIAL presentation as the result of real time emails sent by Mr Stipnieks to Ms Musolino from the AIAL conference on 20 July 2017.
2. Ms Musolino learned more of the presentation from a summary of the presentation included in the 'Weekly Report Program Advice & Privacy Branch up to 19 July 2017' dated 26 July 2017 which Mr Stipnieks emailed to Nicole Clark (Senior Government Lawyer, DHS) (copying in the 'Chief Counsel's Office' generic email address).
3. In an email of 8:41 pm on 20 July 2017 to Ms Campbell, Ms Musolino stated that: 'None of [Mr Hanks'] criticisms are new.'
4. That statement suggested there was no necessity to act responsively to Mr Hanks' criticisms and tended to diminish the significance of them.
5. Ms Musolino's duty as 'general counsel [sic]' of DHS was to ensure that Ms Campbell and Mr Hutson received appropriate, documented advice that Mr Hanks' criticisms raised serious questions about the legality of OCI and that DSS ought seek external legal advice.
6. The only rational explanation for Ms Musolino's failure to give that advice was her expectation that Ms Campbell and Mr Hutson did not wish to receive it.

Ms Musolino's overstatement to Ms Leon of her confidence that OCI was lawful

1119. The Royal Commission found:¹³¹¹

1. On or about 17 May 2018, Ms Leon asked Ms Musolino 'whether we were confident the program was lawful'.
2. Ms Musolino responded affirmatively.
3. When Ms Leon pressed Ms Musolino for the basis for DHS' confidence, Ms Musolino stated: 'it was a long-standing principle of administrative law that a decision maker is entitled to rely on the best available evidence at the time.'
4. As an 'experienced lawyer' Ms Musolino should have known there was no such principle.
5. It was to be inferred that Ms Musolino did know there was no such principle.

¹³¹¹ Report of the Royal Commission into the Robodebt Scheme, Chapter 7, Section 9.1, 270.

6. In 2017, Ms Musolino had dishonestly represented to Ms Sara Samios of the Office of Legal Services Coordination (OLSC) that there was no legal issue requiring a report under the Legal Services Directions 2005 (Cth).
7. At the time of responding to Ms Leon's question, Ms Musolino had failed to advise DHS Senior Executives in 2017 of the weaknesses of DHS' legal position and the need to obtain independent legal advice, and had failed to put in place proper procedures to ensure that legal issues arising from AAT decisions were monitored.
8. If Ms Musolino had given appropriate advice to Ms Leon, questions were liable to be asked as to why Ms Musolino had not given appropriate advice to DHS Senior Executives in 2017, and why Ms Musolino had failed to put in place proper procedures to ensure that legal issues arising from AAT decisions were monitored, with the consequent prospect of Ms Musolino being criticised and disciplined.
9. Ms Musolino falsely represented to Ms Leon that there was a longstanding principle of administrative law that a decision-maker could rely on the best evidence available, because Ms Musolino feared the prospect of being criticised and disciplined if the truth were found out.

Ms Musolino's response to Ms Golightly's email of 21 January 2017

Context of the response

1120. There is no evidence that Mr Gladman emailed the Gladman advice to Ms Musolino. It is probable that Ms Carmody gave Ms Musolino a copy of the 'Draft note of advice re averaging/apportionment'.¹³¹² There were 2 versions of this document: one which was saved to Ms Carmody's drafts mailbox as a draft email to Ms Kruse,¹³¹³ and another marked 'Hard copy delivered to Sue Kruse 13/1/2017' which Ms Carmody seemingly delivered to Ms Kruse's office (and may also have handed to Mr Gladman) on 13 January 2017.¹³¹⁴ Neither version of this document contained the recommendation to obtain external legal advice which had originally been included in the Gladman advice. Ms Carmody thought she also gave Ms Musolino a copy of the Gladman advice, but was unable to recall with certainty which documents were provided to Ms Musolino.¹³¹⁵ Ms Musolino believed she only received the 'Draft note of advice re averaging/apportionment' because she had no record or recollection of the advice other than in that form.¹³¹⁶ She recovered it from her documents when preparing her statement for the Royal Commission.¹³¹⁷

1312 CH21, CTH.0028.0002.0016_R, Email, 'Draft internal advice Averaging ok', 1-2, undated; Statement of Lisa Carmody, 23 February 2023, LCA.9999.0001.0002_R, 12 [46]; NACC Transcript, 28 August 2025, Lisa Maree Carmody, T64-65.

1313 CH21, CTH.0028.0002.0016_R, Email, 'Draft internal advice Averaging ok', 1-2, undated.

1314 MG11, CTH.3754.0001.0001_R, Email, 'Lisa Carmody Scanned Email', 13 January 2017, 1; NACC Transcript, 28 August 2025, Lisa Maree Carmody, T46; Statement of Mark Gladman, 26 February 2023, MDA.9999.0001.0003, [9].

1315 NACC Transcript, 28 August 2025, Lisa Maree Carmody, T64-65; Statement of Lisa Carmody, 23 February 2023, LCA.9999.0001.0002_R, 12 [50].

1316 RRC Transcript, 30 January 2023, Annette Musolino, T2673; Statement of Annette Musolino, 31 October 2022, AMU.9999.0001.0003_R, 27 [46].

1317 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T37.

1121. It is debatable whether the arguments expressed in the ‘Draft note of advice re averaging/apportionment advice’ were ‘markedly tentative’. They were referred to in the document as ‘reasonable arguments’.¹³¹⁸ But Ms Musolino readily acknowledged that she soon became aware that the legality of averaging was an issue.¹³¹⁹ Apart from anything else, it was being questioned in the media storm and, from almost immediately after her return to work, she was involved in the Ombudsman’s own motion investigation in which the legislative basis of OCI was a principal issue of investigation. Indeed, it was discussed as such as a ‘hot issue’ at the Legal Services Division branch heads meeting on 19 January 2017 chaired by Ms Musolino and attended by Ms Carmody, Mr Robinson, Mr Stipnieks, Mr Menzies-McVey, Mr Brazel and Ms Millar.¹³²⁰
1122. Ms Musolino recalled her reaction upon becoming aware of the issue was that she needed to find out what advice DHS had about it, and she asked Mr Stipnieks, who was General Counsel (SES Band 1) in charge of the DHS Program Advice Branch, what advice they had. He told her that, although there had been lots of advices on particular aspects of OCI, there was none that covered the legality of OCI averaging ‘end-to-end’.¹³²¹
1123. By that stage, the Ombudsman’s investigation had become the priority, and dealing with the Ombudsman’s investigation and at the same time dealing with the rest of the legal work proved very demanding. As Ms Musolino explained:¹³²²

[Ms Golightly] was demanding ... she wanted a lot of information very quickly, she [was] ... concerned that we make sure we deal with the Ombudsman queries very quickly and ... provide ... [W]e were all hands on deck. So, she could be quite demanding in terms of time frames and ... and there was a lot on. [It is] hard to paint a picture ... I remember working around the clock at this period ... There were ministerial briefs going, there were media queries, there were FOI requests, there were Senate questions, there was the Ombudsman own motion. So there [was] a lot happening ... in a short period of time and we were also trying to manage the rest of the legal work.

1318 CH21, CTH.0028.0002.0016_R, Email, ‘Draft internal advice Averaging ok’, 1, undated.

1319 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T22–23.

1320 LC5, CTH.4750.0030.0008, Minutes, ‘Draft LSD BH Meeting Minutes 19 January 2017’, 19 January 2017, 1.

1321 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T45–46.

1322 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T47.

1124. It was in that context that Ms Musolino received Ms Golightly's email to Ms Musolino and Mr Hutson at 9:57 am on Saturday 21 January 2017 and the attached DHS media unit email and *The Guardian* article concerning the mooted OCI class action. As was earlier recorded in this report, in her email Ms Golightly predicted that *The Guardian* article would likely generate a new set of questions from the Minister and possibly the Prime Minister. She instructed that 'we need to get some advice very quickly', and exhorted:¹³²³

Given we haven't changed the way we do the data matching or the way we assess or calculate the debts, if we are doing it the same way we have done it for many years, does this form the kernel of any immediate legal advice we may need to give? **(This has been our position to date when other mentions of legal issues have come up in the press.)** Is there something you need from my people to give you, show you to help you with this?

The thing that is different is that people have the opportunity to go online to correct their details themselves if they choose. If they don't engage then a debt is generated based on what we know, this is also the same as in the past except that in the past current recipients were suspended all together. We are not doing this with the new system, just raising a debt.

I'm not sure we need formal external legal advice just yet, unless you have a different view. Just want to be ready with something but not scare the horses. We don't want to give the impression we are concerned when we are not. (Empasis added.)

1125. In her evidence, Ms Musolino said that she had not known a great deal about the way in which the OCI program operated until she received Ms Golightly's email, and that it was the first time she learned what DHS had been saying when responding to media criticisms of the legality of the process.¹³²⁴
1126. Having learned from Mr Stipnieks that DHS did not have end-to-end advice on the legality of OCI, Ms Musolino concluded it would be a good idea to get it. Mr Stipnieks agreed. That is why Ms Musolino wrote in her response at 9:04 pm on 21 January 2017 to Ms Golightly's email:¹³²⁵

1323 JH4, CTH.3007.0004.3585_R, Email, 'Possible Legal issues – for discussion with Malisa', 23 January 2017, 1.

1324 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T49.

1325 JH4, CTH.3007.0004.3585_R, Email, 'Possible Legal issues – for discussion with Malisa', 23 January 2017, 1.

I don't think there is a legal advice (either internal or external) that considers the end to end process - that is something we could consider getting.

1127. Ms Golightly responded at 9:07 pm to the effect that she wanted to discuss the 'pros and cons' of getting end-to-end advice with Ms Musolino and Mr Hutson on Monday.¹³²⁶

1128. Asked in this investigation what Ms Musolino thought Ms Golightly meant by not wishing to 'scare the horses', Ms Musolino answered it must have been that Ms Golightly was concerned, if Minister Tudge learned DHS had commissioned an end-to-end legal review, the Minister might see it as undermining the certitude of Ms Golightly's previous assurances of the validity of OCI:¹³²⁷

MS MUSOLINO: I'm trying to interpret her words of 'not scare the horses'.

QUESTION: Yes.

MS MUSOLINO: I think that's what it must have meant, which is, um, if the next thing she said to the Minister was, 'We've commissioned an end to end legal review' it might contradict what she had previously told the Minister.

QUESTION: That is to say the state of certainty as to the validity of the program?

MS MUSOLINO: Yes, so the mere fact - the mere fact of commissioning the advice would be disclosed to the Minister.

QUESTION: I suppose they foresaw the possibility of it going the other way?

MS MUSOLINO: It could have. I mean - yes, yes. So it may have just - but, I mean, I'm now sort of trying to imagine what she meant by those words, but that's all I can think that she meant, she was concerned that if it came to be known that we had commissioned an end-to-end review that might upset, you know, a communication she'd previously given.

1129. Based on her earlier discussion with Mr Stipnieks, at 9:33 am on Monday 23 January 2017, Ms Musolino sent an email to Mr Hutson (copying in Mr Stipnieks) titled 'Possible Legal issues - for discussion with Malisa', stating:¹³²⁸

1326 JH4, CTH.3001.0034.0729_R, Email, 'FW: Weekend Top Stories - Saturday 21 January 2017', 21 January 2017, 1.

1327 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T51.

1328 JH4, CTH.3007.0004.3585_R, Email, 'Possible Legal issues - for discussion with Malisa', 23 January 2017, 1.

I don't think there is a legal advice (either internal or external) that considers the end-to-end process. **If the department wants assurance on the legal issues, I recommend we get the end-to-end review. I think for the purposes of the Senate Inquiry Submission and Senate Estimates it will be useful to be able to say that as part of the review work undertaken, a full legal analysis was undertaken.** Possible Legal issues

1. **What is the legal basis of the data matching we do with the ATO for the OCI system?**
2. Prior to implementation of the OCI, what if any legal sign off was obtained?
3. Was a Privacy Impact Assessment (PIA) obtained?
4. **Is it lawful to 'average' absent any other income information?**
5. Are there any legal issues with the department having used former customers last known addresses without first verifying their currency?
6. Do the letters and notices comply with legal requirements?
7. If a person was sent a letter demanding a debt which is incorrect, what if any legal cause of action would they have against the Cth? [Emphasis added.]

1130. Ms Musolino said in evidence in this investigation that she composed the list of 'possible legal issues' with the assistance of Mr Stipnieks and sent the email to Mr Hutson to ensure that she and Mr Hutson would be 'on the same page' at the anticipated meeting with Ms Golightly as to the 'pros and cons' of getting further advice.¹³²⁹
1131. As is recorded earlier in this report, Ms Musolino could not recall if there was a meeting with Ms Golightly about the 'pros and cons'.¹³³⁰ Nor could Mr Hutson.¹³³¹ But Ms Musolino believed it likely she would have discussed the matter with Ms Golightly and Mr Hutson, even if not in a meeting as such. She worked in close physical proximity to Mr Hutson and talked to Ms Golightly quite regularly.¹³³²
1132. One way or another, however, Ms Golightly decided that DHS would not follow Ms Musolino's recommendation to obtain external end-to-end advice.

1329 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T55.

1330 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T45-46.

1331 NACC Transcript, 29 August 2025, Jonathan Hutson, T43-44.

1332 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T45-46.

1133. When Ms Musolino was asked why, if she considered that the legality of OCI was an issue, she did not push the point harder with Ms Golightly, she answered it was because, at that stage, Ms Musolino did not know whether DHS had a real problem:¹³³³

If I had genuinely believed we had a real problem I would have pushed it further.

...

At this stage I don't know if we have a **problem** or not, and I don't know I mean that's a list of issues that I could and the fact that Maris [Stipnieks] is on the email suggests I spoke to him and we kind of came up with what do we think the top issues are. But I don't know at this point if we had an issue or not. If I'd come to the view that we have an issue then I probably would have pushed it. I may not have pushed it with her [Ms Golightly], I may have pushed it through Jonathan [Hutson] up to the Secretary. I don't think I would have been brave enough to confront Malisa directly. [Emphasis added.]

1134. Asked why, if Mr Hutson thought getting end-to-end advice was a good idea, he did not push it with Ms Golightly, Ms Musolino answered that she did not think he would have been brave enough either:¹³³⁴

QUESTION: Were you hopeful that [Mr Hutson] had pushed that point of view with her?

MS MUSOLINO: They did not have that kind of relationship.

QUESTION: Which is to say he'd not be brave enough to do it?

MS MUSOLINO: Absolutely not.

Ms Musolino's assessment of the gravity of the issue

1135. The evidence summarised in the preceding paragraphs establishes that by 21 January 2017 Ms Musolino understood there was an 'issue' about the legality of OCI – which is to say that its legality was at least contestable – and, for the reasons listed in her email to Mr Hutson of 9:33 am on Monday 23 January 2017, considered it prudent for DHS to obtain an end-to-end legal advice of the kind she recommended.

1333 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T52.

1334 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T52.

1136. The evidence does not establish that Ms Musolino ‘must also have appreciated that the legal arguments in favour of averaging were weak and unconvincing’. Evidently, she did not perceive them as strong enough to exclude all question of doubt. That is why she recommended end-to-end legal advice. But I accept her evidence that she did not consider there was a ‘real problem’ at that stage – meaning that she did not regard the arguments in favour of OCI’s legality as so weak and unconvincing as to be untenable.
1137. Ms Musolino was not a specialist social security lawyer.¹³³⁵ She was reliant on the specialist lawyers of the DHS Legal Services Division’s Program Advice branch headed by Mr Stipnieks. And as Mr Stipnieks himself said, although Ms Musolino was ‘very sharp’ and ‘very, very capable’, she ‘didn’t have an advice background’. She was reliant on the knowledge of ‘the people who worked underneath her’. In his words: ‘the real corporate knowledge in these areas sits below SES level’ and ‘once you get to Band 2 level, you’ve got so little time and you’re doing so much that’s not legal, you are very reliant on the ... subject matter experts below you’.¹³³⁶
1138. It needs also to be kept in mind that, although it may now appear axiomatic that the arguments in support of OCI’s legality were unsustainable, that was not so as at 23 January 2017. At that point, DSS – the policy department with principal responsibility for the determination of legislative compliance – believed that OCI was lawful. That is why a principal issue in the Ombudsman’s own motion investigation was to determine whether DSS was correct. And after thoroughly examining DSS’ arguments in support of OCI’s legality, with full knowledge of the media storm, the Martin article, and the 8 March 2017 Carney decision, the Ombudsman accepted the DSS point of view.¹³³⁷

1335 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T8.

1336 NACC Transcript, 11 September 2025, Maris Stipnieks, T88.

1337 JH5, CTH.3044.0003.7539, Report, ‘4.3 Ombudsman Report–Centrelink’s automated debt raising and recovery’, April 2017. This decision was made by the Acting Ombudsman despite the recommendation of Ms Macleod’s team to the contrary: Report of the Royal Commission into the Robodebt Scheme, Chapter 21, Section 3.4, 591; RRC Transcript, 9 March 2023, Richard Glenn, T4784.

1139. There is no evidence that Ms Musolino was ever advised by the Program Advice Branch that they considered the arguments in support of the legality of OCI to be weak and unconvincing. It goes no higher than Mr Stipnieks agreeing with Ms Musolino that it would be a good idea to get end-to-end advice; which is what Ms Musolino then recommended to Ms Golightly and Mr Hutson. Nor is there evidence that Ms Musolino otherwise perceived the issue to be so critical that she should press Ms Golightly to agree to getting end-to-end advice.
1140. In those circumstances, I accept Ms Musolino's evidence that, although she knew it was an issue, she did not believe it was a real problem at that stage, and, if she had genuinely believed there was a real problem, she would have pushed it up to Ms Campbell through Mr Hutson.

Failure to mention the arguments were weak and unconvincing

1141. I do not believe it was incumbent on Ms Musolino to state anything more than she did in her response to Ms Golightly's email. It was 9:04 pm on a Saturday night during a period in which Ms Musolino was required to work 'around the clock' to satiate Ms Golightly's demands.¹³³⁸ The response was not and could not have been regarded as considered advice. It was a foretaste of what might come. And what came was Ms Musolino's email of 9:33 am on Monday 23 January 2017 to Mr Hutson, who was the Deputy Secretary of DHS with responsibility for the Legal Services Division, and of equal rank to Ms Golightly.
1142. That email stated in terms that, if DHS wanted assurance on the legal issues affecting OCI, Ms Musolino recommended DHS get an end-to-end review. It further emphasised the advantages of being able to say in DHS' Senate Inquiry Submission and to the Senate Estimates Committee that a full legal analysis had been carried out. Mr Hutson cannot have been in any doubt about what Ms Musolino was recommending, or why, or its advantages. Nor did he suggest he was. Asked in evidence why he had not done more about it, he answered that, although it should have been on the 'critical path' because of the proximity of Senate Estimates, it must have fallen off the critical path and it was 'very realistic' that the issue disappeared off into the ether.¹³³⁹

1338 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T47.

1339 NACC Transcript, 29 August 2025, Jonathan Hutson, T43.

1143. I do not consider that Ms Musolino was knowingly at fault in failing to state in her email of 23 January 2017 that the arguments in support of the legality of OCI were ‘weak and unconvincing’. She did not know that they were weak and unconvincing. She was aware there was an issue about the legality of OCI, and she considered it was contestable. That is why she recommended getting end-to-end legal advice.
1144. Arguably, Ms Musolino could have expressed her advice to Mr Hutson more emphatically, by deleting the condition: ‘If the department wants assurance on the legal issues’. But I do not regard that as being of much significance. Despite the condition, the email conveyed to Mr Hutson that Ms Musolino considered there was sufficient uncertainty to warrant end-to-end review and that is what she recommended. Ms Musolino’s advice to Mr Hutson accorded with what she believed the position to be: that there was uncertainty about the legality of OCI and to resolve the uncertainty she recommended an end-to-end review.
1145. It is probable that Ms Musolino perceived that Ms Golightly wished not to receive a recommendation to obtain external legal advice, because Ms Golightly feared that the act of commissioning external advice would discredit her in the eyes of the Minister.¹³⁴⁰ I infer Ms Musolino was sufficiently concerned about the consequences of giving Ms Golightly advice she wished not to hear that Ms Musolino sent her email of 9:33 am on Monday 23 January 2017 to Mr Hutson alone rather than also to Ms Golightly.
1146. I regard it as probable, too, that Mr Hutson understood that to be the case. Although at one point in evidence he said he had not noticed the email was sent only to him, he later accepted it was ‘in the realm of possibility’ that Ms Musolino was worried Ms Golightly would regard the recommendation to seek external advice as ‘bad news’ and that would result in a negative reaction from Ms Golightly.¹³⁴¹

1340 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T50-52.
1341 NACC Transcript, 29 August 2025, Jonathan Hutson, T60-61.

1147. Faced with that situation, what more should Ms Musolino have done? Ms Golightly was responsible for the OCI and thus in one sense was ‘the client’. Ordinarily, advice sought by the client in relation to the OCI would be given straight to her. But Mr Hutson had also sought the advice, and he was of equal rank to Ms Golightly with just as much power, authority and responsibility. He was the Deputy Secretary, Corporate Services responsible for the Legal Services Division and, as protocol dictated, the Band 3 SES officer through whom Ms Musolino would ordinarily communicate with Ms Campbell.¹³⁴²
1148. That being so, whatever else Ms Musolino might or should have done, I do not consider that she was dishonest in giving the advice to Mr Hutson and leaving it to him with others of the same rank and above to make the right decision.

Effect of the Fiveash advice

1149. Ms Musolino had no recollection of having received the Fiveash advice or reading it.¹³⁴³ The Royal Commission found it was probable she did.¹³⁴⁴ Mr Fiveash emailed a copy of it to her at 9:56 am on 21 January 2017 in response to her email of 9:51 am.¹³⁴⁵ It is natural to assume that she read it. It is possible that all of the advices which were sent in in response to Ms Musolino’s email were received by her executive officer and sent immediately to Ms Stipnieks. The evidence of that, however, is too uncertain to say. In the scheme of things, I regard it as more likely than not that Ms Musolino read the advice.
1150. What effect that had upon her perception of the ‘weakness and legal risk of the DHS position on averaging’ is more difficult to say. If she read it with sufficient care, it might have changed her view about the seriousness of the issue of the legality of OCI. If, however, in the febrility of the media storm and the Ombudsman’s own motion investigation she read it hurriedly and with insufficient care, it might not have had much effect at all. As Mr Stipnieks observed in evidence:¹³⁴⁶

1342 NACC Transcript, 29 August 2025, Jonathan Hutson, T7; NACC Transcript, 12 September 2025, Annette Lillian Musolino, T8.

1343 RRC Transcript, 1 March 2023, Annette Musolino, T4146; NACC Transcript, 12 September 2025, Annette Lillian Musolino, T57–58.

1344 Report of the Royal Commission into the Robodebt Scheme, Chapter 6, Section 13.6, 191.

1345 GF3, CTH.3007.0004.3601_R, Email, ‘RE- URGENT Online Compliance Intervention – Debt system’, 23 January 2017, 1.

1346 NACC Transcript, 11 September 2025, Maris Stipnieks, T97.

I suspect that she possibly read it and didn't understand what it meant. I mean Glyn had referred to [it] as an information piece and it was very, very short.

1151. In the result, I am not persuaded that it could only have reinforced in her mind the doubts about the DHS position; especially given that she did not learn about the DHS position until 21 January 2017 (through Ms Golightly's email to her on that day). It is possible it did, but Mr Fiveash was not in the Program Advice Branch at the time. He had been seconded to the WPIT program.¹³⁴⁷ And it would be unsurprising if Ms Musolino did not pay his advice the same degree of attention she paid to Program Advice Branch advice. Having watched and listened closely to her give her evidence about it, it presents to me as more probable than not that whatever effect the Fiveash advice might have had on her perception of risk was minimal. She relied on Mr Stipnieks's Program Advice Branch, not her own assessment of arguments.¹³⁴⁸
1152. It is another matter whether Ms Musolino should have read the Fiveash advice more closely and should have understood it as advice in effect that the DHS view was untenable. But it is not the function of this investigation to assess whether Ms Musolino performed her duties as Chief Counsel with sufficient skill and care. The function of this investigation is to determine whether she dishonestly refrained from giving advice that she comprehended should be given. And although the Fiveash advice is directly relevant to that question, it does not persuade me that she did.

DSS Response to the Ombudsman's second request

1153. As detailed in the evidence earlier set out, at 5:16 pm on 1 March 2017, Mr de Burgh emailed Mr Stipnieks (copying in Ms Halbert and Mr Hurman), thanking him for their conversation earlier that day and setting out verbatim the text of the 1 March 2017 DSS response to the Ombudsman's second request as 'the information we will forward to the Ombudsman'.¹³⁴⁹ At 6:09 pm on 1 March 2017, Mr Stipnieks replied to Mr de Burgh (copying in Ms Halbert, Mr Hurman, Ms Musolino, the 'Chief Counsel's Office' generic email address and Mr Robinson):¹³⁵⁰

1347 NACC Transcript, 25 August 2025, Glyn Cameron Fiveash, T7, 9, 14.

1348 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T86.

1349 CH21/AM5, DSS.5086.0001.1110, Email, 'RE- Issue re brief', 1 March 2017.

1350 CH21/AM5, DSS.5086.0001.1110, Email, 'RE- Issue re brief', 1 March 2017.

... Noting the quite detailed information you intend to provide to the Ombudsman, I'm not sure there would be any utility in organising a discussion between DHS, DSS and the Ombudsman's office at this point in time. Please let me know if you disagree.

1154. As the Royal Commission found,¹³⁵¹ it could be inferred from the DSS response to the Ombudsman that, after receiving the 2014 DSS Legal Advice, DSS did not seek legal advice on the legality of OCI until DSS obtained the 2017 DSS Legal Advice; and, hence, that DSS did not at the time that OCI was implemented obtain legal advice on whether DSS' 'better understanding' of OCI was sufficient to support its legality.
1155. Unlike the Royal Commission, however, I am not persuaded it would have been obvious to Ms Musolino that the 'better understanding assertion' was a dubious, highly qualified deployment of legal reasoning calculated to rationalise the commencement and continuation of OCI, contrary to the 2014 DSS Legal Advice.¹³⁵²
1156. Ms Musolino recalled receiving the email and its attachments, including the document that summarised the 2014 DSS Legal Advice and the 2017 DSS Legal Advice:¹³⁵³

I think this email, I think, was the first time I understood Department of Social Services' position and I think that we'd been waiting to find out what their view was. And this, in a sense, it was an important email because I thought, oh, okay, so DSS says its fine, was my take away.

1157. Asked whether she had been aware at the time that DSS had only recently received the 2017 DSS Legal Advice, she seemed not to recall but was frank in accepting that she had received everything that had come with the email.¹³⁵⁴

I think I don't know if I became aware from this email. I think no, I think it's on this email, sorry, I think it was attached. Well I think there was a summary of the 2014 and 2017 advices as an attachment to this email, and I think I got it.

1351 Report of the Royal Commission into the Robodebt Scheme, Chapter 7, Section 1.11, 221.

1352 Cf. Report of the Royal Commission into the Robodebt Scheme, Chapter 7, Section 1.11, 221.

1353 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T94.

1354 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T94.

1158. Asked whether she had then made inquiries about the better understanding that DSS was said to have acquired and what had led to the better understanding, she replied:¹³⁵⁵

I think I just took the email on face value. I read this and I read the attachments. My impression was that - so I think somewhere it says yeah, 'Here is the information that we will forward to the Ombudsman'.

...

So my understanding was this is Department of Social Services' response about the legislative arrangements. So that's their position. I understood what they were saying. I don't, I don't recall much more than that.

1159. Ms Musolino gave that evidence openly and without hint of hesitation or prevarication, and there is nothing apparent about it which presents as inherently incredible. Ms Musolino was aware that DHS had long been of the view that OCI was legal (misplaced though that view was later found to be). Hence, at the time it would hardly have come as a shock to Ms Musolino that DSS agreed. It is also less than likely that Ms Musolino would have undertaken an hermeneutic analysis of the text. To repeat Mr Stipnieks's observation, Ms Musolino 'didn't have an advice background'. She was dependent on the advice of the experts who supported her.
1160. I am not able to conclude that Mr de Burgh's email and attachments raised Ms Musolino's assessment of the risk of OCI being unlawful. If anything, I think it is more likely to have lowered it.

Ms Musolino's dealings with OLSC

1161. The Royal Commission found that on 13 January 2017, after reaching a 'preliminary view' that OCI may raise a significant issue within the meaning of clause 3.1 of the *Legal Services Directions 2005* (Cth), staff of the Office of Legal Services Coordination (OLSC) drafted an email for Ms Sara Samios of OLSC to send to DHS requesting that DHS submit a draft 'significant issues' report.¹³⁵⁶

1355 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T94.

1356 Report of the Royal Commission into the Robodebt Scheme, Chapter 19, Section 7.4, 537.

1162. Ms Samios told the Royal Commission that, although she had planned to send the email on that date, instead, ‘some time after 20 January 2017’, she telephoned and spoke to Ms Musolino. Ms Samios made no contemporaneous note or other recording of the call and apparently had no recall of the terms of what she asked Ms Musolino. Nevertheless, the Royal Commission found:¹³⁵⁷

She [Ms Samios] had a very specific memory of Ms Musolino telling her that there were no legal issues and, as such, nothing to report to the OLSC. She was surprised by this and pressed Ms Musolino on the question of whether any advice existed or any report ought to be sent.

1163. Ms Samios could not recall the terms or substance of Ms Musolino’s response but rather, as the Royal Commission recorded, her evidence was that:¹³⁵⁸

Ms Musolino’s response **made it clear** to her that sending a request for a draft report would not lead to provision of specific material, but rather an advice in the form that there were no legal issues.

The OLSC did not pursue DHS for a significant issue report and instead undertook to keep a ‘watching brief’ to ‘monitor the media coverage’. The OLSC did not engage with DHS again about the Scheme for more than two years, when the application filed by Ms Masterton was reported as a significant issue. [Emphasis added.]

1164. Ms Musolino had no recollection of speaking to Ms Samios about the matter and had no file note or other record of having done so. Asked whether, if she had the conversation, she would have considered there was then a significant legal issue within the meaning of clause 3.1 of the Legal Services Directions, she said she would have referred the question to the Litigation Branch for advice:¹³⁵⁹

I don’t think I would have made the call. So significant legal issues were managed primarily out of the Litigation Branch, because most significant legal issues arose in the context of litigation. I would have referred that question to the Litigation Branch for advice. That was my practice.

1165. The Royal Commission concluded:¹³⁶⁰

1357 Report of the Royal Commission into the Robodebt Scheme, Chapter 19, Section 7.4, 537.

1358 Report of the Royal Commission into the Robodebt Scheme, Chapter 19, Section 7.4, 537.

1359 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T131.

1360 Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 19.

The Commission considers that there **may be a question** whether this representation was made by Ms Musolino dishonestly, given her then knowledge detailed above about the issue of income averaging. [Emphasis added.]

1166. With respect, I do not agree. The question is whether there was a conversation and, if there were, what was said. Given the circumstances and nature of the supposed conversation and representation, the fact that no contemporaneous note, memorandum, or email confirmation of it was made by either party, and that there is no record of Ms Musolino referring the matter to the Litigation Branch, it is at best possible that it occurred. And given that Ms Samios could not say more than what was ‘made clear’, it is impossible to know what was said.
1167. This is not to suggest that this investigation is bound by the rules of evidence. It is not. But even in an investigation like this the rules of evidence cannot be entirely ignored without significant risk of injustice.¹³⁶¹ And so to jump from a finding that ‘there may be a question whether this representation was made’ to the conclusion that by this representation Ms Musolino dishonestly misrepresented to Ms Samios that there was no legal issue requiring a report, is a leap in logic I am not prepared to make.

Ms Musolino’s advice concerning the 8 March 2017 Carney decision

The need for further advice

1168. The observation in Ms Musolino’s email to Ms Campbell at 8:41 pm on 20 July 2017,¹³⁶² that none of Mr Hanks’ criticisms of OCI were new, was accurate. The criticisms had all been rehearsed before in the Martin article and the 8 March 2017 Carney decision, had been essayed in various other media articles, and had all been the subject of the Ombudsman’s own motion investigation. In effect, Mr Hanks’ only addition was to suggest that it would be good idea for a customer to test the issue by application for judicial review. None did.

1361 R v War Pensions Entitlement Tribunal; Ex parte Bott (1933) 50 CLR 228 at 256; Pochi v Minister for Immigration and Ethnic Affairs (1979) 36 FLR 482.

1362 JH6, CTH.3007.0006.8430, Email, ‘RE- Australian Institute of Administrative Law Conference - OCI sessions [DLM=For-Official-Use-Only]’; 20 July 2017.

1169. I do not accept, therefore, that Mr Hanks' contribution raised such new, serious questions about the legality of OCI that it was Ms Musolino's duty to advise Ms Campbell and Mr Hutson that DHS should forthwith seek further legal advice; still less that Ms Musolino conceived it was her duty to so advise Ms Campbell.

1170. As Ms Musolino said in evidence, although as at January 2017 she believed there was an issue as to the legality of OCI, in the months that followed that changed and by July 2017 she no longer considered the issue was as problematic as others claimed:¹³⁶³

The Ombudsman had been in and had said, and there is an email to this effect, had said, 'I independently considered the legal issues', ... but the other thing is if you look at the Ombudsman's report there is an annexure of a letter from Secretary Finn Pratt, he was the Secretary of the Department of Social Services, saying the Department of Social Services is happy. I can't remember the words but its content is this is consistent with the legislative requirements. I don't think he would have said that without some legal support, and that's published in the Ombudsman's report. I felt the issue had been addressed and resolved.

...

... [O]n my reading of the Ombudsman's report it had said the program had been redesigned, improvements would be monitored, it was in accordance with legislative requirements.

1171. Ms Musolino acknowledged that the issue continued to generate attention even after that, and she had expected that, at some point, somebody would bring a legal challenge of the kind Mr Hanks had flagged. But it never came. Hence, she remained confident until 2019.¹³⁶⁴

1172. That evidence is borne out by Ms Musolino's email of 30 June 2018 to the Chief Operating Officer of DHS, Mr Andrew Wood. In that email, Ms Musolino recommended that DHS invite the Ombudsman to conduct a further review of OCI, and she listed what she conceived would be the benefits of the review, including that it would:¹³⁶⁵

1363 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T112.

1364 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T106.

1365 CTH.3007.0009.3754_R, Email, 'Exhibit 4-7696 - CTH.3007.0009.3754_R - Request from the Ombudsman's Office - Own motion', 30 June 2018.

- ‘[a]ssist in building public trust’
- ‘[v]alidate the process and confirm the system is operating legally, and calculation of debts is correct based on the information in hand’
- ‘[p]rovide the opportunity to address misconceptions that remain circulating in the public domain.’

1173. It is extremely difficult to accept that Ms Musolino would send such an email, and thereby invite further close scrutiny of the legality of OCI, unless she truly believed that OCI was lawful and was confident that its legality would be affirmed.

Ms Musolino’s state of mind

1174. Even assuming for the sake of argument, however, that it was Ms Musolino’s duty to give the kind of advice the Royal Commission envisaged, and that she breached the duty by failing to do so, I am unable to find sufficient evidence to conclude that the breach of duty was dishonest.

1175. I have inferred that Ms Musolino feared giving unwanted advice to Ms Golightly. But there is no evidence that she feared giving it to Ms Campbell. As Ms Musolino said, if in January 2017 she had considered that her recommendation to obtain end-to-end legal advice should be pushed up, she probably would have pushed it up to Ms Campbell, through Mr Hutson.¹³⁶⁶ And as was demonstrated by the way Ms Musolino dealt with Mr Hutson in relation to her recommendation to obtain legal end-to-end advice, she had no fear of giving the advice to him.

1176. I am not persuaded that Ms Musolino dishonestly failed to give proper advice to Ms Campbell or Mr Hutson in connection with Mr Hanks’ AIAL presentation.

¹³⁶⁶ NACC Transcript, 12 September 2025, Annette Lillian Musolino, T52.

Did Ms Musolino make a dishonest overstatement to the Secretary of DHS in 2018?

Longstanding principle of administrative law

1177. The circumstances in which Ms Musolino told Ms Leon it was a longstanding principle of administrative law that a decision-maker is entitled to rely on the best available evidence at the time are set out above in paragraphs 756 to 757.
1178. The Royal Commission reasoned that ‘as an experienced lawyer’ Ms Musolino should have known there was no such principle.¹³⁶⁷ On that basis, the Royal Commission found that Ms Musolino did know there was no such principle. And from that, the Royal Commission inferred that Ms Musolino’s response to Ms Leon was a dishonest misrepresentation of something that Ms Musolino knew to be false.¹³⁶⁸
1179. Once again, with respect, I disagree. Although there is no principle of the kind that Ms Musolino expressed, it is a longstanding principle of administrative law that an administrative decision-maker is not ordinarily under a duty to make inquiries¹³⁶⁹ and so may decide on the basis of the material before her.
1180. That longstanding principle did not authorise the application of default averaging to a customer who failed to respond – because each application of averaging was a decision to reduce a social security benefit. By contrast, the principle might authorise a decision-maker refusing an application for a social security benefit. For whereas no reasonable decision-maker could reduce a social security benefit unless rationally satisfied on the available material that the customer was not legally entitled to the amount of the reduction, conversely, no reasonable decision-maker could grant an application for a social security benefit unless rationally satisfied on the available material that the customer was legally entitled to the benefit.¹³⁷⁰

1367 Report of the Royal Commission into the Robodebt Scheme, Chapter 8, Section 9.1, 269.

1368 Report of the Royal Commission into the Robodebt Scheme, Chapter 8, Section 9.1, 270.

1369 *Prasad v Minister for Immigration and Ethnic Affairs* (1985) 6 FCR 155; *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273; *Minister for Immigration and Citizenship v SZAI* (2009) 259 ALR 429; cf *Wei v Minister for Immigration and Border Protection* (2015) 327 ALR 28.

1370 *Chaplin v Secretary, Department of Social Services* [2025] FCAFC 89[14].

1181. Plainly, Ms Musolino misstated and thereby misrepresented the principle. But the misstatement was not of her own design. It was sourced in the advice of the Program Advice Branch which had been repeatedly deployed by the lawyers of that branch in refutation of Professor Carney's and Mr Hanks' criticisms of OCI and in responding to the Ombudsman's concerns.¹³⁷¹
1182. I assume without deciding that it *should* have been obvious to any experienced government lawyer that Ms Musolino's misrepresentation of longstanding principle was wrong. But quite clearly it was not obvious to Mr Stipnieks or the specialist lawyers of the Program Advice Branch who conceived it.
1183. It is not without significance either that Ms Leon was also an experienced government lawyer. After graduating from the Australian National University with Bachelor degrees in Arts and Law in 1993 and admission to practice in 1994, she obtained a Masters degree in International Law from the University of Cambridge. Following her admission to practice, she was employed in the Commonwealth Attorney-General's Department for some 16 years engaged in human rights law, international human rights law, and international law. For a short time she worked at the Department of Industrial Relations engaged in workplace relations law, whereafter she moved to the Australian Capital Territory (ACT) Department of Justice and Community Safety as Chief Executive Officer with overall management responsibility for the ACT's legal policy and legal institutions. She returned to the Attorney-General's Department as a Deputy Secretary with responsibility for constitutional law strategy and Corporate Services. That was followed by time as a Deputy Secretary in the Department of the Prime Minister and Cabinet with responsibility for governance. And after that, she was Secretary of the Department of Employment for 4 years with responsibility for workplace relations law before being appointed as Secretary of DHS in September 2017.¹³⁷² Despite Ms Leon's long years of experience as a government lawyer, it was not obvious to her that Ms Musolino's misstatement of principle was wrong.

1371 NACC Transcript, 12 September 2025, Annette Lillian Musolino, T88-89; see, e.g., AM10, CTH.3007.0008.5900, Memo, 'Employment income matching under OCI - issues arising from Professor Carney article', 23 April 2018, 1.

1372 RL5, Statement of Renee Leon, 23 November 2022, RLE.9999.0001.0002_R, 1-2 [9]-[10].

Ms Musolino's motive

1184. The Royal Commission found that Ms Musolino was motivated to misrepresent the law to Ms Leon because: in 2017, she had represented to Ms Samios that there was no 'significant legal issue' arising from the Scheme; she had not put in place systems to ensure that legal issues arising from AAT decision were monitored; and she had not advised DHS Senior Executives of the weakness of the DHS legal position and of the need to obtain independent legal advice. It was said that appropriate advice to Ms Leon would give rise to questions as to why it was not provided in 2017, with the prospect of criticism and possible discipline.
1185. Implicit in these reasons was the assumption that Ms Musolino was concerned that the invalidity of OCI would be discovered and that she feared the consequences of criticism and discipline that would be visited upon her for her previous dishonest misrepresentations of the issue of OCI illegality; dishonest failure to give proper advice to Ms Golightly; dishonest failure, after receipt of the Fiveash advice, to give clear advice of the 'weakness and legal risk of DHS position on averaging'; dishonest failure, after receipt of Mr de Burgh's email, to perceive that the 2017 DSS Legal advice was contrived as legal cover for those involved and to realise the consequent increased need for independent advice, and so to advise; and dishonest failure, following publication of the Hanks article, to advise Ms Campbell and Mr Hutson properly on the risks of OCI invalidity which the article exposed.
1186. For the reasons already set out, I am not satisfied that Ms Musolino acted dishonestly in any of the respects identified by the Royal Commission.

Ms Musolino's state of mind

1187. Finally, Ms Musolino stated in evidence that she did not know that what she told Ms Leon was wrong. What she told Ms Leon was what she had been informed was correct and, therefore, what she believed was correct:¹³⁷³

I accept that if I had my time again I would do things differently, but everything I did I did was based on what I believed to be the correct position as I'd been informed. I did not – I had no interest in misrepresenting anything to Secretary Leon.

1188. I accept her evidence. In consequence of the considerations listed above, I see no reason to doubt it. I am not persuaded that the fallacy of the misstated principle of longstanding was so obvious to any experienced government lawyer that Ms Musolino must have been aware it was false, or that Ms Musolino was aware that it was false.

Conclusion

1189. I am not satisfied that Ms Musolino engaged in dishonest conduct of any of the kinds identified by the Royal Commission or, therefore, that she engaged in corrupt conduct in any of those ways.

¹³⁷³ NACC Transcript, 12 September 2025, Annette Lillian Musolino, T128.

Kathryn Campbell

1190. The Royal Commission concluded that Ms Campbell intentionally breached her duties as Secretary of DHS, by:

- being knowingly involved in misleading Cabinet that the adoption of OCI did not require legislative change
- instructing officers of DHS to cease the process of responding to Mr Jackson's request for advice
- directing PwC not to provide the final report to DHS.¹³⁷⁴

Did Ms Campbell mislead the Cabinet in 2015?

Royal Commission findings

1191. The Royal Commission based its determination that Ms Campbell was knowingly involved in misleading Cabinet on the following findings:

1. The language used to describe the OCI proposal in the NPP submitted to ERC on 25 March 2015 was misleading, in that:
 - a) although the NPP referred to the involvement of ATO information, it did not explain how the information would be used or disclose the intended use of income averaging to determine social security benefit entitlements and debts;¹³⁷⁵
 - b) the representation in the NPP that 'there would be no change to how income is assessed or overpayments calculated as part of this proposal' ('the no change representation') disguised its use of averaging in a way that changed how income is assessed and overpayments calculated, and the associated legal and policy impediments;¹³⁷⁶
 - c) the no change representation positively insinuated to the reader that, because there was to be no change to the way income was assessed or overpayments calculated, the implementation of the proposal would be unlikely to encounter legal or policy barriers;¹³⁷⁷ and

1374 Royal Commission into the Robodebt Scheme, Final Report - Confidential Chapter, 4.

1375 Royal Commission into the Robodebt Scheme, Final Report - Confidential Chapter, 6-7.

1376 Royal Commission into the Robodebt Scheme, Final Report - Confidential Chapter, 6-7.

1377 Royal Commission into the Robodebt Scheme, Final Report - Confidential Chapter, 7.

- d) the NPP did not disclose that DSS advice had indicated that the implementation of the OCI proposal in the way intended could not lawfully occur without legislative change.¹³⁷⁸
2. It was to be inferred that Ms Campbell knew of the misleading effects of the NPP, because:
- a) Ms Campbell was aware from the Executive Minute signed by Minister Morrison on 20 February 2015 that DSS had advised that legislative amendment was required;¹³⁷⁹
 - b) Ms Campbell was provided with drafts of the NPP on 3 March 2015 and 11 March 2015;¹³⁸⁰
 - c) it was likely Ms Campbell reviewed at least the draft of 11 March 2015;¹³⁸¹
 - d) on 12 March 2015 Ms Ahmer emailed Ms Campbell a wording change and, although it did not relate to the OCI NPP but to another NPP, it implied that Ms Golightly was working closely with Ms Campbell on the NPPs;¹³⁸²
 - e) on 18 March 2015, Ms Campbell, Ms Golightly and Ms Lees were scheduled to attend an ERC meeting;¹³⁸³
 - f) at 11:14 am on 24 March 2015 Ms Golightly emailed Ms Ahmer and Ms Canning (the Acting Chief Financial Officer of DHS) that Ms Campbell had called with questions regarding some of the ERC briefs and that they would need to be updated;¹³⁸⁴
 - g) at 2 pm on 24 March 2015, Ms Canning emailed Ms Campbell that work had been done to polish the ERC talking points based on comments received, and asking whether Ms Campbell was content that the talking points be submitted to Minister Payne's and Minister Morrison's offices;¹³⁸⁵
 - h) on 25 March 2015, Ms Campbell, Ms Golightly and Mr Withnell briefed Minister Payne for the ERC meeting to be held later that day and as part of that provided Minister Payne with a folder of relevant Cabinet documentation, the Finance Green brief, talking points, and perhaps some other relevant documents;¹³⁸⁶

1378 Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 7; Royal Commission into the Robodebt Scheme, Final Report – Section 2, 96.

1379 Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 7.

1380 Royal Commission into the Robodebt Scheme, Final Report – Section 2, 96; Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 7.

1381 Royal Commission into the Robodebt Scheme, Final Report – Section 2, 96.

1382 Royal Commission into the Robodebt Scheme, Final Report – Section 2, 96-97.

1383 Royal Commission into the Robodebt Scheme, Final Report – Section 2, 97.

1384 Royal Commission into the Robodebt Scheme, Final Report – Section 2, 97.

1385 Royal Commission into the Robodebt Scheme, Final Report – Section 2, 97.

1386 Royal Commission into the Robodebt Scheme, Final Report – Section 2, 97.

- i) the ERC meeting was held on 25 March 2015 commencing at 4 pm;¹³⁸⁷
 - j) whether or not Ms Campbell attended the ERC meeting, she was invited to attend and therefore it was necessary for her to be ready for the meeting – and, to be ready for the meeting, it was necessary that Ms Campbell have sufficient technical knowledge of each NPP to speak to it and defend it as required;¹³⁸⁸
 - k) it was likely that, by reason of Ms Campbell’s oversight of preparation of the NPP and her preparation for the ERC meeting, she had knowledge of the contents of the OCI NPP, knew that averaging was not explicitly referred to in the NPP, and knew that the checklist at the end of the NPP stated that legislative amendment was not required;¹³⁸⁹
 - l) during the period 20 February to 25 March 2015, Ms Campbell did not consult with any person about the need for legislative amendment and had no recollection of asking any person whether legislative amendment had occurred;¹³⁹⁰
 - m) in oral evidence, Ms Campbell accepted the NPP was apt to mislead ERC;¹³⁹¹ and
 - n) Ms Campbell failed to correct the misleading effect of the NPP.¹³⁹²
3. Ms Campbell’s evidence that she did not notice that the OCI NPP did not refer explicitly to averaging or smoothing, or that the checklist at the end of the NPP stated that legislative amendment was not required, should be rejected because it would be an ‘extraordinary oversight for someone of Ms Campbell’s seniority and experience’.¹³⁹³
4. ‘The weight of the evidence’ led to the conclusion that Ms Campbell was aware of the misleading effect of the NPP but ‘chose to say silent, knowing that Mr Morrison wanted to pursue the proposal and that the Government could not achieve the savings which the NPP promised without averaging’.¹³⁹⁴

1387 Royal Commission into the Robodebt Scheme, Final Report – Section 2, 97.

1388 Royal Commission into the Robodebt Scheme, Final Report – Section 2, 97; Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 7.

1389 Royal Commission into the Robodebt Scheme, Final Report – Section 2, 97.

1390 Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 7.

1391 Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 7.

1392 Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 7.

1393 Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 7.

1394 Royal Commission into the Robodebt Scheme, Final Report – Chapter 4.21.1, 98.

The issues

1192. The bulk of the Royal Commission's findings of fact are not in dispute. The issues are:
1. whether Ms Campbell noticed that the NPP made no express reference to averaging, stated that OCI would not change the way in which income was assessed, or represented that legislative amendment was not required
 2. whether Ms Campbell was aware that the NPP was, for those reasons, misleading
 3. whether Ms Campbell intentionally stayed silent in order to mislead ERC that legislative change was not required and might be hard to achieve.

Additional facts

1193. Apart from the Royal Commission's findings, it is also necessary to understand the following:
1. At relevant times, DHS was the largest and most decentralised APS department, with 8 Band 3 SES Deputy Secretaries, 35 SES Band 2 First Assistant Secretaries, 150 SES Band 1 Assistant Secretaries, and, in total, around 34,000 staff. Due to the size and historical origins of the department, each Deputy Secretary and their divisional staff was located in 4 different buildings in the Canberra suburbs of Griffith, Greenway, and Tuggeranong. Ms Campbell was in the Doris Blackburn Building in Griffith. Ms Golightly and the bulk of her staff were in Tuggeranong over 20 kilometres away.¹³⁹⁵

¹³⁹⁵ Written Statement of Kathryn Campbell to the NACC, 10 September 2025, [29]-[31].

2. Due to the massive size of DHS, its decentralised divisions, and the many programs it operated on its own behalf and on behalf of client agencies, it was not possible for Ms Campbell to run DHS without delegating to Deputy Secretaries and prioritising her focus. In this matter, Ms Campbell delegated development and then implementation of the OCI program to Ms Golightly whom she considered to be an experienced Deputy Secretary well able to manage the issues.¹³⁹⁶ Ms Campbell's focus was elsewhere on the Welfare Payments Infrastructure Transformation program (WPIT)¹³⁹⁷ which was a vast program involving the establishment of new arrangements and IT upgrades with multiple other agencies. It was DHS' largest single project at the time.¹³⁹⁸
3. DHS was not a policy department. It was a service delivery agency whose function was to deliver social security programs (including social security welfare payment integrity programs) in accordance with policy and legislative requirements determined by DSS.¹³⁹⁹ By contrast, DSS was a policy department and, as the relevant policy department, had sole responsibility and authority to determine whether a DHS service delivery program complied with legislative and policy requirements.¹⁴⁰⁰ Consequently, although it was open to DHS to propose a service delivery program such as OCI, and it was expected that it should, only DSS could determine whether the program satisfied legislative and policy requirements or whether and what legislative and policy changes were required.¹⁴⁰¹
4. In accordance with standard ERC protocol, Ms Campbell and Mr Pratt were likely both in attendance in the ERC committee room when ERC considered the OCI proposal.¹⁴⁰² Ms Campbell, to explain and defend (if and when asked to do so) the operational and DHS fiscal components of the proposal,¹⁴⁰³ and Mr Pratt to explain and defend (if and when asked to do so) the proposal's legislative and policy compliance and any legislative amendments that would be required.¹⁴⁰⁴

1396 Written Statement of Kathryn Campbell to the NACC, 10 September 2025, [54].

1397 NACC Transcript, 18 September 2025, Kathryn Campbell, T45-46.

1398 Written Statement of Kathryn Campbell to the NACC, 10 September 2025, [67]-[68].

1399 NACC Transcript, 18 September 2025, Kathryn Campbell, T9.

1400 Written Statement of Kathryn Campbell to the NACC, 10 September 2025, [27]-[28], [77(a), (c)].

1401 NACC Transcript, 18 September 2024, Kathryn Campbell, T64-65; Written Statement of Kathryn Campbell to the NACC, 10 September 2025, [61].

1402 NACC Transcript, 18 September 2025, Kathryn Campbell, T74.

1403 NACC Transcript, 18 September 2025, Kathryn Campbell, T74-75.

1404 NACC Transcript, 15 September 2025, Finn Axel Pratt, T29-30.

5. Ms Campbell readily accepted before the Royal Commission and swore in evidence in this investigation that she was aware of the contents of the Executive Minute approved by Minister Morrison on 20 February 2015;¹⁴⁰⁵ aware it stated that DSS considered legislative amendment would be required;¹⁴⁰⁶ and aware it was intended that DHS and DSS should work together in developing the program.¹⁴⁰⁷ As part of that process, it was Ms Golightly's responsibility to work with Ms Wilson regarding DSS' legislative and policy requirements and to develop the proposal in accordance with them.¹⁴⁰⁸ In that sense, the OCI proposal was a joint project of DHS and DSS. Nevertheless, DSS at all times retained authority and responsibility to determine legislative and policy compliance. The proposal could not be put forward to ERC as one that did not require legislative amendment unless and until DSS first determined that it did not.¹⁴⁰⁹ Consequently, as Ms Campbell said, and I accept:¹⁴¹⁰

I was not responsible for providing advice to the Minister on legislative change.

...

... it was not my responsibility to draft or advise the Minister on that legislative change. This proposal asked the Minister whether he wished to pursue this, and then it was envisaged that DHS would work with DSS. But DHS was not responsible for the legislative change. That was the responsibility of DSS.

6. The OCI NPP was one of 58 DHS NPPs included in the 2015-2016 budget submissions.¹⁴¹¹ Because of the number and size of the proposals, it was necessary for Ms Campbell to delegate many of the processes to others and to rely on them to perform:¹⁴¹²

I could not do every program that was delivered by DHS ... I was unable to sit down and go through every one of those. So, therefore, I relied on staff within the Department of Human Services to work with agencies on whose programs we were delivering.

1405 NACC Transcript, 18 September 2025, Kathryn Campbell, T64.

1406 Written Statement of Kathryn Campbell to the NACC, 10 September 2025, [109].

1407 Written Statement of Kathryn Campbell to the NACC, 10 September 2025, [111].

1408 NACC Transcript, 18 September 2025, Kathryn Campbell, T26-27, T30; Written Statement of Kathryn Campbell, 10 September 2025, [66].

1409 NACC Transcript, 18 September 2025, Kathryn Campbell, T64-65.

1410 RRC Transcript, 11 November 2022, Kathryn Campbell, T941.

1411 RRC Transcript, 7 December 2022, Kathryn Campbell, T1317.

1412 RRC Transcript, 7 December 2022, Kathryn Campbell, T1295.

7. Although the OCI NPP was one of the largest 2015-2016 DHS budget proposals in terms of projected savings, there were others of comparable value which were more complex and demanded more of Ms Campbell's time.¹⁴¹³ They included WPIT, the No Job No Pay proposal, and a broad range of measures in Growing Jobs, Small Business, and increasing the age for Newstart allowance and sickness benefits allowance.¹⁴¹⁴
8. Ms Campbell accepted that she was kept informed of the general progress of the OCI measures but she was not involved in and did not oversee their drafting and did not review any draft version in any detail before the ERC.¹⁴¹⁵ Once Minister Morrison had given approval for the PAYG Clean Up proposal to be developed, Ms Campbell's focus was on the costings component of the NPP. For that reason, she doubted she would have noted any difference between the text of the Executive Minute and the text of the NPP:¹⁴¹⁶

I was turning my mind to the costing. I wasn't turning my mind to the legality of the measure.

...

I don't think I did observe that [the NPP] was very different [from the Executive Minute] ... because I was clearing hundreds of costings...

...

I didn't note any difference.

...

MR GREGGERY: [...] And you're saying from thereafter [20 February 2015] you didn't notice that the language about how the policy – or, rather, the program was described had significantly changed to assert something inconsistent with the minute that you were involved in developing for weeks?

1413 RRC Transcript, 7 December 2022, Kathryn Campbell, T1317.

1414 RRC Transcript, 7 December 2022, Kathryn Campbell, T1298-1299.

1415 NACC Transcript, 18 September 2025, Kathryn Campbell, T64; Written Statement of Kathryn Campbell to the NACC, 10 September 2025, [63].

1416 RRC Transcript, 7 December 2022, Kathryn Campbell, T1307-1308, T1316-1317.

MS CAMPBELL: No, because this was one of the 58 measures that were finally agreed in the Budget which DHS was involved in. And I expect there were many more measures which were not finally agreed. So I am concerned, Counsel, that you indicate that this is the only thing we were doing at the time. And, so, therefore, I should have – and I wish I had picked up that there were changes. But there were many such proposals at the time, and I necessarily relied on others to run some of these processes.

9. Put to her that she must have wondered how OCI could be implemented without legislative change, she answered she did not recall turning her mind to it because it was the responsibility of DSS and she relied on DSS to be responsible for the legislation with respect to the Social Security Act.¹⁴¹⁷ It was part of Ms Golightly's job to liaise with Ms Wilson concerning legislative requirements and it was DSS' job to determine them.¹⁴¹⁸
10. Put to her that she must have appreciated the no change representation was false because she knew that the Executive Minute stated the PAYG Clean Up proposal would introduce a new approach to reconciling information declared to DHS with information from the ATO, she replied in effect that she would not have turned her mind to legislative compliance because she would have assumed that legislative compliance had been worked out between DHS and DSS, and approved by DSS.¹⁴¹⁹ In any event, she said, the only change was the use of an online system and the requirement for the recipient to engage rather than a compliance officer engaging with the recipient.¹⁴²⁰
11. Put to her that that could not be right because averaging was never used under the manual compliance process that preceded OCI, she answered that she was advised in 2017 that averaging was sometimes used in the past as a last resort under the manual process.¹⁴²¹

1417 RRC Transcript, 11 November 2022, Kathryn Campbell, T981; NACC Transcript, 18 September 2025 Kathryn Campbell, T64-65.

1418 NACC Transcript, 18 September 2025, Kathryn Campbell, T65, T69.

1419 NACC Transcript, 18 September 2025, Kathryn Campbell, T66-68.

1420 NACC Transcript, 18 September 2025, Kathryn Campbell, T62.

1421 NACC Transcript, 19 September 2025, Kathryn Campbell, T117.

12. Evidence adduced in this investigation, although not before the Royal Commission, shows that apportionment¹⁴²² was sometimes used in the past even when there was material available to the compliance officer that was inconsistent with the apportioned result.¹⁴²³ In a recent Services Australia sampling activity of 2,150 cases sourced in 1,000 debts between 2003 and 2020, 150 AAT decisions and 1,000 arrears records, it was found that there were 1,117 employment income updates which resulted in a determined debt (or an AAT decision on an arrears amount), of which 714 (64%) relied on income apportionment and, of those, 457 (64%) had contained sufficient evidence on record to conduct an informed calculation.¹⁴²⁴
13. It is true as Ms Campbell conceded in evidence before the Royal Commission that, looking at it now, the NPP ‘no change’ statement appears misleading.¹⁴²⁵ Taken together with the statement that legislative amendment was not required, they do convey that, because there was to be no change to the way income was assessed or overpayments calculated, the implementation of the proposal was unlikely to encounter legal or policy barriers. As was found earlier in this report, the deletion from the NPP of explicit mention of averaging and the inclusion of the ‘no change’ statement was designed by Mr Withnell to deceive DSS, including Ms Wilson. But as Ms Campbell swore time and again before the Royal Commission and in this investigation, she knew nothing of Mr Withnell’s deceit of DSS and she did not notice the changes or that the document was misleading.¹⁴²⁶
1194. Unlike the Royal Commission,¹⁴²⁷ I do not consider that the failure of someone of Ms Campbell’s seniority and experience to notice the differences between the Executive Minute and the NPP is such an ‘extraordinary oversight’ that the failure must have been deliberate. After all, Mr Pratt did not identify the misleading effect of the NPP and he was someone of greater seniority and experience than Ms Campbell and the Secretary of the policy department responsible to ERC for the OCI proposal’s legislative and policy compliance.¹⁴²⁸ It has not been suggested that he must have intended to mislead ERC.

1422 Which is not the same as but is closely related to averaging.

1423 NACC Transcript, 19 September 2025, Kathryn Campbell, T164.

1424 KC15, Services Australia Report, ‘Income Apportionment Sampling Activity # 2, November 2023 – February 2024’, 3.

1425 RRC Transcript, 11 November 2022, Kathryn Campbell, T976-978; RRC, Transcript, 7 December 2022, T1288-1289.

1426 NACC Transcript, 18 September 2025, Kathryn Campbell, T66-69; RRC Transcript, 7 December 2022, T1316-1317.

1427 Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 7.

1428 NACC Transcript, T35-36, 15 September 2025, Finn Pratt, T35-36.

1195. Given Ms Campbell's delegation to Ms Golightly of management responsibility for OCI; Ms Campbell's lack of involvement in drafting the NPP once the PAYG Clean Up proposal had been approved for development; Ms Campbell's belief that no substantive change was made to the proposal after it was approved for development (as was reflected in the fact that once approved for development, the projected savings did not alter); Ms Campbell's belief, and the fact, that legislative compliance was the responsibility of DSS and, therefore, something about which she need not be concerned; Ms Campbell's focus on costings; the sheer volume of NPPs with which Ms Campbell had to deal within a short time; and the speed with which she must have had to deal with each one, I do not find it 'implausible' that the changes or their significance did not register with her. It presents to me as well within the bounds of reasonable possibility they did not.

Motive

1196. It remains to determine what motive Ms Campbell might have had to deliberately mislead ERC.

1197. The Royal Commission found that:¹⁴²⁹

the weight of the evidence ... leads to the conclusion that Ms Campbell knew of the misleading effect of the NPP but chose to stay silent, knowing that Mr Morrison wanted to pursue the proposal and that the Government could not achieve the savings which the NPP promised without income averaging.

1198. Obviously, Ms Campbell did know that Minister Morrison wanted OCI to proceed, because he had approved development of the proposal by his endorsement of the Executive Minute on 20 February 2015.¹⁴³⁰ Equally, Ms Campbell did know that the savings which OCI was projected to achieve could not be achieved without income averaging.¹⁴³¹ It was the essence of the proposal. But the Royal Commission did not state why it considered those facts were a sufficient basis to infer that Ms Campbell intentionally misled ERC.

1429 Report of the Royal Commission into the Robodebt Scheme, Section 2, 97.

1430 JR15, Executive Minute, 'B15 125 - Minister Morrison signed brief', DSS.5053.0001.0088, 20 February 2015.

1431 Written Statement of Kathryn Campbell to the NACC, 10 September 2025, [76].

1199. Possibly, the Royal Commission focused on the evidence mentioned earlier in this report that Ms Golightly told Ms Wilson that Minister Morrison wanted to find a way to proceed without legislation. But as was observed when dealing with that matter, there was no evidence before the Royal Commission, and I have found none in this investigation, that Minister Morrison expressed a preference of that kind. In his evidence, Minister Morrison denied it,¹⁴³² and Ms Campbell said that Minister Morrison never spoke of it to her.¹⁴³³ Ms Campbell's meeting with Minister Morrison on 30 December 2014 was the only meeting she had with Minister Morrison in which the subject of online compliance was mentioned, and at that stage the idea was embryonic and only one of several that might be considered and developed.¹⁴³⁴
1200. Perhaps the Royal Commission had in mind the idea earlier referred to that there was a general understanding within senior ranks of the public service at the time that, because of the recalcitrance of the Senate crossbench and the government's chariness towards the effects of Senate rejection of proposed legislation, a compliance intervention proposal that required legislative amendment was unlikely or less likely to proceed. But the difficulty with that is Ms Campbell's evidence that she did not believe it was so. In her experience, there had been several significant social security proposals in recent times that required legislative amendment which it was predicted would be unattractive to the crossbench and yet the government proceeded.¹⁴³⁵
1201. Most importantly, however, if the Royal Commission is to be taken as inferring that Ms Campbell believed Minister Morrison wished to find a way to proceed without legislative amendment, why should that be thought sufficient motivation for Ms Campbell to deliberately mislead ERC?

1432 NACC Transcript, 2 October 2025, Scott Morrison, T37-38.

1433 NACC Transcript, 18 September 2025, T52-53.

1434 NACC Transcript, 18 September 2025, T12; Written Statement of Kathryn Campbell to the NACC, 10 September 2025, [40].

1435 NACC Transcript, 18 September 2025, T53-54.

1202. Possibly, the thinking would be that Ms Campbell thought the result would find such favour with Minister Morrison as to lead to her advancement. But quite apart from the speculation inherent in that kind of reasoning, it is objectively a most unlikely proposition that an already very senior, career public servant with a long and unblemished record of achievement and recognition in both the APS and ADF would so much desire further advancement as to premeditatedly commit the serious criminal offence of deceiving ERC.
1203. It is surely even more unlikely in a case like this where the supposed benefit to be derived from the crime could never have been more than an unprovoked hope that a then junior Cabinet minister of another department would be so gratified by ERC's adoption of a proposal developed at his request as to determine, and be able, to secure the public servant's further advancement.
1204. And as it seems to me, it is yet more unlikely in a case like this, where the supposed object of the deceit was to cause ERC to adopt an unlawful proposal, since *ex hypothesi* it would have been obvious to the already very senior, career public servant with a long and unblemished record of achievement and recognition that the unlawfulness of the proposal would in all likelihood soon be revealed, the offence would thus be detected, and what would follow would be the inevitable consequences of conviction and severe punishment or at best abject ignominy and career-ending discipline.
1205. Motive is no more an essential element of corrupt conduct within the meaning of the NACC Act than it is of a criminal offence. But just as in crime, so too with corrupt conduct, where the only motive for engaging in corrupt conduct is so improbable as to be near inconceivable, it comes so near to the point of proved absence of motive as to bespeak the absence of intent.¹⁴³⁶

Conclusion

1206. I am satisfied that Ms Campbell did not intentionally mislead ERC.

1436 Plomp v The Queen (1963) 110 CLR 234 at 250; Griffiths v The Queen (1994) 69 ALJR 77 at 79; De Gruchy v The Queen (2002) 211 CLR 85 at 93.

Did Ms Campbell instruct DHS officers to cease obtaining external legal advice in 2017?

1207. The Royal Commission determined that Ms Campbell instructed DHS officers to cease the process of responding to Mr Jackson’s request for advice on the statutory basis of OCI, motivated by a concern that the unlawfulness of OCI might be exposed to the Ombudsman during the Ombudsman’s own motion investigation.¹⁴³⁷ The Royal Commission based that determination on the following findings:

1. By 13 January 2017, significant steps had been taken in the process of responding to Mr Jackson’s request for advice on the legislative basis of OCI.¹⁴³⁸
2. The cessation of the process coincided with, first, Ms Campbell’s return from leave, and, secondly, Mr Jackson’s handover briefing of Ms Campbell.¹⁴³⁹
3. Ms Campbell was notified of the commencement of the Ombudsman’s investigation.¹⁴⁴⁰
4. The language of Ms Carmody’s email of 5:09 pm on 13 January 2017 to Mr Gladman and Mr Brazel¹⁴⁴¹ supported the conclusion that ‘there had been a positive instruction to cease the process of responding to the request for advice (as opposed to inaction)’.¹⁴⁴²

1437 Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 8.

1438 Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 8.

1439 Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 8.

1440 Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 8.

1441 MG11, MGL.0001.0001.0058_R, Email, ‘thoughts please – draft note of advice re averaging-apportioning’, 13 January 2017, 1.

1442 Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 8.

Significant steps taken before Ms Campbell's return

1208. The evidence of the steps taken towards responding to Mr Jackson's request for advice is set out in paragraphs 476 to 558 above. As is there apparent, during the week 6 to 13 January 2017, Mr Barnett, Mr Gladman and Ms Carmody laboured successively to produce the advice that was sought, albeit they understood this to be a request from Ms Kruse. That resulted in, first, Mr Barnett's advice,¹⁴⁴³ then Mr Gladman's draft advice,¹⁴⁴⁴ then Ms Carmody's 'draft note of advice'¹⁴⁴⁵ and, finally, the 'hard copy' version of the 'draft note of advice',¹⁴⁴⁶ which deleted the recommendation to seek AGS advice, which Ms Carmody handed to Ms Musolino upon Ms Musolino's return to work on Monday 16 January 2017.¹⁴⁴⁷
1209. During that process, on 10 January 2017 Ms Campbell returned from leave and, according to Mr Jackson, he told her as part of the handover that he had asked Ms Golightly to obtain advice and that Ms Golightly had since advised that she was progressing the matter.¹⁴⁴⁸ In Ms Campbell's evidence, she said that Mr Jackson did not mention that he had asked Ms Golightly for advice or anything about its progress.¹⁴⁴⁹

1443 MG6, CTH.3038.0002.6640_R, Email, 'Exhibit 3-4230; Exhibit 4-8082 - CTH.3038.0002.6640_R - Draft Instructions', 10 January 2017; MG6, CTH.3038.0002.6641, Draft Instructions, 'Exhibit 3-4231 - CTH.3038.0002.6641 - AGS Instruction', 10 January 2017.

1444 MG10, MGL.0001.0001.0052_R, Email, 'Exhibit 4-5885 - MGL.0001.0001.0052_R - updated draft - calculating of income for income support payments', 11 January 2017; MG10, MGL.0001.0001.0053, Draft Advice, 'Exhibit 4-5886 - MGL.0001.0001.0053 - calculating of income for income support payments', 17 January 2017, 1-2.

1445 MG11, MGL.0001.0001.0058_R, Email, 'thoughts please - draft note of advice re averaging-apportioning', 13 January 2017, 1.

1446 MG11, CTH.3754.0001.0001_R, Email, 'Lisa Carmody Scanned Email', 13 January 2017, 1.

1447 RRC Transcript, 30 January 2023, Annette Musolino, T2673; Statement of Annette Musolino, 31 October 2022, AMU.9999.0001.0003_R, 27 [46].

1448 Statement of Barry Jackson, 3 March 2023, BAJ.9999.0001.0001, 7-8 [40]-[42].

1449 NACC Transcript, 18 September 2025, Kathryn Jane Campbell, T89, 98-99.

Continuation of process after Ms Campbell's return

1210. Despite Ms Campbell's return to work on the morning of 10 January 2017, at 12:17 pm on 10 January 2017, Mr Gladman emailed Ms Carmody a draft email of instructions to an AGS lawyer, Mr Leo Hardiman, for Ms Carmody's consideration and,¹⁴⁵⁰ at 12:24 pm on 10 January 2017, Mr Barnett emailed Mr Gladman (copying in Mr Matthew Daly) a copy of the draft instructions to AGS.¹⁴⁵¹ At 12:30 pm on 10 January 2017, Ms Carmody replied to Mr Gladman's email of 12:17 pm, thus:¹⁴⁵²

Thanks – I'll have a look – 2 things though before we instruct AGS though:

We'll need to make sure the relevant area in the dept wants legal advice (Scott Britton's area)

We need to be clear about whether advice has already been sought from LSD about any of these issues.

1450 MG6, CTH.3881.0001.0009_R, Email, 'Exhibit 4-5848 - CTH.3881.0001.0009_R - RE- urgent advice - calculating income for income support payments', 10 January 2017.

1451 MG6, CTH.3038.0002.6640_R, Email, 'Exhibit 3-4230; Exhibit 4-8082 - CTH.3038.0002.6640_R - Draft Instructions', 10 January 2017; MG6, CTH.3038.0002.6641, Draft Instructions, 'Exhibit 3-4231 - CTH.3038.0002.6641 - AGS Instruction', 10 January 2017.

1452 MC6, CTH.3881.0001.0008_R, Email, 'Exhibit 4-5847 - CTH.3881.0001.0008_R - RE- urgent advice - calculating income for income support payments', 10 January 2017.

1211. At 12:37 pm on 10 January 2017, Ms Carmody emailed Mr Gladman that she had spoken to Mr Hardiman,¹⁴⁵³ who advised that he had the capacity to provide the advice. At 1:29 pm on 10 January 2017, Mr Daly sent a second version of the draft AGS Instructions to Mr Barnett and, at 1:31 pm, Mr Daly forwarded the second version of them to Mr Gladman.¹⁴⁵⁴ At 3:57 pm on 10 January 2017, Mr Gladman emailed Ms Carmody attaching the draft Gladman advice. He noted he had left in the recommendation to obtain AGS advice.¹⁴⁵⁵ That was followed by further email exchanges: at 5 pm on 10 January 2017 from Ms Carmody to Mr Gladman;¹⁴⁵⁶ at 5:06 pm on 10 January 2017 from Mr Gladman to Ms Carmody;¹⁴⁵⁷ at 5:09 pm and 5:11 pm on 10 January 2017 from Ms Carmody to Mr Gladman; at 5:13 pm on 10 January 2017 from Mr Gladman to Ms Carmody;¹⁴⁵⁸ at 5:20 pm on 10 January 2017 from Mr Daly to Ms Carmody attaching a link to the ‘Guide to Social Security Law’;¹⁴⁵⁹ at 5:23 pm on 10 January 2017 from Mr Gladman to Ms Carmody identifying the ‘relevant parts’ of the guide provided in Mr Daly’s email of 5:20 pm;¹⁴⁶⁰ at 5:27 pm on 10 January 2017 from Mr Gladman to Ms Carmody, attaching the draft advice for her consideration and another version of the draft AGS Instructions;¹⁴⁶¹ and, at 7:46 pm on 10 January 2017, from Mr Gladman to Ms Carmody forwarding an ‘updated’ version of the draft Gladman advice.¹⁴⁶²
1212. In her statement before the Royal Commission (which Ms Carmody confirmed in her evidence in this investigation)¹⁴⁶³ Ms Carmody explained that the succession of drafts was the result of Mr Gladman and her discussing each draft as it was produced and Mr Gladman then making further amendments as required.¹⁴⁶⁴

1453 MG6, CTH.3881.0001.0009_R, Email, ‘Exhibit 4-5848 - CTH.3881.0001.0009_R - RE- urgent advice - calculating income for income support payments’, 10 January 2017.

1454 MG5, CTH.3038.0002.6646_R, Email, ‘Exhibit 3-4232; Exhibit 4-8084 - CTH.3038.0002.6646_R - FW- AGS Instruction’, 10 January 2017; MG5, CTH.3038.0002.6647, Draft Instructions, ‘Exhibit 3-4233 - CTH.3038.0002.6647 - AGS Instruction v2’, 10 January 2017.

1455 MG7, CTH.3113.0004.7075_R, Email, ‘Exhibit 4-5844 - CTH.3113.0004.7075_R - draft advice - calculating income for income support payments’, 10 January 2017; MG7, CTH.3113.0004.7076, Draft Advice, ‘Exhibit 4-5845 - CTH.3113.0004.7076 - calculating of income for income support payments’, 10 January 2017.

1456 MG8, MGL.0001.0001.0033, Email, ‘Exhibit 4-5865 - MGL.0001.0001.0033_R - RE- draft advice - calculating income for income support payments’, 10 January 2017, 1.

1457 MG8, MGL.0001.0001.0033, Email, ‘Exhibit 4-5865 - MGL.0001.0001.0033_R - RE- draft advice - calculating income for income support payments’, 10 January 2017, 1.

1458 MG8, MGL.0001.0001.0040, Email, ‘Exhibit 4-5868 - MGL.0001.0001.0040_R - RE- draft advice - calculating income for income support payments’, 10 January 2017, 1.

1459 MG8, CTH.3882.0001.0005_R, Email, ‘Exhibit 4-5854 - CTH.3882.0001.0005_R - FW- Guide to Social Security Law’, 10 January 2017.

1460 MG8, CTH.3882.0001.0005_R, Email, ‘Exhibit 4-5854 - CTH.3882.0001.0005_R - FW- Guide to Social Security Law’, 10 January 2017.

1461 MG9, CTH.3881.0001.0025_R, Email, ‘Exhibit 4-5850 - CTH.3881.0001.0025_R - AGS Instructions – background’, 10 January 2017; MG9, CTH.3881.0001.0026, Draft Instructions, ‘Exhibit 4-5851 - CTH.3881.0001.0026 - AGS Instruction (002)’, 10 January 2017.

1462 MG9, MGL.0001.0001.0043_R, Email, ‘Exhibit 4-5870 - MGL.0001.0001.0043_R - revised draft of paper’, 10 January 2017; MG9, MGL.0001.0001.0044, Draft Advice, ‘Exhibit 4-5871 - MGL.0001.0001.0044 - calculating of income for income support payments’, 10 January 2017.

1463 NACC Transcript, 28 August 2025, Lisa Carmody, T38.

1464 Statement of Lisa Carmody, 23 February 2023, LCA.9999.0001.0002_R, 10 [33].

1213. At 3:06 pm on 11 January 2017, Mr Barnett (who, despite Mr Menzies-McVey's email of 7 January 2017, had not spoken to Mr Fiveash and did not know of the Fiveash advice)¹⁴⁶⁵ sent an email to Mr Gladman titled 'calculating of income for income support payments', to which he attached another version of the draft Gladman advice.¹⁴⁶⁶ At 3:30 pm on 11 January 2017, Mr Gladman forwarded the new version of the draft Gladman advice to Ms Carmody (copying in the 'Chief Counsel's Office' generic email address), noting that: 'An updated version of the draft paper is attached, as discussed'.¹⁴⁶⁷ At 5:39 pm on 11 January 2017, Mr Gladman emailed Ms Carmody a further updated copy of the draft Gladman advice.¹⁴⁶⁸
1214. On 11 January 2017, Ms Campbell received formal notice that the Ombudsman had determined to conduct an own motion investigation into OCI.¹⁴⁶⁹
1215. At 5 pm on 13 January 2017, Mr Robinson emailed Ms Carmody:¹⁴⁷⁰

Lisa

The Department met with the Ombudsman's office (OO) this afternoon to discuss the administration logistics of the [Ombudsman's office] conducting the Own Motion investigation ...

1216. At 6:09 pm on 13 January 2017, Ms Carmody emailed Mr Damien Brazel and Mr Gladman requesting their 'thoughts please' on an included 'draft note of advice re averaging/apportioning'. The draft note of advice was based on the draft Gladman advice but expressed in more certain terms. It did not retain the recommendation to obtain external legal advice.¹⁴⁷¹ At some time after 6:09 pm on 13 January 2017, Ms Carmody amended the draft by adding the email address of Ms Kruse (then Acting Deputy Secretary, Enabling Services). The note was based on the draft Gladman advice but was expressed in more certain terms.¹⁴⁷² In her email, Ms Carmody wrote, in part:

1465 NACC Transcript, 27 August 2025, John Douglas Barnett, T42-43.

1466 JB2, JBL.0001.0001.0455_R, Email, 'Exhibit 4-8089 - JBL.0001.0001.0455_R - RE- calculating of income for income support payments', 11 January 2017.

1467 MG10, CTH.3702.0001.0348_R, Email, 'Exhibit 4-5891 - CTH.3702.0001.0348_R - calculating of income for income support payments', 11 January 2017; MG10, CTH.3702.0001.0349, Draft Advice, 'Exhibit 4-5892 - CTH.3702.0001.0349 - calculating of income for income support payments', 11 January 2017.

1468 MG10, MGL.0001.0001.0052_R, Email, 'Exhibit 4-5885 - MGL.0001.0001.0052_R - updated draft - calculating of income for income support payments', 11 January 2017; MG10, MGL.0001.0001.0053, Draft Advice, 'Exhibit 4-5886 - MGL.0001.0001.0053 - calculating of income for income support payments', 17 January 2017, 1-2.

1469 LM8, LMA.1000.0001.3109_R, Email, 'Commonwealth Ombudsman own motion investigation notice', 11 January 2017, 1.

1470 LC2, CTH.2001.0004.0877, Email, 'FW- Meeting request', 13 January 2017.

1471 MG11, MGL.0001.0001.0058_R, Email, 'thoughts please - draft note of advice re averaging-apportioning', 13 January 2017, 1.

1472 MG11, MGL.0001.0001.0058_R, Email, 'thoughts please - draft note of advice re averaging-apportioning', 13 January 2017, 1.

I realise that to some extent circumstances have moved beyond this – we have prepared a preliminary/draft note of advice in relation to apportioning annual amounts of income across 26 fortnightly payments (commonly referred to as 'averaging'). This can be reconsidered and expanded upon as needed ...

1217. In her evidence before the Royal Commission, Ms Carmody explained that her reference to circumstances having to some extent moved on was a recognition of the fact that, since announcement of the Ombudsman's own motion investigation, the focus had moved to formulating and providing answers to questions posed by the Ombudsman's officers and locating and providing them with the documents they required.¹⁴⁷³

Why the process was not completed

1218. Asked why the process of obtaining AGS advice did not proceed beyond that point, Ms Carmody said that, before AGS advice could be sought, it was necessary to establish that the 'client' (which, in this case was Mr Britton's area) wished to seek AGS advice and to get the financial expenditure arranged through the Legal Services Division.¹⁴⁷⁴ As Ms Carmody said in evidence in this investigation:¹⁴⁷⁵

So the Legal Services Division was responsible for engaging external lawyers. That couldn't be done by a business area, it needed to be done through the Legal Services Division as part of the, you know, financial delegations and managing the funds and that type of thing, but the practice was that in order to do that you would need instructions. You didn't go off your own bat and decide in the Legal Division that we needed to prepare advice on something if no one had asked for that advice, and you certainly didn't go and seek external advice on something if no one had asked for that advice in a business area.

1473 RRC Transcript, 27 February 2023, Lisa Carmody, T3893-3894.

1474 NACC Transcript, Lisa Carmody, 28 August 2025, T35.

1475 NACC Transcript, Lisa Carmody, 28 August 2025, T35.

1219. Asked how that could be so given the request for advice on the legislative basis of OCI had come from Mr Jackson via Ms Kruse, Ms Carmody said that Ms Kruse's request was for a paper which explained the legislative basis of OCI.¹⁴⁷⁶ That was a different task from obtaining AGS advice as to the legality of OCI.¹⁴⁷⁷ The latter would require instructions from the 'client' and would need financial expenditure to be arranged by the Legal Services Division.
1220. After Ms Carmody handed over to Ms Musolino on the morning of 16 January 2017, she understood that the Legal Services Division was closely involved in and looking for any previous advices on the subject that DHS may have had.¹⁴⁷⁸
1221. Likewise, Ms Musolino recalled that, after she returned to work on the morning of 16 January 2017 and learned of the Ombudsman's investigation, she appreciated that the question of the legislative basis of OCI was a hot issue and her first reaction was that she needed to find out what advices DHS had.¹⁴⁷⁹
1222. Ms Carmody said that she was never directed to cease the process of obtaining AGS advice.¹⁴⁸⁰ Likewise, Ms Musolino said that she was not directed to cease obtaining AGS advice.¹⁴⁸¹ Rather, her recommendation of 23 January 2017 to seek external end-to-end legal review came to an end when Ms Golightly effectively rejected it.¹⁴⁸²
1223. On 16 January 2017, Mr Hutson returned to work and, like Ms Musolino, was almost immediately thrown into the Ombudsman's investigation.¹⁴⁸³ He said that he was not informed and never learned of Mr Jackson's request for advice regarding the statutory basis of OCI.¹⁴⁸⁴ He was told of the problems that had arisen in the implementation of OCI and thereafter his focus was on them.¹⁴⁸⁵

1476 NACC Transcript, 28 August 2025, Lisa Carmody, T29.

1477 NACC Transcript, 28 August 2025, Lisa Carmody, T29.

1478 NACC Transcript, 29 August 2025, Lisa Carmody, T57-59.

1479 NACC Transcript, 12 September 2025, Annette Musolino, T32, T41, T55-56.

1480 NACC Transcript, Lisa Carmody, 28 August 2025, T32, T83.

1481 NACC Transcript, 12.

1482 NACC Transcript, 12 September 2025, Annette Musolino, T51.

1483 NACC Transcript, 29 August 2025, Jonathan Hutson, T22, 24-31.

1484 NACC Transcript, 29 August 2025, Jonathan Hutson, T23.

1485 NACC Transcript, 29 August 2025, Jonathan Hutson, T23, 52-53.

1224. On or about 19 January 2017, Mr Stipnieks returned from leave to resume his role as General Counsel, Program Advice and Privacy Branch.¹⁴⁸⁶ As part of the handover, Mr Gladman briefed Mr Stipnieks on what had occurred while Mr Stipnieks was away and provided Mr Stipnieks with a copy of the draft Gladman advice (in the hope that it might be of some assistance in the work of advising senior executives or obtaining external legal advice on income averaging that might need to be done).¹⁴⁸⁷
1225. At that stage, Mr Gladman believed that the branch was waiting on the client's decision whether to seek AGS advice on income averaging.¹⁴⁸⁸ Mr Gladman did not receive any instruction to desist from seeking AGS advice, nor did Mr Stipnieks.
1226. At 7:37 am on Friday, 20 January 2017, Ms Campbell emailed Mr Jason Stott and Mr Bevan Hannan (copying in Ms Golightly and Mr Hutson) the media briefing email concerning the interview on Sky News of the CEO of ACOSS.¹⁴⁸⁹ In that email, Ms Campbell asked for someone to get her a copy of the interview and added among other things: **'we have to make sure [OCI] is in accordance with the law,** not just beneficial to the recipient.'¹⁴⁹⁰ [Emphasis added.]
1227. That was followed by Ms Golightly's email to Ms Musolino and Mr Hutson of 9:57 am on Saturday, 21 January 2017 concerning a mooted OCI class action, in which Ms Golightly observed that the prospect of the class action was liable to raise a whole new set of questions from the Minister and possibly the Prime Minister, and that 'we may have to get some advice very quickly'.¹⁴⁹¹ At the same time, she cautioned that she was not sure whether she wished to 'scare the horses' by seeking external advice.¹⁴⁹²

1486 NACC Transcript, Maris Andris Stipnieks, 11 September 2025, T45.

1487 Tab 490, 491; NACC Transcript, Maris Andris Stipnieks, 11 September 2025, T63; NACC Transcript, Mark Stanley Gladman, 26 August 2025, T52, T53.

1488 Statement of Mark Gladman, 30 January 2023, MGL.9999.0001.0002_2, 8 [46], 13 [69]-[71]; NACC Transcript, 26 August 2025, Mark Stanley Gladman, T58.

1489 JH2, CTH.3001.0033.7774, Email, 'RE: PRINTED - RE: Top Stories - Friday 20 January 2017 [SEC=UNCLASSIFIED]'; 20 January 2017.

1490 CTH.3001.0033.7774_R, Email, 'RE: PRINTED - RE: Top Stories - Friday 20 January 2017 [SEC=UNCLASSIFIED]'; 20 January 2017.

1491 JH4, CTH.3007.0004.3585, 'Possible Legal issues - for discussion with Malisa [DLM=Sensitive-Legal]'; 21, 23 January 2017.

1492 JH4, CTH.3007.0004.3585, 'Possible Legal issues - for discussion with Malisa [DLM=Sensitive-Legal]'; 21, 23 January 2017.

1228. Thereafter came Mr Hutson’s email of 6:11 pm on Saturday 21 January 2017, in which he asked whether Ms Golightly thought there were any parts of OCI where DHS had been relying on internal advice that may need the reassurance of an AGS view;¹⁴⁹³ Ms Musolino’s email of 9:04 pm on 21 January 2017 to Mr Hutson and Ms Golightly in which she advised that she did not believe DHS had legal advice (either internal or external) which considered the end-to-end process – and it was something they could consider getting;¹⁴⁹⁴ Ms Golightly’s email at 9:07 pm on 21 January 2017 to Ms Musolino and Mr Hutson requesting a discussion on Monday about the ‘pros and cons’ of ‘getting any further advice’;¹⁴⁹⁵ Ms Musolino’s email of 9:33 am on Monday 23 January 2017 to Mr Hutson recommending that, if the department wanted assurance on the legal issues, she recommended end-to-end review, and setting out the questions for end-to-end review which she had formulated with Mr Stipnieks’s assistance;¹⁴⁹⁶ followed by Ms Golightly’s determination in effect not to seek an end-to-end review. After that, there were no further suggestions of obtaining AGS or any other external legal advice.

Did Ms Campbell direct that AGS advice not be sought?

1229. There was no direct evidence before the Royal Commission, and I have been unable to find any direct evidence in this investigation, that Ms Campbell directed that AGS advice not be sought. Nor is there sufficient inferential evidence to sustain that conclusion.

1230. Contrary to the Royal Commission’s finding, the steps taken towards obtaining AGS advice did not cease upon Ms Campbell’s return from leave on 10 January 2017. They continued apace until 13 January 2017 when it appears likely that the logistical demands of the Ombudsman’s investigation referred to in Mr Robinson’s email of that day took precedence.¹⁴⁹⁷ Even then, there was not a cessation of the process as such but rather a period in which the Program Advice Branch headed by Mr Stipnieks believed they were waiting for the ‘client’ to decide whether to seek AGS advice.

1493 JH4, CTH.3007.0004.3585, ‘Possible Legal issues - for discussion with Malisa [DLM=Sensitive-Legal]’, 21, 23 January 2017.
 1494 JH4, CTH.3001.0034.0729, ‘FW: Weekend Top Stories - Saturday 21 January 2017 [DLM=Sensitive: Legal]’, 21 January 2017.
 1495 JH4, CTH.3001.0034.0729, ‘FW: Weekend Top Stories - Saturday 21 January 2017 [DLM=Sensitive: Legal]’, 21 January 2017.
 1496 JH4, CTH.3007.0004.3585, ‘Possible Legal issues - for discussion with Malisa [DLM=Sensitive-Legal]’, 21, 23 January 2017.
 1497 LC2, CTH.2001.0004.0877, ‘FW- Meeting request’, 12 January 2017.

1231. Nor does the language of Ms Carmody's email of 5:09 pm on 13 January 2017 to Mr Gladman and Mr Brazel support the conclusion that 'there had been a positive instruction to cease the process of responding to the request for advice (as opposed to inaction)'.¹⁴⁹⁸ Both the surrounding circumstances of the communication and Ms Carmody's direct testimony show that it was a recognition of the effects of the Ombudsman's investigation. Rather than a positive instruction, Mr Stipnieks's wait for the 'client' to decide whether to proceed effectively came to an end when the client, Ms Golightly, decided on or about 23 January 2017 not to 'scare the horses' by commissioning external advice.
1232. Certainly Ms Campbell was aware of the Ombudsman's own motion investigation, and she assigned Mr Hutson to head DHS' response to it. But there is no evidence that she instructed Mr Hutson or anyone else to put a stop to obtaining AGS advice, and Ms Campbell has sworn that she did not.
1233. Finally, so far as can be inferred from contemporaneous documentary evidence, Ms Campbell would not have wished to put a stop to the process of obtaining AGS advice if she had known of it. The statement in her email of 7:37 am on Friday, 20 January 2017 that 'we have to make sure [OCI] is in accordance with the law' implies the contrary.¹⁴⁹⁹

Conclusion

1234. Despite the findings of the Royal Commission and the extensive efforts that have been made during this investigation to identify precisely why the idea of obtaining AGS advice was abandoned, there is not sufficient evidence to establish that Ms Campbell directed it. Based on all the available direct evidence and all possible rational inferences, the most likely cause was the result of Ms Golightly's decision on or about 23 January 2017 not to 'scare the horses' by commissioning external advice.

Did Ms Campbell direct PWC not to provide their final report to DHS in 2017?

1235. The evidence of PwC's non-delivery of the final report is set out above at paragraphs 758 to 826, especially at 815 to 826.

1498 Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 8.

1499 JH3, CTH.3001.0033.7774, 'RE: PRINTED - RE: Top Stories - Friday 20 January 2017 [SEC=UNCLASSIFIED]', 20 January 2017.

Royal Commission findings

1236. The Royal Commission found that:

1. Ms Campbell made the decision to engage PwC, initiated the engagement and approved the engagement letter, which included specific reference to the production of a final report as a deliverable under the engagement.¹⁵⁰⁰
2. Ms Campbell was involved in monitoring the work of PwC, including in personally attending presentations and the presentation to the Minister.¹⁵⁰¹
3. A communication by DHS that the ‘report’ deliverable component was no longer required and that the presentation would instead suffice, either required or amounted to a variation of the official order.¹⁵⁰²
4. Mr van Hagen gave evidence of a conversation he had had with either Mr West or Mr Bowe (he could not remember which of them) in which it was said that Mr Weber spoke to Ms Campbell and that ‘a report was not required’.¹⁵⁰³
5. Mr Bowe’s evidence was that he believed that either Mr Weber or Mr West (he could not remember which of them) told him that DHS did not require the report. He ‘understood’ that the reason was because DHS was ‘keen to focus on implementation of improvement initiatives, and minimise media interest on the challenges of the previous system’.¹⁵⁰⁴
6. Mr West’s evidence was that he had no communication with anyone at DHS about not delivering the final report.¹⁵⁰⁵
7. Mr Weber’s evidence was that he could not recall, but he accepted it was possible the communication from DHS to PwC that a report was not required occurred between Ms Campbell and himself.¹⁵⁰⁶
8. The final report was contracted for, all but finalised, and far more extensive and critical of OCI’s failings than the PowerPoint presentation to Minister Tudge in that it revealed OCI would not deliver the projected savings; OCI was producing a significant percentage of inaccurate debts; and OCI had been a failure.¹⁵⁰⁷

1500 Royal Commission into the Robodebt Scheme, Final Report, 237.
1501 Royal Commission into the Robodebt Scheme, Final Report, 237.
1502 Royal Commission into the Robodebt Scheme, Final Report, 237.
1503 Royal Commission into the Robodebt Scheme, Final Report, 237 (citations omitted).
1504 Royal Commission into the Robodebt Scheme, Final Report, 237.
1505 NACC Transcript, 3 October 2025, Shane West, T19-22.
1506 Royal Commission into the Robodebt Scheme, Final Report, 237.
1507 Royal Commission into the Robodebt Scheme, Final Report, 237.

9. The rational inference was that, although the report was contracted for and all but finalised, Ms Campbell formed the view that its detail as to the deficiencies of the Scheme was damaging and that it would be better for DHS' reputation, and her own, if the report were not produced.¹⁵⁰⁸

Additional facts

1237. There are some additional facts that also need to be considered:

1. Due to the large number of operational problems that were affecting OCI, on 31 January 2017 Ms Campbell telephoned Mr Weber about the possibility of DHS engaging PwC to conduct an external review of OCI.¹⁵⁰⁹ Having worked with PwC who had been engaged in mid-2016 to review and recommend improvements to the NDIS IT system, Ms Campbell considered it would be useful to have PwC perform similar work to identify the process problems affecting OCI and develop solutions to rectify them.¹⁵¹⁰
2. At 7:10 am on 2 February 2017, Mr Weber emailed Mr West's contact details to Ms Campbell, and at 8:37 am Ms Campbell emailed Mr McNamara requesting him to contact Mr West.¹⁵¹¹ Apart from making the initial contact with Mr Weber, Ms Campbell was not involved in negotiating the terms of PwC's retainer. She considered that Mr McNamara would take responsibility for the engagement and Ms Golightly held appropriate delegations under the *Public Governance, Performance and Accountability Act 2013* (Cth) to enter into the PwC retainer once negotiated.¹⁵¹²

1508 Royal Commission into the Robodebt Scheme, Final Report, 237.2, 237.

1509 NACC Transcript, 19 September 2025, Kathryn Campbell T123-124; KC11, PWC.1007.0016.0004, 'Exhibit 9091 - PWC.1007.0016.0004_R - RE- Business process improvement [SEC=UNCLASSIFIED]'; 2 February 2017.

1510 Written Statement of Kathryn Campbell to the NACC, 10 September 2025, [167].

1511 KC11, PWC.1007.0016.0004, 'Exhibit 9091 - PWC.1007.0016.0004_R - RE- Business process improvement [SEC=UNCLASSIFIED]'; 2 February 2017.

1512 KC 12, PWC.1007.0001.0013_R, '1. 20170214 - DHS Business process improvement review - Work order.pdf' 14 February 2017; NACC Transcript, 19 September 2025, Kathryn Campbell, T133-136, 139, T155.

3. At some time prior to 1:30 pm on 9 February 2017, a meeting brief setting out the deliverables for PwC's review was prepared by Ms Foster, approved by Mr McNamara, and submitted to Ms Campbell for approval.¹⁵¹³ The deliverables specified were: Business process maps documenting the current 'state' of compliance and fraud activities; Process maps documenting customer interaction with the department systems; Identify and analyse options for improvements; and Development of a high-level implementation plan. A copy of the proposed retainer letter was attached to the brief. The brief did not refer to a final report, although the attached retainer letter did.¹⁵¹⁴ Ms Campbell's recollection is that she reviewed the brief and annotated it in accordance with her usual practice but that she did not review the retainer letter. Ms Campbell wrote on the cover of the brief 'Agreed to proceed'.¹⁵¹⁵
4. The final engagement letter was addressed to Mr McNamara and signed by Ms Golightly on 14 February 2017. Ms Campbell's evidence before the Royal Commission and in this investigation was that she did not see the final engagement letter signed by Ms Golightly.¹⁵¹⁶
5. Ms Campbell's involvement in monitoring the PwC's performance of the retainer was limited. Ms Campbell said in evidence in this investigation that she was not involved in and had no knowledge of any communications between DHS and PwC or meetings of DHS and PwC between 9 February and 18 April 2017.¹⁵¹⁷ There is nothing in other evidence which contradicts that.
6. Ms Campbell was absent on leave between 7 and 18 April 2017. When she returned, she was informed by Ms Golightly by email that there would be a meeting at 3 pm the next day with Mr Asten, Mr Wood and PwC to work through PwC's findings and recommendations to be presented to Minister Tudge. Ms Golightly attached the proposed presentation and offered to take Ms Campbell through it.¹⁵¹⁸

1513 JM2, CTH.3001.0035.6372_R, 'Sec annot brief BPI CustComp 090217.pdf', 10 February 2017.

1514 JM2, CTH.3001.0035.6372_R, 'Sec annot brief BPI CustComp 090217.pdf', 10 February 2017.

1515 NACC Transcript, 19 September 2025, Kathryn Campbell, T125; Written Statement of Kathryn Campbell to the NACC, 10 September 2025, [172].

1516 Written Statement of Kathryn Campbell to the NACC, 10 September 2025, [171]; KF Statement of Kristen Foster, 25 February 2023, KFO.9999.0001.0002, 4-5 [32].

1517 Written Statement of Kathryn Campbell to the NACC, 10 September 2025, [175]-[182].

1518 Written Statement of Kathryn Campbell to the NACC, 10 September 2025, [182]; JMN.001.001.0293, Email, 'Update on PwC work and briefing for the Minister [DLM=Sensitive]', 18 April 2017.

7. The presentation to Minister Tudge was originally scheduled for 11 May 2017 but was rescheduled at the Minister's request.¹⁵¹⁹ On 10 May 2017, Ms Golightly informed PwC that Ms Campbell would nonetheless like to use the opportunity to be taken through the presentation. On 11 May 2017, PwC delivered the presentation to Ms Campbell, Ms Golightly and Mr McNamara.¹⁵²⁰
8. On or about 12 May 2017, Ms Campbell received from Mr McNamara (copying in Ms Golightly) a proposed Executive Minute to Minister Tudge. It stated that PwC had been engaged in February 2017 to undertake a review of compliance and debt processes and that PwC's work was ongoing.¹⁵²¹
9. On 19 May 2017, Ms Campbell messaged Ms Golightly requesting that some minor changes be made to the presentation.¹⁵²²
10. On 22 May 2017, Ms Campbell attended the presentation to Minister Tudge.¹⁵²³ Ms Campbell's evidence before the Royal Commission and in this investigation was that she was not then aware, and did not at any time later become aware, that PwC was working on a final report in addition to the presentation.¹⁵²⁴
11. There is no documentary or other evidence that Ms Campbell was provided with any drafts of the final report or otherwise apprised of their existence or contents. The documentary evidence suggests that the only draft of the final report that was shown to DHS was a hard copy of the draft as at 4 May 2017 that PwC handed to Mr McNamara on that date. It does not appear that Mr McNamara shared the draft with anyone else at DHS.¹⁵²⁵
12. Mr McNamara gave evidence in this investigation that he did not consider the final report was more critical of OCI's failings than the PowerPoint presentation to Minister Tudge, or that the PowerPoint presentation did not reveal that OCI would not deliver the projected savings, or was producing a significant percentage of inaccurate debts, or had been a failure. To the contrary Mr McNamara said:¹⁵²⁶

1519 Statement of Frank van Hagen, 23 February 2023, FVH.9999.0001.0002, 18[99].

1520 Written Statement of Kathryn Campbell to the NACC, 10 September 2025, [183]; CTH.3007.0006.0789, Brief, '11 May - MO meeting - Sec Brief - PwC Implementation strategy', 9 May 2017.

1521 Written Statement of Kathryn Campbell to the NACC, 10 September 2025, [184].

1522 Screenshots of text messages between Kathryn Campbell and Malisa Golightly, 19 May 2017; NACC Transcript, 19 September 2025, Kathryn Campbell T138; Written Statement of Kathryn Campbell to the NACC, 10 September 2025, [183].

1523 NACC Transcript, 19 September 2025, Kathryn Campbell, T149; CTH.3051.0018.9153_R, 'Compliance Briefing with DHS & PwC Officer's (MW) [DLM=For-Official-Use-Only]', 16 May 2017.

1524 NACC Transcript, 19 September 2025, Kathryn Campbell, T151.

1525 NACC Transcript, 16 September 2025, Jason McNamara, T47; Written Statement of Kathryn Campbell to the NACC, 10 September 2025, [189]. Royal Commission into the Robodebt Scheme, Final Report, 232.

1526 NACC Transcript, 16 September 2025, Jason McNamara, T51, 64.

MR McNAMARA: Yeah. Well the PowerPoint if you look at the PowerPoint it's got all the numbers, it's got all the key dot points of what we're going to do with the change. And PwC presented it unfettered to the Minister. I was present at the meeting when they presented it to the Minister ... Kathryn and Malisa weren't saying anything, it was Terry and Frank and Shane presenting to the Minister.

...

QUESTION: Was it any worse, that is to say the draft report any worse in its criticisms of what had occurred than the PowerPoint was?

MR McNAMARA: No, no. To me, I read the two. One's just like more words. But it's not even really a criticism. PwC weren't there to criticise, PwC were there to go this was what's going to work.

QUESTION: They identified, though, the errors that had occurred?

MR McNAMARA: Yeah, yeah. Yeah, yeah.

QUESTION: And did the PowerPoint presentation do that less effectively than the draft report did?

QUESTION: No. No. I don't think so. I don't think Ministers were sitting there at the Cabinet submission process going the department's covered itself in glory. You know, they would have looked at this as a complete stuff up by the Public Service.

13. Mr McNamara said that because of the nature of DHS most of the 30,000 people working in the department were not used to dealing with Cabinet security or national secrets.¹⁵²⁷ Generally speaking, therefore, both Ms Campbell and Ms Golightly were 'very focused on FOI and leaking', and DHS had a 'protective enclave' for storing Cabinet documents.¹⁵²⁸
14. Asked whether he thought it possible DHS did not wish to receive the final report because of fear of FOI and leaking, he said he thought it was highly likely due to fear of leaking and the reputational damage that it might do to DHS.¹⁵²⁹

1527 NACC Transcript, 16 September 2025, Jason McNamara, T60.

1528 NACC Transcript, 16 September 2025, Jason McNamara, T54, 55.

1529 NACC Transcript, 16 September 2025, Jason McNamara, T53.

MR HEVEY: perhaps the reason this final report was not sought was that if it was FOled, or another suggestion was leaked?

MR McNAMARA: Yeah, yeah, leaked would have been more likely, but yes.

MR HEVEY: If it was leaked then it could do reputational damage to the government and to the Department?

MR McNAMARA: Yep.

MR HEVEY: Do you put any credence on that?

MR McNAMARA: Oh yeah. Yeah, yeah. No, I think highly likely to be leaked because we obviously had senior people who were leaking stuff. I mean they leaked a Cabinet submission. So yes, I'd put a whole lot of credence on that. I think that was a genuine issue of this process.

15. Mr McNamara said that, by contrast, his perception was that DHS was not concerned about the Ministerial PowerPoint presentation 'because the PowerPoint presentation was attached to the Cabinet submission' and could be stored in the 'protective enclave'.¹⁵³⁰
16. Asked if he had ever been party to a discussion about whether DHS should receive the PwC final report, he said that he could not recall but that it was an 'entirely reasonable' possibility because of the concerns about FOI and leaking.¹⁵³¹
17. Asked who at DHS would have had the authority to decide to instruct PwC not to deliver a final report, Mr McNamara said either Ms Golightly or Ms Campbell.¹⁵³²
18. Asked whether he was directed to 'Tell PwC we do not want this report', he said that he could not recall.¹⁵³³

1530 NACC Transcript, 16 September 2025, Jason McNamara, T64.

1531 NACC Transcript, 16 September 2025, Jason McNamara, T55.

1532 KC 12, PWC.1007.0001.0013_R, '1. 20170214 - DHS Business process improvement review - Work order.pdf' 14 February 2017; NACC Transcript, 19 September 2025, Kathryn Campbell, T133-136, 139, T155; Written Statement of Kathryn Campbell to the NACC, 10 September 2025, [174].

1533 NACC Transcript, 16 September 2025, Jason McNamara, T58.

19. Asked (assuming Ms Golightly or Ms Campbell had decided that PwC should not deliver the final report) who would have conveyed the message to PwC, he said it would have been he as the main person talking to PwC, or possibly one of his subordinates, and, if not them, Ms Golightly or Ms Campbell. He said that if he had delivered the message, he would have delivered it either to Mr van Hagen or to Mr Bowe but not to Mr Weber. If the message were delivered to Mr Weber, it would have been delivered by Ms Golightly or Ms Campbell.¹⁵³⁴
20. At 3:28 pm on 16 June 2017, Mr Andrew Harvey, who according to Mr McNamara's evidence was in the DHS Corporate Division, emailed Mr McNamara asking whether PwC had yet submitted 'a report on the outcome of their OCI related work'.¹⁵³⁵
21. Asked what that was about, Mr McNamara said that DHS was 'a fairly dysfunctional department' in which 'the Deputies would yell and scream at each other in executive meetings' and that the head of the Corporate Division did not get on with Ms Golightly. The Corporate Division knew of Ms Golightly's fear of FOI and leaking and hence that she would not give them a copy of the PwC final report even if she had one. Mr Harvey's email was making mischief.¹⁵³⁶

MR McNAMARA: What's going on there is Malisa and whoever's the head of corporate didn't get on and they [Corporate Group] were making mischief. That's what's going on.

MR HEVEY: So what does that mean?

MR McNAMARA: Well, they wanted the report and they knew that Malisa was concerned about FOI, Malisa was concerned about leaking, and Malisa didn't want anyone unnecessarily getting hold of the PwC work. And the head of corporate was, 'Oh, you know, well we need a record in corporate', and Malisa was, 'Well I'm not giving them anything'. So even if they were holding a copy or something, she wasn't prepared to give it to them, and they were making mischief.

1534 NACC Transcript, 16 September 2025, Jason McNamara, T54.

1535 NACC Transcript, 16 September 2025, Jason McNamara, T59; JM9, CTH.3005.0005.3299, 'Email from A Harvey to J McNamara with the subject 'OCI Report from PwC?', 16 June 2017.

1536 NACC Transcript, 16 September 2025, Jason McNamara, T59.

Who gave the direction?

1238. In light of the Royal Commission's findings and the extra evidence given in this investigation, it appears unlikely that anyone other than Ms Golightly or Ms Campbell would have decided that PwC should be directed not to deliver a final report, or that the decision was conveyed to PwC by anyone other than Mr McNamara, or one of his staff, or by Ms Golightly or Ms Campbell.
1239. It also appears that the reason for the decision was fear of the report being made public pursuant to an FOI application or, more likely, as the result of leaking, and the reputational damage that might do to DHS. In substance, the final report was no more damning of OCI than the Ministerial PowerPoint presentation. But DHS was not concerned about the PowerPoint presentation because the PowerPoint presentation was Cabinet-in-Confidence and therefore likely to be immune from public scrutiny. The concern was not to hide the facts from the Minister – they were fully revealed in the PowerPoint presentation – but to prevent their public dissemination and the reputational damage that might do.
1240. It is objectively improbable that the direction not to deliver the final report was given to anyone at PwC other than Mr van Hagen, Mr Bowe, Mr West or Mr Weber. They were the only partners/employees of PwC engaged with the project and, therefore, the only persons of authority to whom the direction is likely to have been issued. In face of the evidence of Mr van Hagen, Mr Bowe and Mr West, it is unlikely that the direction was given to any of them. In view of Mr Weber's evidence, it is more probable that the direction was given to him.

1241. Nevertheless, I discount the hearsay evidence given by Mr van Hagen of his conversation with one or other of Mr West and Mr Bowe. It is, at best, second-hand hearsay of something that may have been no more than a rumour of unidentified source. Likewise, I put to one side Mr Bowe's hearsay evidence of what he 'believed' was a conversation he had with Mr Weber or Mr West in which one or other of them told him that DHS did not require the report. Apart from being no more than second-hand hearsay evidence that DHS did not require a final report, it says nothing about who at DHS made or delivered the decision that DHS did not require a final report. I do not overlook Mr Weber's evidence that it was possible Ms Campbell told him the report was not required. But that takes the matter no further. Mr Weber could not remember whether he had such a conversation and, as he said in evidence in this investigation, he was sure that, if it had occurred, he would have remembered it. Even taken at its highest, it says nothing against the possibility that it was Ms Golightly who communicated the message.
1242. Each of Ms Golightly and Ms Campbell had the authority to give the direction and, in view of Mr McNamara's evidence, each was, generally speaking, sufficiently concerned about the risks of FOI applications and the leaking of documents to be motivated to do so. Other things being equal, therefore, it might appear just as probable that Ms Campbell gave the direction as that Ms Golightly did so. But over and above what has already been said on the subject, there are 4 additional considerations which, in my view, point to the conclusion it was Ms Golightly who gave the direction, and that she did so without the involvement of Ms Campbell.
1243. First, although Ms Campbell may have seen the draft engagement letter when first reviewing PwC's proposal, and may have been aware at the time that it provided for a final report, unlike Ms Golightly Ms Campbell was not involved in the day-to-day supervision of PwC's work and she did not seek to bend the results of the review in ways that Ms Golightly more than once attempted.

1244. Secondly, as can be seen from the evidence earlier set out when dealing with Ms Musolino's recommendation to obtain end-to-end review, Ms Golightly was obsessively concerned lest she be criticised for the role she had played in mismanaging the OCI program. By contrast, by retaining PwC to advise on what had gone wrong and to plan a way forward – and in so doing baring all to the Minister in terms of past failings and how much it would take to fix – Ms Campbell presents as having been far more concerned with rectifying problems of Ms Golightly's creation than hiding from personal criticism and censure.
1245. Thirdly, Ms Golightly was the delegate responsible for administration of the contract and, therefore, more likely than Ms Campbell to be the one to decide what was and was not to be done and delivered under the contract.
1246. Fourthly, Ms Campbell gave sworn evidence before the Royal Commission and uncontradicted sworn evidence in this investigation that she did not make or participate in any decision to direct PwC not to deliver a final report and she did not instruct PwC or direct anyone at DHS to instruct PwC not to deliver the final report.

Conclusion

1247. I conclude it is more likely than not that Ms Golightly made and conveyed the decision that PwC was not required to deliver a final report and that she did so without the involvement of Ms Campbell.

Scott Morrison

1248. The Royal Commission referred Mr Morrison for consideration of whether he engaged in corrupt conduct on the basis that:¹⁵³⁷

- a. ‘Mr Morrison was not entitled without further question to rely on the contradictory content of the NPP on the question of the DSS legal position when he proposed the NPP to the ERC’
- b. ‘Mr Morrison allowed Cabinet to be misled because he did not make that obvious inquiry’ [of why, given DSS’ earlier statement that legislative amendment would be required, the NPP stated that legislative amendment was not required]’

1249. The Royal Commission stated that, in its view:¹⁵³⁸

The evidence and circumstances detailed ... in the Commission’s report raises for consideration whether Mr Morrison had knowledge of the misleading effect of the NPP and, or alternatively, dishonestly refrained from making an obvious inquiry that would have revealed the misleading effect of the NPP.

Did Mr Morrison mislead the Cabinet in 2015?

Was Mr Morrison entitled to rely on the NPP?

1250. The Royal Commission’s finding that Mr Morrison was not entitled to rely on the NPP implies that Mr Morrison was under a duty to appreciate that the NPP was or may be misleading and that he breached the duty by failing to make the ‘obvious inquiry’ of ‘why ... DSS appeared to have reversed its position on the need for legislative change’.¹⁵³⁹

1251. In the view of the Royal Commission, that duty inhered in the principle of Cabinet ministerial responsibility described in the *Cabinet Handbook*, 8th Edition as follows:¹⁵⁴⁰

23. In upholding the principles of collective responsibility and Cabinet solidarity, Ministers must:

...

1537 Royal Commission into the Robodebt Scheme, Final Report, 106; Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 12.

1538 Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 12.

1539 Royal Commission into the Robodebt Scheme, Final Report, 106.

1540 Royal Commission into the Robodebt Scheme, Final Report, 105-106.

(f) Ensure that Cabinet submissions provide enough detail on risk and implementation challenges to ensure the Cabinet can make an informed decision on the efficacy of the proposal.

...

80. Ministers are expected to take full responsibility for the content, quality, and accuracy of advice provided to the Cabinet under their name. Ministers bringing forward submissions are also responsible for ensuring that the consultation necessary to enable a fully informed decision to be taken occurs at both ministerial and officials [sic] levels. It is particularly important that there is agreement on factual matters, including costs.

1252. The Royal Commission reasoned that the principle there described imposed an obligation on Mr Morrison to detect and arrest the misleading or potentially misleading effect of the NPP because the NPP ‘was directly relevant to the DSS responsibility for income support policy and therefore relevant to Mr Morrison’s administration of the department’.¹⁵⁴¹

Mr Morrison knew that the use of income averaging was the primary basis of the ‘new approach’ described in the Executive Minute and that DSS had advised DHS that legislative change was required to implement the DHS proposal in that way. The NPP represented a complete reversal of the legal position without explanation.

1253. The Royal Commission considered that, in those circumstances:¹⁵⁴²

Mr Morrison was not entitled without further question to rely upon the contradictory content of the NPP on the question of the DSS legal position when he proposed the NPP to the ERC. The proper administration of his department required him to make inquiries about why, in the absence of any explanation, DSS appeared to have reversed its position on the need for legislative change. If he had asked Ms Wilson, she would have told him that it was because DHS had ostensibly reversed its position on income averaging. He chose not to inquire.

1254. The Royal Commission concluded:¹⁵⁴³

1541 Royal Commission into the Robodebt Scheme, Final Report, 106; Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 12.

1542 Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 12.

1543 Royal Commission into the Robodebt Scheme, Final Report, 106; Royal Commission into the Robodebt Scheme, Final Report – Confidential Chapter, 12.

Mr Morrison allowed Cabinet to be misled because he did not make that obvious inquiry. He took the proposal to Cabinet without necessary information as to what it actually entailed and without the caveat that it required legislative and policy change to permit the use of ATO PAYG data in the way proposed ... He failed to meet his ministerial responsibility to ensure that Cabinet was properly informed about what the proposal actually entailed and to ensure that it was lawful.

Mr Morrison's responsibility

1255. The passage from the *Cabinet Handbook* 8th Edition cited above reflects the Westminster system constitutional convention of ministerial responsibility that ministers are ultimately responsible for the actions and omissions of their departments. It is grounded in the constitutional imperative of responsible government that there must be at least one elected official answerable to parliament for each government decision regardless of whether the elected official is personally at fault.¹⁵⁴⁴
1256. In Australia, as in the United Kingdom, one aspect of the convention is the principle of Cabinet solidarity (or collective responsibility) which dictates that, regardless of personal fault, Cabinet is answerable for the acts and omissions of each Cabinet minister. Correlatively, each Cabinet minister, regardless of personal fault, is responsible to the Cabinet for the actions and omissions of the minister's department.¹⁵⁴⁵

1544 Dicey A V (1952), *Law of the Constitution* (9th Ed.) at 324 et seq.

1545 Mulgan R (2012), *Assessing Ministerial Responsibility*. In K. D. C. L. (Ed.), *Ministerial Careers and Accountability in the Australian Commonwealth Government* (1st ed., Vol. 1, pp. 177-193). ANU ePress.
<https://doi.org/10.22459/MCAACG.09.2012.09>, at 178; *Cabinet Handbook* - 15th edition at [12]; Strøm, Kaare; Müller, Wolfgang C.; Bergman, Torbjörn (2006-01-19). *Delegation and Accountability in Parliamentary Democracies*. OUP Oxford. ISBN 9780199291601.

1257. In the present context, however, of an investigation into allegations of corrupt conduct, we are not so much concerned with Diceyan theory of ministerial accountability and Cabinet solidarity as with personal obligations of honesty and good faith. Thus, although Mr Morrison may have been responsible to Cabinet for the failings of DSS – in particular for DSS’ failings in not preventing the shortcomings of the NPP and checklist – it by no means necessarily follows that Mr Morrison was personally at fault for not detecting the failings of DSS or that he set out to act dishonestly or in bad faith. The question of any personal shortcoming requires consideration of the system and circumstances of ERC’s operation at the time of its adoption of the NPP.

Inconsistency between the Executive Minute of 12 February 2015 and the NPP of 25 March 2015

1258. Although there were obvious differences between the Executive Minute and the NPP, there are several reasons to regard it as unsurprising that Mr Morrison did not perceive the 2 documents to be relevantly inconsistent.

1259. First, the uncontradicted evidence before the Royal Commission and in this investigation is that, at relevant times, it frequently occurred in the development of policy proposals that different departments had different views about a proposal at the outset of its development and then later changed their stance over the course of further development.¹⁵⁴⁶ Rather than jumping in at the outset and endeavouring to resolve differences there and then, ministers would frequently wait and rely on the development process for the differences to be addressed and resolved by agreement between the departments.¹⁵⁴⁷ As Mr Morrison explained in evidence, the approach ministers adopted was one of:¹⁵⁴⁸

Let's not prejudge very early in the process. That is what the process is supposed to deliver. We'll have that discussion should it become relevant at the time, but let the departments do their work and they'll bring the submission forward.

1546 NACC Transcript, 2 October 2025, Scott Morrison, T48; RRC Transcript, 14 December 2022, Scott Morrison, T1801.

1547 NACC Transcript, 2 October 2025, Scott Morrison, T48.

1548 NACC Transcript, 2 October 2025, Scott Morrison, T48.

1260. Secondly, as the evidence also establishes, an Executive Minute was not in any way equivalent to an NPP.¹⁵⁴⁹ In this case, the signed Executive Minute was an authority for DHS and DSS to proceed to develop the PAYG Clean Up proposal through discussion and consultation between the 2 departments.¹⁵⁵⁰ By contrast, under the procedures of Commonwealth government administration that applied in 2015 (and presumably still do), an NPP represented the final advice of the sponsoring department of the results of its completed assessment of a fully developed proposal.¹⁵⁵¹ As such, it was perceived as a warranty given by the secretary of the sponsoring department to the minister of the sponsoring department and to other involved ministers that all the issues had been identified and were adequately explained in the NPP and checklist.¹⁵⁵² Ministers were expected to and did rely on the warranty and thus on the NPP and checklist.¹⁵⁵³
1261. In this case, the Online Compliance Intervention (OCI) NPP represented the final advice of both DHS and DSS of the results of each department's completed assessment of the fully developed OCI proposal, and a warranty given by the secretary of each department to Ms Payne, Mr Morrison and other involved ministers that all issues had been identified and were adequately explained in the NPP and checklist. Ms Payne, Mr Morrison and other involved ministers were expected to and did rely on that warranty and so on the NPP and checklist. Hence, to the extent that there were differences between the Executive Minute and the NPP, it was to be expected that Ms Payne and Mr Morrison would look to the NPP as DHS' and DSS' authoritative warranty that the differences had been resolved to the satisfaction of both departments.¹⁵⁵⁴

1549 NACC Transcript, 2 October 2025, Scott Morrison, T15, T46-47.
1550 NACC Transcript, 2 October 2025, Scott Morrison, T47.
1551 NACC Transcript, 2 October 2025, Scott Morrison, T47.
1552 NACC Transcript, 2 October 2025, Scott Morrison, T44, T47, T50.
1553 NACC Transcript, 2 October 2025, Scott Morrison, T47.
1554 NACC Transcript, 16 September 2025, Jason McNamara, T26-31.

1262. Thirdly, it is necessary to bear in mind that Mr Morrison, like many other ministers, was not a lawyer, and therefore did not have, nor could be expected to have, an informed comprehension of how a once-perceived need for legislative amendment had resolved, without fundamental change to the structure of OCI, to the view that legislative amendment was not required.¹⁵⁵⁵ It was enough, and it was necessary for the proper efficient processes of government, for Mr Morrison, as with other like ministers, to be assured by the NPP and checklist that the subject matter experts within each department were agreed that legislative amendment was not required.¹⁵⁵⁶
1263. Fourthly, under the Cabinet process protocols that operated in 2015 (and presumably still do), before any NPP could be submitted to the ERC for adoption the NPP and supporting costings had to be subjected to the discipline of the complete Cabinet consultation process. That involved submission of the proposal to other affected departments – the Department of Finance, the Department of Prime Minister and Cabinet, and AGS – for consideration and consultation.¹⁵⁵⁷ As part of that process, final views on technical matters such as legal and constitutional issues and other considerations covered in the NPP checklist were either resolved by consultation or left unresolved and the results were reflected in the coordination comments provided on the NPPs.¹⁵⁵⁸
1264. One of the many checks and balances involved in the consultation process that applied in this case was that other affected departments, particularly the Department of Finance, had to understand the essence of OCI and hence that averaging was how OCI's projected savings were to be achieved. Accordingly, as can be seen from the evidence earlier set out, officers of both DHS and DSS were involved in the consultation process in answering questions and providing requested information.¹⁵⁵⁹

1555 NACC Transcript, 2 October 2025, Scott Morrison, T48; NACC Transcript, 16 September 2025, T 31.

1556 NACC Transcript, 15 September 2025, Finn Pratt, T36.

1557 NACC Transcript, 2 October 2025, Scott Morrison, T43.

1558 RRC Transcript, 14 December 2022, Scott Morrison, T1819, T1826.

1559 See, eg, CTH.2007.0002.7329_R, Email, 'Re- For clearance- 001944- Strengthening the Integrity of the Welfare Payments System', 9 March 2015; DSS.8500.0001.1116_R, Email, 'PM&C comments on NPPs, and revised submission time of 10am Wed 11 Mar 15 close out of all Central and Affected Agency comments in NPPs for 2015-16 Portfolio Budget Submission', 10 March 2015; Third Statement of Senator the Hon. Marise Payne, 21 February 2023, MPA.9999.0001.0019_R, 3 [1](g)-(h); CTH.4000.0399.0050_R, Email, 'Re- compliance NPP', 11 March 2015; CTH.2007.0002.7344_R, Email, 'Re- [printed] update on PB Sub and DHS NPPs', 11 March 2015; CTH.3027.0001.5004_R, Email, 'FW- NPP changes as discussed', 11 March 2015, 1; PM2, DSS.8500.0001.1415, Email, 'FW- Rollback of 2015-16 Portfolio Budget Submission for Coordination Comments', 19 March 2015.

1265. Elsewhere I have concluded that, on 27 February 2015, Mr Withnell misrepresented to Mr Kimber and Mr McBride that the ‘revised proposal’ would not involve averaging; and that, in an effort to support the misrepresentation, Mr Withnell amended the NPP by deleting reference to averaging and by adding the statement that OCI would not change the way in which income was assessed for social security purposes.
1266. Despite those misrepresentations, however, at least by 25 March 2015 Mr Kimber and Mr McBride (and perhaps also Ms Wilson) can have been in no doubt that the ‘revised proposal’ did involve averaging, and they had come to accept the DHS point view that it was averaging of a kind which, in principle, was no different from the kind of averaging ‘as a last resort’ that had long been used by DHS, and so did not require legislative amendment.
1267. There is no suggestion that DSS attempted to hide the basis of its conclusions from the other departments involved in the Cabinet consultation process, or that any of the other departments were under any illusion as to the way in which the process of automated default averaging was expected to achieve the projected savings of the OCI proposal. To repeat, those other departments – particularly the Department of Finance – just like DSS, had to have understood that it was only by means of automatic default averaging that OCI’s projected savings could be achieved. Yet none of the other departments or their ministers perceived there to be a problem with what was presented in the NPP.

Did Mr Morrison fail to make an obvious inquiry?

1268. Unless Mr Morrison appreciated there was relevant inconsistency between the Executive Minute and the NPP, he could not be expected to make inquiries about how the inconsistency had been or was to be resolved. In his evidence in this investigation, Mr Morrison swore that he did not regard the Executive Minute and the NPP as relevantly inconsistent.¹⁵⁶⁰ His concern was with the NPP as the departments’ authoritative advice on the OCI proposal and the issues involved. I accept that evidence.

¹⁵⁶⁰ NACC Transcript, 2 October 2025, Scott Morrison, T47-48.

1269. The Royal Commission made much of the statement in the NPP that OCI did not involve any change to the way in which income from employment was assessed for social security purposes. The Royal Commission suggested that Mr Morrison must have known that was wrong or at least misleading because Mr Morrison knew that OCI involved automated default averaging for customers who failed to respond, in contrast to the system of compliance officer investigation and assessment that previously applied.¹⁵⁶¹
1270. The Royal Commission was also critical of evidence Mr Morrison gave before the Royal Commission that he had been informed there was an established practice of using averaging as the basis of raising a debt where customers did not respond.¹⁵⁶² In the view of the Royal Commission, that was directly contrary to the statement in the Executive Minute that traditional compliance reviews were ‘a manual staff intensive verification process involving obtaining information from customers and third parties’ and the ability to change that process was limited because of ‘legislative and policy constraints on the need to apply income fortnightly to determine overpayments’.¹⁵⁶³
1271. The Royal Commission invoked evidence given before the Royal Commission by Ms Wilson, Mr Whitecross, Mr McBride and Mr Kimber that they had no knowledge of a longstanding practice of income averaging.
1272. The facts disclosed by evidence given in this investigation present a different complexion. Certainly, it was the case before the advent of OCI that each intervention was conducted manually by a compliance officer who usually would attempt to contact the recipient and seek information from relevant third-party sources. But the evidence in this investigation is that there was also a longstanding practice of applying averaging ‘as a last resort’ where, after thorough examination, the compliance officer was unable to find sufficient information to make an informed assessment.¹⁵⁶⁴ The difference between the previous practice and OCI was that OCI applied averaging to customers who failed to respond ‘as a last resort’ without a compliance officer first conducting a search for third-party information.

1561 Royal Commission into the Robodebt Scheme, Final Report, 106.

1562 Royal Commission into the Robodebt Scheme, Final Report, 101-102.

1563 Royal Commission into the Robodebt Scheme, Final Report, 101-102, 106.

1564 NACC Transcript, 5 August 2025, Jason Ryman, T58-59; NACC Transcript, 3 September 2025, Scott Britton, T191, T206; NACC Transcript, 3 October 2025, Catherine Halbert, T14; NACC Transcript, 22 August 2025, Serena Wilson, T62.

1273. Further, in their evidence in this investigation Mr Ryman and Mr Britton said that, although averaging as a last resort was not ordinarily used in the past without first attempting to obtain sufficient information from third-party sources, they believed (as they had believed from the outset of development of the PAYG Clean Up proposal) that there was no difference in principle between the kind of averaging as a last resort that was applied under the previous manual process and the kind of automatic default averaging as a last resort that was applied under OCI.¹⁵⁶⁵ Hence, in their view, OCI did not change the way in which income was assessed and legislative amendment was not required.¹⁵⁶⁶
1274. The Royal Commission accepted that evidence,¹⁵⁶⁷ and so do I. Mr Ryman and Mr Britton did honestly believe just that. And for reasons previously expressed, I suspect that Ms Golightly and Mr Withnell may also have believed it.
1275. Likewise, although Mr Kimber's and Mr McBride's first response to the PAYG Clean Up proposal was that the kind of automatic default averaging it contemplated would be different in principle from the kind of averaging as a last resort that was applied under the previous manual process, and therefore it would require legislative amendment, they later changed their minds. Over time Mr Kimber's and Mr McBride's views altered such that, at some point between 5 March 2015 and 25 March 2015, they reached the conclusion that legislative amendment was not required.
1276. Mr Whitecross and Ms Wilson are in different positions. Mr Whitecross, like Mr Kimber and Mr McBride, was initially of the view that legislative amendment was required.¹⁵⁶⁸ But by the time of submission of the NPP to ERC, Mr Whitecross had moved back from his role as acting Group Manager, Social Security Policy to his substantive role of Branch Manager, Rates and Means Testing Policy, DSS, and was no longer part of the decision-making process.¹⁵⁶⁹

1565 NACC Transcript, 5 August 2025, Jason Ryman, T56; NACC Transcript, 3 September 2025, Scott Britton, T191.

1566 NACC Transcript, 5 August 2025, Jason Ryman, T56; NACC Transcript, 3 September 2025, Scott Britton, T191

1567 Royal Commission into the Robodebt Scheme, Final Report, 69.

1568 NACC Transcript, 14 August 2025, Andrew Whitecross, T14, T52-53, T60-61.

1569 NACC Transcript, 14 August 2025, Andrew Whitecross, T64-65; NACC Transcript, 18 September 20125, Kathryn Campbell, T61.

1277. Ms Wilson's position is different again since, for some time after 27 February 2015, she was seemingly alone among all other involved DSS officers in believing that OCI did not involve averaging. But if not before, then likely not long after OCI was approved, she, too, came to realise that it involved automatic default averaging, and eventually she, too, was persuaded that it did not require legislative amendment.
1278. It is unnecessary for the purpose of this report to determine whether Mr Morrison was told before 25 March 2015 that averaging as a last resort had long been used by DHS. Ultimately, it does not bear upon the issues. What is of significance, however, is that the evidence just referred to shows the situation was not as clear as the Royal Commission found in its report. For if upon receiving the NPP for submission to the ERC Mr Morrison had asked Mr Pratt how DSS had come to change its mind about the need for legislative amendment, Mr Pratt would presumably have consulted Ms Wilson, who in turn would presumably have consulted Mr Kimber as she had done on other occasions, with the result that the answer Mr Pratt would likely have provided was that DSS had acquired a better understanding of the way in which OCI complied with legislative requirements.
1279. If that answer had been given, Mr Morrison would hardly have been at fault if he had accepted it. And since that answer is in effect precisely what Mr Pratt certified by his signature on the NPP, I have difficulty in seeing why Mr Morrison should be regarded as at fault for not suspecting it.

Reliance on the Finance Green brief

1280. There are also some further reasons in support of that conclusion. As is detailed earlier in this report, Finance Green briefs were the basis on which ERC conducted its business for all spending measures.¹⁵⁷⁰ Each brief contained a summary prepared by the Department of Finance of each of the proposals dealt with in the brief, the associated financial implications of the proposal, and the Department of Finance and other central agency views on the proposal.¹⁵⁷¹ Although NPPs were attached to the summaries, the ERC operated by reference to the summaries with usually scant regard to the attachments.¹⁵⁷²

1570 NACC Transcript, 2 October 2025, Scott Morrison, T 43.

1571 NACC Transcript, 2 October 2025, Scott Morrison, T 43.

1572 NACC Transcript, 2 October 2025, Scott Morrison, T 43-44.

1281. At first sight, that may appear less than sufficient care for the transaction of Cabinet business. But the evidence is that, in the reality of modern government at the time of the events in issue (and presumably still), the sheer volume of proposals and the limited time available in which to consider each allowed for no more. The ERC involved ‘constant meetings’ for about 6 to 8 weeks preceding the Budget between March and April, lasting 4 to 6 hours at a time, even while ordinary sittings of parliament continued.¹⁵⁷³ Members of the ERC were thus reliant on and trusted implicitly in the integrity of the Cabinet process and the consequent accuracy of the Finance Green briefs.¹⁵⁷⁴ The uncontradicted evidence before the Royal Commission and in this investigation is that it was necessary to do so to enable the proper functioning of Cabinet and the work of government to continue. Ministers had to rely on the Cabinet process to get through the volume of business while confidently making decisions.
1282. To say so is not to gainsay that a presenting minister and portfolio minister had special responsibilities to Cabinet to ensure that an NPP provided enough detail on risk and implementation challenges to ensure that Cabinet could make an informed decision on the proposal; or that a presenting minister and portfolio minister were expected to take full responsibility for the content, quality and accuracy of advice provided to the Cabinet under their names. Those were and are requirements of the principle of Cabinet solidarity. But that does not mean that the presenting and portfolio ministers were (or presumably are) expected to examine or interrogate each proposal they brought to Cabinet with the time, skill and insight of the departmental experts whose role it was to ensure that the NPP complied in all respects with Cabinet requirements. If the department failed to ensure that an NPP was compliant, the presenting minister and to a greater or lesser extent the portfolio minister were ultimately responsible; but not necessarily, if at all, because of any personal failing on the part of those ministers to do what was to be expected of a competent minister in the presenting or portfolio minister’s position. Neither presenting ministers nor portfolio ministers had or presumably have the time, or in most cases ability, to reinterpret or re-examine matters covered in the checklist; especially the question of whether legislation is required. Ministers were, and presumably still are, expected to and did rely on the warranty of the secretaries of the departments who had signed off on their Cabinet submissions.

1573 NACC Transcript, 2 October 2025, Scott Morrison, T 43.
1574 NACC Transcript, 2 October 2025, Scott Morrison, T 43.

1283. In this investigation, the evidence is that the OCI NPP was but one of 51 NPPs comprising the Social Services 2015-2016 Portfolio Budget Submission (itself but one of the many other multi-NPP Portfolio Budget Submissions) with which Mr Morrison and other ERC ministers were expected to and did deal with on the faith of the Cabinet process during the 6 weeks of 2015 ERC pre-budget meetings.¹⁵⁷⁵
1284. In those circumstances, it is objectively improbable that Mr Morrison would have perceived there to be such inconsistency between the Executive Minute and the NPP as to require further interrogation and justification. It is more likely that he, like any other minister working at that pace with that volume of business, would have been preternaturally disposed to rely on the Finance Green brief as Mr Morrison has sworn he did.

Refraining from making inquiry

1285. Elsewhere in this report, I have referred to findings by the Royal Commission that Mr Morrison had at some point expressed the wish for DHS to find a way to implement OCI without legislative amendment, and it was that which led some of the officers involved to find a dishonest way to do it.
1286. The idea that Mr Morrison expressed a desire to find a way to proceed without legislative amendment appears also to inform the Royal Commission's conclusion underlying this referral that, despite the NPP checklist and Finance Green brief, there was a possibility Mr Morrison suspected that legislative amendment might be required but dishonestly refrained from doing anything about it.
1287. What I have said already about this referral is enough to dispose of the suggestion that Mr Morrison might have suspected there was need for legislative amendment and kept quiet about it. In my view, none of the evidence before the Royal Commission or in this investigation comes near to substantiating that conclusion, even on the balance of probabilities. But for the sake of completeness, it is appropriate to refer also to 2 final considerations.

¹⁵⁷⁵ NACC Transcript, 2 October 2025, Scott Morrison, T28, T41, T43, T48; Statement of Scott Morrison, 25 November 2022, SMO.9999.0001.0009_R2, _0008.

1288. First, Mr Morrison gave sworn evidence, which I have accepted, that he did not say he wished to proceed without legislative amendment.¹⁵⁷⁶ And notably, every DHS or DSS officer or former officer who has given evidence in this investigation has confirmed that Mr Morrison did not say to them that he wished to proceed without legislative amendment.¹⁵⁷⁷ Whatever, therefore, the source of the idea that Mr Morrison wished to proceed without legislative amendment, it was not because he said anything that put undue pressure on public servants to do so.

1289. Secondly, if Mr Morrison had suspected the NPP was misleading, I think it probable that the last thing he would have done was refrain from speaking up in the hope of OCI being adopted without further delay or investigation. For, as a member of parliament and minister of many years standing, he would almost certainly have foreseen that, were he to do so, there would be a high chance of the deception soon being discovered and of his and his government's subjection to the inevitably adverse political consequences that would follow. Rather than being a reason to suspect a dishonest failure to inquire, the fact that Mr Morrison did not make further inquiries appears more probably consistent with him not having perceived there was a need to do so.

Conclusion

1290. For the reasons expressed, I do not accept that Mr Morrison should have realised the NPP was misleading; and, accordingly, I do not consider that his failure to detect the NPP was misleading was in breach of any personal obligation of honesty or good faith. Like other ministers, Mr Morrison was expected to rely on the advice of his department and on the NPP and the Finance Green Brief, and he did so. His failure to detect that the NPP was misleading was caused by the failure of DHS and DSS, particularly of DSS, to advise him and other concerned ministers that legislative amendment was required, and to ensure that the need for legislative amendment was noted in the checklist.

1576 NACC Transcript, 2 October 2025, Scott Morrison, T37-38.

1577 NACC Transcript, 18 September 2025, Kathryn Campbell, T53-54; NACC Transcript, 19 September 2025, Kathryn Campbell, T111-115; NACC Transcript, 2 October 2025, Serena Wilson, T5.

Observations and recommendations

1291. The Commission has corruption prevention and education functions and can make corruption prevention recommendations as part of its investigation reports.
1292. The findings of corrupt conduct arising from this investigation are confined to Mr Withnell and Ms Wilson. Each of those persons is now retired from the APS. Nonetheless, I consider it is appropriate to make the following observations in relation to what has occurred.
1293. I have concluded that the principal contributing factors to Mr Withnell's corrupt conduct were:
- a. DHS' Customer Compliance Branch's profound ignorance of social security law and legislation
 - b. the failure of Customer Compliance Branch staff to properly involve DHS' Legal Services Division in the development of the OCI program and in the preparation and approval of the NPP submitted to ERC
 - c. a rushed and unrealistic timetable for development of the OCI program and the 2015-16 budget measure
 - d. Ms Golightly's exertion of unreasonable pressure on her staff to deliver the OCI program and the 2015-16 budget measure, within unrealistic time limits and initial indicative cost predictions, despite clearly identified concerns that, viewed objectively, warranted independent legal advice, further deliberation, and further development before implementation.
1294. I consider the principal contributing factors to Ms Wilson's corrupt conduct were:
- a. her failure, in February and March 2015, to ensure that her staff were satisfied the OCI program would comply with legislative requirements
 - b. her failure, post March 2015, to monitor and ensure that DHS implemented the OCI program without averaging in the manner that DHS had represented to her that it would
 - c. her uninterest in and lack of concern over the serious issues regarding the administration of the OCI program that prompted the Ombudsman's own motion investigation to commence in January 2017

- d. her failure then to identify to the Ombudsman the basis on which she had been persuaded in February 2015 that OCI would comply with legislative requirements, namely, the assurances given to her by DHS that averaging would not be used, and her subsequent discovery that DHS had not adhered to those assurances
 - e. her subsequent conduct in supporting the DHS position that the OCI program was lawful instead of disclosing to the Ombudsman the full facts and circumstances of what had occurred.
1295. If competent independent legal advice had been sought in relation to the OCI proposal before its submission to ERC, it is very likely that the OCI program would not have been approved without necessary legislative amendment, if at all.
1296. Consequently, the most obvious and effective way of ensuring the events examined in this investigation do not occur again is to require that before any budget measure of the kind is submitted to ERC for adoption, it must first be submitted for consideration by a competent independent legal adviser; that the measure must receive from the adviser a formal, written legal opinion that the measure complies in all relevant respects with statutory and other legal requirements; and that the opinion must be annexed to the measure as part of the documentation submitted to ERC for their consideration of the proposal.
1297. The Robodebt Royal Commission made several recommendations to improve the rigour of the budget process, including requirements to obtain independent legal advice (recommendations 15.1-15.5).¹⁵⁷⁸ The Royal Commission also made recommendations about how responses to the Ombudsman should be managed by departments (recommendations 21.1-21.5).¹⁵⁷⁹
1298. I consider that these recommendations are sufficient to prevent repetition of the kind of corrupt conduct that Mr Withnell engaged in (in February 2015 in the lead up to the approval of the Robodebt Scheme by the Cabinet in March 2015) and the corrupt conduct Ms Wilson engaged in (in responding on behalf of DSS to the Ombudsman's own motion investigation in February 2017).

1578 Report of Royal Commission into the Robodebt Scheme, 7 July 2023, xv.
 1579 Report of Royal Commission into the Robodebt Scheme, 7 July 2023, xix-xx.

1299. I note, too, that the Robodebt Royal Commission made recommendations regarding the legal practice and training of government lawyers (recommendations 19.1–19.13) that would serve to address some other issues that were the subject of the referrals but that have not resulted in findings of corrupt conduct.¹⁵⁸⁰
1300. In February 2026 I was advised by PM&C that:
- a. Recommendations 15.1 – 15.5 have been implemented
 - b. Recommendations 19.1 – 19.13 have mostly been implemented with a small number still in the process of being implemented
 - c. Recommendations 21.1 – 21.5 have been implemented.
1301. For completeness, I add that I respectfully agree with many of the Robodebt Royal Commission’s criticisms regarding the serious maladministration that occurred in the development and implementation of the Robodebt Scheme, including the Royal Commission’s criticisms of how DHS and DSS responded to concerns raised by recipients, their advocates, the media, and the Ombudsman about the lawfulness of the Scheme.
1302. However, serious maladministration is not necessarily, or frequently at all, the same as corrupt conduct as defined by the NACC Act, despite such serious effects as it may have upon recipients, their families and the reputation of the APS. Hence the findings of corrupt conduct that have resulted from this investigation are more limited than those which it might have been thought the Royal Commission’s report suggested would be the case.
1303. To quote from Justice Murphy’s decision in decision in *Katherine Prygodicz & Ors v The Commonwealth of Australia (No 2)* [2021] FCA 634 (11 June 2021):

1580 Report of Royal Commission into the Robodebt Scheme, 7 July 2023, xvii–xviii.

The proceeding has exposed a shameful chapter in the administration of the Commonwealth social security system and a massive failure of public administration. It should have been obvious to the senior public servants and to the responsible Minister(s) at different points who designed and were charged with overseeing the Robodebt system that many social security recipients do not earn a stable or constant income, and any employment they obtain may be casual, part-time, sessional, or intermittent and may not continue throughout the year. Where a social security recipient does not earn a constant fortnightly wage, does not earn income every fortnight, or only works for intermittent periods in a year, their notional or assumed fortnightly income based on income averaging is unlikely to be the same as their actual fortnightly income. It should have been plain that in such circumstances the automated Robodebt system may indicate an overpayment of social security benefits when that was not in fact the case. Yet, in the absence of further information from social security recipients, that is the basis upon which the Commonwealth raised and recovered debts for asserted overpayments of social security benefits.

Ministers and senior public servants should have known that income averaging based on ATO data was an unreliable basis upon which to raise and recover debts from social security recipients. **However, it is quite another thing to be able to prove to the requisite standard that they actually knew that the operation of the Robodebt system was unlawful. There is little in the materials to indicate that the evidence rises to that level. I am reminded of the aphorism that, given a choice between a stuff-up (even a massive one) and a conspiracy, one should usually choose a stuff up.** [Emphasis added.]

Determination

1304. With respect to the referral made by the Royal Commission in relation to Mr Withnell, I am satisfied that Mr Withnell engaged in corrupt conduct because at all relevant times, Mr Withnell knew and intended that automatic default averaging would be central to OCI, and I am satisfied that, by representing to Mr Kimber and Mr McBride that OCI would not involve averaging, Mr Withnell engaged in deliberate conduct that was designed to mislead Mr Kimber and Mr McBride, and, through them, DSS. This amounted to corrupt conduct within the meaning of section 8(1)(a) and further or alternatively section 8(1)(b) of the NACC Act.
1305. With respect to the referral made by the Royal Commission in relation to Ms Wilson, I am satisfied that Ms Wilson engaged in corrupt conduct by intentionally misleading, or attempting to mislead, the Ombudsman. Ms Wilson's conduct in so misleading or attempting to mislead the Ombudsman amounted to dishonest performance by Ms Wilson of her official functions or duties as a public official and further, or alternatively, the dishonest exercise of her official functions or duties as a public official for the improper purpose of misleading the Ombudsman, and therefore was corrupt conduct within the meaning of section 8(1)(a) and further, or alternatively, section 8(1)(b) of the NACC Act.
1306. With respect to the referral made by the Royal Commission in relation to Ms Halbert, I am satisfied that Ms Halbert did not engage in corrupt conduct.
1307. With respect the referral made by the Royal Commission in relation to Ms Musolino, I am satisfied that Ms Musolino did not engage in corrupt conduct.
1308. With respect to the referral made by the Royal Commission in relation to Ms Campbell, I am satisfied that Ms Campbell did not engage in corrupt conduct.
1309. With respect to the referral made by the Royal Commission in relation to Mr Morrison, I am satisfied that Mr Morrison did not engage in corrupt conduct.

Appendix

Investigation team

Deputy Commissioner

On 4 April 2025, conduct of the investigation was delegated to Deputy Commissioner Kylie Kilgour.

Deputy Commissioner Kilgour did not participate in the original decision-making process. She was appointed as a Deputy Commissioner on 12 February 2024, which was after the original decision had been made (but before it was publicly announced). She had no conflicts of interest in relation to any of the 6 referred persons. She had never met, worked with, or socialised with any of them.

Chief Advisor

Given his familiarity with the referrals and the potential corruption issues, Mr Geoffrey Nettle was engaged by the CEO as a consultant in the role of Chief Advisor. He assisted the Deputy Commissioner with all aspects of the investigation, including hearings, analysis of evidence, drafting proposed findings, consideration of submissions in reply from the referred persons, and the settling of the final report. Mr Nettle had no conflicts of interest in relation to any of the referred persons.

Counsel Assisting

Mr Gary Hevey SC and Ms Jenny Croxford were appointed as Counsel Assisting. Mr Nettle recommended Mr Hevey's engagement, and Mr Hevey recommended Ms Croxford's engagement. Consistent with the Commission's usual practice in appointing Counsel Assisting, the Commission's Legal branch managed their engagement, and the CEO approved the arrangements.

Counsel Assisting led questioning during the hearings and made submissions to the Deputy Commissioner and Mr Nettle on the findings open to be made against each of the 6 referred persons. Mr Hevey and Ms Croxford had no conflicts of interest in relation to any of the referred persons.

Solicitors Assisting

A team of legal practitioners from the Australian Government Solicitor (AGS) was engaged as Solicitors Assisting. None of the team had worked on the Royal Commission or the Robodebt class action, although some had assisted Mr Nettle with the section 41(5) reconsideration process. An internal information barrier was established within AGS to quarantine the team from other AGS lawyers who had worked on other Robodebt-related matters. The team prepared detailed chronologies of events the referrals encompassed, drafted notices to produce and summonses, managed witnesses' attendance at the hearings, supported Counsel Assisting during the hearings, and helped prepare the proposed findings and the final report.

Investigation team

Two investigators and an intelligence analyst from the Commission's Victorian Operations team assisted with locating and contacting witnesses, serving summonses, conducting a small number of voluntary interviews, and other investigative tasks.

A Witness Liaison Officer was also part of the investigation team and supported each of the witnesses in the lead-up to, and during, their attendance at hearings. The independent witness counselling service offered to all witnesses who appear before the Commission was made available to the witnesses in this investigation.

No Commission staff involved in the investigation had participated in the initial consideration of the referrals in 2023-24, and none had conflicts of interest in relation to any of the referred persons.

The NACC CEO issued a direction to all NACC staff creating an information barrier between the investigation team and the rest of the Commission. This included the Commissioner and the other Deputy Commissioners.

Decision not to hold public hearings

Legislative framework

Section 73 of the *National Anti-Corruption Commission Act 2023* (Cth) (NACC Act) sets out how the Commission decides whether an investigation hearing should be held in private or in public.

The NACC Act requires that investigation hearings are generally held in private. A hearing **may** be held in public only if **both** of the following requirements are met:

- exceptional circumstances justify holding a public hearing **and**
- it is in the public interest to hold the hearing in public.

Section 73(3) of the NACC Act includes a non-exhaustive list of matters that may be taken into account in deciding whether to hold a public hearing.

What a NACC investigation hearing is – and is not

A NACC investigation hearing is a powerful investigative tool. It forms one step in a broader inquisitorial investigation process: it is **not** the same as a criminal trial.

In an investigation hearing:

- witnesses may be compelled to answer questions
- the rules of evidence do not apply
- certain legal privileges available in a criminal trial do not apply.

Criminal trials, by contrast, occur only after an investigation has been completed, charges have been laid, and a prosecutor has decided that prosecution is in the public interest. Court proceedings are generally conducted publicly and are subject to strict procedural and evidentiary safeguards.

This distinction is critical to understanding why hearings are generally held in private. In short, NACC investigation hearings occur at an investigative stage, before facts are established and without the protections that apply in criminal courts.

Application of the statutory test in this investigation

In deciding whether to hold public hearings, the Deputy Commissioner applied the statutory test set out in section 73 of the NACC Act.

Exceptional circumstances

There is no definition of ‘exceptional circumstances’ in the NACC Act. It is a high threshold to meet. That referrals had been made by the Royal Commission did not amount to exceptional circumstances that justified public hearings be held. Referrals by royal commissions and other time limited inquiries often identify matters requiring further investigation, as was the case with the Royal Commission’s referrals.

Public interest considerations

The Deputy Commissioner also considered whether it was in the public interest that public hearings be held, including the matters outlined in section 73(3) of the NACC Act.

The Deputy Commissioner considered that holding investigation hearings in public could:

- risk prejudicing any criminal prosecutions that might arise if serious corrupt conduct could be established.

- cause unfair harm to the reputation, privacy, safety or wellbeing of individuals involved, including witnesses.

In determining the likelihood of prejudice to subsequent criminal proceedings and/or unfair harm to people's reputation, privacy, safety or wellbeing, the ongoing public commentary about the investigation and related processes was an important consideration. That commentary reflected misunderstandings about the nature of the referrals, the investigative role of the Commission, and the absence of any findings at that stage. The Deputy Commissioner was concerned that holding investigation hearings in public could entrench or amplify inaccurate narratives before facts were established. This was not in the public interest.

Ongoing review

Whether public hearings should be held was under constant review. As the investigation progressed, the Deputy Commissioner continued to review whether exceptional circumstances had arisen and whether it would be in the public interest to hold hearings in public.

At no point during the investigation were both those statutory requirements satisfied.