

NOTICE OF FILING

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Details of Filing

Document Lodged: Statement of Agreed Facts
File Number: VID611/2019
File Title: DEANNA AMATO v THE COMMONWEALTH OF AUSTRALIA
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 7/11/2019 12:13:19 PM AEDT

A handwritten signature in blue ink, reading 'Warwick Soden'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



STATEMENT OF AGREED FACTS

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL

No VID611 of 2019

DEANNA AMATO

Applicant

COMMONWEALTH OF AUSTRALIA

Respondent

For the purposes of s 191(3)(a) of the Evidence Act 1995 (Cth), this statement sets out the facts that the parties have agreed are not, for the purposes of this proceeding, to be disputed.

The Department and Centrelink

1. Services Australia, formerly known as the Department of Human Services (**Department**), is the department of the Commonwealth government that has responsibility for delivering payments and services to Australian citizens, including social security payments under the *Social Security Act 1991* (Cth) (**SSA**).
2. The payments are delivered by the Department on behalf of other Commonwealth departments and agencies, such as the Department of Social Services (**DSS**) and the Department of Health.
3. At all relevant times, the Department has delivered the payment of Commonwealth allowances and pensions, on behalf of DSS, through the Centrelink Program.
4. The Department has systems in place under which past payments of social security payments may be subject to review to determine whether there has been overpayment of social security benefits and, accordingly, whether debts are owed to the Commonwealth.

Austudy

5. Austudy is one of the programs delivered as part of the Centrelink Program.

Filed on behalf of the Respondent, Commonwealth of Australia

File ref: 19004317

Prepared by: Nerissa Schwarz
AGS lawyer within the meaning of s 55I of the *Judiciary Act 1903*

Address for Service:
The Australian Government Solicitor,
Level 5, 101 Pirie St
ADELAIDE SA 5000

Telephone: 08 8205 4217
Lawyer's Email:
nerissa.schwarz@ags.gov.au

6. The purpose of Austudy is to provide income support to full-time students aged 25 or older. Austudy is also available to apprentices aged 25 or older. Eligibility for Austudy is also subject to income and asset tests.
7. Persons who are eligible for Austudy are entitled to receive fortnightly payments of Austudy, subject to the amount of any income they earn, derive or receive in each fortnight.

The Employment Income Confirmation program

8. From on or about 11 February 2017, the Department implemented a compliance program known as the "Employment Income Confirmation" (**EIC**) program. The EIC program replaced a program known as the "Online Compliance Intervention", which commenced in July 2016.
9. At material times including in August 2017, the EIC program relevantly involved the Department identifying persons who had received social security benefits in a particular financial year in the past and, for each such person:
 - 9.1. obtaining from the Australian Taxation Office (**ATO**) "Pay-As-You-Go" (**PAYG**) income data relating to that financial year, being data provided to the ATO by employers of the person about the amounts of payments the employers made to the person in the relevant financial year, or part thereof;
 - 9.2. from the PAYG data:
 - 9.2.1. identifying the employers for whom the person worked for any period while the person received social security benefits during the financial year;
 - 9.2.2. summing up all of the income the person received from those employers during the financial year to produce a total income figure; and
 - 9.2.3. multiplying the total income figure by the percentage of time that the person received social security benefits in the financial year (for example, a period of 3 months of receipt of benefits would translate to a multiplier of 25%);
 - 9.3. comparing the figure produced by the process described in paragraph 9.2 above with the amount of income the person reported to the Department in the relevant financial year, to determine whether there was a discrepancy between those amounts (**Initial Discrepancy**);
 - 9.4. sending a letter (**Initial Letter**) by Registered Post to the person at the address that was last known to the Department as the person's address (**Last Known Address**) to attempt to inform the person that the Department had information from the ATO that it needed the person's help "to confirm or update" and that the "employment dates or income details" in that information were "different" to what the person had told the Department when getting a payment. The letter included

an “Employment information statement”, which set out the employer’s name, the dates of employment and the earnings amount. The letter included the statement:

“Please note, if you don’t confirm or update the information within 28 days, we may apply the employment dates and income from the ATO to your record. This may result in a debt you will need to repay.”

; and

- 9.5. if Australia Post notified the Department that the Initial Letter had been delivered, and the person did not provide information or contact the Department in response to the letter within 28 days of the letter, assigning a Compliance Officer to consider whether the person had received an amount of social security benefit to which the person was not entitled.
10. The processes described in paragraph 9 above were partly automated.
11. Aspects of the processes described in paragraph 9 above are generally described in a document known as Program Protocol – Pay-As-You-Go (PAYG) Data-Matching and a document known as Employment Income Matching PAYG Transition to HANA – Detailed Requirements Document. Annexed to this document and marked SOAF-A is the Program Protocol. Annexed to this document and marked SOAF-B is the Detailed Requirements Document.
12. At all material times, the Department maintained a document known as Operational Blueprint – Customer Support for EIC Online Compliance Intervention, which is a policy document that outlined the processes to be followed by Compliance Officers when conducting compliance reviews under the EIC program.
13. The Operational Blueprint was updated from time to time. Annexed to this document and marked SOAF-C are relevant parts of the Operational Blueprint in the form that was available to Compliance Officers during the period from 22 February 2018 to 8 March 2018, together with certain material that was hyperlinked from the Operational Blueprint.
14. The Operational Blueprint (Table 11) required Compliance Officers to take the following steps when a past recipient of social security benefits had not provided relevant information or contacted the Department within 28 days of the date of the Initial Letter, as described in paragraph 9.5 above:
 - 14.1. apply the ATO PAYG data using the Verify Employment Income Guided Procedure to conduct a Provisional Assessment by:
 - 14.1.1. calculating fortnightly earnings by apportioning the total earnings recorded in the PAYG data evenly over the number of fortnights in the relevant period of employment;

- 14.1.2. comparing the apportioned fortnightly earnings with the fortnightly earnings that the person reported to the Department at the time that the person received the social security benefits, to determine whether there is a discrepancy or discrepancies between the apportioned fortnightly earnings and the reported fortnightly earnings (**Discrepancy**); and
- 14.1.3. calculating the amount of social security benefit to which the person would have been entitled for each fortnight in the relevant period on the basis that the apportioned fortnightly earnings represent the person's actual income for that fortnight;
- 14.2. proceed to the next step if the Provisional Assessment outcome is a debt greater than \$50 as a result of a Discrepancy;
- 14.3. check the person's record within the Income Security Integrated System (**ISIS**) and Customer Relationship Management (**CRM**) systems, for information that might explain the Discrepancy, including checking:
 - 14.3.1. the person's payment history on the Payment Summary Screen or benefit history from the XDS Screen (which is a backend data structure screen which displays date and payment system data), for the purpose of making sure the person was in receipt of benefits during the relevant period;
 - 14.3.2. the recorded employment income for the person on the Earnings Screen (including checking employer name, ABN and employment dates in case income was declared under a differently named entity to the one in the ATO PAYG data);
 - 14.3.3. the previously verified earnings on the Verified Earnings Screen (income recorded in this screen indicates it has been verified as accurate through checking it against a source external to Centrelink, such as an employer, or payslips from the person);
 - 14.3.4. notations that have been archived, Employer Separation Certificates and past requests to employers for information for verification;
 - 14.3.5. past debts raised or waived for the person (which would show debts previously raised for the same employer and/or period as the ATO PAYG data);
 - 14.3.6. the history of any past compensation payments recorded in the Compensation Summary, other income (such as lump sum payments or scholarships) recorded in the Other Income Screen; and
 - 14.3.7. the documents and notes recorded for the person in the Document List and any past incidents recorded in the Customer Incident Notification Screen;

14.4. if the Discrepancy cannot be “fully explained” from the information contained on the person’s record, use “suitable information” to determine the “employment income relevant to the intervention” and input into the Earnings Apportionment Tool:

14.4.1. the employment income details; and

14.4.2. the period in which the income is to be assessed; and

calculate the daily rate of affecting income and the total affecting income relevant for each period, which is apportioned over the relevant periods (including, where ATO PAYG data is used, in the manner described in paragraph 14.1.1 above) within the Earnings Apportionment Tool;

14.5. for the purposes of paragraph 14.4:

14.5.1. a Discrepancy might be “fully explained” if, for example, a debt has previously been raised for the same employer and the same period, or an Employer Separation Certificate indicates that the person’s employment commenced after the person’s social security payments ceased; and

14.5.2. “suitable information” and the “employment income relevant to the intervention” may be the ATO PAYG data (apportioned as described in paragraph 14.1.1 above) or previously verified income, but cannot include income information previously reported to the Department by the person unless that income information can be verified during conversations with the person resulting from the attempts to contact the person referred to at paragraph 14.6 below;

14.6. make two “genuine attempts” to contact the person on all available numbers to discuss the Discrepancy and to give the person an opportunity to provide further information, including a “satisfactory verbal explanation” for the Discrepancy;

14.7. once the process outlined in paragraphs 14.4 and 14.6 above has been completed, if the two “genuine attempts” to contact the person were unsuccessful, or if the person is contacted but the person does not provide further information that explains the Discrepancy, treat the calculation of the person’s relevant fortnightly income referred to in paragraph 14.4 above as being sufficiently accurate to provide a basis from which it could then be concluded that a debt is owed to the Commonwealth; and

14.8. if the conclusion is reached that a debt is owed, determine whether a “recovery fee” is to be applied – “recovery fee” being the name given to a penalty under s 1228B of the SSA. A recovery fee will be applied where the person has not provided information relating to their employment income confirmation, including where the person has not responded to the Initial Letter or the “genuine attempts” to contact the person.

15. If the process described in paragraph 14 above produced a conclusion that a debt was owed to the Commonwealth, a letter would be sent to the person which was intended to be a notice for the purpose of s 1229 of the SSA.
16. During the period from 5 February 2019 to 26 February 2019, a further version of the Operational Blueprint (**2019 Operational Blueprint**) was made available to Compliance Officers. Annexed to this document and marked SOAF-D is an extract of relevant parts of the 2019 Operational Blueprint.
17. The 2019 Operational Blueprint (Table 13) sets out the steps to be followed by Compliance Officers in response to a request by a person for a further explanation about a decision made under the EIC program. Relevantly, Table 13 required that:
 - 17.1. a Compliance Officer was to provide a full and thorough explanation of the decision to the person and if, while providing an explanation, an error was identified, the Compliance Officer was to immediately correct the error [row 3];
 - 17.2. if the person had no new information or evidence to provide, or the person was still not satisfied with the decision after having a reassessment, the Compliance Officer was to offer the person a quality check of the decision [row 9]; and
 - 17.3. a subject matter expert was to complete a quality check of the decision, correct any errors/make any reassessments and provide a thorough explanation to the person [row 9].
18. Under an Operational Blueprint maintained by the Department, a garnishee notice is and was to be issued to the ATO in certain circumstances in relation to a debt owed by a person. At the relevant time, the tax garnishee process was conducted in stages as follows:
 - 18.1. The Department's electronic systems identify persons whom the Department considers to be eligible for tax garnishee, referred to as a "client of interest". "Clients of interest" include persons who:
 - 18.1.1. are no longer in receipt of social security benefits;
 - 18.1.2. have been identified by the Department as having an outstanding debt of \$20 or more (being an alleged debt that the Department considers has become due and payable under s 1229(2) of the SSA because 28 days have lapsed since a purported notice was sent under s 1229); and
 - 18.1.3. do not have a payment arrangement in place in respect of that alleged debt.
 - 18.2. Where a person is identified as a "client of interest", a tax garnishee warning letter is sent to the Last Known Address for that person. The letter states that the Department may ask the ATO to recover the outstanding alleged debt from tax refunds or similar payments that may be made to the person.

- 18.3. A “client of interest” with an outstanding alleged debt is referred to the ATO for matching.
- 18.4. The matching process is automated. When a “client of interest” is matched, an indicator is placed on both the ATO’s and the Department’s records for that person.
- 18.5. When the person lodges his or her tax return or activity statement, and a refund or credit is due, the ATO sends a trigger to the Department.
- 18.6. The Department’s Debt Management Information System automatically checks whether the person has any debts that are eligible for garnishee and, if so, an electronic garnishee message with the debt amount is automatically sent to the ATO.
- 18.7. The Department will also send a garnishee notice letter either:
 - 18.7.1. to the postal address for the person that is on the person’s most recent tax return lodged with the ATO; or
 - 18.7.2. if the tax return has been lodged by a tax agent or is an activity statement return, to the person’s Last Known Address recorded with the Department.
- 18.8. The ATO then applies the garnishee to the tax refund or credit. The amount of the garnishee will be the lesser of the credit available for garnishee or the amount of the alleged debt.
- 18.9. The ATO forwards details of the garnisheed amounts to the Department electronically.
- 18.10. The ATO appends a statement of account to the Notice of Assessment sent to the taxpayer, which shows “Credit offset to Centrelink” with the relevant amount.
19. Annexed to this document and marked SOAF-E is an extract of a historical version of the Department’s Operational Blueprint – Tax Garnishees to Recover Debts, which outlines the tax garnishee process. This version was in place at the time of the 3 September 2018 garnishee (see paragraph 56 below).

Successor program to the Employment Income Confirmation program

20. From around November 2018, all new compliance reviews of past entitlements to social security benefits have been initiated under a successor program to the EIC program, known as the “Check and Update Past Income” (**CUPI**) program. Like the EIC program, the CUPI program uses apportioned PAYG data to raise debts that the Department then seeks to recover.

21. Compliance reviews initiated under the EIC program prior to November 2018 have been, and continue to be, completed by applying the processes described in the Operational Blueprint in relation to the EIC program at the relevant time.

Applicant's employment and Austudy payments during the 2011-12 financial year

22. Over the course of the 2011-12 financial year, the applicant was employed by Well Baked Cafe Pty Ltd (**Well Baked**), which is also known as Naked for Satan.
23. In February 2012, the applicant began a course of full-time study at Swinburne University of Technology.
24. On 1 March 2012, the applicant applied for Austudy. The Department considered that the applicant's application did not include the necessary proof of identity, so the application was subsequently refused.
25. On 21 March 2012, the applicant renewed her application for Austudy.
26. On 25 May 2012, the applicant's application for Austudy was granted.
27. The consequence was that, as from 21 March 2012 and while the applicant continued to be enrolled as a full-time student, the applicant was eligible to receive fortnightly payments of Austudy, subject to the amount of any income she earned, derived or received in each fortnight.
28. On 14 June 2012, the applicant contacted Centrelink and reported her fortnightly income from Well Baked for the period 21 March 2012 to 12 June 2012.
29. On 15 June 2012, the applicant received her first Austudy payment, of \$2,399.37, which involved backdating to 4 April 2012.
30. On 26 June 2012, the applicant reported income from Well Baked for the period 13 June 2012 to 26 June 2012.
31. On 27 June 2012, the applicant received a further Austudy payment of \$482.83.
32. The amount of each Austudy payment described in paragraphs 29 and 31 above was determined having regard to the income reported by the applicant for the relevant fortnights.
33. From time to time, the applicant received payments of Austudy and Newstart Allowance until July 2014, when she ceased to receive payments from Centrelink.

Chronology of correspondence

34. On 21 August 2017, the Department received information from the ATO, namely PAYG data relating to income received by the applicant from Well Baked for the period 1 July 2011 to 30 June 2012. The PAYG data is recorded in a document "Match data for 2011/2012", which is annexed and marked SOAF-F.

35. After receiving the PAYG data referred to in paragraph 34 above, the Department applied the steps described in paragraphs 9.2 to 9.3 above to the PAYG data. The application of those steps produced an Initial Discrepancy.
36. On 19 September 2017, the Department sent, by registered post, an Initial Letter addressed to the applicant, stating that the Department had information from the ATO (**ATO Information**) “that we need your help to confirm or update”. The letter also stated that “You must confirm or update the information within 28 days of receiving this letter”. The letter was sent by registered post to 8 Johnson Street, Northcote, Victoria (**Northcote address**), being the Last Known Address for the applicant. The letter dated 19 September 2017 is annexed and marked SOAF-G.
37. The applicant had moved out of the Northcote address in or about October 2014. From that point onward, including in 2017 and 2018, the applicant did not reside at that address. The applicant did not update her address with the Department when she moved out of the Northcote address, nor was she required to do so as she was not receiving a Centrelink payment at that time. Therefore, the Department was not aware that the applicant had moved until the applicant updated her address with the Department on 13 September 2018, as described in paragraph 57 below.
38. On 21 September 2017, the Department received a notification from Australia Post that stated that Article ID 553048077010 had been delivered to the Northcote address on 21 September 2017. A screenshot of the Department’s system recording the notification is annexed and marked SOAF-H.
39. On 6 October 2017, the Department sent a further letter by registered post addressed to the applicant at the Northcote address. That letter was returned to the Department on 10 October 2017 marked “return to sender”. That letter is annexed and marked SOAF-I. A screenshot of the Department’s system recording the notification is annexed and marked SOAF-J.
40. On 19 October 2017, the Department sent a further letter by ordinary post addressed to the applicant at the Northcote address. That letter is annexed and marked SOAF-K.

Chronology of decisions and subsequent correspondence

41. Because the applicant had not responded to any of the letters referred to in paragraphs 36, 39 or 40 above, or otherwise contacted the Department in relation to those letters, and because the notification described in paragraph 38 above had been received by the Department, a Compliance Officer was assigned to consider whether the applicant had received an amount of social security benefit to which she was not entitled in accordance with the EIC program.
42. At about 8.21 am on 27 February 2018 (6.21am AWST), a Compliance Officer applied the ATO PAYG data referred to in paragraph 34 and conducted a Provisional Assessment as described in paragraph 14.1, which produced a provisional debt as a result of a Discrepancy. The Compliance Officer made a record of the use of the ATO PAYG data. The record is annexed and marked SOAF-L.

43. At about 8.24am on 27 February 2018 (6.26am AWST), a Compliance Officer attempted to contact the applicant by phone. The applicant did not answer, so the Compliance Officer left a message for the applicant to call back on a 1800 number that was provided. The Compliance Officer made a record of the telephone call in the electronic file of the applicant that was maintained by the Department. The record is included in annexure SOAF-L.

44. At about 10.49am on 28 February 2018 (8.50am AWST), a Compliance Officer attempted to contact the applicant by phone. The applicant did not answer, so the Compliance Officer left a message for the applicant to call back on a 1800 number that was provided. The Compliance Officer made a note that:

“Because customer failed to answer both attempts, match data will be applied and a provisional debt will be raised.”

The Compliance Officer made a record of the telephone call in the electronic file of the applicant that was maintained by the Department. The record is included in annexure SOAF-L.

45. At 11.42am on 28 February 2018 (9.42am AWST), a Compliance Officer decided to apply apportioned ATO PAYG data for the applicant for her employment at Well Baked for the period from 1 July 2011 to 30 June 2012 to calculate the applicant’s entitlement to social security benefits for the period 21 March 2012 to 26 June 2012. The Compliance Officer:

45.1. uploaded the ATO PAYG data for the applicant to the applicant’s record.
A record of the income that was applied to the applicant’s record is annexed and marked SOAF-M;

45.2. entered “Y” in the ISIS and CRM systems next to “Customer Circumstances checked” and “Information Integrity Checked” to indicate that the Compliance Officer had checked the applicant’s record within the ISIS and CRM systems to see if there was any information that would explain the Discrepancy and to determine if there was any information that could be used in conjunction with the ATO PAYG data. The Operational Blueprint instructed the Compliance Officer to do this, as described in paragraph 14.3 above. This included checking the applicant’s payment history on the Payment Summary Screen and Benefit History Screen, the recorded employment income for the applicant on the Earnings Screen, and the previously verified earnings for the applicant on the Verified Earnings Screen;

45.3. entered the total earnings of \$24,811 and the income period of 1 July 2011 to 30 June 2012, as recorded in the PAYG data, in the Earnings Apportionment Tool, which generated a statement that there was a provisional debt of \$2,924.28 for the period 21 March 2012 to 26 June 2012;

45.4. used the ADEX Tool to assist in assessing the applicant’s entitlement to past social security benefits based on the apportioned PAYG data;

- 45.5. by applying the process in paragraphs 45.1 to 45.4 above, produced a conclusion that the applicant had received social security benefits during the period 21 March 2012 to 26 June 2012 in the amount of \$2,924.28, to which she was not entitled, and therefore that a debt was owed to the Commonwealth in the sum of \$2,924.28 (**Alleged March 2018 Debt**); and
- 45.6. by applying the policy referred to in paragraph 14.8 above, applied a penalty to the Alleged March 2018 Debt.
46. Included in the annexure marked SOAF-L is a copy of the notes made on the applicant's record in the ISIS and CRM systems relating to the process outlined at paragraph 45 above.
47. Annexed to this statement and marked SOAF-N is an ADEX Debt Schedule report for the period 21 March 2012 to 26 June 2012, which provides a fortnightly breakdown of the amounts paid to the applicant, her declared income, and the apportioned PAYG data applied under the process outlined at paragraph 45.3 above. An ADEX Debt Schedule is a document that is normally prepared for the purpose of explaining a debt to a person.
48. The quantum of the Alleged March 2018 Debt was calculated by:
- 48.1. dividing the total income specified in the ATO Information (\$24,811) by the total number of days in the employment period specified in the ATO Information (1 July 2011 to 30 June 2012), being 366 days, to produce a daily income figure of \$67.79;
- 48.2. multiplying that averaged daily income figure (\$67.79) by 14 to produce an apportioned fortnightly income figure of \$949.05 (**Apportioned Fortnightly Income**);
- 48.3. substituting the amount of income declared by the applicant for each fortnight as her actual income in the period from 21 March 2012 to 26 June 2012 (**Relevant Period**) with the Apportioned Fortnightly Income;
- 48.4. calculating the amount of Austudy to which the applicant would be entitled for each fortnight in the Relevant Period on the basis that the Apportioned Fortnightly Income represented the applicant's actual income for that fortnight;
- 48.5. for each fortnight in the Relevant Period, calculating the difference between:
- 48.5.1. the amount of Austudy to which the applicant would be entitled on the basis of the Apportioned Fortnightly Income; and
- 48.5.2. the amount of Austudy the applicant was paid based on the income the applicant reported for that fortnight as her actual income; and
- 48.6. aggregating the differences for the fortnights in the Relevant Period so calculated to produce the amount of the Alleged March 2018 Debt.

49. On 2 March 2018, the Department sent a letter by ordinary post addressed to the applicant at the Northcote address. The letter stated that a total amount of \$3,215.38 was payable, with a due date of 2 April 2018. The amount payable comprised:

49.1. overpaid Austudy benefits during the Relevant Period, totalling \$2,924.28; and

49.2. a penalty (or “recovery fee”) of \$291.10.

The letter dated 2 March 2018 is annexed and marked SOAF-O.

50. On 20 March 2018, a Compliance Officer attempted to contact the applicant by phone. The applicant did not answer. The Compliance Officer made a record of the telephone call in the ISIS and CRM systems. Two screenshots recording the attempted call to the applicant are annexed and marked SOAF-P.

51. On 4 April 2018, Centrelink sent a letter by ordinary post addressed to the applicant at the Northcote address. That letter is annexed and marked SOAF-Q.

52. On 13 April 2018, the Applicant was identified as a “client of interest” under the Department’s Operational Blueprint in relation to tax garnishees referred to at paragraph 19 above. On the same day, an indicator was placed on both the ATO’s and the Department’s records for the applicant.

53. On 6 July 2018, Centrelink sent a letter by ordinary post addressed to the applicant at the Northcote address in relation to interest on the Alleged March 2018 Debt and penalty. That letter is annexed and marked SOAF-R.

54. On 7 August 2018, Centrelink sent a letter by ordinary post addressed to the applicant at the Northcote address. That letter is annexed and marked SOAF-S.

55. On 31 August 2018, Centrelink sent a further letter by ordinary post addressed to the applicant at the Northcote address, giving notice of a decision made under s 1233 of the SSA to garnishee her tax return. That letter is annexed and marked SOAF-T.

56. On 3 September 2018, the Commonwealth garnisheed \$1,709.87 from the applicant’s tax refund (**Garnisheed Amount**), being the total amount of the tax refund that the applicant would have received for the 2017-18 financial year but for the Commonwealth’s determination of the Alleged March 2018 Debt and penalty. This occurred in accordance with the process described at paragraph 18 above.

57. On 13 September 2018, the applicant updated her address details in the Department’s records by logging onto the Centrelink Online Portal within the MyGov platform. None of the letters referred to in the paragraphs above was available to be viewed on the MyGov platform at that time. A record of the event extracted from the ISIS and CRM systems is annexed and marked SOAF-U.

58. Upon receiving the information described in paragraph 57 above, the Department did not resend any of the letters referred to above or otherwise seek to contact the applicant at her updated address.

59. The applicant became aware that her tax return had been garnisheed on or about 25 January 2019, when she was informed of the garnishee by her accountant. Prior to that date, the applicant was not aware that the Commonwealth had raised the Alleged March 2018 Debt against her, nor had she received the letters referred to above.
 60. On 21 February 2019, after becoming aware that her tax return had been garnisheed, the applicant contacted the Department by telephone to enquire about the Alleged March 2018 Debt. The Compliance Officer who spoke to the applicant made a record of the telephone call in the ISIS and CRM systems system maintained by the Department. A copy of the record is annexed and marked SOAF-V.
 61. The applicant had not contacted the Department about the Alleged March 2018 Debt prior to 21 February 2019.
 62. In response to the applicant's telephone call on 21 February 2019, a Compliance Officer undertook a quality compliance check of the Alleged March 2018 Debt. During the quality compliance check, the Compliance Officer identified an error in the calculation leading to the Department's conclusion that the applicant owed the Alleged March 2018 debt. The error was that the Alleged March 2018 debt was calculated on the basis that the applicant had been paid benefits from 21 March 2012, when in fact she was only paid from 4 April 2012. The outcome of that review was that the amount of the debt was reduced to \$2,504.42 (**Alleged Reassessed March 2019 Debt**). The Compliance Officer made two electronic records of the quality compliance check in the ISIS and CRM systems. Annexed to this statement and marked SOAF-W are two screenshots of those records.
 63. The amount of the Alleged Reassessed March 2019 Debt was calculated applying the steps described in sub-paragraphs 48.1 to 48.5 above, except that the period used for the calculations was 4 April 2012 to 26 June 2012 (**Amended Relevant Period**) rather than the Relevant Period.
 64. On 6 March 2019, the Department sent a letter to the applicant notifying her that a reassessment of the Alleged March 2018 Debt had been completed and, as a result, the quantum of the debt had been amended to \$2,754.82, comprising:
 - 64.1. overpaid Austudy benefits during the Amended Relevant Period totalling \$2,504.42; and
 - 64.2. a recovery fee of \$250.40.
- The letter enclosed an ADEX Debt Schedule Report, which showed the calculations that had produced the Alleged Reassessed March 2019 Debt. The letter dated 6 March 2019, with its enclosure, is annexed and marked SOAF-X.
65. On 4 April 2019, the Department sent a further letter to the applicant stating that she owed a debt of \$1,116.71, being the difference between the amount stated to be owed in the 6 March 2019 letter and the Garnisheed Amount, plus interest. That letter is annexed and marked SOAF-Y.

66. On 26 April 2019, the applicant contacted the Department by telephone and entered into a payment arrangement. On that day, the Department sent the applicant a letter confirming that payment arrangement. A file note of the telephone call is annexed and marked SOAF-Z. The letter is annexed and marked SOAF-AA.
67. On 6 June 2019, the applicant filed the Originating Application that commenced this proceeding.
68. On 9 July 2019, without notice to the applicant, the Department exercised its powers under s 192 of the *Social Security (Administration) Act 1999* (Cth) (**SS Administration Act**) by sending letters to Well Baked and the Commonwealth Bank requiring each of them to provide information about the applicant's income. On 16 July 2019, the Department received information from Well Baked. On 23 July 2019, the Department received information from the Commonwealth Bank.
69. On 21 August 2019, a delegate of the Secretary of the Department undertook a review of the Alleged March 2018 Debt and the Alleged Reassessed March 2019 Debt under s 126 of the SS Administration Act. The delegate conducted the review having regard to the information received pursuant to s 192 of the SS Administration Act and calculated that:

69.1. for the fortnight 21 March to 3 April 2012, there was an underpayment of \$482.83;

69.2. for the fortnight 4 to 17 April 2012, there was an overpayment of \$1.48;

69.3. for the fortnight 18 April to 1 May 2012, there was an underpayment of \$3.81; and

69.4. for the fortnights between 2 May and 26 June 2012, the correct payments had been made.

Annexed to this document and marked SOAF-AB is copy of the Multical – Centrelink Debt Calculator.

70. On 21 August 2019, the Department, through the Commonwealth's lawyers, sent the applicant a letter advising that a further review had been undertaken of the Alleged March 2018 Debt and the Alleged Reassessed March 2019 Debt. The result of the review was that the Department determined that:

70.1. the decision to raise the Alleged March 2018 Debt, as reassessed to produce the Alleged Reassessed March 2019 Debt, was set aside; and

70.2. the applicant owed a debt of \$1.48, which amount would be waived pursuant to s 1237AAA of the SSA.

The Department's letter and a covering letter from the Commonwealth's lawyers are annexed and marked SOAF-AC.

71. On 28 August 2019, the Commonwealth repaid an amount of \$1,769.87 to the applicant by electronic funds transfer, being the Garnisheed Amount plus \$60 paid by the applicant under the payment arrangement plan entered into on 26 April 2019. This repayment was for the full amount of the funds that had been obtained by the Commonwealth from the applicant in relation to the Alleged March 2018 Debt and the Alleged Reassessed March 2019 Debt.

Date: 7 November 2019



Charley Brumby-Rendell
Victoria Legal Aid
Lawyer for the Applicant

Date: 7 November 2019



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Julian Ensby
AGS Lawyer
for and on behalf of the Australian Government Solicitor
Lawyer for the Respondent