

# Australia's Robodebt fiasco

Lessons for in-house lawyers



**Te Tari Ture  
o te Karauna**  
Crown Law

# Ko wai ahau?

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# What is unethical organisational behaviour?

- Relevant to both public and private sectors
- Sometimes it's easy to spot unethical behaviour in organisations
  - Fraud
  - Preferential treatment
  - Abuse of power
- Can overlap with unlawfulness
- But it can be more insidious than that
  - Unfair
  - Immoral
  - Manipulative

# Why talk about unethical organisational behaviour?

*Our Public Service can only work effectively if it has the trust and confidence of New Zealanders. Without public trust, the Public Service loses its licence to operate. ... Trust and confidence is something that cannot be taken for granted. We as public servants need to keep working hard to build and maintain it. It takes a long time to earn trust, but it can be lost very quickly.*

Public Service Commissioner and Head of Service, March 2023

*New Zealand is held in high regard for the standards of honesty, openness, transparency and integrity in the public sector, but our reputation depends upon our ability to build and maintain a culture that promotes speaking up about wrongdoing.*

Acting in the Spirit of Service: Speaking Up

# What was Robodebt?

- Social security benefits are based on beneficiary's fortnightly income declarations
- Tax assessments are annual income declarations
- Data-matching:
  - Used annual tax assessments to impute a notional or assumed fortnightly income (income averaging – ie divide by 26)
  - Compared notional or assumed fortnightly income to declared fortnightly income
  - Identified potential overpayments
- Previously: manual investigation – Government collected information from employers and financial institutions
- Now: debt was asserted, obligation on beneficiary to engage and disprove it
- Failure to engage or disprove escalated into aggressive debt recovery

# Why might this be problematic?

- As a matter of social security law, benefit eligibility is based upon actual fortnightly income, not annualised income
- This is consistent with the premise underpinning social security benefits – a safety net to ensure people receive help when they most need it
- Many beneficiaries do not earn stable or constant income. Employment may be casual, part-time, sessional, or intermittent, and may not continue throughout the year
- Notional or assumed income based on averaging is unlikely to be the same as actual income
- Robodebt may have indicated a benefit overpayment, when that was not in fact the case

# What were the faulty assumptions?

- Data collected in one context could be applied in another
- Beneficiaries (including former beneficiaries) would engage in an automated system
- Beneficiaries who did engage could prove (or re-prove) their eligibility for benefits (sometimes years later)
- In the absence of engagement or proof, notional or assumed fortnightly income was the best evidence of actual fortnightly income
- This “best evidence” provided a justification for asserting a debt
- Beneficiaries could withstand scrutiny from the State, and would advocate for themselves if the State were wrong

# What were the results?

- Government unlawfully asserted debts totalling at least A\$1.763 billion against approximately 433,000 Australians
- Government then pursued beneficiaries – including through private debt collection agencies – to repay these wrongly asserted debts, and recovered approximately A\$751 million from about 381,000 of them



# What were the results?

*[A] shameful chapter ... and a massive failure of public administration.*

*One thing, however, that stands out from the objections is the financial hardship, anxiety and distress, including suicidal ideation and in some cases suicide, that people or their loved ones say was suffered as a result of the Robodebt system, and that many say they felt shame and hurt at being wrongly branded “welfare cheats”. Some of the objections were heart-wrenching and one could not help but be touched by them.*

Prygodicz v Commonwealth of Australia (No 2) [2021] FCA 634

# What was the response?

- Ombudsman investigation (qualified support)
- Individual reviews before administrative tribunals (most decided in favour of beneficiaries)
- Dogged public interest journalism and political pressure
- Parliamentary inquiries (x 2)
- Class action litigation
- Royal Commission





# What were the red flags?

## 1. Framing

- Budget savings and “welfare fraud”
- As opposed to supporting the most vulnerable in society

## 2. Pace

- Trade-offs between speed and quality
- It's never too late so speak up and call out fundamental flaws

## 3. Transactionalism

- Legality must not be lost sight of
- Understanding context is important, but...
- The enduring importance of frank and fearless, high-quality advice

# What went wrong? How might it have been prevented?

## 4. Fragmentation within organisations

- Beware advice generated from the “wrong place”
- The importance of joining-up

## 5. Uncomfortable advice is still advice

- It can't be ignored **[video]**
- If you disagree or don't take it further, you must document why
- Work may need to be paused while advice is clarified

## 6. Don't avoid escalation and clarification

- Get more authoritative advice
- Seek review or appeal



# What went wrong? How might it have been prevented?

## 6. Be open to critique – don't just reflexively defend

- Internally
- From the frontline **[Video]**
- From stakeholders
- From the outside

## 7. Welcome accountability

- Importance of candour
- Respect their independence





# Further reading and listening

- Report of the Royal Commission into the Robodebt Scheme:  
[www.robodebt.royalcommission.gov.au](http://www.robodebt.royalcommission.gov.au)
- *The Westminster Tradition* podcast
- Rick Morton in [www.thesaturdaypaper.com.au](http://www.thesaturdaypaper.com.au)
- Christopher Knaus and Luke Henriques-Gomez in [www.theguardian.com/au](http://www.theguardian.com/au)

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