Centrelink Prosecutions at the Employment/Benefit Nexus: A Case Study of Wollongong

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Foreword

This report examines financial and social issues pertaining to Centrelink prosecutions for overpayments of unemployment-related social security benefits. Specifically, it examines the circumstances of prosecutions of those returning to work, and those in precarious casual employment. A sample of overpayment prosecutions in the Wollongong area of New South Wales from July 2008 to June 2010 is profiled and analysed.

From the perspective of Westminster public accountability, this report makes recommendations for policy change to achieve a reduction in overpayment of social security benefits, arguing the inadequacy of the current technical approach reliance on fraud prevention strategies. It counters the public discourse of reductionism and financialisation that surrounds this ‘wicked’ social problem.

This report purposefully does not seek to generate a definitive costing model of social security prosecutions for predictive generalisation. To do so, reduces an understanding of the humanity of individuals’ crises; to one of an individual’s questionable character and financial management. This report argues that social security overpayment prosecutions cannot be thought of only as an individual failure, but also as a failure of the state and its systems to its citizens (who comprise both the recipient of the benefits, and the wider community). The interests of society are not best served when the state assumes a formulaic approach to prosecutions, where individual cases are systemically treated as homogeneous and equivalent. Doing so leads to oversimplification and misrepresentation and is therefore questionable ethics. Not all aspects of this issue can or should be quantified and measured. The Social Accounting and Accountability Research Centre and this report seeks a contextualization of the issues, an approach that to date is absent from the public discourse.
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<tbody>
<tr>
<td>ACTU</td>
<td>Australian Council of Trade Unions</td>
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<td>AGIS</td>
<td>Australian Government Investigation Standards</td>
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<td>AIC</td>
<td>Australian Institute of Criminology</td>
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<td>ANAO</td>
<td>Australian National Audit Office</td>
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<td>ATO</td>
<td>Australian Taxation Office</td>
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<tr>
<td>BMA</td>
<td>Bilateral Management Arrangement</td>
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<td>CDAA</td>
<td>Detriment Caused by Defective Administration</td>
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<td>CDPP</td>
<td>Commonwealth Director of Public Prosecutions</td>
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<tr>
<td>DEEWR</td>
<td>Department of Education, Employment and Workplace Relations</td>
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<td>DSP</td>
<td>Disability Support Pension</td>
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<td>FaHCSIA</td>
<td>Department of Families, Housing, Community Services and Indigenous Affairs</td>
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<td>FICMS</td>
<td>Fraud Investigation Case Management System</td>
</tr>
<tr>
<td>HOCOLEA</td>
<td>Heads of Commonwealth Operational Law Enforcement Agencies.</td>
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<td>ICT</td>
<td>Information and Communication Technologies</td>
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<td>KPI</td>
<td>Key Performance Indicator</td>
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<td>LSD</td>
<td>Legal Services Directions</td>
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<td>NWRN</td>
<td>National Welfare Rights Network</td>
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<td>WG</td>
<td>Whole-of-Government</td>
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Executive Summary

Summary
This pilot study was conducted by researchers from the Social Accounting and Accountability Research Centre (SAARC) in the Faculty of Commerce at the University of Wollongong in collaboration with Legal Aid NSW Wollongong Office. In cases of social security overpayment, both civil and criminal lawyers defend clients and assist them to engage with Centrelink’s appeals process and navigate the criminal prosecution system. Individuals can be pursued administratively for recovery of a Centrelink debt and also with the imposition of a criminal sanction.

Centrelink is a Commonwealth government agency that delivers a range of social security benefits in Australia. Consistent with government policy and strategy, several benefit types mandate a responsibility for the recipient to seek or gain employment. Since social security benefits are means-tested, further complexities in reporting income arise. This research project is conducted within the context of social security overpayments and social security fraud at the employment/benefit nexus. It is a response to the criminalisation of a vulnerable group of citizens receiving income from both Centrelink and employment which presents challenges for both Centrelink and benefit recipients. Centrelink currently invests significantly in secondary detection systems, including data-matching with other government agencies, to mitigate losses from overpayments resulting from the under-declaration of employment income.

Initially the research intended to determine the financial costs of prosecuting social security fraud for this specific group. However, it became obvious that the issue could not be considered in any meaningful way unless it was situated within the broader socio-political context of: recent changes to a whole-of-government approach; public sector accountability and secondary prevention measures; and, the shifting nature and rise of precarious employment.

The problem identified is the challenge to accurately report employment income in a means-tested social security environment within the context of public sector accountability and precarious employment. Thus, it is a ‘wicked’ problem which is intractable and unavoidable in the social policy area.

This pilot study profiles the Wollongong region for the two-year period 1 July 2008 – 30 June 2010 using case file data from Legal Aid NSW in addition to secondary data to supplement the findings. The main findings were that, in the case of social security fraud, the ‘criminal’ profile is quite different from those found in other criminal prosecutions. The majority of both civil and criminal cases involved individuals between 36 – 40 years of age and the majority of defendants were female. Most of these individuals found themselves with a criminal record for a debt of less than $10 000. The study focussed on the employment/benefit nexus, where paradoxically, individuals attempt to supplement Centrelink income while gaining workplace experience and skills. The most common areas of employment is nursing for civil cases and hospitality for criminal cases. The nature of
these occupations is often outside the traditional nine-to-five working week and involves shift work and casualisation.

It was found 99% of prosecutions of social security fraud are successful. Both the payment of Centrelink benefits and employment income are well-documented and easily compared to ascertain the periods and instances of overpayment within the Centrelink reporting cycle. Whether the under-declaration of income arose from an inability to navigate the system of reporting income or from deliberate misinformation is not a factor in the formulation of the following recommendations.

**Recommendations**

The recommendations include:

1. The introduction of primary prevention techniques leveraging on existing Centrelink data-matching technology with the ATO.

2. A pilot program with one or more large employers, the ATO and Centrelink to trial a data-matching system.

3. The implementation of a flexible Centrelink reporting cycle to more practically reflect the *ad hoc* nature of precarious employment.

4. The implementation of an education programme for those at the employment/benefit nexus to develop basic skills relating to relevant financial terminology.
Chapter 1

INTRODUCTION

1.1 Overview

Centrelink, a Commonwealth agency, provides support for individuals across a wide range of financial benefit types and non-financial activities. Nationally, Centrelink delivers $87 billion in social security payments annually to approximately 7 million ‘customers’, many who are the most vulnerable and dependent in society. Given the scale of this responsibility and the identification of overpayments of social security entitlements as a high risk area; the Australian Government has invested significantly in Centrelink’s compliance and fraud detection activities as an important tool of accountability. Centrelink refers the largest number of cases of intentional misrepresentation of any agency to the Commonwealth Director of Public Prosecutions (CDPP) (Australian National Audit Office 2011).

This pilot project reports on the financial and societal costs of social security fraud and prosecutions in the Wollongong region for the two-year period 1 July 2008 – 30 June 2010. This project considers recipients of Centrelink payments at the employment/benefit nexus. In this case individuals access income from both the government and paid work and are required to declare employment income (even if this is zero) on a regular basis to Centrelink. The under-declaration of income is problematic and can result in an overpayment and a subsequent debt to Centrelink and, in some cases, the escalation to an accusation of social security fraud.

Social security fraud, also known as benefit or welfare fraud involves “giving false or misleading information, or omitting relevant information, to a government agency in order to receive a social security benefit to which the person is not entitled” (Lindley and Smith, 2011, p.3). Fraud in public sector agencies deprives governments of income for services and is a serious issue in terms of public sector accountability (Lindley and Smith, 2011). While there is little debate that fraud is a serious issue, the area of social security fraud is contested. Anti-fraud measures have been described as stigmatising and overly-reliant on criminal prosecutions. A ‘get tough’ approach easily criminalises recipients who have made genuine errors in reporting their circumstances and this potential is exacerbated by the casualisation of labour and the shifting circumstances of the working poor and unemployed (Marston and Walsh, 2008).

Fraud is a criminal offence and 75% of defendants charged with a summary offence and 12% with an indictable offence in 2008-2009 were referred to the CDPP by Centrelink (Australian Institute of Criminology, 2011). The CDPP has a range of legislative instruments to charge an individual with social security fraud. Clients are often under the belief that repayment of a social security debt means that this is the end of the matter, however, in some cases, individuals are pursued for recovery of a debt (administratively) and the imposition of a criminal sanction (criminally) (Marston and Walsh, 2008). Fraud offences are found in Division 135 of the Commonwealth Criminal Code 1995 under two offences: s135.1 prohibits “general dishonesty” including obtaining a gain from the Commonwealth entity; while
s135.2 is “obtaining a financial advantage from a Commonwealth entity”. The maximum penalty for s135.1 offences is five years imprisonment and one year imprisonment for the lesser penalty in s135.2. In addition, fraudulent conduct is also dealt with in the Social Security Administration Act 1999 (Cth): s215 is the offence of obtaining a payment that is not payable; while s216 creates the offence of payment obtained through fraud. Both offences carry a maximum sentence of 12 months imprisonment. However there is a range of sentencing alternatives including reparation orders, fines, good behaviour bonds, community service orders, probation orders, restitution, and suspended sentences (Marston and Walsh, 2008).

Centrelink’s efforts to improve compliance are driven by public interest and political drivers as well as legislative requirements. Centrelink is required to minimise fraud under the Commonwealth Financial Management and Accountability Act 1997 and the Commonwealth Fraud Control Guidelines (Prenzler, 2010) and fraud management reviews by the Australian National Audit Office (Prenzler, 2011). Social Security fraud is reported annually by the Australian Institute of Criminology (AIC) to indicate both fraud against the Australian Government and fraud control arrangements within Australian Government agencies.

Social security fraud has risen with the rise of the welfare state in Australia (Prenzler, 2011) and the number and amount of payments to recipients. The Fraser (1975-1983) and Hawke-Keating (1983-1996) governments introduced stricter work seeking tests for the unemployed, and data-matching processes to ensure system integrity. The Howard government (1996-2007) further expanded the prevention and detection measures and created Centrelink in 1997 allowing for the centralisation and standardisation of welfare payments and anti-fraud initiatives (Prenzler, 2011). In 2006, the welfare-to-work social security package introduced a ‘jobs-first’ policy and created working conditions on social security for individuals of workforce age (Carney, 2008). These neoliberal initiatives shifted the responsibility from the state to the individual through ‘mutual obligation’ policies (Carney, 2008), further adding demands for income-support recipients in an already complex social security system (Marston and Walsh, 2008).

The emphasis on compliance means that innovations for detecting non-compliance have been implemented in Centrelink agencies. In a study by Marston and Walsh (2008) 55% of the cases prosecuted for social security fraud were detected through data-matching with the Australian Taxation Office (ATO). Although there is a lack of available data to verify the full cost of data-matching, surveillance, the CDPP and the review activities of Centrelink (ANAO 2011), the government claims that benefits outweigh the costs and subsequently save large amounts of taxpayer funds (Marston and Walsh, 2008). These savings are calculated by: downward variation in rates and payments; debts raised; and, ceased payments (Marston and Walsh, 2008).

Minor offenders and those who incur a social security debt through error make up the substantial proportion of those investigated by Centrelink and prosecuted by the CDPP. For example, in 2007-08, 1 135 debts were prosecuted for amounts ranging between $5 000 and $10 000, while 379 people were prosecuted for amounts of less than $5 000. In the same year, from a total of 2 624 successful prosecutions, only 10 were for deliberate and intentional false claims or identity fraud (Siewert, 2011).
1.1.1 The Precarious Circumstances of Social Security Recipients

Marston and Walsh (2008) studied sentencing outcomes for a sample of 80 social security recipients prosecuted in two magistrate courts in Queensland over a seven month period and collected information on age, gender, marital status and employment status. In the sample 86% of cases were charged under s135 and 9% under s135 and another offence of Commonwealth Criminal Code. The legal representation was divided among a duty solicitor (34%), legal aid (19%), private representation (41%), and self-representation (5%). Their study challenged “the stereotype of the organised criminal willingly defrauding the Commonwealth Government for large sums of money (Marston and Walsh, 2008, p.297) and concluded that there was little value in pursuing minor matters in the criminal courts when administrative remedies are available (Marston and Walsh, 2008, p.297). Several of the finding of this study are used as comparative data with this project.

The motivation for social security fraud goes beyond the assumption of “greed and lack of moral integrity” (Marston and Walsh, 2008, p.289). Studies of the structural and individual reasons have demonstrated that the predominant reason for defrauding is economic necessity. Where employment income was under-reported it was often to provide the “extras” in life and the “vicissitudes of life on a very low income represented a bigger worry than the prospect of getting caught for benefit fraud” (Marston and Walsh, 2008, p. 289). In addition, the groups targeted by welfare-to-work reforms are often the most vulnerable as “many unemployed customers lead lives that are constrained, stressful and easily disrupted by a sudden reduction or loss of income” (Carney, 2008, p.10). The majority of social security cases studied internationally indicated ‘working on the side’ as the main driver of fraud, especially with the growth of insecure employment and casualisation (Evason and Woods in Marston and Walsh, 2008).

In Australia, most people on low incomes who are working are concentrated in the bottom end of the labour market, where precarious patterns of employment are the norm. The nature of casual employment means that people’s earnings fluctuate, which presents potential for error in terms of under-reporting income to Centrelink. In the majority of cases where a debt has arisen due to undeclared or under-declared income, the person has completed an employment declaration form and knows that Centrelink will obtain the information about their employment...In these cases, the argument that the person has willingly misled the Australian government for financial gain appears less convincing, hence the need to examine the nature of those cases coming before the criminal courts.
(Marston and Walsh, 2008, p.290)

The detection of social security overpayment is primarily due to secondary prevention measures. However, there is a need to move toward primary prevention i.e. prevent overpayment and possible prosecution for fraud from occurring in the first place; and “reduce the need for expensive and difficult secondary level processes of detection, prosecution, punishment and restitution” (Penzler, 2011, p.5). Marston and Walsh (2008) in their empirical study found that a large proportion of the prosecutions for social security fraud involved overpayment from some form of employment and suggest that:
[t]he relationship between work and declaration of earnings requires further investigation in terms of indentifying ways to improve the way in which income is reported to Centrelink in the context of a labour market where casual and insecure employment is the norm for people combining work and welfare (Marston and Walsh, 2008, p.297).

Therefore, this project adds to the literature and public discourse on social security fraud by providing empirical evidence from the Wollongong region. However, the costs of criminal prosecution are not only a financial burden. Invariably there are long-term consequences of criminal conviction including social exclusion from future employment and housing. Similarly the tangible and intangible costs incurred by a society can never be fully incorporated (Dossetor, 2011). In addition the differential treatment of fraud requires a public policy response and the need to “analyse social security fraud in the context of welfare state restructuring, changes in the labour market and the shifting goals of the social security system” (Marston and Walsh, 2008, p.298).

1.2  A Wicked Problem

This report identifies social security fraud (as described in section 1.1) as a wicked problem. Wicked problems are endemic to the social policy area. It has been observed that such public policy problems “are increasingly conceptualized as interdependent and nested in loosely coupled networks of participants or problem stakeholders” (Wexler 2009, p.532). A wicked problem is intractable and unavoidable, and various stakeholders will define it differently (Wexler, 2009). It is highly resistant to resolution, because economic, social and political constraints continuously change as the problem is worked, with changing boundaries and coalitions and uncertainties (Australian Public Service Commission 2007; Wexler, 2009).

Head (2008) argues that the convergence of three circumstances is necessary for a wicked problem to exist. First, citing Koppenjan and Klijn (2004), Head (2008, p.103) notes high levels of uncertainty are intrinsic to the institutional and knowledge aspects of public management problems; secondly that social problems cannot be solved through a technical approach alone, because different social groups have differences in attitudes and values prohibiting a universal “right” solution; and, thirdly such problems have great complexity causing them to be ill-defined and interrelated. Each circumstance on its own is not enough; however, combined they produce a wicked problem (refer to Figure 1).
Such problems as social security fraud cannot be tackled in a traditional problem-solving manner. They cannot be resolved with logic and technical applications alone; there is not a right or wrong answer as to how best to resolve them. For example, Social Security debt overpayments are not confined to one jurisdiction: Centrelink is a Commonwealth agency; it is prosecuted by another Commonwealth agency, the CDPP; defendants are represented by state legal aid bodies or private solicitors or defend themselves; the costs associated with the assigned court and magistrate are of the state; those found guilty can be incarcerated in a state or privatised prison; costs of enforcing bonds lie with the local jurisdiction; and costs of counsellors and other social support agencies are often born by the Third Sector of the economy. Some ‘knock-on’ costs such as disruptions to both the housing and schooling of children in affected families and the associated emotional trauma and social stigmatisation cannot be measured, but nonetheless consume resources in terms of ancillary services. The interrelationships between these factors are complex, demanding collaborative and innovative approaches.

Minimising fraud through technical fraud prevention strategies is not necessarily solving this social problem. The incursion of social security debt overpayments is ongoing with no “end date” and the instance of each case is itself unique and does not permit an exhaustive solution applicable to every instance. The circumstance of a Centrelink debt overpayment at the employment/benefit nexus is a symptom of a broader societal problem. It is argued wicked problems such as this are malignant, tricky, vicious and aggressive (Rittel and Webber, 1973, p.160), and that attempts to address them lead to unforeseen circumstances (Australian Public Service Commission, 2007).

This report elucidates what factors impact the wicked problem of the prevention of social security overpayments and fraud. It challenges the setting of performance targets in terms of fraud prosecutions alone as a suitable ‘solution’ to the societal problem of social security fraud. This report asks the question - what should a Centrelink overpayment debt prosecution achieve? in the context of what should a social security system do? This is based on the assumption that such prosecutions are a surrogate for achieving desired societal accountability. These questions force goals to be articulated, understood and evaluated in terms of a broader compassionate engagement for social benefit, rather than just defined in terms of government agency structure (Rittel and Webber, 1973).
The Secretary of the Department of the Prime Minister and Cabinet has commented that a ‘whole-of-government’ (WG) approach is the public administration of the future, and extols such team based approaches to solve the wicked problems that are endemic to public policy (Australian Public Service Commission 2007, p.18).

1.3 Research Approach

This report examines the financial and social issues pertaining to Centrelink prosecutions of overpayments of unemployment-related social security benefits. Specifically it examines the circumstances of prosecutions of those returning to work, and those in precarious casual employment. A sample of overpayment prosecutions in the Wollongong area of New South Wales from July 2008 to June 2010 is profiled and analysed. Cases were selected from those defended by Legal Aid NSW Wollongong Branch in the specified period.

The study elucidates the actions taken when Centrelink’s prevention systems and procedures that are designed to minimise incorrect payment and fraud from occurring, fail. It analyses outcomes of fraud detection, and deterrence in the form of criminal prosecution, “designed to deal with incorrect payment and respond to potential or actual fraud when it is uncovered” (Australian National Audit Office 2011, p. 18).

Data for this report was collected from primary and secondary sources. Primary data sources include: legal case files; parliamentary Hansards; Freedom of Information requests from Centrelink; and, requests from the Judicial Information Research System of the Judicial Commission of New South Wales. Secondary data was collected from: Centrelink Annual Reports, reports of the Auditor General and the Australian National Audit Office, reports of the Commonwealth Ombudsman; and, other government reports and relevant research papers.

In the construction of this report the following assumptions were made:

- Wollongong is a typical/representative area for study;
- cases selected were typical /representative of Centrelink prosecutions;
- the sample period selected is adequate to capture the breadth of typical cases;
- the independent valuation based the costing on representative cases;
- the independent valuations obtained are accurate;
- major policy change to the funding of the Centrelink agency in 2009 does not impact on nature of its Business Integrity Unit.

1.4 Outline of the Report

Chapter 2 provides a contextualisation of the study. An overview of Westminster accountability and the structure of the Centrelink agency pertaining to social security payments and debt investigations are presented. A review of the policy for Whole of Government administration is also given. Key policy issues and stakeholders are identified. Chapter 3 describes the background to the study, including the demographics of Wollongong, and a detailed profile of Centrelink’s operations. Chapter 4 presents the data of the study. Chapter 5 contextualises the findings. Chapter 6 gives a summary of findings and recommendations.
Chapter 2

THE CONTEXT OF THE STUDY

2.1 Public Sector Accountability in Australia

Public Sector accountability in Australia is understood in the context of a Westminster government, to which both financial and management accountability are pivotal to satisfying constitutional, social, moral and political responsibilities (Funnell and Cooper, 1998). This is a multi-level system, as shown in Figure 2 below.

![Figure 2](image)

**Figure 2**: The chain of political accountability in the Commonwealth of Australia (from Funnell and Cooper, 1998, p. 29).

According to the above framework we understand Centrelink to be an agency accountable for the delivery of government services, programs and payments for government departments. The agency Centrelink forms part of the Human Services Portfolio. The Minister, through the Department of Human Services negotiates, directs and coordinators improvements to the delivery of services of the agencies of the portfolio, from a whole-of-government (WG) perspective. Besides Centrelink, other agencies in the portfolio are Australian Hearing, the Child Support Agency, CRS Australia, and Medicare Australia.
2.2 Whole-of-Government Approach

Centrelink reflects the recent Australian Commonwealth Government program of taking a WG approach to policy implementation. This approach provides the context in which delegations and accountabilities of social security legislation in Australia is enacted.

Whole-of-government “denotes public services agencies working across portfolio boundaries to achieve a shared goal and an integrated government response to particular issues. Approaches can be formal or informal. They can focus on policy development, program management, and service delivery” (Australian Management Advisory Committee 2004 as cited in Christensen and Laegreid 2007, p. 1060).

WG is a holistic approach to government that draws on many social science disciplines rather than just economics (Cornford, 2004). Its purpose is to reduce the fragmentation of policies and strategies evident in the era of New Public Management¹. WG aims for horizontal and vertical coordination across areas of government.

Until 30 June 2009 Centrelink received its funding through Bilateral Management Arrangements (BMAs) with policy agencies such as Department of Education, Employment and Workplace Relations (DEEWR) and Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). The Key Performance Indicators (KPIs) specified in the BMAs, in regard to the recovery of customer debts and payment correctness, set a target of 95 per cent (Australian National Audit Office 2011, p. 18). Centrelink advised the Commonwealth Auditor-General that the approach of targeting “customers” identified as most at risk of committing serious fraud was hampered by such KPIs: for example, specified quantitative targets included in the BMAs for fraud investigations and prosecution referrals (Australian National Audit Office 2011, p. 25).

From July 2009, Centrelink’s funding model was changed to reflect the new WG policy agenda. Now under a WG approach to managing social, health and welfare fraud and non-compliance, Centrelink receives all its departmental funding through direct appropriation. This focuses the organisation more directly on: preventative and detective controls; capability and capacity; an improvement of financial information; and, shared information systems which enable the automatic and generic referral of potential fraud cases through data matching with other agencies e.g. ATO. The largest percentage of Centrelink’s fraud cases is debts which are automatically referred through data matching, and these cases make up the greatest percentage of prosecution referrals to the CDPP (Australian National Audit Office 2011). Intelligence Teams have been introduced in Centrelink to prioritise such referrals, as well as support the investigation of fraud.

The scope of this study of Wollongong Centrelink prosecutions is 2008 – 2010 encompasses the transition period to WG and new funding arrangements for Centrelink.

¹ New Public Management emerged from the Thatcher government in the UK and applies private sector principles of financial management to the public sector.
2.3 Centrelink as an Agency

Centrelink is a statutory agency established through the *Commonwealth Services Delivery Agency Act 1997* to deliver services and welfare payments for nine Government Departments. Centrelink reports to the Commonwealth Minister for Human Services and Minister for Social Inclusion\(^2\) (Centrelink, 2011). The Department of Human Services is responsible for several agencies, programs and administering a wide range of legislation (see Figure 3).

![Department of Human Services](image)

**Figure 3**: Portfolio Structure of Centrelink as at 30 June 2010 (adapted from Centrelink (2010b)).

With the changes and shift to a WG approach, Centrelink, Medicare and the Department of Human Resources are reconstituting as a single department\(^3\) to “prevent people from falling through the cracks” and “provide better policy outcomes for the government” (Centrelink, 2010a, p.7).

2.4 Westminster Accountability, Whole of Government, and Wicked Problems

The Westminster system of government has embedded within it a traditional model of vertical lines of accountability, where separate portfolio agencies are held accountable through their individual Minister to Parliament. This does not adequately support the WG agenda, which requires horizontal responsibilities working across organisational boundaries. Innovative approaches to wicked problems require flexibility and devolution of decision making, which is not intrinsic to the design of public sector infrastructure and governance arrangements. Is specifying prosecution targets for Centrelink overpayment debts useful

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\(^2\) The Hon. Tanya Plibersek.

\(^3\) The co-location of Medicare and Centrelink offices began in 2010 for remote and rural communities (Centrelink, 2010a).
when the problem is wicked and its causes are difficult to know? We can ask, the prosecution target achieved is a solution for whom? How? (Australian Public Service Commission 2007, p.30).

### 2.5 The Trend of Precarious Employment

#### 2.5.1 ACTU Project

The Australian Council of Trade Unions (ACTU) launched a campaign concerning job and income security, especially for precarious employment. Australia has one of the highest rates of casual employment in the developed world with over two million of casual workforce (Kearney, 2011). Casual, part time and contract work is overtaking permanent full time employment as the standard type of job for the majority of working Australians (ACTU, 2010). Less than half of the Australian workforce has permanent, full-time employment. Short-term contract, outsourcing, labour hire, and sham independent contracting are all symptoms of the rise of insecure employment. However, it is argued that such flexibility of employment practices in the economy supports the growth of business. Among the workforce employed as casuals or contracts, 30% do not have any redundancy entitlements (Burrow, 2009). With the support of key-collar unions, the ACTU lobbied Prime Minister Gillard and her Government to wind back casual employment and reduce labour-hire arrangements (Hannan, 2011).

The ACTU has called for action to improve job and income security for working families and to reduce the incidence of casual and contract labour. The ACTU commissioned report, *Shifting Risk – Work and Working Life in Australia* (2010), identified a massive growth in non-standard forms of employment over the past two decades to now outstrip standard full-time employment. Rafferty and Yu (2010) conclude that there is an increase in precarious jobs and growth in non-standard forms of employment is outstripping standard full time employment, defined as a working week in excess of 35 hours attracting paid leave benefits. They also argue that the rise in precarious forms of employment is part of a shifting of costs from business to workers and is exposing working families to greater financial risk.

#### 2.5.2 National Welfare Rights Network

The National Welfare Rights Network (NWRN) provides both formal and informal feedback to Centrelink on improving service delivery for social benefit recipients. It develops policy and advocates for reform. NWRN also conduct training and education for community workers and engages in policy work and lobbying to improve the social security system.

In 2008, the Welfare Rights Centre published the 6th edition of the *Independent Social Security Handbook* to help ensure social security recipients have knowledge of their right entitlements and support from Centrelink. This handbook seeks to demystify complex rules and regulations and provides recipients with the right information to challenges Centrelink decisions (Welfare Rights Centre, 2008). NWRN also support reforms which make the payments system easier to understand and navigate. In 2011, NWRN made submissions to the Senate Reference Group about the need to overhaul unfair and harsh debt waiver rules

2.6 Summary
Centrelink sits within public sector accountability in Australia. Since 2009, this accountability is reflected in new policy, administrative and structural government agencies, as a consequence of a WG approach. A WG approach relies on horizontal responsibility across government agencies. This design of infrastructure supports the notion that wicked problems require a more flexible and innovative approach. At the employment/benefit nexus, the complexity of precarious employment, rules and regulations exacerbates the wicked nature of social security prosecutions.
Chapter 3

BACKGROUND OF THE STUDY

3.1 Profile of Centrelink

With $86.8 billion in social security payments, Centrelink is ranked in the top 100 Australian companies and has 6.84 million customers paying 10.43 million individual entitlements annually (Centrelink, 2011). The strategic direction to achieve “self-sufficiency for individuals and families through access to personalised assistance and co-ordinated delivery of payments and services on behalf of government” reflects the direction given by the Commonwealth Government (Centrelink, 2011, p.1). This outcome is supported strategic priorities that include, but not restricted to:

- the reduction of fraud and non-compliance and increase payment accuracy;
- ensuring service delivery is convenient, accessible and suits the diverse needs of individuals and providers;
- ensuring the workforce and Information and Communication Technologies (ICT) systems capacity underpins the ability to deliver integrated customer service in a complex and evolving environment with short and long term policy objectives (Centrelink, 2011).

This case study aligns with two annual reporting cycles of Centrelink; 1 July 2008- 30 June 2009 and 1 July 2009- 30 June 2010. During these periods Centrelink recorded the following:


<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Payments</td>
<td>$86.8 billion</td>
<td>84.2 billion</td>
</tr>
<tr>
<td>Operating Surplus</td>
<td>$48.3 million</td>
<td>$24 million</td>
</tr>
<tr>
<td>Customers</td>
<td>6.84 million</td>
<td>7.02 million</td>
</tr>
<tr>
<td>Service Profiling</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fortnightly savings (reductions in payments)</td>
<td>$22.5 million</td>
<td>$21.7 million</td>
</tr>
<tr>
<td>Amount of debts identified (p.a.)</td>
<td>$23.4 million</td>
<td>$22.4 million</td>
</tr>
<tr>
<td>Serious non-compliance/fraud-related investigations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amount in debt and savings</td>
<td>$113.4 million$</td>
<td>$103.3 million</td>
</tr>
<tr>
<td>No. of cases referred to DPP</td>
<td>5 082</td>
<td>4 608</td>
</tr>
<tr>
<td>CDPP Fraud Prosecutions</td>
<td>2 973$</td>
<td>3 461$</td>
</tr>
<tr>
<td>CDPP Fraud Acquittals</td>
<td>34</td>
<td>25</td>
</tr>
</tbody>
</table>

$ Amount recouped from tip-offs data-matching and other triggers leading to 26 084 formal investigations. The average saving was calculated at $4 347 per investigation (Prenzler, 2010).

$381 cases had offence proven but no conviction recorded

$363 cases had offence proven but no conviction recorded
3.2 Centrelink Payments

Centrelink is the delivery agency for several Government Departments and includes both employable and non-employable customers e.g. carers, retirees. This study specifically targets the employment/benefit nexus and is concerned with the following payments: parenting (single and partnered); allowances for study or training; Newstart allowance; and, disability, illness or injury payments.

3.2.1 Parenting Payment

Parenting Payment provides support for persons with dependent children and includes participation requirements to qualify for payment after their youngest child reaches the threshold age. To meet the requirement, parents must be engaged in or looking for, at least, 30 hours per fortnight of suitable paid work, except in cases where another activity is approved. Suitable paid work is that which the customer is capable of performing and which is paid at a rate equivalent to, or above, the relevant minimum wage. Parenting Payment is paid fortnightly in arrears and customers must report their paid work earnings to Centrelink (Centrelink, 2009b). Parenting Payment can be single or partnered. For partnered payments the income of the partner is taken into consideration.

3.2.2 Allowances for Studying or Training

Youth Allowance provides support for full-time students and full-time Australian Apprentices aged 16-24 years and 16-20 year olds undertaking training and/or looking for work (Centrelink, 2009b). Austudy provides the same support for customers over 25 years and ABSTUDY provides similar support for Indigenous recipients aged from 14 years. While the rate of payment is subject to the dependent or independent status of the customer, the focus of this report is at the interface between payment and employment where the Personal Income Test applies. This test applies to all income from all sources, including work and investments. Centrelink requires notification within 14 days of income received or “earned”. Penalties, including a 10% debt recovery fee, are applied for a failure to notify and/or the provision of incorrect or misleading information (Centrelink, 2009b, p.55).

Youth Allowance, Austudy and ABSTUDY provide an Income Bank to facilitate the flexibility of study and income streams. Customers are able to accumulate any unused portion of the income-free threshold for the duration of their study or Australian Apprenticeship to offset income earned at a later date (Centrelink, 2009b).

3.2.3 Newstart

Newstart is available to unemployed (or deemed unemployed) persons over 21 years and under the eligibility requirements for an age pension. Customers must be looking for paid

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7 From July 2006
8 Aged under eight if single and six if partnered
9 75% of normal full-time study load at an approved institution.
10 The Personal Income Test applies to recipients aged 16 years and over.
11 Earn up to $236/fortnight (before tax) without affecting payment. Between $236 - $316, payment is reduced by 50c in the dollar and over $316, payment is reduced 60c in the dollar.
12 Maximum amount permitted is dependent on the status of the recipient e.g. full-time students can accumulate up to $6 000 over the duration of their study.
employment and be prepared to enter into an Employment Pathway Plan and activity tests. Newstart is both income and asset tested. Partner income and assets is also considered.

3.2.4 Disability, Illness or Injury Payments

Centrelink has a range of payments for temporary illness or injury and also the Disability Support Pension (DSP) that ensures income support for people prevented by physical, intellectual or psychological impairment from working. This pension is both income and assets tested. Persons on a DSP are provided with incentives to work including:

- Working Credit - if income from employment is less than $48/fortnight customers automatically accrue ‘credits’ to offset against other employment income in the future.
- Access to services that help customers find work or training including Disability Supported Employment Services that employ people with disabilities.

Disability programs support employment through wage subsidies and the Supported Wage System (SWS) which incorporates productivity-based wage assessments compared with co-workers performing the same task (Centrelink, 2009b).

The Centrelink compliance framework links the payment of income to a customer’s participation in the workforce and adherence to an activity agreement while receiving Newstart, Youth Allowance (job seeker), Austudy, Parenting Payment or Special Benefit (Centrelink 2009). The Government indicated that more than 2 million customers of working age could secure employment including: 800,000 people receiving the DSP; 551 000 on Newstart Allowance; 80 000 young people on Youth Allowance; 330 358 Parenting Payment (Single) recipients (130 000 whose youngest child was over six); and, 121 500 on Parenting Payment Partnered (Welfare Rights Centre, 2011).

3.3 Centrelink Customers Rights and Responsibilities

As the recipients of Centrelink benefits, beneficiaries are entitled to receive the correct amount and type of benefit to which they are entitled. Centrelink recipients have the right not to attend a ‘prosecution interview’ with Centrelink for any alleged debt incurred. No penalty can be imposed, or current payments stopped for a client not attending such a Centrelink interview. Centrelink customers have the right to seek independent advice about any Centrelink related matter. If clients disagree with a Centrelink decision, they also have the right to appeal such a decision (Legal Service Commission, 2009).

Recipients of social security payments have the responsibility to notify Centrelink of any changes in income, assets and other circumstances. Centrelink has wide powers to obtain information from any person (including government agencies, banks and employers) on any matter relating to a person’s social security entitlement (Social Security (Administration) Act s.192, s.195). Centrelink also conducts random reviews of clients’ eligibility and entitlements, and participates in data matching programs with other government departments as part of its program to limit fraud. Centrelink will investigate information

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13 At least 15 hours/week for two years or 30 hours/week before 11 May 2005.
14 Working Credit is available for some payments including: youth Allowance (job seeker), Newstart, Disability Support Pension, Parenting Payment. $1 is equal to one credit up to a maximum of 1 000 credits.
which comes to it from any source, anonymous or otherwise. Investigating officers may conduct field visits to investigate allegations of fraud, or as part of a standard review (Legal Service commission, 2009).

Any recipient of a Centrelink benefit has the responsibility to keep Centrelink informed of any changes in circumstances, such as:

- any changes to income (including compensation payments);
- changes to assets;
- change address;
- variation of enrolment in a course or associated study load;
- a recipient becomes a member of a couple;
- a recipient ceases to be a member of a couple;
- a recipient has a dependent child left in their care;
- changes in partner’s income. (Legal Services Commission, 2009)

### 3.4 Overpayments of Social Security Entitlements

The integrity of social security outlays is viewed as a high-level risk to be managed by Centrelink (Australian National Audit Office 2011). To ensure income support “goes to people in genuine need and that they get the correct payments” a regular detection process and system for timely recovery of overpayments has been established by Centrelink (Centrelink, 2009a, p.18). A strategic priority for Centrelink is to “reduce fraud and non-compliance and increase payment accuracy” (Centrelink, 2010a, p.67). In 2009-2010 the government introduced the *Annual Social, Health and Welfare Payments Compliance Plan*, outlining the direction for fraud and non-compliance strategies (Centrelink, 2010a).

Debt prevention is a high priority and a range of debt prevention strategies are employed to reduce the incidence of overpayment, including education, through a network of Debt Management Coordinators and Officers. Customers have an obligation to advise Centrelink of all income and failure to notify may result in an overpayment of benefit and subsequent debt to Centrelink (Centrelink, 2009b). Customers with a Centrelink debt receive an ‘accounts payable’ notification, due within a certain period\(^\text{15}\). Centrelink has legislative recovery powers where customers fail to negotiate an appropriate payment schedule or repay their debt, including civil (legal) action. Where an overpayment involves making false or misleading statements or misrepresenting circumstances the situation can give rise to penalties and, in some cases of fraud, imprisonment.

Centrelink has various ways to detect overpayments including random selection of customers and also targeted customers on the basis of certain risk factors. In addition, Centrelink data-matches with several agencies, including the Australian Tax Office (ATO). Data-matching involves the comparison of two or more sets of data to detect discrepancies or similarities and, in the case of income, Centrelink has four data-matching programs to detect customers failing to declare and/or declare the correct amount of income from employment including:

\(^{15}\) Customers can make arrangements to repay the debt by contacting Centrelink’s Debt Recovery Team prior to the due date. A range of options for repayment are available to prevent financial hardship.
Centrelink Prosecutions at the Employment/Benefit Nexus: A Case Study of Wollongong

- ATO Pay-As-You-Go (PAYG) Data Matching Protocol detects anomalies with the amount received and declared from PAYG Income Summaries. This is conducted on an annual basis;
- ATO matching of Tax File Number Declaration Forms to detect non-disclosure of income from employment. This is conducted on a weekly basis;
- Department of Employment and Workplace Relations (DEWR) matches customers placed in employment by a Job Network Member. This is conducted on a monthly basis;
- ATO matches customers’ Income Tax Returns where income from employment is a source of income. Uses previous financial year data and conducted up to nine times per year (Centrelink, 2004).

The stated objectives of data-matching programs are:
- to achieve savings by identifying customers with incorrectly declared income from employment;
- to deter customers from not disclosing income and promote voluntary compliance;
- to recover overpayments;
- to prosecute customers, in cases of fraud or misrepresentation (Centrelink, 2004).

In addition to data-mining, Centrelink commenced targeting cash economy investigations through its intelligence frameworks in 2008-2009 with labour hire, private security, restaurant and cafe and fishing industries of particular interest (Centrelink, 2009a). Other methods include: identity-related fraud detection and public tip-offs.

Data-matching and other mechanisms for detecting fraud are considered secondary prevention strategies i.e. detecting and preventing fraud after it has begun. The benefits of this strategy are the cessation of future losses and the recovery of past losses through repayment orders (Prenzler, 2011). However, as fraud prevention increases more fraud is detected, so there are little substantive reductions in fraud activity with an ‘ongoing ‘roll call’ of offenders convicted in the courts” (Prenzler, 2011, p. 5).

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17 In 2008—2009 the costs of this program were estimated to be $23 463 800 & benefits $173 117 700 resulting in a net benefit of $149.7 million (Centrelink, 2010b)
Table 2: Debts raised by Centrelink, number of investigations and savings of debt.

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Debts Raised</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Amount Raised</strong></td>
<td>$1 926 million</td>
<td>$1 747 million</td>
</tr>
<tr>
<td><strong>Amount Recovered</strong></td>
<td>$1 091 million</td>
<td>$1 094 million</td>
</tr>
<tr>
<td><strong>Data Mining</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Savings and debts</td>
<td>$149.7 million</td>
<td>n.a.</td>
</tr>
<tr>
<td><strong>Cash Economy</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of investigations</td>
<td>7 925</td>
<td>n.a.</td>
</tr>
<tr>
<td>Savings and debts</td>
<td>$15.2 million</td>
<td>n.a.</td>
</tr>
<tr>
<td><strong>Identity-related fraud</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of investigations</td>
<td>3 873</td>
<td>7 333</td>
</tr>
<tr>
<td>Savings and debts</td>
<td>$15.1 million</td>
<td>$9.4 million</td>
</tr>
<tr>
<td><strong>Public Tip Offs</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of investigations</td>
<td>50 277</td>
<td>43 726</td>
</tr>
<tr>
<td>Savings and debts</td>
<td>$119.3 million</td>
<td>$101.8 million</td>
</tr>
</tbody>
</table>

In response to questions of the Commonwealth of Australia Joint Committee of Public Accounts and Audit Hearing #42 of the 2008 Management of Customer Debt (Human Services Portfolio) Carolyn Hogg advised that, for non-automated benchmark debt, the average time between when a debt is identified to when the debtor is notified of the debt is 17 days. The mean number of days for such a notification in 2007-2008 was 173.5 days, while the median period for notification was 33 days.

3.5 Social Security Debt

The Social Security Act 1991 determines what constitutes a social security debt. Centrelink can only recover an overpayment that is due to the Commonwealth. Typically a debt is raised where an individual receives a payment and is either not qualified for the payment, or the payment was not payable to that individual, or where an incorrect amount was paid to the individual. Where such an overpayment is the result of a deliberate action of the individual through misrepresentation or fraud, Centrelink has the authority to take both administrative action and prosecution for a criminal offence.

3.5.1 Legislation Relevant to Raising Social Security Debts

Part 5.2 of the Social Security Act 1991 contains the provisions for raising social security debts. Centrelink only has the power to recover an overpayment if it is “a debt due to the Commonwealth”. If the money paid to the person does not fall within one of the specified debt categories in social security law it is not a ‘debt’ and therefore cannot legally be recovered. However, since legislative changes from 1 October 1997 in most cases where a person has been overpaid an amount of money by Centrelink it is a recoverable debt.

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18 Centrelink (2009)
19 Centrelink (2010a)
The main section used by Centrelink to raise debts is s1223(1), which states:

Subject to this section, if:

a) a social security payment is made; and
b) a person who obtains the benefit of the payment was not entitled for any reason to obtain that benefit;

the amount of the payment is a debt due to the Commonwealth by the person and the debt is taken to arise when the person obtains the benefit of the payment.

The main situations in which Centrelink will raise a debt are:

- where a person was not qualified for a payment;
- where the payment was not payable to that person; or
- where the payment was paid to a person at an incorrect rate.

Where a debt arises from unintentional declaration of incorrect gross income or alleged fraud or deliberate misrepresentation, Centrelink has two possible courses of action against the alleged offender:

- administrative action to calculate and recover the debt; and/or
- prosecution for a criminal offence.

In such circumstances, Centrelink will always take administrative action to determine the amount of the debt, whether it should be recovered, and if so, the process of recovery appropriate.

The most common charge of social security overpayment recipients is knowingly obtaining payments, of which they were not entitled because of their misrepresented circumstances (e.g. marital status, income received), or they failed to make notification of a change of their circumstances (e.g. work not declared, change in address). Various penalties can be applied by the courts in cases of fraud; including gaol terms, fines, reparation orders, and good behaviour bonds (Legal Aid NSW, 2010).

Importantly, neither do criminal convictions preclude any administrative review of an overpayment debt, nor are they conclusive proof of matters before the administrative review tribunal. An individual charged with a criminal offence does not automatically result in the adjournment of an administrative review (Legal Aid NSW, 2010).

3.6 Administrative Action and Appeals Process for Social Security Debt Recovery

Centrelink will always undertake administrative action, and administrative decisions are made regarding: the existence of the debt; whether the debt ought to be recovered and, if so; the method of recovery. These administrative decisions to raise and recover debts are subject to administrative merits review, initially internally (by a Centrelink Authorised Review Officer (ARO)) and externally by the Social Security Appeals Tribunal (SSAT) and the Administrative Appeals Tribunal (AAT).

Customers have several levels of appeal when they consider a decision is wrong and this invokes a series of reviews. The process aims to “provide a mechanism of review that is fair, just, economical, informal and quick” (Centrelink, 2009a, p.20) (Refer Figure 4).
Figure 4: Centrelink’s civil cases appeal process for customers.

For the period 2009-2010 Centrelink received 207,871 requests for review and of these requests:
- 39% of the decisions reviewed by an ODM where changed and 55%\(^{20}\) affirmed. (69% in abbreviated ODMs\(^{21}\));
- 21% ODM reviews went on to be considered by an ARO and 38% changed, 34% changed in direct-to-ARO reviews (Commonwealth Ombudsman, 2011).

In 2011, the Commonwealth Ombudsman investigated Centrelink’s conduct of internal review and identified several administrative deficiencies, including Centrelink’s current practice to cancel a request for an ARO if a customer consents to a review by the ODM (Commonwealth Ombudsman, 2011). The report also identified a distinct “at-risk group” of customers with “a limited capacity to ‘jump through the hoops’ of a protracted review process” (Commonwealth Ombudsman, 2011, p.3).

\(^{20}\) 6% withdrew.
\(^{21}\) Where the customer requests an ARO but consents to a “quick check” by an ODM prior to escalating to an ARO (Commonwealth Ombudsman, 2011, p. 6)
Table 3: Outcomes of Centrelink’s Internal Reviews 2008 – 2010 (adapted from Centrelink 2010a).

<table>
<thead>
<tr>
<th></th>
<th>Unchanged Decisions</th>
<th>Changed Decisions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2008-09</td>
<td>2009-10</td>
</tr>
<tr>
<td>ARO</td>
<td>69.2%</td>
<td>66.7%</td>
</tr>
<tr>
<td></td>
<td>(57 259)</td>
<td>(40 482)</td>
</tr>
<tr>
<td>SSAT</td>
<td>70.1%</td>
<td>70.5%</td>
</tr>
<tr>
<td></td>
<td>(10 780)</td>
<td>(9 054)</td>
</tr>
<tr>
<td>AAT- Customer applications</td>
<td>72%</td>
<td>72.5%</td>
</tr>
<tr>
<td></td>
<td>(1 533)</td>
<td>(1 990)</td>
</tr>
<tr>
<td>AAT- Secretary applications</td>
<td>63.6%</td>
<td>59.6%</td>
</tr>
<tr>
<td></td>
<td>(124)</td>
<td>(65)</td>
</tr>
</tbody>
</table>

Table 3 above indicates Centrelink internal review 2008-2010. In cases where decisions are changed, customers may be able to claim for compensation. Centrelink received 2 562 compensation claims from customers for settlement under the Legal Services Directions (LSD) or payment under the Scheme for Compensation for Detriment Caused by Defective Administration (CDDA) in 2009–10. This was less than the 2 722 claims received in 2008–09. In the same period, 300 claims were settled under the LSD, and 1089 were approved under the CDDA scheme, a total of 1389. This represented 52% of all determined claims, compared with 48% in 2008–09. Centrelink aims to process claims within 90 days. In 2009–10, 48% of claims were completed within 90 days, compared to 57% in 2008–09. The most common reasons for paying customer compensation were to reimburse customers for the cost of bank fees and claims regarding the start date of payments (Centrelink, 2010a).

3.6.1 Waiver of Debt

Under s1237A(1) Sole administrative error and received in good faith, where there is an administrative error, only that part of the debt caused solely by the Centrelink error (or any other Commonwealth Government Department) must be waived. Debts which are the result of an error made by the person who owes the debt cannot be waived using this provision.

S1237AAD Waiver in "special circumstances" provides for The Secretary to waive the right to recover all or part of a debt if the Secretary is satisfied that:

(a) the debt did not result wholly or partly from the debtor or another person knowingly:
   (i) making a false statement or false representation; or
   (ii) failing or omitting to comply with a provision of this Act or the 1947 Act;
(b) there are special circumstances (other than financial hardship alone) that makes it desirable to waive; and
(c) it is more appropriate to waive than to write off the debt or part of the debt.

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22 Includes withdrawals
In summary, a debt may be waived where:

- the debt did not arise through a person knowingly making a false statement or representation or knowingly failing to comply with a requirement of social security law; and
- there are special circumstances to warrant waiver of part or all of the debt.

Whether there are ‘special circumstances’ will depend on the particular facts of each case. Financial hardship alone cannot amount to special circumstances.

### 3.6.2 Effects of Bankruptcy

Like other debts, social security debts cease to be payable once a person becomes bankrupt. Any deductions made from a person’s social security payment, or money recovered by garnishee during the debtor’s bankruptcy, should be refunded. Once a person is discharged from bankruptcy, social security debts incurred before the date of the discharge become irrecoverable at law. However, debts incurred by fraud will still be recoverable after a debtor’s discharge from bankruptcy. (see Secretary, DSS v Southcott (1998) 50 ALD 162).

In the Appeal of Garbutt to the Administrative Appeals Tribunal, it was found that by reason of his bankruptcy, Mr Garbutt was released from repaying a debt totally $13,452.69. It was found that there was not sufficient evidence to support a finding that Mr Garbutt was deliberately dishonest in under declaring his income to Centrelink, and so he was released from debts affected by the bankruptcy (Administrative Appeals Tribunal 2011 AATA 538).

### 3.7 The Regulatory Framework of Centrelink Fraud Investigations

Fraud is defined as “the use of dishonest and deceitful means to obtain some unjust advantage” (Lindley and Smith, 2011, p.3) and is a generic term for a range of practices. Social security (welfare) fraud involves “giving false or misleading information to a government agency in order to receive a social security benefit to which the person is not entitled” (Lindley and Smith, 2011, p.3) and “a criminal offence liable to long, jail sentences” (Ludwig, 2008, p.1). Centrelink, with its large customer base is a particularly vulnerable agency.

The detection of social security fraud by Centrelink is predicated on the idea that “the social security system exists to give a helping hand to those people in most need. People who commit offences undermine community support for the system” and that “the right payments go to the right people” (Ludwig, 2008, p.1). However, there is considerable debate that the anti-fraud measures used by Centrelink are overly punitive, criminalising recipients and driving them further into debt by recovery orders (Prenzler, 2011).

Table 4 below identifies selected Centrelink benefit types that are represented in this project and the number of fraud convictions in Australia in 2008-09 combined with the total debt associated with the prosecution.
Table 4: Fraud by selected benefit types 2008-09 (adapted from Prenzler, 2011).

<table>
<thead>
<tr>
<th>Benefit Type</th>
<th>No. of Convictions</th>
<th>Debt Associated ($)</th>
<th>Average Debt ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parenting Payment (Single)</td>
<td>1 280</td>
<td>22 157 531</td>
<td>17 311</td>
</tr>
<tr>
<td>Newstart Allowance</td>
<td>1 045</td>
<td>11 303 971</td>
<td>10 817</td>
</tr>
<tr>
<td>Disability Support Pension</td>
<td>301</td>
<td>5 675 043</td>
<td>18 853</td>
</tr>
<tr>
<td>Parenting Payment (Partnered)</td>
<td>174</td>
<td>1 896 174</td>
<td>10 898</td>
</tr>
<tr>
<td>Youth Allowance (student)</td>
<td>85</td>
<td>1 180 800</td>
<td>13 892</td>
</tr>
<tr>
<td>Austudy</td>
<td>69</td>
<td>964 492</td>
<td>13 978</td>
</tr>
<tr>
<td>Youth Allowance (Jobseeker)</td>
<td>26</td>
<td>168 395</td>
<td>6 677</td>
</tr>
</tbody>
</table>

Within the total population of 15 benefits (total convictions = 3 228), Parenting Payment (Single and Partnered) and Newstart account for 77% of the total convictions (Prenzler, 2011).

3.7.1 Commonwealth Director of Public Prosecution (CDPP)

The Office of the Director of Public Prosecutions was established in 1984 and ensures independence of the prosecution process and separation of the investigative and prosecutorial functions of the Commonwealth criminal justice system (CDPP, 2003). In effect, the CDPP decides whether a prosecution proceeds regardless of the investigation. The decision whether to prosecute or not is taken “in the interests of the victim, the suspected offender and the community at large” (CDPP, 2003, p.2). Several considerations in using this discretion include:

- the existence of admissible, substantial and reliable evidence;
- the prospect of conviction;
- the likely presentation of the case in court e.g. reliability and credibility of witnesses, admissibility of confessions;
- the public interest requires a prosecution be pursued e.g. seriousness or triviality, availability and efficacy of alternatives (CDPP, 2003).

The CDPP is considered an independent process where only the strongest cases are pursued when the standard of evidence is beyond reasonable doubt (Prenzler, 2011). In 2008-09, Centrelink referrals accounted for 69% of defendants prosecuted (Prenzler, 2011) with 3 388 Centrelink cases with a conviction rate of 99% (Centrelink 2011b).

The Social Security (Administration) Act 1999 and the Commonwealth Fraud Control Guidelines are Centrelink’s authority to investigate potential cases of fraud and provide briefs of evidence to the CDPP (Australian National Audit Office, 2011). Centrelink’s Business Integrity Division is responsible for fraud investigations, and deploys 11 Fraud Investigation Teams to this end across Australia. They use specified policies, procedures, processes and information systems to support this work; including their bespoke Fraud Investigation Case Management System (FICMS) (Australian National Audit Office, 2011). Relevant regulations pertaining to Centrelink’s fraud investigations include the Australian Government Investigations Standards (AGIS), the Freedom of Information Act 1982, the Privacy Act 1988 and the Public Service Act 1988 (Australian National Audit Office, 2011).

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23 In 2008-09 the CDDP reviewed the method to calculate the number of charges and defendants it dealt with. Therefore, comparison with figures from previous years is not available (AIC, 2011).
Centrelink is only authorised to investigate its customers for compliance and must, in their investigation distinguish compliance from fraud. A critical decision for the agency is whether a case merits transition from a non-compliance investigation to an investigation for fraud. Upon Centrelink detecting suspected fraudulent behaviour, it does not have legislated powers to collect evidence for criminal prosecution, but must refer the matter to a Heads of Commonwealth Operational Law Enforcement Agency (HOCOLEA). Centrelink is not a HOCOLEA (Australian National Audit Office, 2011).

The Australian National Audit Office (2011) found that the majority of Centrelink fraud investigations result in an administrative recovery of the debt outstanding, rather than a referral to the CDPP. The Auditor-General also found that “the results of the ANAO’s case reviews indicate that most of these fraud investigations did not comply with the Australian Government’s regulated framework for fraud investigations and Centrelink’s internal policies and procedures... contributing to: deficiencies in case selection and prioritisation practices; and shortcomings in managerial oversight of investigation planning and the necessary deliberation of critical decisions and investigation outcomes” (Australian National Audit Office, 2011, p.24).

### 3.8 Prosecution for a Criminal Offence

The same set of circumstances which gave rise to a debt may also lead to a charge of a criminal offence. The most common charge laid against defendants is knowingly obtaining payments of the relevant social security payment, the whole or part of which were not payable. These circumstances most commonly arise when it is alleged a person has misrepresented their circumstances (e.g. marital status, income), or they have failed to notify of changed circumstances (e.g. found work and did not declare it to Centrelink), or when a person has used a false identity.

There are two possible sources for criminal proceedings in social security cases:

- **Criminal Code Act 1995**

#### 3.8.1 Criminal Penalties

It has long been established principle that a custodial sentence should be imposed for social security fraud unless there are 'very special circumstances' justifying a lesser order (see *R v Perdon* NSWCCA, 27 March 1997). The appropriateness of a suspended sentence for social security fraud was discussed by Howie J in *R v Hinton* [2002] NSW CCA 405 at [32]:

> The question of whether a particular sentencing alternative, including a suspended sentence is an appropriate or adequate form of punishment must be considered on a case by case basis, having regard to the nature of the offence committee, the objective seriousness of the criminality involved, the need for general or specific deterrence and the subjective circumstances of the offender.

With respect to a conviction for social security fraud by an individual with no previous criminal history, *R v Phelan* (1993) 66 A Crim R 446. found that it remains open to the Court
to take this into account on sentence, particularly when assessing the likelihood of recidivism and the issue of individual deterrence.

Social security fraud committed before 24 May 2001 is charged making a false representation under the now repealed s29B of the Crimes Act (2 year maximum) or as general fraud under the repealed s29D (5 year maximum). Offences after that date are charged under the general dishonesty provisions in s135.1 of the Criminal Code Act 1995 (5 year maximum).

3.8.2 Poniatowska Appeal

In 2010 an appeal was heard in the Supreme Court of South Australia against a conviction and sentence for Centrelink fraud, which has created precedence in the area of social security fraud. The appellant pleaded guilty to receiving payments of Parenting Payment Single to which she was not or only partly entitled, because of employment income she received between August 2005 and May 2007. Poniatowska was charged with 17 counts of obtaining a financial advantage from the Commonwealth knowing that there was no entitlement to it contrary to s135.2 of the Criminal Code (Cth).

135.2 Obtaining financial advantage
(1) A person is guilty of an offence if:
(a) the person engages in conduct; and
(aa) as a result of that conduct, the person obtains a financial advantage for himself or herself from another person; and
(ab) the person knows or believes that he or she is not eligible to receive that financial advantage; and
(b) the other person is a Commonwealth entity.
Penalty: Imprisonment for 12 months.

The Full Court of the South Australian Supreme Court ruled that Poniatowska did not commit an offence by failing to notify Centrelink of any changes to her employment status. It was found that liability for admission under the criminal code requires a legal duty, but there was no such legal duty identified by the prosecution. Failure to notify is a non-action, not an engaged conduct. Subsequent to the ruling of the Supreme Court of South Australia, an appeal was lodged on behalf of Centrelink to the High Court of Australia. In anticipation of an adverse ruling in the case, a Social Security and Other Legislation Amendment (Miscellaneous Measures) Bill 2011 was introduced, to amend the Social Security (Administration) Act 1999 to include a standalone obligation for a person to inform Centrelink of any changes in their circumstances within 14 days, that might affect the payment of a social security benefit or their qualification for a concession card. It is intended that the Bill be made retrospective to 20 March 2000, to mitigate any consequences from a failed Poniatowska v DPP (Cth) High Court of Australia appeal. The current position is that a large number of past convictions are at risk of being overturned on the basis of the pending Poniatowska case. It was noted in the case files of the Wollongong study that the CDPP either adjourned or discontinued a number of cases before the courts, awaiting the outcome of the decision and the approval of the proposed Bill. It was observed in the

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24 Poniatowska v DPP (Cth) [2010] SASCFC 19 (2 August 2010)
Wollongong court a drop in the typical number of cases brought forward following the lodgement of the Poniatowska Appeal.

Western Australia’s Greens’ Senator Siewert (Commonwealth of Australia Senate Speech 6th July 2011) argues the retrospective nature of the Bill will ensure the convictions of approximately 15 000 people, contravening both the principle of natural justice, and the International Covenant on Civil and Political Rights, quoting “[N]o one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed”. Senator Siewert went on to argue concern that the proposed legislation promotes the prosecution of unintentional breaches resulting from overly complex systems of rules and entitlements: as well as, directing resources to the easy small targets rather than the ‘big fish’ of social security fraud. It is noted the targets of the retrospective legislation are likely to be those vulnerable in the system, for example those: with inadequate English language skills to read a payslip; in precarious employment such as casual teachers and nurses who are statistically more often in debt because of the irregularity and unpredictability of their employment and pay; and, Indigenous income support recipients. Senator Siewert’s speech also notes the culture of fear to report any overpayments received, given the incidents of prosecuting individuals subsequent to repayment arrangements and the full repayment of debts.

3.9 Summary

Centrelink is a prominent institution both financially and socially providing for over 6 million customers with annual payment of $10.43 million. Certain Centrelink payments require participation in paid work as a condition of receiving the benefits. Therefore it is a vulnerable to instances of overpayment error both administratively and fraudulently. Centrelink relies heavily on sophisticated secondary preventive measures including ex post data matching and data mining techniques. In cases of overpayment resulting in a Centrelink debt, customers have the right of appeal through Centrelink review process. Where Centrelink determines that overpayments resulting from knowingly obtained payments which would not payable could be charged with criminal offence, social security fraud.
Chapter 4

A CASE STUDY OF CENTRELINK PROSECUTIONS IN WOLLONGONG

4.1 Introduction

Wollongong office of Legal Aid NSW ran a pilot program from September 2009 to June 2011. Both civil and criminal lawyers worked collaboratively on Centrelink prosecutions of alleged fraud that resulted from an overpayment of a social security benefit. Their project reviewed 34 criminal law files, finding that: 71% of their clients were women; 91% of these were single; 50% received Parenting Payment (single); and 20% had a medically diagnosed mental illness. The average debt to Centrelink of this group was $9,247 per person. These statistics indicate that the cohort is vulnerable. Justice was not immediate, as the average delay between the end of the charge period and the court attendance was two years. The longest period was four years and the shortest period was eight months. The current conviction rate for Centrelink prosecutions is 99% (Wollongong Legal Aid NSW, 2011). This profile of offenders leads one to question whether there are systemic factors at play, especially considering where a system uses post-event prosecution as an instrument of accountability assurance. One further question whether it is truly accountable to citizens (including the defendants), both in terms of cost-efficiency and the broader public interest aspect of social outcomes.

4.2 Scope

This study is located within the context of the above described Wollongong profile, and elaborates on this initial investigation of the Wollongong office of Legal Aid NSW. It is assumed that the Wollongong profile is not atypical and therefore a suitable region to investigate possible systemic issues. This study examines Centrelink prosecutions dealt with by Legal Aid NSW and encompasses both civil and criminal cases of Centrelink social security fraud. All criminal cases were heard at Wollongong Local Court. The period of the study covers 1 July 2008 to 30 June 2010. These years were chosen for several reasons:

- they encompass the most recent data for current costing;
- these periods from 1 July to 30 June are consistent with Centrelink’s reporting cycle;
- there were changes to the method and collection of data for crime statistics from 1 July 2009;
- primary documents for the period were available on-site for the researchers to access;
- it is a period of relative stability in Federal and NSW government.

Centrelink offices are located within and responsible for jurisdictional areas in Australia. The jurisdiction under review in this study is the Wollongong region, which forms part of Area Sydney East. The Wollongong region encompasses Corrimal, Wollongong, Warrawong, Dapto and Shellharbour Centrelink offices (see Figure 5 below). The Dapto office is also responsible for fraud investigations under the Business Integrity Unit of Centrelink. While
the Dapto office is “predisposed to undertaking investigation and prosecution functions mainly in the Wollongong region...no geographical boundaries are imposed on the team”\textsuperscript{25}.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{Figure5.png}
\caption{Area Sydney East (Source: Freedom of Information FOI/2011/960596).}
\end{figure}

Wollongong is situated 82km south of Sydney NSW and lies on the narrow coastal strip between the Illawarra Escarpment and the Pacific Ocean. Wollongong is the 3rd largest city in New South Wales after Sydney and Newcastle, with a population of 263 53526. Historically Wollongong is established on four industries: farming; fishing; coal mining; and heavy industry manufacturing, predominately steel production. Wollongong’s large population provides it with a substantial labour force. The most recently available census data indicate, that in 2006, the number of people in the area’s potential labour force was 119 542 with only 110 874 of these employed. Wollongong’s workforce has traditionally included high numbers of unskilled and semi-skilled workers. For the same period, labourers, sales workers, machinery operators and drivers, technicians and trade workers accounted for 50.1\% of the work force.

\textit{According to the Australia Bureau of Statistic, 29.6\% of persons in the labour force are not employed on a full time basis.}

Table 5 and 6 below describe the employment profile of the region (ABS, 2006).

\textsuperscript{25} Information from Centrelink obtained under a freedom of information FOI/2011/960596
\textsuperscript{26} Australian Bureau of Statistics (9 March 2006)
Table 5: Employment Profile in the Wollongong region (Source: ABS 2006 Census QuickStats).

<table>
<thead>
<tr>
<th>LABOUR FORCE (Population aged 15 and over in region)</th>
<th>Wollongong</th>
<th>Australia</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of people</td>
<td>% of persons</td>
</tr>
<tr>
<td>Total</td>
<td>119 542</td>
<td>-</td>
</tr>
<tr>
<td>Employed full-time</td>
<td>67 871</td>
<td>56.8%</td>
</tr>
<tr>
<td>Employed part-time</td>
<td>35 419</td>
<td>29.6%</td>
</tr>
<tr>
<td>Employed away from work</td>
<td>4 424</td>
<td>3.7%</td>
</tr>
<tr>
<td>Employed hours not stated</td>
<td>3 160</td>
<td>2.6%</td>
</tr>
<tr>
<td>Unemployed</td>
<td>8 668</td>
<td>7.3%</td>
</tr>
<tr>
<td>Not in the labour force</td>
<td>79 427</td>
<td>-</td>
</tr>
</tbody>
</table>

Table 6: Employment Profile of Wollongong (Source: ABS 2006 Census QuickStats).

<table>
<thead>
<tr>
<th>OCCUPATION (Employed persons aged 15 years and over)</th>
<th>Wollongong</th>
<th>Australia</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of people</td>
<td>% of employed</td>
</tr>
<tr>
<td>Professionals</td>
<td>21 665</td>
<td>19.9%</td>
</tr>
<tr>
<td>Technicians and Trades Workers</td>
<td>18 240</td>
<td>16.7%</td>
</tr>
<tr>
<td>Clerical and Administrative Workers</td>
<td>15 898</td>
<td>14.6%</td>
</tr>
<tr>
<td>Community and Personal Service Workers</td>
<td>11 179</td>
<td>10.3%</td>
</tr>
<tr>
<td>Managers</td>
<td>11 145</td>
<td>10.2%</td>
</tr>
<tr>
<td>Sales Workers</td>
<td>11 005</td>
<td>10.1%</td>
</tr>
<tr>
<td>Labourers</td>
<td>10 778</td>
<td>9.9%</td>
</tr>
<tr>
<td>Machinery Operators and Drivers</td>
<td>9 091</td>
<td>8.3%</td>
</tr>
</tbody>
</table>

The following

Table 7 describes the longitudinal profile of Centrelink pension and allowance recipients for the period 2005-2010. While data is available for the age, disability and carer support pensions, there is a paucity of data on the residual employment-related pensions and allowances.
Table 7: Government Pensions and Allowances Wollongong Region (as at 30 June).
(Source: ABS 1379.0.55.001 National Regional Profile, Wollongong, 2005-2009, 22 November 2010)

<table>
<thead>
<tr>
<th>Type of Benefit</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age Pension - Centrelink</td>
<td>no. 32 318</td>
<td>32 286</td>
<td>32 753</td>
<td>34 123</td>
<td>35 157</td>
</tr>
<tr>
<td>Carers Payment</td>
<td>no. 1 712</td>
<td>1 898</td>
<td>2 120</td>
<td>2 363</td>
<td>2 573</td>
</tr>
<tr>
<td>Disability Support Pension</td>
<td>no. 11 009</td>
<td>11 055</td>
<td>11 305</td>
<td>11 609</td>
<td>12 145</td>
</tr>
<tr>
<td>Newstart Allowance</td>
<td>no. na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>7 999</td>
</tr>
<tr>
<td>Newstart Allowance - more than 365 days</td>
<td>%</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>55.2</td>
</tr>
<tr>
<td>Parenting Payment - Single</td>
<td>no. na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>5 231</td>
</tr>
<tr>
<td>Youth Allowances</td>
<td>no.</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
</tbody>
</table>

Figure 6: below indicates the proportion of various benefit types for criminal and civil cases defended by Legal Aid NSW Wollongong office during the period.

Figure 6: Benefit by type for civil and criminal cases at Legal Aid NSW Wollongong office (1 July 2008 – 30 June 2010).

The dominant payments attracting overpayment debt prosecutions from employment-related income are Parenting Payment (40%) followed by Newstart (38%). Disability Support Payment comprised a large proportion at 12%.

4.3 Method of Data Collection

Data was collected from primary and secondary sources. Primary data sources included legal case files, Commonwealth Parliamentary Hansards, Freedom of Information requests from Centrelink, and requests from the Judicial Information Research System of the Judicial Commission of New South Wales. Secondary data was collected from Centrelink Annual Reports, reports of the Auditor General and the Australian National Audit Office, reports of
the Commonwealth Ombudsman, and other government reports and relevant research papers. Attributes of the data are described specifically below.

4.3.1 Primary Data

Legal Case Files
The researchers summarised relevant data from Legal Aid NSW Wollongong records for both civil and criminal social security cases for the period 1 July 2008 - 30 June 2010. There were 75 case files identified. From these a total population of 56 case files was selected as primary data meeting the set criteria. Specifically, the commencement date for each case was considered the relevant date for inclusion, and the data set consisted of all files categorised as s135.2(1) of the Commonwealth Criminal Code. Information was extracted in aggregated form and summarised using the following categories pertaining to each defendant:

- age & sex;
- civil or criminal prosecution;
- employment Industry (nursing, teaching, retail, hospitality, other);
- nature of work (casual, permanent part-time, full time, other);
- type of benefit received (Youth Allowance, Newstart Allowance, Parenting Payment, Disability Payment, other);
- overpayment debt;
- criminal penalty awarded;
- reparation amount;
- court costs.

Commonwealth Parliamentary Hansards
All online federal parliament Hansards from the House of Representatives and Senate sittings for the period under review were searched using the terms; ‘Centrelink’, ‘welfare’, fraud’, ‘overpayment’, and ‘debt’. This includes questions on notice, and speeches from members. The documents were examined for content relating to the project by the researchers to ascertain issues of relevance to the citizens and government departments accountable for implementation of policy and legislation.

Centrelink
Centrelink documents were referenced and included annual reports for the relevant period and public information available on the Centrelink website. Information was also requested under the Freedom of Information Act 1982 (FOI/2011/960596). Centrelink provided aggregate data for the Area Sydney East only, and included:

- the number of staff employed by Sydney Fraud Investigation Team;
- the job title, grading and total salaries for each of the officers, including legal and administrative officers;
- the number of cases prosecuted;
- the number of successful prosecutions and unsuccessful prosecutions;
- details of the geographical area for which the Dapto office is responsible.

Information requested specifically for the Wollongong region but not obtained included:
- number of prosecution files held by each team;
- the amount of rent paid for the Dapto office;
- details of total prosecutions, male/female, employment, and type of benefit pertaining to case files from Legal Aid NSW Wollongong.

In addition, a sample of complete criminal files (45 in total) and civil files (25 in total) accepted by Legal Aid NSW Wollongong office and commenced within the Wollongong jurisdiction in the two year period 2009 and 2010, were independently costed by Costacomp Pty Ltd27 (see summary in Table 9). All files in the sample relate directly to social security overpayment debts and fraud cases brought by the CDPP.

4.4 Descriptive Data – Wollongong Overpayment Prosecutions

The following descriptive data was selected from 56 case files from Legal Aid NSW Wollongong office records for the period 1 July 2008 – 30 June 2010. Figure 7 below illustrates the jurisdictions of the cases identified. These were predominately criminal (84%), with 11% civil prosecutions and 5% dual jurisdictional cases.

![Number of cases per quarter between 1 July 2008 - 30 Jun 2010](image)

**Figure 7:** Number of cases at Legal Aid NSW Wollongong office (1 July 2008 – 30 June 2010).

As Figure 7 indicates, criminal cases comprise the majority of cases across all quarterly periods. Aggregate data is presented in Figure 8 below.

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27 Costacomp Pty Ltd provides a legal cost service to a range of law service providers.
4.4.1 Demographic Data of the Sample

In the sample of Legal Aid NSW civil and criminal cases at the Wollongong office overwhelmingly females dominate criminal social security cases. In terms of civil cases, this study found that 38% are females and in criminal cases the percentage is greater at 57% (see Figure 9 below).

The majority of offenders involved in criminal prosecutions in Australia are male and, according to New South Wales Criminal Courts Statistics 2010, the average percentage of female offenders in criminal courts is approximately 21% only (NSW Bureau of Crime Statistics and Research, 2011). However, the Wollongong data reveals that contrary to this trend, 57% of prosecutions for social security fraud relates to females, over double that for
other criminal offences. The Marston and Walsh (2008) study also found that a slight majority (53%) were female.

In all age groups, criminal prosecutions for fraud dominated the social security cases for Legal Aid NSW Wollongong office (see Figure 10 below).

**Figure 10:** Age of defendants at Civil and Criminal cases at Legal Aid NSW Wollongong office (1 July 2008 – 30 June 2010).

In relation to criminal cases, the Marston and Walsh (2008) study found the most likely age to be between 25 and 34 years. This pilot study found the most likely age to be slightly higher between 36 and 40 years with an average age of 38.3 years for criminal 39.5 years and for civil.

**4.4.2 Industry and Employment Data of the Sample.**

The sample case files are classified into nine industry categories of employment, with an unspecified category where the industry is not identified. The other category comprises floristry, stevedoring, boiler-making and management.

Criminal prosecutions are primarily from the following industries: hospitality (31.5%); cleaning (13%); retail (9.3%); construction (7.4%); manufacturing (7.4%); accounting (3.7%); nursing (3.7%); removalists (3.7%); security (1.9%); and, other and unspecified categories (18.4%) (refer Figure 11 below).

The nursing industry dominated the civil cases (20%), with cleaning (13.3%), retail (13.3%), security (13.3%), and hospitality (6.7%). Other and unspecified categories are 33.4%. In comparison to criminal prosecutions, there are no civil cases in accounting, construction, manufacturing and removalist categories.
The nature of employment for both civil and criminal cases is overwhelmingly dominated by casual labour (see Figure 12). The precarious and inconsistent nature of casual employment is a structural impediment for accurate and timely notification within Centrelink’s reporting framework for employment income. Some occupations such as nursing and cleaning require short notice shiftwork and long shifts that attract penalty rates, which exacerbate the problem of an individual’s ability to estimate accurately his or her income. This finding
supports the assertion that those in precarious patterns of employment are at the crux of social security fraud.

4.5 Civil Cases at the Employment/Benefit Nexus
In civil cases, Centrelink customers are investigated for non-compliance, and pass through the appeals process as detailed in Figure 4. Three Centrelink benefits dominate the profile of civil cases for the period under review: Newstart (37%); Parenting Payment, single and partnered (25%); and the Disability Support Pension (38%). Since this study focussed only on social security overpayments arising from the under-declaration of income, these payments are consistent with the profile of a welfare beneficiary supplementing their income through employment. Additionally, these payments reflect the requirement of Centrelink to seek income through employment under certain circumstances.

![Type of Benefit (Civil)](image)

**Figure 13**: Type of benefit in civil cases at Legal Aid NSW Wollongong office (1 July 2008 – 30 June 2010).

In relation to civil cases in the Wollongong region, the average debt/case is $12 036. Figure 14 below demonstrates the range of debts relating to overpayments for the period under review.

![Debt (Civil)](image)

**Figure 14**: Centrelink Debt in civil cases at Legal Aid NSW Wollongong office (1 July 2008 – 30 June 2010).
4.6 Criminal Cases at the Employment/Benefit Nexus

Centrelink, under the authority of the *Social Security (Administration) Act* 1999 investigates potential cases of fraud associated with the receipt of social security benefits including overpayments, and provides evidence to the CDPP for criminal prosecution. When a case transitions from non-compliance to fraud, the case is referred to the HOCOLEA agency CDPP, who assesses the case and if appropriate brings it forward for criminal prosecution.

Figure 15 below represents fraud convictions by benefit type for the Wollongong region during the sample period (1 July 2008 – 30 June 2010).

![Type of Benefit - Wollongong (Criminal)](image)

**Figure 15:** Fraud Convictions by benefit type at Legal Aid NSW Wollongong office (1 July 2008 – 30 June 2010).

In the Wollongong region, Parenting Payment (Single and Partnered) (43%) and Newstart (39%) accounted for 82% of benefit type; consistent with the Australia-wide data on fraud convictions. The Marston and Walsh (2008) study also found that the most common social fraud cases were committed by individuals receiving an unemployment benefit such as Newstart or Youth Allowance (44%) or Parenting Payment (35%). These figures are not surprising and reflect the requirement to engage in employment, and therefore individuals are vulnerable to the risk of Centrelink overpayments at the employment/benefit nexus.

According to Australia-wide data, the average debt for the selected sample of benefits is $13 203. Figure 16 below represents the overpayments in criminal cases in the sample.
Figure 16: Total Debt in Fraud Convictions at Legal Aid NSW Wollongong office (1 July 2008 – 30 June 2010).

The Marston and Walsh (2008) study found that the average individual had defrauded the Commonwealth of just over $10 000 and that most defendants (85%) had repaid all or some of the debt. This pilot project found that the average debt was $9 270. This amount is consistent with the Marston and Walsh (2008) regional study but lower than the Australia-wide data.

Centrelink provided aggregated data on the number of cases prosecuted by the Centrelink Serious Non-Compliance Team-Sydney (previously the Sydney Fraud Investigation Team), which includes the Wollongong region\(^{28}\) (see Table 8 below). Centrelink was unable to furnish discrete data on the Wollongong region.

Table 8: Centrelink Overpayment Prosecutions in the Area Sydney East (including Wollongong).

<table>
<thead>
<tr>
<th></th>
<th>2007/08</th>
<th>2008/09</th>
<th>2009/10</th>
<th>July to Dec 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td># CasesProsecuted</td>
<td>445</td>
<td>638</td>
<td>585</td>
<td>214</td>
</tr>
<tr>
<td># Successful</td>
<td>403</td>
<td>557</td>
<td>500</td>
<td>189</td>
</tr>
<tr>
<td>prosecutions</td>
<td>(12 dismissed)</td>
<td>(10 dismissed)</td>
<td>(7 dismissed)</td>
<td>(4 dismissed)</td>
</tr>
</tbody>
</table>

The successful prosecutions are recorded on finalisation, however the case may have begun in the previous period. Prosecutions include the number of cases heard by the courts. The successful prosecutions include the cases that the CDPP have brought before the courts, and the dismissals that occurred where the court judged that the charges were unproven. In this pilot study three cases were withdrawn by the CDPP in the period.

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\(^{28}\) Information from Centrelink obtained under a freedom of information FOI/2011/960596
The following data relates to criminal prosecutions from Legal Aid NSW Wollongong office. All cases were resolved at Wollongong Local Court. Figure 17 represents criminal sanctions for social security fraud relating to the under-declaration of employment income.

**Figure 17:** Criminal penalties for Legal Aid NSW Wollongong office (1 July 2008 – 30 June 2010).

The Marston and Walsh (2008) study found that a good behaviour bond (GBB)(58%) is the most common penalty followed by community service order (CSO) (16%). This pilot study found that the most common penalty is GBB (58%) followed by CSO (26%). Imprisonment is recorded for 16% of the cases in contrast to the 2% in the Marston and Walsh (2008) study. In most cases reparation orders are given.

### 4.7 Costs in the Defence of Centrelink Wollongong Overpayment Prosecutions

**4.7.1 Determination of average costs for civil and criminal files**

The legal costs of files were independently ascertained by a field specialist, Costacomp Pty Ltd. There are 45 criminal and 25 civil proceedings. Average cost is derived by the inclusion of estimated professional costs and applicable GST\(^{29}\) and disbursements. With respect to the criminal files, total costs range from $220 to $6 500 at Legal Aid-scheduled rates (inclusive of disbursements). These files, when costed at ranges generally charged by private solicitors (inclusive of disbursements), range from $412.50 to $11 955.50. The average cost at Legal Aid-scheduled rates (inclusive of disbursements) is $1 113.52, while the average cost at rates charged by private solicitors (inclusive of disbursements) is 255.2% higher at $2 841.93.

\(^{29}\) GST is included as it is a transfer payment in the economy (Department of Finance and Administration 2006).
Similarly, for civil files, total costs range from $206.25 to $5,943.25 at Legal Aid-scheduled rates (inclusive of disbursements). These files, when costed at rates generally charged by private solicitors (inclusive of disbursements), range from $495 to $14,263.79. The average cost at Legal Aid-scheduled rates (inclusive of disbursements) is $1,823.61 while the average cost at rates charged by private solicitors (inclusive of disbursements) is 226.8% higher at $4,136.90.

**Table 9**: Summary of estimated average costs per criminal and civil file at Legal Aid NSW Wollongong office (1 July 2008 – 30 June 2010).

<table>
<thead>
<tr>
<th></th>
<th>CRIMINAL</th>
<th>CIVIL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Legal Aid</td>
<td>Private</td>
</tr>
<tr>
<td>Range of Costs</td>
<td>$220 - $6,500</td>
<td>$412.50 –</td>
</tr>
<tr>
<td></td>
<td>$11,955.50</td>
<td>$5,943.25</td>
</tr>
<tr>
<td>Average Costs/file</td>
<td>$1,113.52</td>
<td>$2,841.93</td>
</tr>
</tbody>
</table>

### 4.7.2 Costs of Penalties

In 2008-09, the most recently available data indicates the average expenditure per criminal case lodgement is $423 in the Magistrates Court (AIC, 2011). Similarly, the most recent available data indicates in 2008-09 the average expenditure per prisoner is $210 (AIC, 2011) per day. This compares with the costs associated with sentencing an offender to a community corrections program, for which in 2008-09 the average expenditure per day is $17 (AIC, 2011).

### 4.7.3 Costs of Prosecuting

The Australian National Audit Office (2011, p.144) argue relevant costs “include direct and indirect costs when allocated by program; activity costs related to management, prevention, detection, investigation activities and training; costs involved in debt recovery; and recovered debts and savings from fraud and non-compliance activities”. These cost calculations enable Centrelink to measure the cost-effectiveness of its fraud control programs, and furnish appropriate KPIs.

The Australian National Audit Office (2011, p.144) advised that Centrelink was unable to “produce an estimated cost of its fraud control program and related activities” and that it “does not have a system in place to effectively measure the cost-effectiveness of its fraud programs”. Furthermore, Centrelink’s Business Integrity Division advised the Australian National Audit Office that it does not measure and is unable to provide a breakdown of debt data such as recovered debts and savings. Ian McPhee, Commonwealth Auditor General, has recommended to Centrelink that fraud be more accurately quantified so that the cost-effectiveness of its fraud control strategies are able to be assessed (Australian National...
Audit Office, 2011, p.147). Effectively, at the time of writing this report, such costs remain a ‘black box’ and cannot reliably be identified.

4.8 Summary

This pilot study of Wollongong furnishes a profile of the typical case files of legal aid, and provides accurate data on a number of aspects including the range of penalties awarded, average Centrelink overpayment debt, trends in employment in the region, and the precarious nature of the employment of those convicted.

It was also discovered the problem of disaggregated prosecution cost data by region. Such a lack of record keeping and transparency exemplifies the wicked nature of the Centrelink overpayment debt problem. A lack of data collection and dissemination compounds ambiguous, incomplete measurements, where the costs of prosecution become a ‘black box’.

The following chapter contextualises and elucidates qualitative considerations of the data described in this chapter.
Chapter 5

PROSECUTING AT THE EMPLOYMENT/BENEFIT NEXUS

5.1 Introduction

The findings of the Wollongong study should be interpreted in the broader social context. This chapter discusses the impact on Centrelink benefit recipients at the employment/benefit nexus of changing family structures, the effects of social exclusion, and the prevalence of stereotyping in public discourse.

5.2 Changing Social Structures and Benefit Recipients

Rawsthorne (2006) observes that Australia is consistent with the international trend toward significant changes to the typical family structure. These changes move beyond what is seen in divorce statistics, to more fluid family formations and diversity in family forms such as non-residential parents and blended families; and, greater instability in relationships, e.g. relationships of shorter duration. Rawsthorne (2006) notes connotations of moral failure are ascribed for these changes including alcohol and drug abuse, domestic violence including physical, verbal and emotional abuse, and health and financial problems. She also notes a high level of family instability among income support recipients (Rawsthorne, 2006). The generalisations, while typical, are contestable. Such factors are necessarily neither controllable nor predictable. As such, they confound compliance with Centrelink policies and procedures by entitled beneficiaries. They exemplify the wicked nature of the prevention of Centrelink fraud.

5.3 The Effects of Social Exclusion

Marshall (1950 as cited by Cook and Marjoribanks 2005) identifies citizens as having three types of rights: civil, political and social, and these rights enable the reduction of social inequality. Social equality is aspirational, and social security is an instrument to achieve social equality. However, such a social security system as Centrelink in provision of its services, cannot take into account all non-economic circumstances that impact the need for and the ability of their customers to access their entitled benefits. Such circumstances are neither measurable nor generalisable, however they contribute to the fabric of circumstances leading to overpayment breaches and fraudulent outcomes, creating social exclusion (Cook and Marjoribanks, 2005). Such factors include poor skills, poor housing, bad health and family breakdown. Inequality affects how people participate in society.

The demographic profile of the Wollongong study indicates that those who are convicted of social security fraud are predominately women, and that those in receipt of a Parenting Payment are most precariously placed. This supports the findings of Cook and Marjoribanks, who found that Centrelink’s policies and processes fail to recognise the circumstances and meet the needs of low-income women who must navigate the welfare system (Cook and Marjoribanks, 2005). The Cook and Marjoribanks (2005) study found that low-income women on welfare were viewed unjustly by the welfare system and were
financially punished because the system did not adequately acknowledge the social structural factors that impacted upon their unemployment. They identified feelings of “scrutiny, marginalisation, surveillance, and stigma” (Cook and Marjoribanks, 2005, p.18). It was found that the Centrelink information handbook did not engage with the difficulties of this cohort in combining paid work with domestic and care-giving responsibilities for children, or relatives that were sick or disabled.

5.4 Stereotyping in Public Discourse
Since means-testing is the primary form of welfare provision in Australia and while it reduces the number of payments, it requires a more complex bureaucracy and the opportunity for recipients to hide or understate income or assets (Prenzler, 2011). The media-driven stereotype of the social security fraudster is often one of the “street-smart, savvy criminal” defrauding “the government for large sums of money” leading to an impression that the problem is in epidemic proportions in Australia (Marston and Walsh, 2008, p.285). Risks relating to social security fraud appear high due to the large number of incidents reported (Lindley and Smith, 2011). Only 0.04% of 6.5 million welfare recipients are convicted of fraud each year (Prenzler, 2011).

Discursive devices create social exclusion. The press has power and opportunity to represent identified groups in a particular light. In the case of welfare recipients, they are often represented as a social problem. Cook and Marjoribanks (2005, p.13) state “there is a need to explore how discourse are presented to welfare consumers, such as low-income women, in order to understand the impact of ‘common sense’ discursive shift”. The moral character of the recipients themselves is challenged in such discourse. Rawsthorne (2006, p.25) states “[s]ome of these interpretations have been moral, tinged with judgements about the characters of these parents and families, particularly those carried in the popular media”. Such a positioning of welfare recipients in the community by the media is suggested in the following headlines:

“Double-Dipping Welfare Cheat…. was a dishonest woman who gave no thought to her two young children when she ripped off social security for a second time, a Wollongong magistrate said yesterday” (Tydd, 2011).

“Use the big stick on welfare fraud” … “WELFARE fraud is one of Australia’s most insidious crimes. The matter of outright theft is bad enough but the nature of the theft means that those who are innocent of any crime and deserving of welfare will now face additional scrutiny.” (Anonymous, 4 April 2011).

“WELFARE cheats are in the gun with new technology being used to track people with Centrelink debts” (Johnston, 2011).

5.5 The Harm of Private Sector Concepts in Public Sector Delivery
Governments are elected to make collective decision on behalf of citizens, in the public interest, and are funded through taxation to do so. As such Centrelink benefits in the general sense are non-rival and non-excludable to citizens. Given a set of circumstances, all identified beneficiaries are entitled and none can be deprived. Social stigma should not be
attached to any receipt of benefits, nor should the system be unreasonably difficult to engage with. Thus the government is accountable to Centrelink recipients; “Democratic governments are agents of citizens and they are accountable to them” (Barton, 2005, p.145).

A government’s liabilities arise not only from exchange transactions, but from is social welfare commitments to its citizens. These obligations should not be framed solely in the private sector objective of cost minimisation, as they are part of the core business of government. Financialisation of social objectives is reductionist and can lead to morally bankrupt solutions. Centrelink as an agency is an administrative arm of government and as such provides services to the public. The agency does not exist as an entity in isolation. One can ask, from whom and for whom do they seek cost recovery? This question needs further debate in the context of the new WG policy agenda.

Broadly speaking, the social costs upheaval, especially on families is not and cannot be fully measured in limited financial terms. Social stigmatisation and isolation has its insidious effects. Benefit recipients may not have the capacity for compliance with Centrelink policy.

5.6 Summary

Centrelink prosecutions at the employment/benefit nexus are unavoidable. Circumstances of individuals’ contexts and capabilities makes this societal problem intractable. While technical solutions go some way to a remedy, they cannot guarantee justice to all stakeholders. For the Government and its agency Centrelink together with those prosecuted for overpayments and their representatives, financial accountability juxtaposed with social accountability is a ‘wicked problem’.
Chapter 6

FINDINGS AND RECOMMENDATIONS

6.1 Review of Findings

Wollongong, as a selected area to review the nature and number of Centrelink prosecutions for benefit overpayment debts, has been assessed to have a typical profile. The results of this study are consistent with the earlier study of Marston and Walsh (2008).

The majority of those being prosecuted in receipt of various benefits associated with the employment/benefit nexus are engaged in precarious casual employment, suggesting the vulnerability of individuals in this employment status. This precarious casual employment is represented across the construction, hospitality, nursing, cleaning, security, manufacturing and retail sectors in the Wollongong study. Also, atypical for criminal prosecutions, females dominate this group, many of whom are on a parenting benefit. This suggests a systemic gender bias in social security fraud leading to Centrelink debt overpayments. The reasons for this are identified as an area for further study.

Data matching is proving an effective strategy for identifying Centrelink debt overpayments, however, this technology is being applied to profile and identify those in receipt of Centrelink benefit overpayments after the event. This technological capability of data mining across government agencies and other private sector organisations support a WG policy agenda. However, it also highlights the nature of this wicked problem. Data mining, although having ability to profile, is limited because of its reactive response in the case of Centrelink overpayment debt detection.

Much of the tone of the agency, policy setters and commentators is a technical approach and as such appears naïve. While catching fraudsters is obviously a moral obligation of the agency, a purely technical approach cannot overshadow a broader accountability of government in this wicked problem – improving egalitarianism and the quality of life for needy citizens. The impact of the individual experience cannot be understood from setting key performance indicator targets of criminal prosecutions. This approach is insular to the government agency entity and does not gauge the impact in the broader society.

The paradoxical nature of the employment/benefit nexus means that those undertaking employment activity are vulnerable because of its casual and precarious nature. Individuals are caught in a system of complex compliance and find themselves criminally prosecuted. This study reinforces the notion that, in terms of financial accountability, the incidences of Centrelink overpayments should be lessened. However, it questions whether the criminal court is the most efficient and effective forum to discharge broader public sector accountability, especially where case selection by the CDPP is driven by agency KPIs (ANAO, 2011). Secondary detection satisfies probity but does not prevent any non-compliance at the employment/benefit nexus. In a broader sense government accountability to its citizens includes the responsibility for financial management. Consistent with other studies in the
area of social security fraud, primary prevention measures and changes to the way income is reported would better serve the public interest.

6.2 Recommendations

The recommendations include:

1. **The introduction of primary prevention techniques leveraging on existing Centrelink data-matching technology with the ATO.**

   This recommendation will mitigate *ex ante* the occurrence of overpayments that result from both intentional and unintentional under-declaration of income. Centrelink already has data-matching capabilities with the Australian Taxation Office (ATO) including reporting of employment income. Greater utilisation of this relationship could make a substantial amount of benefit recipients’ reporting redundant, minimising an opportunity for overpayment. This would be particularly useful to ensure compliance of employees in industries with large numbers of casual labour.

2. **A pilot program with one or more large employers, the ATO and Centrelink to trial a data-matching system.**

   Ensuring the integrity of the system would insulate Centrelink from increasing amounts of overpayment debts necessarily associated with the business trend for a more flexible and mobile workforce and prevent reporting net rather than gross income.

3. **The implementation of a flexible Centrelink reporting cycle to more practically reflect the ad hoc nature of precarious employment.**

   ‘Income smoothing’ would ease the artificial administrative distortion created by fluctuations in casual employment; for example, longer periods to reconcile employment income and benefit payment. In addition, the distortion of timing differences between Centrelink and employer systems, especially where there is more than one employer, will be mitigated. This would reduce the opportunity for under-declaration, especially instances of unintended breaches such as misaligning reporting periods.

4. **The implementation of an education programme for those at the employment/benefit nexus to develop basic skills relating to relevant financial terminology.**

   Compliance with Centrelink systems requires sophisticated skill levels, for example understanding technical terms such as gross and net income or the difference between cash and accrual reporting systems.
References


