This report talks about some difficult themes, including suicide, self-harm and mental ill-health. Readers may find parts of the report distressing. These are some support services which might be helpful if you or someone you know needs help:

- Lifeline 13 11 14 (24/7 crisis support line)
- Beyond Blue 1300 224 636 (24/7 telephone, website or email short-term counselling)
- Suicide Call Back Service 1300 659 467 (24/7 counselling for suicide prevention and mental health)
Appendix
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>#NotMyDebt</strong></td>
<td>A grassroots organisation which uses social media to assist affected people to challenge debts raised under the Scheme.</td>
</tr>
<tr>
<td><strong>2014 DSS legal advice</strong></td>
<td>A legal advice prepared by officers of the Department of Social Services in late 2014 about their view on the lawfulness of income averaging. It said that a debt amount derived from annual smoothing (that is, averaging) over a defined period of time was not consistent with social security legislation, which required entitlements to be calculated based upon actual fortnightly income. In other words, the use of income averaging, in the absence of other information, was unlawful.</td>
</tr>
<tr>
<td><strong>2014 DSS policy advice</strong></td>
<td>An advice prepared by officers of the Department of Social Services in late 2014 about their view on the policy of income averaging. The advice did not support such a policy, because the calculation method was not consistent with Social Security Legislation, which required employment income to be assessed fortnightly. It would also result in incorrect debt amounts.</td>
</tr>
<tr>
<td><strong>2017 AIAL Conference</strong></td>
<td>Annual conference of the Australian Institute of Administrative Law held on Thursday 20 and Friday 21 July 2017 at Hotel Realm, 18 National Circuit, Barton, Australian Capital Territory.</td>
</tr>
<tr>
<td><strong>2017 DSS legal advice</strong></td>
<td>A legal advice prepared by officers of the Department of Social Services in 2017.</td>
</tr>
<tr>
<td><strong>AAOs</strong></td>
<td>Administrative Arrangement Orders set out which departments, agencies and legislation are administered by which department/Portfolio.</td>
</tr>
<tr>
<td><strong>AAT</strong></td>
<td>Administrative Appeals Tribunal. The Government plans to introduce legislation in 2023 to abolish the AAT, and create a new Federal administrative review body.</td>
</tr>
<tr>
<td><strong>AAT1</strong></td>
<td>Administrative Appeals Tribunal Tier 1 Review. This is the first level of review by the AAT. Tier 1 decisions of the AAT are not published.</td>
</tr>
<tr>
<td><strong>AAT2</strong></td>
<td>Administrative Appeals Tribunal Tier 2 Review. Provides for review of AAT1 decisions. Tier 2 decisions of the AAT are published.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>--------------------</td>
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</tr>
<tr>
<td>ACOSS</td>
<td>Australian Council of Social Services</td>
</tr>
<tr>
<td>AFAR</td>
<td>Advice for Further Administrative Review prepared for adverse AAT tier 1 decisions.</td>
</tr>
<tr>
<td>AGD</td>
<td>Attorney-General’s Department</td>
</tr>
<tr>
<td>AGLS</td>
<td>Australian Government Legal Service. The AGLS is a formal professional network for all government lawyers.</td>
</tr>
<tr>
<td>AGS</td>
<td>Australian Government Solicitor</td>
</tr>
<tr>
<td>AI</td>
<td>Artificial Intelligence</td>
</tr>
<tr>
<td>AJAL</td>
<td>Australian Institute of Administrative Law</td>
</tr>
<tr>
<td>Amato case</td>
<td><em>Deanna Amato v the Commonwealth of Australia</em> (VID611/2019)</td>
</tr>
<tr>
<td>ANAO</td>
<td>Australian National Audit Office</td>
</tr>
<tr>
<td>APPs</td>
<td>The Australian Privacy Principles in Schedule 1 to the <em>Privacy Act 1988</em> (Cth).</td>
</tr>
<tr>
<td>APS</td>
<td>Australian Public Service</td>
</tr>
<tr>
<td>APS Code of Conduct</td>
<td>The APS Code of Conduct can be found in the <em>Public Service Act 1999</em> (Cth), s 13. All APS employees are required to comply with the Code.</td>
</tr>
<tr>
<td>APS Employment Principles</td>
<td>The APS Employment Principles can be found in the <em>Public Service Act 1999</em> (Cth), s 10A. The APS Employment Principles are designed to embody the principles of good public administration.</td>
</tr>
<tr>
<td>APS Values</td>
<td>The APS Values can be found in the <em>Public Service Act 1999</em> (Cth), s 10. The values “articulate the parliament’s expectations of public servants in terms of performance and standards of behaviour.”</td>
</tr>
<tr>
<td>APSC</td>
<td>Australian Public Service Commissioner</td>
</tr>
<tr>
<td>ARC</td>
<td>Administrative Review Council</td>
</tr>
<tr>
<td>ARO</td>
<td>Authorised Review Officer</td>
</tr>
<tr>
<td>ATO</td>
<td>Australian Taxation Office</td>
</tr>
<tr>
<td>ATO PAYG data</td>
<td>See PAYG income data.</td>
</tr>
<tr>
<td>BPORs</td>
<td>Budget Process Operational Rules</td>
</tr>
<tr>
<td>Budget</td>
<td>The Commonwealth government’s annual statement on public expenditure.</td>
</tr>
<tr>
<td>BVT</td>
<td>Business verification testing. Involves testing of a computer program to ensure particular coded functions work correctly.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-------------------------------</td>
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</tr>
<tr>
<td>Cabinet</td>
<td>The council of senior Commonwealth Ministers who are empowered by the government to make binding decisions on its behalf.</td>
</tr>
<tr>
<td>Cabinet handbook</td>
<td>Sets out the structure, practices and processes of the Government’s Cabinet and its committees.</td>
</tr>
<tr>
<td>Checklist</td>
<td>The NPP Due Diligence Checklist is a standard form completed by the department preparing an NPP to ensure that certain matters have been dealt with by the time the NPP reaches the ERC.</td>
</tr>
<tr>
<td>Class Action</td>
<td>See “Prygodicz case”.</td>
</tr>
<tr>
<td>Clayton Utz advice</td>
<td>A legal advice from Clayton Utz which was received by DSS in August 2018. It said that the use of averaging of ATO PAYG data to determine a Youth Allowance or Newstart Allowance recipient’s fortnightly income [in the absence of any other information] was unlawful.</td>
</tr>
<tr>
<td>Code</td>
<td>See APS Code of Conduct.</td>
</tr>
<tr>
<td>Commission</td>
<td>Royal Commission into the Robodebt Scheme</td>
</tr>
<tr>
<td>Commissioner</td>
<td>Commissioner Catherine Holmes AC SC</td>
</tr>
<tr>
<td>Commonwealth / the Commonwealth</td>
<td>The legal entity of the Australian Government.</td>
</tr>
<tr>
<td>CPSU</td>
<td>Community and Public Sector Union</td>
</tr>
<tr>
<td>CRN</td>
<td>Customer Reference Number</td>
</tr>
<tr>
<td>CSMC</td>
<td>Council of Single Mothers and their Children</td>
</tr>
<tr>
<td>CUPI</td>
<td>The online compliance intervention program called Check and Update Past Income, which involved compliance reviews initiated after on or around 30 September 2018.</td>
</tr>
<tr>
<td>Data set</td>
<td>A discrete, ordered collection of data. A data set may be sourced from a database, and may be defined by specific criteria — for example, the receipt of a certain benefit within a given period.</td>
</tr>
<tr>
<td>Data-matching</td>
<td>The bringing together of at least two data sets that contain personal information and that come from different sources, and the comparison of those data sets with the intention of producing a match.</td>
</tr>
<tr>
<td>Data-matching cycle</td>
<td>The completion of all the steps and processes necessary to generate a match, within a specific timeframe.</td>
</tr>
<tr>
<td>Data-matching program</td>
<td>The conduct of data matching to assist one or more agencies to achieve a specific objective. A data matching program may involve more than one data matching cycle.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Debt collection agency / debt collector</strong></td>
<td>A private business that collects debts / an individual working for a debt collection agency who contacts individuals to recover alleged debts.</td>
</tr>
<tr>
<td>DHS</td>
<td>Department of Human Services until 1 February 2020 when the department was replaced by an Executive Agency and its name changed to Services Australia.</td>
</tr>
<tr>
<td>Disclosure</td>
<td>An entity “discloses” personal information where it makes it accessible to others outside the entity and releases the subsequent handling of the information from its effective control.</td>
</tr>
<tr>
<td>DPOs</td>
<td>Departure Prohibition Orders which if issued, could prevent a recipient from leaving Australia.</td>
</tr>
<tr>
<td>DSS</td>
<td>Department of Social Services</td>
</tr>
<tr>
<td>DTO</td>
<td>Digital Transformation Office</td>
</tr>
<tr>
<td>Dun and Bradstreet</td>
<td>Debt collectors Illion Australia Pty Ltd trading as Milton Graham, formerly trading as Dun and Bradstreet.</td>
</tr>
<tr>
<td>EIC</td>
<td>The online compliance intervention program called Employment Income Confirmation, which applied to compliance reviews initiated in the period from on or around 11 February 2017 to on or around 30 September 2018.</td>
</tr>
<tr>
<td>EJA</td>
<td>Economic Justice Australia is the peak organisation for community legal centres providing specialist advice to people on their social security issues.</td>
</tr>
<tr>
<td>EL1/EL2</td>
<td>Executive Level 1 and Executive Level 2 – officer classifications in the Australian Public Service.</td>
</tr>
<tr>
<td>ERC</td>
<td>Expenditure Review Committee, a committee of Cabinet</td>
</tr>
<tr>
<td>Executive Minute</td>
<td>Refers to the Executive Minute from DHS addressed to the Hon Scott Morrison MP as Minister for Social Services, dated 12 February 2015.</td>
</tr>
<tr>
<td>FBO</td>
<td>Final Budget Outcome reports on the fiscal outcomes for the government over the previous financial year.</td>
</tr>
<tr>
<td>Finance</td>
<td>Department of Finance</td>
</tr>
<tr>
<td>FOI</td>
<td>Freedom of information</td>
</tr>
<tr>
<td>Garnishee notice</td>
<td>A notice issued to a creditor of a social security recipient which requires them to pay money to DHS to repay the recipient’s debt.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>----------------------------------</td>
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</tr>
<tr>
<td>Income averaging</td>
<td>DHS’s practice of treating income as if it were earned at a consistent rate over a period rather than applying the precise amounts against the fortnights in which the income was actually earned, where a customer accepted PAYG income data or did not enter data for all fortnights. Sometimes referred to as “smoothing” or “apportioning”.</td>
</tr>
<tr>
<td>Intervention / compliance intervention</td>
<td>Action carried out by DHS on former or current income support recipients to assess and action compliance with reporting and other social security obligations. Also called a “review”. It could result in a debt being raised against a recipient, if DHS determined that they had been overpaid.</td>
</tr>
<tr>
<td>LEA</td>
<td>Lived Experience Australia, a national representative organisation for Australian mental health consumers and carers.</td>
</tr>
<tr>
<td>Legal Services Directions</td>
<td>The <em>Legal Services Directions 2017</em> (Cth) (the Directions) is a set of binding rules issued by the Attorney-General under s 55ZF of the <em>Judiciary Act 1903</em> (Cth) providing obligations that departments and agencies must comply with in the performance of legal work.</td>
</tr>
<tr>
<td>Letters Patent</td>
<td>The Letters Patent issued on 18 August 2022 by the Governor-General, His Excellency General the Honourable David Hurley AC DSC (Ret’d) establishing the Royal Commission into the Robodebt Scheme and outlining its Terms of Reference.</td>
</tr>
<tr>
<td>Litigation Principles</td>
<td>Social Security Appeals and Litigation Arrangements</td>
</tr>
<tr>
<td>Manual program</td>
<td>The PAYG Manual Compliance Intervention Program, which operated from around 1 July 2015 to around 30 June 2016. Under the Manual program, compliance reviews were undertaken by compliance officers. The process was designed to mirror the Online Compliance Intervention process which commenced around 1 July 2016. Also known as the “Rapid Response” model.</td>
</tr>
<tr>
<td>Masterton case</td>
<td><em>Madeleine Masterton v the Commonwealth of Australia</em> (VID73/2019)</td>
</tr>
<tr>
<td>Match</td>
<td>In relation to a data matching program, a result produced, including a meaningful discrepancy, in relation to which administrative action may be taken by the matching agency or source entity.</td>
</tr>
<tr>
<td>Matching agency</td>
<td>In relation to a data matching program, the agency whose information technology facilities or resources are used to conduct the data match comparison.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Milton Graham</td>
<td>Debt collectors Illion Australia Pty Ltd trading as Milton Graham, formerly trading as Dun and Bradstreet.</td>
</tr>
<tr>
<td>Minute/Executive Minute</td>
<td>A memorandum or briefing note, containing information, and prepared for an officer of the public service or a Minister.</td>
</tr>
<tr>
<td>Mutual obligations</td>
<td>Activities that job seekers in receipt of certain income support payments are required to complete in order to maintain their entitlements.</td>
</tr>
</tbody>
</table>
| MYEFO                                     | Mid-Year Economic and Fiscal Outlook
|                                           | Delivered in around December each year, and provides an update on the performance on the Budget and the economic outlook.                 |
| NEIDM                                     | Non-Employment Income Data Matching Program
<p>|                                           | A compliance program related to the PAYG program but which falls outside the scope of the Royal Commission’s Terms of Reference.        |
| NPP                                       | New Policy Proposal                                                                                                                   |
| OAIC                                      | Office of the Australian Information Commissioner                                                                                  |
| OCI                                       | The Online Compliance Intervention scheme which applied to compliance reviews initiated by the Department of Human Services in the period from on or around 1 July 2016 to on or around 10 February 2017. |
| OLSC                                      | Office of Legal Services Coordination, Office of the Attorney-General’s Department.                                                   |
| Ombudsman                                 | Commonwealth Ombudsman or the Office of the Commonwealth Ombudsman                                                                      |
| Ombudsman’s 2017 investigation            | The own motion investigation by the Office of the Commonwealth Ombudsman into the Robodebt Scheme. The Scheme was in the Online Compliance Intervention phase at the start of the Ombudsman’s 2017 investigation, and transitioned to the Employment Income Confirmation phase by the end of the investigation. |
| PAYG                                      | Pay As You Go Tax – a measure which provides for income tax to be withheld by a person’s employer in anticipation of future tax liability. |</p>
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>PAYG income data</td>
<td>Data sourced by the Department of Human Services, from the Australian Taxation Office, which contained details of income and other amounts contained on a PAYG Payment Summary. The amounts on the PAYG Payment Summary had been reported to the Australian Taxation Office by employers.</td>
</tr>
<tr>
<td>PAYG match data</td>
<td>See “PAYG income data”.</td>
</tr>
<tr>
<td>PAYG reporting</td>
<td>Employers withholding tax needed to report to the ATO on the withholdings made on behalf of their employees. Those PAYG reporting details were matched by the ATO with recipients’ details.</td>
</tr>
<tr>
<td>PBS</td>
<td>Portfolio Budget Submission</td>
</tr>
<tr>
<td>Penalty fee</td>
<td>An amount added to an alleged debt, equal to 10 per cent of the debt amount.</td>
</tr>
<tr>
<td>PIA</td>
<td>Privacy Impact Assessment</td>
</tr>
<tr>
<td>Pilot</td>
<td>The PAYG pilot program which ran from early 2015 to 30 June 2015.</td>
</tr>
<tr>
<td>PM&amp;C</td>
<td>The Department of the Prime Minister and Cabinet</td>
</tr>
<tr>
<td>Portfolio</td>
<td>A portfolio is a Cabinet Minister’s area of responsibility, including departments, agencies, boards and other structures.</td>
</tr>
<tr>
<td>Probe</td>
<td>Debt collection agency, Probe Operations, formerly trading as Probe Group.</td>
</tr>
</tbody>
</table>
| Prygodicz case               | *Prygodicz v Commonwealth of Australia* [2020] FCA 1454  
*Prygodicz v Commonwealth of Australia (No 2)* [2021] FCA 634  
*Prygodicz v Commonwealth of Australia (No 3)* [2022] FCA 826  
See also the Commonwealth’s application for leave to appeal against orders granting leave to amend statement of claim:  
*Commonwealth of Australia v Prygodicz* [2020] FCA 1516                                                                                             |
<p>| Rapid response model         | See “Manual Program”.                                                                                                                                                                                        |
| Recipient                    | A person who engages with Services Australia for the purposes of receiving financial support.                                                                                                               |</p>
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robodebt Scheme</td>
<td>The debt assessment and recovery scheme known as the Robodebt scheme reportedly comprised, from 1 July 2015, the PAYG Manual Compliance Intervention program, including associated pilot programs from early 2015 to 30 June 2015, and the following iterations of this program:</td>
</tr>
<tr>
<td></td>
<td>• Online Compliance Intervention, which applied to assessments initiated in the period from on or around 1 July 2016 to on or around 10 February 2017;</td>
</tr>
<tr>
<td></td>
<td>• Employment Income Confirmation, which applied to assessments initiated in the period from on or around 11 February 2017 to on or around 30 September 2018;</td>
</tr>
<tr>
<td></td>
<td>• Check and Update Past Income, which applied to assessments initiated after on or around 30 September 2018.</td>
</tr>
<tr>
<td>Services Australia</td>
<td>From to 1 February 2020 (formerly Department of Human Services) an Executive Agency primarily managing service delivery for social security recipients.</td>
</tr>
<tr>
<td>SES</td>
<td>Senior Executive Service. An officer classification in the Australian Public Service.</td>
</tr>
<tr>
<td>SIP</td>
<td>Staged Implementation Phase. A period of testing in which the new online program was released in a limited way to a small number of recipients to test how it was working.</td>
</tr>
<tr>
<td>SIWP measure</td>
<td>Strengthening the Integrity of Welfare Payments’ Budget measure.</td>
</tr>
<tr>
<td>SLIC</td>
<td>Significant Legal Issues Committee. The SLIC considers significant Commonwealth legal matters as referred by OLSC or raised by its members.</td>
</tr>
<tr>
<td>Solicitor-General</td>
<td>The Second Law Officer of the Commonwealth. The Solicitor-General acts as Counsel for the Commonwealth, provides opinions on questions of law and such other functions ordinarily performed by Counsel as the Attorney-General requests.</td>
</tr>
<tr>
<td>Staff assisted review</td>
<td>Under the Scheme, some vulnerable recipients were eligible for offers of staff assisted intervention at the income data verification and debt notification stage of the compliance process.</td>
</tr>
<tr>
<td>STP</td>
<td>Single Touch Payroll An ATO compliance and reporting program which requires employers to send employee payroll information to the ATO at the same times as they pay their employees.</td>
</tr>
<tr>
<td>TFN</td>
<td>Tax File Number</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
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</tr>
<tr>
<td>VLA</td>
<td>Victoria Legal Aid</td>
</tr>
<tr>
<td>Vulnerability indicator</td>
<td>A DHS digital tool to flag prescribed vulnerabilities known to DHS staff on a recipient’s electronic record.</td>
</tr>
</tbody>
</table>

1. The Administrative Appeals Tribunal conducts independent merits review of various administrative decisions made by the Commonwealth Government.
3. The name change to Services Australia was announced by the government on 29 May 2019.
## Dramatis Personae

Below is a list of all persons of significance in regard to the Robodebt scheme as determined by the Commission with regard to the terms of reference.

The roles included are those the Commission has determined are most relevant; it is not intended as a full or thorough list of roles for each individual.

<table>
<thead>
<tr>
<th>Name</th>
<th>Agency/Organisation</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ricky Aik</td>
<td>N/A</td>
<td>Income support recipient</td>
</tr>
<tr>
<td>Deanna Amato</td>
<td>N/A</td>
<td>Lead Plaintiff in <em>Amato vs The Commonwealth</em></td>
</tr>
<tr>
<td>Amy (Pseudonym)</td>
<td>N/A</td>
<td>Income support recipient</td>
</tr>
<tr>
<td>Iain Anderson</td>
<td>Office of the Commonwealth Ombudsman</td>
<td>Commonwealth Ombudsman</td>
</tr>
<tr>
<td>Andrew Asten</td>
<td>Ministerial Office of the Hon Alan Tudge MP</td>
<td>Chief of Staff</td>
</tr>
<tr>
<td>Luke Baker</td>
<td>Department of Human Services</td>
<td>Authorised Review Officer</td>
</tr>
<tr>
<td>Anthony Barford</td>
<td>Department of Human Services</td>
<td>Policy Manager, Debt Policy, Social Security Performance and Analysis Branch</td>
</tr>
<tr>
<td>John Barnett</td>
<td>Department of Human Services</td>
<td>Deputy General Counsel, Programme Advice Branch, Legal Services Division</td>
</tr>
<tr>
<td>Dr Roslyn Baxter</td>
<td>Services Australia</td>
<td>Deputy Secretary, Integrity and Information Group</td>
</tr>
<tr>
<td>Sandra Bevan</td>
<td>N/A</td>
<td>Income support recipient</td>
</tr>
<tr>
<td>Christopher Birrer</td>
<td>Services Australia</td>
<td>Deputy Chief Executive Officer, Royal Commission Response Team</td>
</tr>
<tr>
<td>Jeannie-Marie Blake</td>
<td>Department of Human Services</td>
<td>Compliance Officer</td>
</tr>
<tr>
<td>Genevieve Bolton</td>
<td>Economic Justice Australia</td>
<td>Chair</td>
</tr>
<tr>
<td>Thai Bowe</td>
<td>PricewaterhouseCoopers</td>
<td>Partner, Government Consulting team</td>
</tr>
<tr>
<td>Katherine Boyle</td>
<td>Welfare Rights Centre</td>
<td>Executive Director</td>
</tr>
<tr>
<td>Damien Brazel</td>
<td>Department of Human Services</td>
<td>National Manager, Acting General Counsel, FOI and Litigation</td>
</tr>
<tr>
<td>Cameron Brown</td>
<td>Department of Social Services</td>
<td>Director, Payment Integrity and Debt Management</td>
</tr>
<tr>
<td>Miles Browne</td>
<td>Victoria Legal Aid</td>
<td>Managing Lawyer, Economic and Social Rights program, Civil Justice</td>
</tr>
<tr>
<td>Elizabeth Bundy</td>
<td>Department of Human Services</td>
<td>National Manager, Appeals</td>
</tr>
<tr>
<td>Felicity Button</td>
<td>N/A</td>
<td>Lead Applicant in class action: <em>Prygodicz v The Commonwealth</em></td>
</tr>
<tr>
<td>Name</td>
<td>Agency/Organisation</td>
<td>Role</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>----------------------------------------------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>Kathryn Campbell AO,</td>
<td>Department of Human Services</td>
<td>Secretary</td>
</tr>
<tr>
<td>CSC and Bar</td>
<td>Department of Social Services</td>
<td>Secretary</td>
</tr>
<tr>
<td>Emily Canning</td>
<td>Department of Human Services</td>
<td>Acting Chief Financial Officer</td>
</tr>
<tr>
<td>Lisa Carmody</td>
<td>Department of Human Services</td>
<td>Acting Chief Counsel, Legal Services Division</td>
</tr>
<tr>
<td>Emeritus Professor</td>
<td>Social Security Appeals Tribunal</td>
<td>Member</td>
</tr>
<tr>
<td>Terry Carney AO</td>
<td>Administrative Appeals Tribunal, Social</td>
<td>Member</td>
</tr>
<tr>
<td></td>
<td>Services and Child Support Division</td>
<td></td>
</tr>
<tr>
<td></td>
<td>University of Sydney</td>
<td>Emeritus Professor of Law</td>
</tr>
<tr>
<td>James Carter</td>
<td>Office of the Commonwealth</td>
<td>Acting Commonwealth Solicitor</td>
</tr>
<tr>
<td></td>
<td>Director of Public Prosecutions</td>
<td></td>
</tr>
<tr>
<td>Rhys Cauzzo (deceased)</td>
<td>N/A</td>
<td>Income support recipient</td>
</tr>
<tr>
<td>Tenille Collins</td>
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Hearings Witness Schedule

See Dramatis personae for further information.

**Hearing Block 1**

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* A pseudonym
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2014 DSS legal advice

Several months before the Robodebt scheme (the Scheme) was introduced in the 2015-16 Budget, internal policy and legal advice within the Department of Social Services (DSS) exposed the inherent deficiencies in the design of the Scheme.

On 18 December 2014, Simon Jordan (senior legal officer, Legal Services Group, DSS) gave internal legal advice in relation to the proposal (the 2014 DSS legal advice). The 2014 DSS legal advice was “second counselled” by Anne Pulford (principle legal officer, Legal Services Group, DSS). The advice considered the question of “whether a debt amount derived from annual smoothing or smoothing over a defined period of time is legally defensible.” The advice set out the legislative requirements under the Social Security Act 1991 (Cth) (the Social Security Act) in relation to the calculation of social security entitlements and the identification of debts due to the Commonwealth.

Critically, the advice concluded that:

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

In support of this conclusion, the advice stated:

In order to correctly determine a relevant debt, it would be necessary to consider the amount of income received in each relevant fortnight in order to apply the income test in that fortnight. There may not be a correct calculation of income received in each relevant fortnight if income is ‘smoothed’ over an income year or other defined period.

The 2014 DSS legal advice is to be understood in the context of the earlier policy advice that was given by David Mason (acting director, Rates and Means Testing Policy Branch, DSS) on 7 November 2014 (the 2014 DSS policy advice). The 2014 DSS policy advice plainly articulated the core issues associated with the “smoothing” of employment income to determine and raise social security debts. The advice stated that the proposal was flawed and would not be supported because:

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

This advice recognised the fundamental flaw in the proposal, in that it did not accord with the legislative requirement that social security entitlements are to be assessed on a fortnightly basis. The underlying policy rationale for this legislative requirement is that income support payments should be made at the time when the recipient is most in need of financial assistance. That the proposal would introduce an arrangement that runs counter to this rationale is a matter which was explicitly addressed in the communication of DSS’s views on the proposal to the Department of Human Services (DHS) in January 2015.

Both the 2014 DSS legal advice and the 2014 DSS policy advice identified that the use of income smoothing may result in inaccurate debts being raised. The 2014 DSS policy advice also noted that the proposal appeared to involve a reversal of the onus of proof, making the following comment:

In normal events a debt is supported by the evidence required to calculate it according to the law, and the approach of asking for supporting evidence should the customer disagree with the decision is not unreasonable. However, under this proposal, DHS will have raised an overpayment based on incomplete information and it is suggested that it would be the customer’s responsibility to provide the information required to allow the debt to be calculated correctly. [emphasis in original]
These criticisms of the proposal raised in the early stages of its conception were ultimately reflected in external commentary from Peter Hanks KC and Professor Terry Carney throughout the life of the Scheme, as well as in the opinion of the Solicitor-General that at last brought an end to it.

2017 DSS legal advice

On 24 January 2017, Ms Pulford provided a further internal legal advice concerning the lawfulness of the use of income averaging (the 2017 DSS legal advice). The 2017 DSS legal advice was directed at the question of whether using income averaging as a ‘last resort’ to determine a social security debt was lawful, in circumstances where no other information about the person’s circumstances was available.

The advice given by Ms Pulford was heavily qualified. It opened with the following statement:

We are providing this advice on a general basis, without details as to what information source is being used and for what period. We would appreciate your treating this advice on this general basis.

With this substantial qualification, the 2017 DSS legal advice concluded (without citing any relevant legislative provisions or case law) that it was lawful for income averaging to be used as a last resort in circumstances where no other information was available. The advice stated that in Ms Pulford’s view:

...reliable income information which makes it likely that a person has been overpaid, even if the information has this effect if taken at an averaged rate, may justify the Secretary lawfully taking action.

The advice also referred to sections 79 and 80 of the Social Security (Administration Act) 1999 (Cth) (the Administration Act) in support of its argument. Neither of these provisions entitled the Secretary to assess income other than as provided for under the Social Security Act. As such, although the 2017 DSS legal advice reached a different conclusion as to the legality of the use of income averaging, it failed to properly engage with or overcome the fundamental issues identified in the 2014 DSS legal advice. The 2017 DSS legal advice was drafted in a manner that disregarded the accepted administrative law principle that there must be some probative evidence to support a decision and that in the absence of probative evidence, the decision is liable to be quashed on the basis that it was illogical or irrational.

The 2017 DSS legal advice was obviously inconsistent with the 2014 DSS legal advice and failed to deal with the underlying policy rationale for the fortnightly calculation of social security entitlements. The advice was used by DSS and DHS from that point onwards to justify the use of income averaging in the scheme internally and, most notably, to the Ombudsman.

2017 DHS legal advices

In early January 2017, during a period of heightened media attention, Barry Jackson (acting secretary, DHS) sought advice about the legality of using income averaging to determine social security entitlement. Sue Kruse (acting deputy secretary, DHS) communicated that request to Paul Menzies-McVey (acting chief counsel, DHS), seeking a paper on the department’s current practice of averaging income for the purposes of calculating payments under the social security law.

Two advices were prepared, the Fiveash advice and the DHS draft advice. On 11 January 2017, Glyn Fiveash (deputy general counsel, Programme Advice Legal and Ombudsman Branch, DHS) sent an email advice to Tracy Tozer (acting Director, DHS) about working out rates of social security payment for the purpose of calculating a debt (Fiveash advice). The advice stated:

When working out what rate a person should be paid a social security payment, whether it’s the first time the calculation is done (the original rate calculation) or the second (for the purposes of working out whether the person owes a debt) the rules relating to the rate of payment are the same.
Where there is no ‘income averaging’ mechanism in the first instance of rate calculation, there can also be no ‘income averaging’ in the second instance. That is, the Department cannot apply an income amount received over a larger period (eg 12 months), in any way against a customer other than in the manner in which the person received it in those individual fortnights; ie the annual amount cannot simply be divided by 26 and applied as the person’s income over 26 payment fortnights. Rather, the annual amount needs to be apportioned between the relevant fortnights in the period at the rate at which it was actually earned, derived or received.

The Fiveash advice was another legal opinion to the effect that averaging, as used in the Scheme, did not meet the requirements of the social security legislation. Unlike other internal advices, this advice actually addressed the statutory definition of “income” and, though brief, it encapsulated the fatal flaw at the heart of income averaging as used in the Scheme: that DHS could not legally or justly assess a recipient’s entitlement to payment on one basis and then seek on a different basis to recover the payments made.

The advice drafted by Mark Gladman (acting general counsel, Legal Services Division, DHS) was titled “Calculating of income for income support payments” (the 2017 DHS draft advice).11 That advice considered whether it was open to DHS to rely on ATO data to calculate a customer’s entitlement to income support. From the outset the advice was sceptical in its support of income averaging:

there are some reasonable arguments that could be made to support the process involving the use of information received from the ATO about annual income amounts to calculate a customer’s entitlement to income support and to not use the information gathering powers. However, the Social Security law is complex.

Given the complexity of the legislation, and the significance of this issue for the department, it may be prudent to obtain external legal advice on this matter.

The 2017 DHS draft advice attempted to justify the Scheme by noting that “[t]he methodology as to how the department arrives at that fortnightly amount is not specified in the legislation.”12

However, Mr Gladman acknowledged that even in drafting the advice, he “didn’t feel that [he] could reach the conclusion that there were reasonable arguments to support income averaging.”13 Mr Gladman was not only concerned about identifying reasonable arguments to support what DHS was doing, but also about whether the factual information he had been provided was really an accurate description of DHS’s processes (in which he referred to the example of a student who would not work consistent hours over the course of a year and so applying averaging on a fortnightly basis could not, mathematically, be applied).14

8 March 2017 AAT decision

On 8 March 2017, Professor Carney handed down a decision in the Administrative Appeals Tribunal (AAT) in which he articulated a reasoned conclusion that calculating social security debts based on income averaging was unlawful, because income averaging provided an insufficient evidentiary basis for the calculation of income support payments.15

Professor Carney concluded that the effective reversal of the onus of proof:

does not absolve Centrelink from its legal obligation to obtain sufficient information to found a debt in the event that the ‘first instance’ contact with the recipient is unable to unearth the essential information about actual fortnightly earnings.16

Ultimately, the insufficiency of evidence which stems from the inaccuracy of averaging is a concept that was taken up by Peter Hanks KC in his article, and in the Solicitor-General’s advice.17

In his reasons, Professor Carney considered the *Briginshaw* principle18 (that findings of fact must be made upon logically probative evidence: “reasonable satisfaction should not be produced by inexact proofs, indefinite testimony, or indirect inferences”),19 to find that the fortnightly averaging methodology was
“too uncertain, and too slight a basis to satisfy the Briginshaw standard.” Professor Carney’s analysis of Briginshaw was not drawn upon in Mr Hanks KC’s paper or the Solicitor-General’s advice which referred instead to the need for findings of fact that underpin administrative decision-making to be grounded in probative material.

Despite the significance of Professor Carney’s reasons, DHS did not obtain legal advice on the question of lawfulness of the use of income averaging upon receiving it. Nor did DHS appeal the decision. Instead, DHS proceeded to use income averaging to recalculate the debt that was the subject of Professor Carney’s decision despite an express direction not to do so and continued its use of income averaging under the Scheme.

July 2017 AIAL Conference

Peter Hanks KC delivered a presentation at the July 2017 Australian Institute of Administrative Law (AIAL) conference, which was later published as an article titled ‘Administrative law and welfare rights: a 40-year story from Green v Daniels to “robot debt recovery”’. The presentation was highly critical of the OCI phase of the Scheme. Mr Hanks KC, with Victoria Legal Aid, was looking to agitate an appropriate challenge in the Federal Court in order to determine the lawfulness of the calculation method underpinning the Scheme.

In his presentation, Mr Hanks KC compared two government schemes; the first being a 1976 initiative aimed at "school leavers" who were alleged to be abusing their entitlement to unemployment benefits. It was ultimately overturned after judicial review in a case known as Green v Daniels. Mr Hanks KC then considered the Scheme and suggested that it should be tested in the Federal Court in the same way as Green v Daniels. He noted two problems with the OCI process, firstly shifting the onus onto the social security recipient to prove that DHS’s assumption as to the recipient’s income was incorrect, and secondly, that the ATO earnings information was spread evenly over the period of employment despite the social security income test using income received in each fortnight. He analogised that Green v Daniels demonstrated the capacity of judicial review to deliver a relatively quick and clear correction of DHS’s potentially unlawful executive action under the Scheme.

The article takes forward the ideas articulated by Professor Carney in the 8 March 2017 AAT decision, but as foreshadowed, does not adopt the Briginshaw line of reasoning. In assessing the legal basis for the Scheme, Mr Hanks KC analysed the Social Security Act, the notion of reversing the onus of proof, the Department’s failure to utilise its information-gathering powers, and the commentary (and omissions) in the Ombudsman’s 2017 report. Mr Hanks KC explained the review process in the AAT and foreshadowed the need for a judicial review to provide a definitive ruling on the legitimacy of the OCI system – “in the same way it did 40 years ago, in Green v Daniels”.

2018 Carney papers

Following Professor Carney’s 8 March 2017 decision, he made four subsequent decisions based on similar reasoning. Professor Carney’s appointment to the AAT was not renewed in September 2017 and he became a full-time academic. In 2018 Professor Carney published a paper which built upon the analysis in his AAT decisions. The article criticised the use of averaging from a legal and mathematical perspective.

The paper, titled ‘The New Digital Future for Welfare: Debts Without Legal Proofs or Moral Authority?’ reviewed the OCI phase, specifically DHS’s responsibility to obtain all information necessary to calculate debts based on actual fortnightly earnings rather than on the basis of assumed averages. He stated:

It is trite maths that statistical averages (whether means or medians) tell nothing about the variability or otherwise of the underlying numbers from which averages are calculated. Only if those underlying numbers
do not vary at all is it possible to extrapolate from the average a figure for any one of the component periods to which the average relates. Otherwise the true underlying pattern may be as diverse as the experience of Australia’s highly variable drought/flood pattern in the face of knowledge of average yearly rainfall figures.

A fundamental point made in that article was that income averaging provided insufficient evidence of the debts that were alleged under the Scheme, there being no statutory scope for substitution of a notional average fortnightly income for actual fortnightly income. The primary legal issue raised by the article was that income averaging as it was used under the Scheme was unlawful because it contravened the no evidence principle.

2018 Clayton Utz advice

In May 2018 DHS referred an AAT decision to DSS that concluded that the legislation “did not authorise the calculation of youth allowance by reference to averaging of income in this case.” The AAT member had placed reliance on the article by Professor Carney.

This caused DSS to seek legal advice from Clayton Utz who provided a draft advice to Anna Fredericks (principal legal officer, DSS) on 14 August 2018. The author of the Clayton Utz advice, Cain Sibley (partner, Clayton Utz) was also the AIAL president at the time Mr Hanks KC delivered his 2018 paper.

The Clayton Utz advice echoed the sentiments of the 2014 DSS legal advice. On income averaging, it stated clearly:

We consider that the Act does not allow the Department to determine a youth allowance or newstart’s [sic] recipient’s fortnightly income through conducting a notional income analysis of the data obtained by the ATO.

On the use of bank statements, it saw no reason why, in principle, bank statements (which showed a net income amount) could not be used to calculate gross income, but stated:

As a matter of good administration, it would, of course, be preferable to use direct evidence of gross amounts paid to a person for a particular fortnightly period (for example, employer payslips or accounting systems) where those records are available, and we expect that the AAT would prefer to obtain and or rely on such direct evidence.

The advice also made comments about the reversal of the onus of proof:

…it is not open to the Department to conduct a notional assessment of a person’s income in respect of a particular fortnightly period in the manner proposed. The Act presently requires evidence of actual income paid to a person in respect of a fortnightly period to be assessed...

Where such evidence exists (that is obtained from a source other than the welfare recipient), and the Department proposes to take it into account when making a decision that is adverse to a person, the Department should give the welfare recipient an opportunity to comment on that information (by sending particular [sic] of it to the last address that the person has given to the Department for the purpose of receiving communications).

The Clayton Utz advice pointed out inconsistencies with DHS’s application of the rate calculators and fortnightly income tests under the Social Security Act.

The Clayton Utz advice acknowledged Professor Carney’s 2018 paper and the AAT’s reasoning in a 4 May 2018 AAT decision (which found that the legislation “did not authorise the calculation of youth allowance by reference to averaging of income in this case”), but did not consider it necessary to apply the Briginshaw or procedural fairness principles, as suggested by Professor Carney in the 8 March 2017 decision.

The Clayton Utz advice was distributed within DSS but ultimately was not finalised, and was not escalated.
2019 Carney paper

Professor Carney published a further article in 2019 titled ‘Robodebt illegality: The seven veils of failed guarantees of the rule of law’ which provided an analysis of the Scheme, and the wider structural deficiencies of the institutions which were designed to protect administrative decision making and implementation of the Scheme. The article considered the impact of the Scheme on the rule of law more broadly but also canvassed a selection of redacted AAT decisions. It also discussed the role of the model litigant obligations, automation, ethical administration and the accountability of government agencies (such as the Ombudsman) in the prolongment of the Scheme.

The article differed from Professor Carney’s previous publications because it not only identified the illegality of the Scheme (which Professor Carney considers at that point to be “essentially uncontested”), but it considered how the unlawfulness of income averaging went unpublicised and uncorrected for so long, and how the democratic and accountability protections failed.

Despite this article being published well prior to the settlement of the Masterton and Amato matters, it succinctly highlighted the issues with the Scheme itself and the failures of monitoring bodies (for example, the Ombudsman, AAT and the Australian National Audit Office) and protocols (for example, model litigant obligations) to ensure accessibility, accuracy and efficiency of government administration.

2019 AGS advice

On 4 February 2019 Madeline Masterton commenced a test case challenging the lawfulness of the Scheme in the Federal Court. Mr Peter Hanks KC was briefed to act for Ms Masterton on instruction from her solicitors, Victoria Legal Aid.

On 27 March 2019 the Australian Government Solicitor (AGS) provided DHS with a detailed prospects advice in relation to Ms Masterton’s proceeding, which concluded that Ms Masterton had good prospects of succeeding in a challenge to the debts based on apportionment. The AGS advice considered issues similar to those in the Clayton Utz advice.

The AGS advice pointed to the limitations of using income averaging, including that there was no statutory basis for it and that it provided weak evidence of the existence of a debt. The AGS advice explored arguments in favour of income averaging which could be made by the Commonwealth but opined that they had “quite low prospects of success.” While the AGS advice was confined to considering Ms Masterton’s matter in isolation from the Scheme as a whole, the advice noted that its conclusions had wider implications and recommended that consideration be given to seeking further advice from senior counsel and possibly the Solicitor-General.

2019 Solicitor-General’s Opinion

On 24 September 2019 the Solicitor-General gave his opinion in relation to the lawfulness of the use of, and reliance on, averaged income information for the purpose of determining and raising debts (the Solicitor-General’s opinion).

The fundamental conclusion reached in that opinion, which ultimately led to the winding back of the Scheme, was that:

A decision-maker is entitled to “have regard to” apportioned ATO PAYG data in considering whether a debt exists under [the Social Security Act]. However, a decision-maker is not entitled to give “decisive weight” to such data. While there may be some circumstances where the ATO PAYG data may provide the basis for an inference that a customer has not accurately reported his or her income, that inference will not provide any basis to calculate the amount of any debt that may be owed, and therefore cannot itself provide an adequate factual foundation for a debt decision. [emphasis in original]
The Solicitor-General’s opinion stepped through a range of different scenarios to consider whether a decision maker would be entitled to give decisive weight to averaged ATO PAYG data in those circumstances. The only circumstance in which the Solicitor-General’s opinion concluded that a decision maker would ordinarily be entitled to give decisive weight to averaged income data was where the decision maker also had regard to information suggesting that the recipient received a consistent fortnightly income over the period of their employment. Where there is no information before the decision maker to suggest that this is the case, the decision maker would not be entitled to give decisive weight to the averaged data. In circumstances where the decision maker fails to have regard to information held by DHS that suggests whether or not the recipient received a consistent fortnightly income (for instance, an employment separation certificate on the customer’s Centrelink record), the Solicitor-General concluded that any debt decision would be liable to be quashed for failure to consider a relevant matter.

The Solicitor-General’s opinion identified that social security entitlements are determined by reference to rate calculators set out in the Social Security Act, and that payment rates for many social security benefits are determined based on a fortnightly income test. The advice then referred to the key provision of the Social Security Act which provides that where a person obtains the benefit of a social security payment to which they were not entitled, the amount of the payment is a debt due to the Commonwealth from the time the payment is made. The opinion specified that in any proceeding to recover a debt owing under that provision, the Commonwealth would need to prove the debt.

The reasoning in the Solicitor-General’s opinion makes clear that whether a debt is due to the Commonwealth under the Social Security Act is a matter of law, and does not involve any administrative assessment of the existence or amount of the debt. However, the opinion identified that in order for the statutory prescription that a debt exists to have any practical consequence, there was an implicit requirement that an officer would have to “decide” that a debt was owed under the Social Security Act. Because such a decision has real practical consequences for the interests of the affected person, that decision is subject to both merits review and judicial review.

The Solicitor-General’s opinion highlighted that there must be some probative evidence to support a conclusion that a debt has arisen under the Social Security Act. Without such evidence, the debt decision would be liable to be quashed on the basis that it was irrational or illogical.

Although the Solicitor-General recognised that averaged PAYG data is inherently capable of providing a degree of insight into a person’s income and may justify further investigation, it cannot, without more, support a conclusion that a debt is due, or the amount of that debt. As was explained in the Solicitor-General’s opinion:

...to conclude that a person had misreported their earning based solely on the fact that there is a discrepancy between a person’s reported earnings in the fortnightly periods where the person received benefits and the figure obtained by averaging the person’s income as recorded in the ATO PAYG data is mere conjecture.

The findings of fact that underpin administrative decision-making “must be grounded in probative material, and not in speculation or guesswork, or (worse) assumptions based on material incapable of supporting those assumptions”. [emphasis in original]

With this administrative law principle in mind, the Solicitor-General’s opinion concluded that even where PAYG data indicates a discrepancy between employment income and reported income over a similar or identical period, that PAYG data says nothing about how much a person earned in each fortnight during that period. There must therefore be an evidential basis for inferring that the income was earned in equal fortnightly amounts within that period before a debt decision could properly be based on apportioned PAYG data.

The Solicitor-General’s opinion went on to consider whether such an inference could be drawn from a customer’s failure to respond to a letter sent by Services Australia. The evidence of Tim Ffrench (acting chief counsel, DHS) and Mr Menzies-McVey suggested that at the time the Scheme was operational, there
was a view within DSS and DHS that an inference of this kind could arguably be drawn in reliance on the well-established principles in the case of Jones v Dunkel.53 In essence, the rule in Jones v Dunkel allows for an inference to be drawn that where there is an opportunity to respond to an existing set of facts and it is not taken, any response would not have assisted in disproving those facts, and they can therefore be more confidently relied upon. In this instance, the reliance on the rule in Jones v Dunkel was directed at an officer being able to infer that where a customer did not respond to a letter from DHS putting them on notice of the PAYG data, any response would not have assisted the customer and the PAYG data can therefore be relied upon with greater confidence. However, the opinion of the Solicitor-General was that even if an inference could be drawn from the failure of a person to respond to a letter, while that inference might be capable of supporting other material which indicated that the assumption underlying apportioned PAYG data was correct, it could not itself provide a foundation for relying on averaged income data in the absence of other evidence.

In reaching this conclusion, the Solicitor-General identified the following crucial proposition:

> ...an inference drawn from a failure to provide information in circumstances where it would be expected to be provided “can only make certain evidence more probable”, and “cannot be used to make up any deficiency of evidence”. Such an inference can “not properly be treated as supplying any gap” in the material before a decision-maker, nor can it “convert conjecture and suspicion into evidence”.

The Solicitor-General’s opinion was unequivocal in its conclusion that the principles of administrative law would not support reliance on averaged income in the absence of other evidence to raise a debt. Although the advice was given by the Solicitor-General in September 2019, it ought to be properly understood as reflecting a legal position about the scheme which always existed. The Solicitor-General’s opinion, in its analysis of the use of averaged PAYG data, was fundamentally consistent with the position reached in the 2014 DSS legal advice almost five years earlier.

Endnotes

1 Exhibit 1-0002 – DSS.5006.0003.1833_R, Email from Jordan Simon to Mark Jones copying Anne Pulford and preceding chain, 18 December 2014.
3 See Exhibit 1-0065 – DSS.5031.0001.0108_R, RE- Information about the DHS proposal to change the approach to identifying and raising debts [DLM=For-Official-Use-Only], 19 January 2015; Exhibit 4-8342 – RBD.9999.0001.0505, Robodebt and social security policy_10 March_clean, 10 March 2023 [p 44]; Transcript, Andrew Whitecross, 8 December 2022 [p 1351: lines 25–46].
4 Exhibit 2-2166 – CTH.3008.0007.8464, URGENT: DSS comments on DHS Welfare integrity options (2).
5 Exhibit 1-0003 – DSS.5006.0001.2713_R, Email from Anne Pulford to Emma Kate McGuirk and preceding chain, 24 January 2017.
7 Exhibit 4-5830 - SKR.0001.0001.0054_R, Re- UPDATE- Media and Social Media Commentary re- online compliance system - Friday 6 January.
8 Exhibit 4-5828 - CTH.3111.0017.9701_R, Social security law - averaging provisions [DLM=Sensitive-Legal].
9 Exhibit 4-6245 - CTH.3884.0001.0001_R - Fw- debts; Exhibit 4-5890 - CTH.3113.0004.7297, ‘calculating of income for income support payments’ [19].
10 Transcript, Mark Gladman, 27 February 2023 [p 3861: lines 1 – 11].
11 Transcript, Mark Gladman, 27 February 2023 [p 3869: lines 1 – 27].
12 Transcript, Mark Gladman, 27 February 2023 [p 3870: lines 1 – 27].
13 Transcript, Mark Gladman, 27 February 2023 [p 3870: lines 4 – 27].
14 Transcript, Mark Gladman, 27 February 2023 [p 3870: lines 4 – 27].
15 Transcript, Mark Gladman, 27 February 2023 [p 3870: lines 4 – 27].
16 Exhibit 3-3482 - CTH.3761.0001.0223_R, 1569 REDACTED.
17 Exhibit 3-3482 - CTH.3761.0001.0223_R, 1569 REDACTED [33].

The New Digital Future for Welfare: Debts Without Legal Proofs or Moral Authority

Smoothing Advice [CU-Legal.FID2448483]; Transcript, Christian Porter, 2 February 2023 [p 3101: lines 8 – 41].

Exhibit 3-4190 – DSS.5036.0001.0103_R, Request for legal advice: Department of Social Services - Income


Proofs or Moral Authority (UNSW Law Journal).pdf.

Exhibit 3-3495 – TCA.9999.0001.0013, Terry Carney, The New Digital Future for Welfare- Debts Without Legal

recovery'' ' (2017) 89 AIAL Forum 1 [p 9].


Transcript, Maris Stipnieks, 3 February 2023 [p 3236: lines 6 – 11].

Exhibit 3-4176 - DSS.5036.0001.0163_R, AAAT Decision 2018/AA119369 [para 15, 17].

Transcript, Christian Porter, 2 February 2023 [p 3102: lines 4-9].


Transcript, Christian Porter, 2 February 2023 [p 3102: lines 4-9].


Exhibit 3-3497 – TCA.9999.0001.0007, Terry Carney, ‘Robo-debt illegality: The seven veils of failed guarantees of

the rule of law?’ (Alternative Law Journal).

Exhibit 3-3497 – TCA.9999.0001.0007, Terry Carney, ‘Robo-debt illegality: The seven veils of failed guarantees of


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Volume 44 of the Alternative Law Journal was published in March 2019. The Masterton and Amato proceedings

were not concluded until November 2019.


19: para 88].


11: para 42-43].


14: para 54].


16: para 65].

Exhibit 1-0001 – CTH.2013.0012.5070_R, Advice prepared by Solicitor General to AGS re use of apportioned

ATO PAYG data, 24 September 2019.

Exhibit 1-0001 – CTH.2013.0012.5070_R, Advice prepared by Solicitor General to AGS re use of apportioned

ATO PAYG data, 24 September 2019 [p 2: para 2].

The period of employment being that recorded in the PAYG data. The Solicitor-General noted that the

information suggests this conclusion sufficiently clearly so as to be probative evidence.

Exhibit 1-0001 – CTH.2013.0012.5070_R, Advice prepared by Solicitor General to AGS re use of apportioned

ATO PAYG data, 24 September 2019 [p 3: para 2].

Exhibit 1-0001 – CTH.2013.0012.5070_R, Advice prepared by Solicitor General to AGS re use of apportioned

ATO PAYG data, 24 September 2019 [p 12: para 12].

Namely, section 1223(1). Relevantly, sections 1223(1AB)(b) and (c) of the Social Security Act provide that a

person is taken not to have been entitled to obtain the benefit of a payment if the payment should not have

been made because, among other things, the person was not qualified to receive the payment, or the payment

was not payable.

Exhibit 1-0001 – CTH.2013.0012.5070_R, Advice prepared by Solicitor General to AGS re use of apportioned

ATO PAYG data, 24 September 2019 [p 13: para 14].

Exhibit 1-0001 – CTH.2013.0012.5070_R, Advice prepared by Solicitor General to AGS re use of apportioned

ATO PAYG data, 24 September 2019 [p 15: para 20].

Exhibit 1-0001 – CTH.2013.0012.5070_R, Advice prepared by Solicitor General to AGS re use of apportioned


Exhibit 1-0001 – CTH.2013.0012.5070_R, Advice prepared by Solicitor General to AGS re use of apportioned

ATO PAYG data, 24 September 2019 [p 15: para 21].

Exhibit 1-0001 – CTH.2013.0012.5070_R, Advice prepared by Solicitor General to AGS re use of apportioned

ATO PAYG data, 24 September 2019 [p 19: para 30].

Transcript, Paul Menzies-McVey, 21 February 2023 [p 3371: line 40 – p 3372: line 2]; Transcript, Paul Menzies-

McVey, 21 February 2023 [p 3373: lines 33 – 37]; Transcript, Timothy Ffrench, 22 February 2023 [p 3502: lines

37-47]; Transcript, Timothy Ffrench, 22 February 2023 [p 3503: lines 37-45].
## Budget Measures Map

*This map represents when activities were projected to be undertaken under programs established by each budget measure.*

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Budget Measures - Income Data Merging</th>
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</thead>
<tbody>
<tr>
<td><strong>2015 - 2016</strong></td>
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<td>July - Sept</td>
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<td>Oct - Dec</td>
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<td>Apr - Jun</td>
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<tr>
<td>2015-16 Budget – Strengthening the Integrity of Welfare Payments¹</td>
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<tr>
<td>Employment Income Matching²</td>
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<tr>
<td>Used PAYG data obtained from the ATO to identify welfare recipients who had allegedly been overpaid. Focused on alleged overpayments in FYs: 2010-11, 2011-12 and 2012-13.</td>
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<td><strong>2016 - 2017</strong></td>
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<td>July - Sept</td>
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<td>Jan - Mar</td>
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<tr>
<td>2015-16 MYEFO – Enhanced Welfare Payment Integrity⁹</td>
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<td>Income Data Matching¹⁰</td>
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<td><strong>2017 - 2018</strong></td>
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<td>Apr - Jun</td>
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<tr>
<td>2016-17 MYEFO – Better Management of the Social Welfare System¹¹</td>
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<tr>
<td>Extend Enhanced Welfare Payment Integrity – Income Data Matching¹²</td>
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<tr>
<td>Extended the “Income Data Matching” element of the 2015-16 MYEFO measure to focus on alleged overpayments in FYs: 2015-16, 2016-17 and 2017-18.</td>
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<td><strong>2018 - 2019</strong></td>
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<tr>
<td>2018-19 Budget – Social Welfare Debt Recovery⁷</td>
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<tr>
<td>Strengthening the Integrity of Welfare Payments by Extending Income Data Matching⁸</td>
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<tr>
<td>Extended income data matching measures in the 2015-16 Budget, and the 2015-16 and 2016-17 MYEFOs which used PAYG information, income tax returns, and asset and investment sources. Focused on alleged overpayments in the 2018-19 FY.</td>
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<td><strong>2019 - 2020</strong></td>
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<td>July - Sept</td>
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<td>Jan - Mar</td>
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<tr>
<td>2020-21 Budget – Changes to the Income Compliance Program*¹</td>
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<tr>
<td>Refund of ATO averaged debts³</td>
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<tr>
<td>Refunded all repayments made on debts raised based wholly or partially on averaged ATO data.</td>
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<tr>
<td>Reversal of PAYG measures⁵</td>
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<tr>
<td>Reversed income data matching elements introduced in 2015-16 and 2016-17 MYEFOs and 2018-19 Budget.</td>
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<tr>
<td>*Measure included component which provided direct cost for payment of interest for refunds⁶</td>
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<td><strong>2020 - 2021</strong></td>
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<td>July - Sept</td>
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<td>Apr- Jun</td>
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<tr>
<td><strong>2015-16 MYEFO – Enhanced Welfare Payment Integrity</strong>&lt;sup&gt;13&lt;/sup&gt;</td>
<td>Expand debt recovery&lt;sup&gt;14&lt;/sup&gt;</td>
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<tr>
<td></td>
<td>Used the 2012-13 budget measure “Fraud prevention and compliance – Increased recovery of high value customer debt” to expand debt recovery for former welfare recipients as well as current recipients on a partial payment due to employment.</td>
</tr>
<tr>
<td>2016 - 2017</td>
<td></td>
</tr>
<tr>
<td>July - Sept</td>
<td></td>
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<tr>
<td>Oct - Dec</td>
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<td>Jan - Mar</td>
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<tr>
<td>Apr- Jun</td>
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<tr>
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</tr>
<tr>
<td><strong>2016-17 MYEFO – Better Management of the Social Welfare System</strong>&lt;sup&gt;19&lt;/sup&gt;</td>
<td>Expand Tax Garnishee&lt;sup&gt;20&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>Expands the Tax Garnishee process so that all current and non-current recipients would have their tax refund garnished to repay their debt, regardless of whether the relevant recipient was in a repayment arrangement.</td>
</tr>
<tr>
<td>2017 - 2018</td>
<td></td>
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<tr>
<td>July - Sept</td>
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<tr>
<td>Oct - Dec</td>
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<td>Jan - Mar</td>
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<tr>
<td>Apr- Jun</td>
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</tr>
<tr>
<td><strong>2018-19 Budget – Social Welfare Debt Recovery</strong>&lt;sup&gt;17&lt;/sup&gt;</td>
<td>Expanding Social Welfare Debt Recovery&lt;sup&gt;18&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>Extended the “Expand Debt Recovery” element in 2015-2016 MYEFO to recover high value debts from former welfare recipients.</td>
</tr>
<tr>
<td>2018 - 2019</td>
<td></td>
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<tr>
<td>July - Sept</td>
<td></td>
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<tr>
<td>Oct - Dec</td>
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<tr>
<td>Jan - Mar</td>
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<tr>
<td>Apr- Jun</td>
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<td></td>
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<tr>
<td>2019 - 2020</td>
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<tr>
<td>July - Sept</td>
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<tr>
<td>Oct - Dec</td>
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<td>Apr- Jun</td>
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<tr>
<td>2020 - 2021</td>
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<td>July - Sept</td>
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<td>Oct - Dec</td>
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<tr>
<td>Apr- Jun</td>
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<tr>
<td></td>
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<tr>
<td>2021 - 2022</td>
<td></td>
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<tr>
<td>July - Sept</td>
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<tr>
<td>Oct - Dec</td>
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<tr>
<td>Jan - Mar</td>
<td></td>
</tr>
<tr>
<td>Apr- Jun</td>
<td></td>
</tr>
</tbody>
</table>
1. Submissions

On 21 September 2022, the Royal Commission issued a call for public submissions. The closing date for submissions was 3 February 2023. This timeframe was set so that submissions could be received in advance of finalising the Commission’s Report by the original transmittal date of 18 April 2023.

The Commission continued to accept submissions beyond 3 February 2023. Submissions received by 2 June 2023 are included in the total list of submissions that appear later in this appendix and were considered for publication on the website.

1.1 Lodging a submission

The primary method for lodging a submission was via the use of the submissions form, available both online or in hard copy. As well as English, the submissions form was available in Arabic, Chinese (Simplified), Chinese (Traditional), Filipino, Greek, Hindi, Italian, and Vietnamese. Submissions were also accepted through email, telephone, post, or via an audio recording. The Commission had the capacity to take submissions via video if required. Participants who needed additional assistance were supported by the Commission’s social work team both remotely and onsite in Brisbane during the hearing blocks.

The Commission directly contacted 43 stakeholder and advocacy groups to invite submissions. The Commission issued regular reminders to subscribers to the Commission’s mailing list and social media profiles about the processes for lodging a submission.

1.2 How submissions informed the work of the Commission

Submissions have guided the Commission’s enquiries and informed its findings in this Report. The experiences, expertise and recommendations shared through submissions by individuals and entities assisted the Commission in developing a more complete understanding of the impacts of the Robodebt scheme (the Scheme), as well as how such a scheme may be prevented in the future. Submissions also assisted the Commission to identify witnesses.

1.3 Publication

Terms of reference

Submissions received by 2 June 2023 and assessed as relating to the matters specified in the terms of reference were considered for publication to the Commission’s website. Submissions were reviewed on a case-by-case basis, including any accompanying material received at the time of submission, any correspondence or supplementary documentation, or any information gained from personal engagement with the participant.

Suitability for publication

In determining whether to publish a submission, appropriate consideration is first given to the preferences conveyed when the submission was made.

When lodging their submission, participants chose a publication option:

- to be published under their own name
• published anonymously with their personal information redacted, or
• for the submission to not be published by the Commission.

Some public submissions - or components of a public submission – could not be published for legal or technical reasons.

Anonymous submissions were reviewed and, where necessary, redacted to protect a participant’s identity. The names of individuals other than the submitter are similarly redacted, such as family members, public servants or members of Parliament.

Submissions which referred to details of a Tier 1 matter considered by the Administrative Appeals Tribunal (AAT) were redacted to remain consistent with current practice of the AAT.

Submissions often attached correspondence from Centrelink or other government departments and agencies. These materials have assisted the Commission in its work. However, this extra material has not been published.

## 1.4 Data and analytics

The Commission received a total of 1099 submissions, 990 of which were received before 3 February 2023 or with an approved extension. From this total, 771 submissions (70.15 per cent) were found to address matters within the terms of reference.

The Commission relied on self-reporting through the submissions form which enabled submitters to

### Submissions by state and territory

<table>
<thead>
<tr>
<th>State and Territory</th>
<th>Number of Submissions</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT</td>
<td>49</td>
<td>4.95%</td>
</tr>
<tr>
<td>NSW</td>
<td>231</td>
<td>23.33%</td>
</tr>
<tr>
<td>VIC</td>
<td>230</td>
<td>23.23%</td>
</tr>
<tr>
<td>TAS</td>
<td>25</td>
<td>2.53%</td>
</tr>
<tr>
<td>SA</td>
<td>67</td>
<td>6.77%</td>
</tr>
<tr>
<td>WA</td>
<td>98</td>
<td>9.90%</td>
</tr>
<tr>
<td>NT</td>
<td>8</td>
<td>0.81%</td>
</tr>
<tr>
<td>QLD</td>
<td>214</td>
<td>21.62%</td>
</tr>
<tr>
<td>Outside Australia</td>
<td>14</td>
<td>1.41%</td>
</tr>
<tr>
<td>Prefer not to say</td>
<td>54</td>
<td>5.45%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>990</strong></td>
<td><strong>100.00</strong></td>
</tr>
</tbody>
</table>
### Submissions by area distribution

<table>
<thead>
<tr>
<th>Area</th>
<th>Number of Submissions</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remote area</td>
<td>29</td>
<td>2.93%</td>
</tr>
<tr>
<td>Rural area</td>
<td>101</td>
<td>10.20%</td>
</tr>
<tr>
<td>Regional area</td>
<td>273</td>
<td>27.58%</td>
</tr>
<tr>
<td>No</td>
<td>587</td>
<td>59.29%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>990</td>
<td>100.00</td>
</tr>
</tbody>
</table>

### Submissions by participants

<table>
<thead>
<tr>
<th>Area</th>
<th>Number of Submissions</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Myself</td>
<td>895</td>
<td>90.41%</td>
</tr>
<tr>
<td>Another person</td>
<td>68</td>
<td>6.87%</td>
</tr>
<tr>
<td>An organisation</td>
<td>22</td>
<td>2.22%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>990</td>
<td>100.00</td>
</tr>
</tbody>
</table>

### Privacy Preference

<table>
<thead>
<tr>
<th>Privacy Preference</th>
<th>Number of Submissions</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public</td>
<td>389</td>
<td>39.29%</td>
</tr>
<tr>
<td>Public anonymously</td>
<td>456</td>
<td>46.06%</td>
</tr>
<tr>
<td>Not made public</td>
<td>145</td>
<td>14.65%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>990</td>
<td>100.00</td>
</tr>
</tbody>
</table>

### Was a Centrelink debt raised against you (or the person you are making a submission for)?

<table>
<thead>
<tr>
<th>Response</th>
<th>Number of Submissions</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>716</td>
<td>72.32%</td>
</tr>
<tr>
<td>No</td>
<td>245</td>
<td>24.75%</td>
</tr>
<tr>
<td>Not answered</td>
<td>29</td>
<td>2.92%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>990</td>
<td>100.00</td>
</tr>
</tbody>
</table>
### How were you (or the person you are making a submission for) notified of the debt?

<table>
<thead>
<tr>
<th>Method of notification</th>
<th>Number of Submissions</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mail</td>
<td>375</td>
<td>37.88%</td>
</tr>
<tr>
<td>Email</td>
<td>94</td>
<td>9.49%</td>
</tr>
<tr>
<td>myGov</td>
<td>204</td>
<td>20.61%</td>
</tr>
<tr>
<td>The Centrelink Express app</td>
<td>42</td>
<td>4.24%</td>
</tr>
<tr>
<td>Unsure</td>
<td>92</td>
<td>9.29%</td>
</tr>
<tr>
<td>Not answered</td>
<td>367</td>
<td>37.07%</td>
</tr>
</tbody>
</table>

### Did you (or the person you are making the submission for) dispute the debt?

<table>
<thead>
<tr>
<th>Response</th>
<th>Number of Submissions</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>523</td>
<td>52.83%</td>
</tr>
<tr>
<td>No</td>
<td>117</td>
<td>11.82%</td>
</tr>
<tr>
<td>Not answered</td>
<td>350</td>
<td>35.35%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>990</strong></td>
<td><strong>100.00%</strong></td>
</tr>
</tbody>
</table>

### Was the debt ever repaid in whole or part?

<table>
<thead>
<tr>
<th>Response</th>
<th>Number of Submissions</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>483</td>
<td>48.79%</td>
</tr>
<tr>
<td>No</td>
<td>150</td>
<td>15.15%</td>
</tr>
<tr>
<td>Not answered</td>
<td>357</td>
<td>36.06%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>990</strong></td>
<td><strong>100.00%</strong></td>
</tr>
</tbody>
</table>

### Was the debt cancelled?

<table>
<thead>
<tr>
<th>Response</th>
<th>Number of Submissions</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>223</td>
<td>22.53%</td>
</tr>
<tr>
<td>No</td>
<td>407</td>
<td>41.11%</td>
</tr>
<tr>
<td>Not answered</td>
<td>360</td>
<td>36.36%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>990</strong></td>
<td><strong>100.00%</strong></td>
</tr>
</tbody>
</table>
Did you (or the person you are making a submission for) seek review of the decision to raise the debt?

<table>
<thead>
<tr>
<th>Response</th>
<th>Number of Submissions</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>434</td>
<td>43.84%</td>
</tr>
<tr>
<td>No</td>
<td>192</td>
<td>19.39%</td>
</tr>
<tr>
<td>Not answered</td>
<td>364</td>
<td>36.77%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>990</strong></td>
<td><strong>100.00%</strong></td>
</tr>
</tbody>
</table>

Have you (or the person you are making the submission for) had the debt resolved?

<table>
<thead>
<tr>
<th>Response</th>
<th>Number of Submissions</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>307</td>
<td>31.01%</td>
</tr>
<tr>
<td>No</td>
<td>315</td>
<td>31.82%</td>
</tr>
<tr>
<td>Not answered</td>
<td>368</td>
<td>37.17%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>990</strong></td>
<td><strong>100.00%</strong></td>
</tr>
</tbody>
</table>

2. Submissions List

This list includes the submissions received by the Commission that:
- were determined to be within the terms of reference
- were not ruled out for technical or other reasons as described above
- were provided with the participant’s express consent to be made public under their name or anonymously.

Submissions lodged under the condition the material not be made public, or without a specified preference, have been considered by the Commission but are not included in this list.
## List of Submissions

* Not all submissions in this list have been published.

<table>
<thead>
<tr>
<th>Submission ID</th>
<th>Primary Submitter</th>
<th>Which of the Royal Commission's terms of reference is your submission about?</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANON-24KG-9815-S</td>
<td>ACT Council of Social Service</td>
<td>The Establishment, design, and implementation of the Robodebt Scheme</td>
</tr>
<tr>
<td>ANON-24KG-95WS-E</td>
<td>Aik, Ricky</td>
<td>The use of third-party debt collectors under the Robodebt Scheme</td>
</tr>
<tr>
<td>ANON-24KG-95UW-G</td>
<td>Akter, Dr Shahriar</td>
<td>Concerns raised following the implementation of the Robodebt Scheme</td>
</tr>
<tr>
<td>ANON-24KG-95RY-F</td>
<td>Andrew, Professor Jane</td>
<td>The intended or actual outcomes of the Robodebt Scheme</td>
</tr>
<tr>
<td>ANON-24KG-9BY4-Z</td>
<td>Anglicare Australia</td>
<td></td>
</tr>
<tr>
<td>ANON-24KG-98W4-X</td>
<td>Anonymous</td>
<td></td>
</tr>
<tr>
<td>ANON-24KG-95ZD-2</td>
<td>Askew, Rebecca</td>
<td></td>
</tr>
<tr>
<td>ANON-24KG-981V-T</td>
<td>Australian Council of Social Service</td>
<td></td>
</tr>
<tr>
<td>ANON-24KG-98BV-1</td>
<td>Australian Unemployed Workers Union</td>
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</tr>
<tr>
<td>ANON-24KG-95NZ-C</td>
<td>B, Daniel</td>
<td></td>
</tr>
<tr>
<td>ANON-24KG-95YY-P</td>
<td>B, Daniel</td>
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<tr>
<td>ANON-24KG-95G2-W</td>
<td>B, Graeme</td>
<td></td>
</tr>
<tr>
<td>ANON-24KG-95SG6-1</td>
<td>B, Martin</td>
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<td>ANON-24KG-98RU-T</td>
<td>Banik, Ryan</td>
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<tr>
<td>ANON-24KG-95NP-2</td>
<td>Bannister, Lisa</td>
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<td>ANON-24KG-95RQ-7</td>
<td>Bantr, Professor Elise</td>
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<td>ANON-24KG-9849-Z</td>
<td>Baweja, Ash</td>
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<td>ANON-24KG-98AZ-E</td>
<td>Baweja, Ash</td>
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<td>ANON-24KG-98AB-P</td>
<td>Baweja, Ash</td>
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<tr>
<td>ANON-24KG-95Q1-6</td>
<td>Berbari, Carol Rita</td>
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<tr>
<td>ANON-24KG-95S2-Z</td>
<td>Berglund, Kyriae</td>
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<td>ANON-24KG-95NI-V</td>
<td>Bevan, Sandra Jean</td>
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<td>ANON-24KG-95MM-X</td>
<td>Bickley, Jenny</td>
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<td>Birnie, Karen</td>
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<td>Boehnke, Carmen</td>
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<td>Borton, Edward</td>
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<td>Brick, Naomi</td>
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<td>ANON-24KG-95SN-4</td>
<td>Brogan, Dr Mark &amp; Arratoon, Mark</td>
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<td>ANON-24KG-95YQ-E</td>
<td>Brooks, Cheree</td>
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<td>ANON-24KG-98BC-4</td>
<td>Brooks, Cheree</td>
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<td>ANON-24KG-95RU-B</td>
<td>Brown, Dr David Lloyd</td>
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<td>ANON-24KG-95TC-U</td>
<td>Bruce, Daniel Christopher</td>
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<td>ANON-24KG-95BC-Y</td>
<td>Burns, Thomas</td>
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<td>ANON-24KG-98AN-2</td>
<td>Cahalan, Penelope Anne</td>
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<td>ANON-24KG-98AB-Y</td>
<td>Cahill, Penni-Leigh</td>
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<td>ANON-24KG-95WK-6</td>
<td>Campbell, Hamish</td>
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<td>ANON-24KG-98AX-Y</td>
<td>Chadwick, Helen</td>
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<tr>
<td>ANON-24KG-95AI-2</td>
<td>Cho, Whan Hee (Linda)</td>
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<tr>
<td>ANON-24KG-95BM-K</td>
<td>Chuditch, Alison</td>
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<td>ANON-24KG-95XQ-D</td>
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<td>Clark</td>
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<td>Clegg, Dylan</td>
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<td>ANON-24KG-9534-B</td>
<td>Connors, Claire</td>
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<tr>
<td>ANON-24KG-959N-B</td>
<td>Consumer Action Law Centre &amp; Economic Justice Australia &amp; Financial Counselling Australia</td>
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<tr>
<td>ANON-24KG-981R-P</td>
<td>Consumers of Mental Health WA</td>
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<td>ANON-24KG-95Z7-N</td>
<td>Cooper, Karenfaye</td>
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<td>ANON-24KG-95Q7-C</td>
<td>Cooper, Lise</td>
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<td>ANON-24KG-95Y4-H</td>
<td>Coulter, Debra</td>
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<td>ANON-24KG-954Q-9</td>
<td>Cox, Jeremy</td>
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<tr>
<td>ANON-24KG-956W-C</td>
<td>Crawford, Anwyn</td>
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</tr>
<tr>
<td>ANON-24KG-95SG-W</td>
<td>Crofts, Professor Penny</td>
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<td>ANON-24KG-95UY-J</td>
<td>Curtis, Peter</td>
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<td>Cutler, Trevor Keith</td>
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<td>ANON-24KG-95E1-T</td>
<td>D’Agostino, Carla J</td>
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9 January 2023

The Hon Mark Dreyfus KC MP
Attorney-General
Suite MG51
House of Representatives
Parliament House
CANBERRA ACT 2600

Email: Attorney@ag.gov.au

Dear Attorney,

As you know, I am currently conducting the Robodebt Royal Commission and am required by the relevant Letters Patent to submit a report of the results of my inquiry, with recommendations, to the Governor-General not later than 18 April 2023. However, I write now to seek an amendment of that date to 30 June 2023, so as to extend by approximately ten weeks the time available for the completion of the inquiry and provision of the report.

One reason for requesting the additional time is that the work done so far has uncovered a far larger range of issues which need to be addressed than might originally have been contemplated. Another is this: while I appreciate that there have been real difficulties for the Commonwealth in assembling material at short notice, the time taken to produce documents, their arrival in fits and starts and the level of disorganization in them have constituted a significant hindrance to the work of the Commission. There is a good deal of irrelevant material and duplication among the half million documents received to date, so the identification of critical documents – often emails – is an extraordinary time-consuming process. Because important documents continue to emerge, further Notices to Give Information will have to be served on some witnesses, and some will have to be recalled to give further evidence.

In consequence of these factors, I anticipate that the Commission will not be able to conclude its hearings until mid-March, after which it will still be necessary, of course, to provide the opportunity to comment to those who may have adverse findings made against them. The result is that I do not think it will be possible for me to deliver a report to the standard I would wish in the time available. Hence, I seek the extension of time to the end of June. I anticipate that I may in fact be able to provide the report somewhat earlier, but as you will understand, I would prefer to err on the side of caution.

I am informed that notwithstanding that extensions the Commission will be able to complete its work with the allocated budget, so I seek no further funds for the purpose.

Yours faithfully

Catherine Holmes AC SC
Royal Commissioner
24 April 2023

The Hon Mark Dreyfus KC MP
Attorney-General
Suite MG51
House of Representatives
Parliament House
CANBERRA ACT 2600

Email: Attorney@ag.gov.au

Dear Attorney,

I am writing to seek a further amendment of the Letters Patent in relation to the Robodebt Royal Commission to permit a short extension of the time for provision of the Report of the results of my inquiry and recommendations to the Governor-General.

The reason is simply explained: presently, the report must be submitted by 30 June 2023. But as you are, of course, aware, by Proclamation, parts 2 to 9 of the National Anti-Corruption Commission Act 2022 will commence on 1 July 2023, the following day. The practical result of the day’s difference is that I am not presently able to refer individuals to the National Anti-Corruption Commission under s 6(p) of the Royal Commissions Act should I reach the view their conduct may meet the definition of “corrupt conduct” under the National Anti-Corruption Commission Act.

For that reason, I seek an extension of the time for delivery of my report to a day in the week of July 3023 (other than Monday 3 July, when I understand the Governor-General would not be available to receive it). I do not contemplate that an extension of that brevity would involve additional cost for the Commission or anyone else.

I would be very much obliged if this request could be given attention as quickly as possible. That is because, in the interests of natural justice, I would want to advise any persons who might be the subject of such a referral of the prospect when they are involved to respond to a Notice of Potential Adverse Findings (those presently being delivered).

Yours faithfully

Catherine Holmes AC SC
Royal Commissioner
**Review of AAT Tier 1 decisions**

### How it was decided and key facts

#### Outcome

- The decision under review was set aside and substituted with the decision that the debt be recalculated with reference to the Applicant’s fortnightly payroll information, with the recalculated debt to be recoverable.

#### Key findings

- The Tribunal noted that ‘Centrelink undertook a data match with the Australian Taxation Office (ATO) for the 2011, 2012 and 2013 tax years. The enquiries revealed clear discrepancies’ [10].
- The Tribunal accepted that the information from the ATO was ‘correct and independent’ [10].
- The Tribunal referenced an extract from the ARO’s findings which noted that Centrelink had apportioned earnings in the absence of the Applicant providing any information about ‘actual earnings’ during the period. The Tribunal found the extract suggested that the debt calculation was ‘inaccurate, in that it uses averaged earnings, during the entirety of his employment with [employer], rather than the precise fortnightly earnings’ [12].
- The Tribunal found that this part of the debt should be recalculated given there appears to be ‘reasonable doubt as to the accuracy of the calculation’ [12].
- The Tribunal concluded:

  > that the precise debt calculation is attended by some doubt. It should be reconsidered. The fortnightly payroll information, which is now available should be worked into the calculations. It would also be desirable for an appropriately qualified Centrelink officer to discuss the debt calculation with [the Applicant] and his partner. They are entitled to a proper explanation. At the very least, he should be allowed to put submissions to Centrelink [16].

- The Tribunal noted the Applicant had:

  > … all the payslips (as does Centrelink) and he wants them to be considered. He also seeks an explanation about the debt. He cannot understand the ADEX Debt Schedule. He is concerned by apparent discrepancies [17].

- The Tribunal was satisfied that the Applicant had been overpaid, but found it was ‘necessary to set aside the debt, pending the recalculation or reconsideration’ [19]
- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

### How it was decided and key facts

#### Outcome

- The decision under review was set aside and substituted with a decision that the Applicant owed a debt of $490.11 for the period between 15 June 2013 to 13 December 2012.

#### Key Findings

- Centrelink raised the debt following a data match with the ATO [2].
- The Tribunal noted that the Applicant’s pay records corroborated with the ATO information used by Centrelink.
- The Tribunal stated:

  > The tribunal examined the information available on [the Applicant’s] Centrelink file, which showed the amounts she had declared to Centrelink, her actual wage information and the debt calculations. As the Centrelink fortnight did not match the fortnightly period used by the employer, and actual dates worked were not known, Centrelink apportioned [the Applicant’s] earnings to arrive at the amounts earned for specific Centrelink fortnights over the entire period of employment [10].
In the tribunal’s view it would be inappropriate to disregard the two final underpayments for two reasons. Firstly, it is quite apparent [the Applicant] was correctly declaring to Centrelink on the next available reporting date the amounts shown on her payslips... Secondly, Centrelink is relying on the apportionment method to determine the overpayment in the absence of records showing actual dates worked and amounts owed in each relevant Centrelink fortnight. The purpose of the apportionment exercise is to arrive at the most accurate determination of the amount of newstart allowance overpaid to [the Applicant] whilst she was employed by [Employer]... As discussed below, subsection 1223(1) requires the decision maker to be positively satisfied that a person who obtains the benefit of a payment was not entitled to that benefit. In the absence of actual records showing dates worked and amounts earned in specific Centrelink fortnights, the tribunal can only be satisfied about the likely amount of newstart allowance overpaid over the entire period of employment using the apportionment method. The tribunal therefore finds that the overpaid amount is $490.11 from 15 June 2012 to 13 December 2012. (In the alternative, the tribunal would have found that the difference between the calculated debt amount of $776.65 and $490.11 should be waived in the special circumstances of the case as it is manifestly unfair that [the Applicant] should face a much higher debt in the circumstances described above, and it is also more appropriate to waive than to write off where such an unfairness arises.) [14].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was affirmed.

**Key findings**

- The Tribunal noted that ‘as [the Applicant] worked a variable number of hours on a few days per week, a calculation (like the one performed by Centrelink) based on fortnightly average earnings may produce a different (not necessarily lesser) result’. The Tribunal noted the Applicant was not able to provide any more detailed information than that already provided to Centrelink, being total weekly hours and earnings [7].
- The Tribunal agreed:
  
  ...that a more precise allocation of hours worked may produce a different result. But as [the Applicant] was unable to provide any detailed records of the days and hours she worked, it was unable to perform the calculation on any other basis and so confirmed Centrelink's calculations as being accurate [8].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt under the direction that there was an NSA debt for the fortnight ending 1 March 2013 and that the quantum was to be calculated taking into account any working credit accrued by the Applicant from 5 January 2013.

**Key Findings**

- Centrelink raised the debt following a data match with the ATO [14].
- The Tribunal examined the Applicant’s payslips to determine the Applicant’s income for the relevant period.
- In relation to Centrelink’s calculations, the Tribunal found:
  
  The Centrelink debt calculation is based on [the Applicant] earning $689.58 a fortnight in the period from 24 October 2012 to 30 June 2013, apparently derived from dividing the figure from the ATO by the weeks/days in the period. This
is clearly incorrect as is the debt end date of 20 July 2013 listed in the papers. As well, [the Applicant] reported earnings from [Employer] for the Centrelink fortnights ending 9 November 2012, 23 November 2012 and 7 December 2012 and these appear to also have been included in the debt calculation, thus “double counting” these amounts [15].

- The Tribunal also, however, found that the Applicant did not correctly report his information in relation to one employer but also that the Applicant’s earnings could not be qualified based on the available information [18].
- The Tribunal also found that the Applicant did not correctly declare his income for the second and third employers [20]-[21].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**Outcome**

- The decision under review was set aside and remitted to Centrelink with the direction to recalculate the debt on the basis that the Applicant had no earnings from one of his employers in the debt period.

**Key Findings**

- The Tribunal found:
  - The debt should therefore be recalculated on the basis that this income was earned before the Applicant had claimed newstart allowance. These amounts of income should not be included when the debt is recalculated. The tribunal, however, is satisfied that the Applicant reported his net rather than gross earnings from [employer] and the remainder of the debt arose because of this [14]-[15].
  - The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**Outcome**

- The decision under review was affirmed.

**Key Findings**

- The Tribunal found that Centrelink apportioned the Applicant’s gross earnings, following a data match with the ATO, across the fortnightly reporting period as he was unable to provide payslips [13].
- The Tribunal was satisfied with Centrelink’s calculations [14].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**Outcome**

- The decision under review was set aside and substituted with the decision that the matter be remitted back to Centrelink for reconsideration and recalculation, with any recalculated debt to be recovered in full.
Key findings

- The Tribunal found the debt raised could not be correct for the period because the Applicant ‘was not working at this time’ [8].
- The Tribunal was not satisfied that the debt calculation was correct where ‘the debt for that period forms the substantial component of the total debt before the Tribunal’ [15].
- The Tribunal also noted there was no ‘information before the Tribunal as to the fortnights in which the income was received. The data match refers to a period where there is no information before the Tribunal’ [15].
- The Tribunal stated that the Department advised it did not obtain copies of pay records from the Applicant’s employer [15].
- The Tribunal did not find that any special circumstances existed to justify a waiver or the writing off of the debt.

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How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt for a specific period.
- The recalculated debt was recoverable.

Key Findings

- The Applicant contested Centrelink’s attribution of income to her for one out of three employers [13].

The Tribunal noted:

[The Applicant] explained that she only worked for [Employer] for a short period each year during the pruning season; generally about five weeks per year from the beginning of July. She said that she earned significant amounts of money during that time and that income should only be attributed to the weeks that she earned it (and not apportioned over the whole year). She said that in July 2011 she do not receive any newstart allowance because of the income that she received from [Employer]. When she finished work there she again claimed newstart allowance. The following two years when she was working for [Employer] she declared some but not all of the income she earned over each five-week pruning period. In the fortnights she declared income she did not receive any newstart allowance [14].

- In relation to Centrelink’s calculations, the Tribunal stated:

  The tribunal notes that the Department relied upon information provided by the Australian Taxation Office (ATO) in determining [the Applicant] income from [Employer] for the purposes of the debt calculations. In the absence of any other evidence the Department has apportioned the income reported for 2010/11 and 2011/12 over the whole of the relevant financial year. The income for 2012/13 has been apportioned over the period 1 July 2013 to 23 August 2013 (being the period reported by the employer to the ATO) [16].

  The tribunal had regard to folio A7 provided by [the Applicant]. The tribunal is satisfied that the document is an accurate reflection of [the Applicant] income from casual employment in the period 16 June 2012 to 13 August 2012 and the period 1 June 2013 to 23 August 2013. The tribunal finds that the income from this employment should be taken into account in the fortnights in which it was earned [17].

- The Tribunal also, however, found that the Applicant did not correctly report her income and therefore that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

- The decision under review was set aside and substituted with the decision that there was a debt of $16,535.46 for the period between 27 February 2012 to 30 May 2014.
• Part of the debt for the period between 27 February 2012 to 12 July 2012 inclusive was waived on the basis of sole administrative error.
• The part of the debt for the period between 13 July 2012 to 30 May 2014 was recoverable.

Key Findings

• In relation to one employer, the Applicant accepted that averaged ATO data was a reasonable assessment of her earnings [13].
• The Tribunal accepted that Centrelink’s other calculations using ATO data were accurate [15].
• The Tribunal found that part of the debt resulted solely due to administrative error as the Applicant had declared her employment and income and had been assessed by the ATO to speak against her application and Centrelink failed to take this into account [25].
• The Tribunal found that no special circumstances existed to justify the waiver of the remainder of the debt.

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How it was decided and key facts

Outcome

• The decision under review was set aside and substituted with the decision that there was a debt and the quantum was to be calculated and recovered.

Key Findings

• The Applicant agreed that she did not report her income from her first employer on a fortnightly basis as the online screen told her there was nothing to report when she attempted to do so [13].
• In relation to the second employer, Centrelink’s documents demonstrated that a data match had been conducted and the Applicant’s income had been applied evenly to each fortnight across the period. The Tribunal noted that ‘...this approach [did] not identify what [the Applicant’s] income was each for fortnight, whether the figure she advised on 2 May 2012 was correct and when her income “increased”’ [16].

• The Tribunal further stated:

  The EAN screen also shows that for the period 11 July 2012 to 22 August 2012 varying fortnightly amounts have been recorded to calculate the debt. The Tribunal asked Centrelink to provide evidence of these amounts but Centrelink advised that the earnings for the debt calculation in relation to [Employer] were derived from the ATO data already provided in the papers. The Tribunal was unable to locate in the papers any ATO data for the period after 27 June 2012 [17].

  Based on the information before it the Tribunal is satisfied that [the Applicant] was employed for variable hours by [Employer] between 2 April 2012 to 22 August 2012. The Tribunal also finds that [the Applicant’s] earnings for the fortnights in that period have not been identified nor has it been established when those earnings increased. Whilst it is possible that [the Applicant] was overpaid in this period, the quantum of any overpayment cannot be reliably calculated on the information before the Tribunal and the Tribunal cannot confirm that an overpayment exists. However, the Tribunal acknowledges that it is open to Centrelink to obtain details of [the Applicant’s] actual fortnightly earnings and dates worked and then calculate and raise a further overpayment in the future. [the Applicant] would be entitled to seek a review of any such future decision [18].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

The decision under review was set aside and substituted with the decision that the debt was to be recalculated.
Key findings

- ATO data matching identified a discrepancy between the income the Applicant received, and what they had reported to Centrelink.
- A debt was calculated by using the gross income from three employers.
- In response to the debt being raised, the Applicant provided payslips from two of her three employers to Centrelink. The debt was then recalculated and reduced.
- The Applicant then requested the decision be reviewed, as two of the employers were actually the same and Centrelink had potentially double counted some of her income. The Applicant however was unable to provide proof of this to the Department.
- The Tribunal found on review that two of the employers were the same, however, that the Applicant had still underreported her income. The Tribunal directed that the debt was to be recalculated and then recovered.
- The Tribunal stated:

\[
\text{...there is still a likely overpayment. However, the overpaid amount will need to be recalculated by Centrelink to take account of the following issues:}
\]

- The employers [Employer 1] and [Employer 2] are the same, so that earnings from [Employer 2] must be removed when recalculating youth allowance entitlement. Only the actual earnings for [Employer 1] are to be used.
- Earnings from [Employer 3] for the 2012/13 financial year are to be averaged over the period 1 July 2012 to 15 November 2012 only [given [Employer 4] had closed and it was no was no longer possible to obtain payslips] [13].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt.

### How it was decided and key facts

#### Outcome

- The decision under review was affirmed.

#### Key Findings

- The Tribunal accepted the Applicant’s income information as demonstrated by ATO data [12].
- The Applicant accepted that she was overpaid however noted that Centrelink was aware of her employment at the time [13].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

### How it was decided and key facts

#### Outcome

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with the direction that Centrelink provides additional time to the Applicant to provide Centrelink officers with relevant information so the debt could be recalculated, with any resultant debt to be recovered.

#### Key findings

- The Tribunal noted that Centrelink had utilised information provided by the ATO and raised a debt. The Applicant then sought review of the decision but did not provide information to establish his case that calculations of the debt were in error [17].
- The Tribunal noted that an ARO subsequently affirmed the decision and recorded (in their notes dated 9 February 2016) advice given to the Applicant about the decision:
He offered to supply bank statements but I advised him they would not be useful as they did not show gross earnings. He asked if I could obtain his payslips from his employers but I advised him the Department’s policy was not to do this. He said he was unable to obtain his payslips, some of the employers in question were no longer in business and he was no longer on good terms with some of them [18].

- The Tribunal considered that the Applicant’s bank records ‘might have been useful in coming to a decision ... because the lack of payments from sources other than Centrelink might indicate periods of unemployment’ [19].
- The Tribunal found that Centrelink needed to recalculate the Applicant’s debt taking into account additional payroll information [22].
- Although the Tribunal found the Applicant’s circumstances at the relevant time constituted a special circumstance, the Tribunal did not find this warranted writing off or waiving the debt because the Applicant was now in a position to repay the debt at a rate negotiated with Centrelink [42].

Outcome

- The decision under review was set aside and substituted with the decision that there is no debt.

Key Findings

- Centrelink raised the debt following a data match with ATO.
- The Applicant worked five different jobs over the debt period.
- The Tribunal noted that earnings were averaged across the period worked [14].
- The Applicant stated that the ATO dates for two of his jobs were incorrect [18].
- For one job, the Tribunal noted that the ARO had averaged the Applicant’s income and included a period after he stopped working there.
- The Tribunal concluded that no debt could be calculated for the other jobs as there was no verified evidence of the Applicant’s individual fortnightly pay [20] – [23].
- The Tribunal criticised the use of income averaging: there is no evidence of actual fortnightly earnings and the ATO data is not sufficient to establish these fortnightly earnings. Again, no debt can be quantified on the basis of earnings from these employers [23].
- The Tribunal was not satisfied as to the quantum of any debt but acknowledged it was open to Centrelink to obtain earning details to recalculate the debt [24].

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How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with directions that the debt be recalculated based on actual income information.

Key findings

- Centrelink received an ATO data match which suggested that the Applicant had not fully disclosed his income during the period in question. The Tribunal found: ‘Centrelink apportioned those earnings across [the Applicant’s] periods of employment during the financial years in question to calculate the discrepancies between the Applicant’s declared income and his actual income’ [2].
• The Tribunal was not satisfied Centrelink’s calculations were based on actual fortnightly income and remitted the decision for recalculation.

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and substituted with the decision that the Applicant was overpaid $1,420.03 in NSA and this amount was to be recovered.

**Key Findings**

• The Tribunal found that the Applicant reported her net rather than her gross income for part of the period [15].

• The Tribunal further stated that Centrelink’s documents contained information from a data match with the ATO. It found:

  The debt calculations also show that Centrelink has calculated that [the Applicant] was overpaid $193.04 for fortnight ending 24 May 2012 as she had earnings in this fortnight. This is based on the advice in the ATO data that [the Applicant] was paid by [Employer] between 14 February 2102 and 14 May 2012. [the Applicant’s] bank statements show she was paid a weekly pay of $668.20 by [Employer] on 10 May 2012 and then paid $155.44 net on 14 May 2012. [the Applicant] did not declare any earnings in the fortnight ending 24 May 2012. There is no evidence in the papers of the exact dates that [the Applicant] worked and actually earned these amounts. In the absence of such evidence, the Tribunal is unable to be satisfied that [the Applicant] was overpaid in the fortnight ending 24 May 2012 [17].

• The Tribunal found that the Applicant under-declared her earnings by a small amount in relation to the second employer and accepted Centrelink’s calculations [21].

• The Tribunal found that the Applicant was overpaid due to a lump sum she received from the first employer which did not meet the definition of ‘compensation’ and therefore needed to be treated as ordinary income [23].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt.

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**How it was decided and key facts**

**Outcome**

The decision under review was affirmed.

**Key findings**

• The Applicant received a debt arising from the receipt of a parenting payment and NSA between 2011 and 2013.

• An ARO varied the decision on internal review by reducing both the PPS and NSA debt.

• The Applicant did not provide any payslips to Centrelink, and so Centrelink obtained records from the ATO. In calculating the debt Centrelink ‘apportioned’ the Applicant’s income over the four-month period [19]

• In the absence of payslips and other supporting material, the Tribunal was ‘reasonably satisfied’ [29] with Centrelink’s calculation of the NSA debts and could detect no error in the calculation of the PPS debt [28].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt.
### Key Findings

The

### Outcome

The decision under review was affirmed.

### How it was decided and key facts

**Outcome**

The decision under review was affirmed.

**Key Findings**

- Centrelink raised the debt following a data match with the ATO [1].
- The Tribunal was satisfied that the Applicant under-declared her income and that Centrelink’s calculations were accurate [10].
- The Tribunal further found that because the Applicant’s reported income from the first employer was less than her actual income and the majority of her income from the second employer was not taken into account, she had been overpaid a parenting payment in the relevant period [12].
- The Tribunal noted that the Applicant had been offered the opportunity to provide payslips from one of her employers after the hearing; however, the Applicant advised she was unable to obtain her payslips from that Employer. The Tribunal noted that, as a result, ‘the information from [the Applicant’s] tax return of her annual payment from [the Employer] was used’ [14].
- The Tribunal found that Centrelink had calculated the debt correctly [15]-[17].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt.

---

### Appendix 9

**How it was decided and key facts**

**Outcome**

The decision under review was affirmed.

**Key Findings**

- Centrelink raised two debts in 17 November 2015: $9,351.50 (the First Debt); and $5,315.2 (the Second Debt) after receiving income information from the ATO and apportioning income over a period [9].
- In 2016, an ARO varied the decisions on internal review. The first debt was reduced and the Second Debt increased due to further information received from Applicant’s employers. The ARO also removed the 10% penalty in respect of each debt.
- For first debt, the Applicant said that payments were incorrectly included as ‘income’. The Tribunal found that income amounts were correctly incorporated in the debt calculations.
- For the second debt, the Applicant received an ex-gratia lump sum payment in relation to the termination of her employment. This lump sum was apportioned over the entire year, and included it in debt calculation. The Tribunal found that this payment also counted as income and that the debt had been calculated correctly.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt.

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Key findings

- Centrelink had averaged the Applicant’s income due to a lack of information having been provided. The Applicant was unable to provide further information, because he had earned no income from any employment [16]. However, he had received payments from a Family Trust which was categorised as income.
- The Tribunal found that it was reasonable to use income averaging in the circumstances, and that the debt should be repaid.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt.

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How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with directions that:
  - the Applicant’s debts be recalculated taking into account additional payroll information that was provided to the Tribunal;
  - that the debts incurred prior to March 2012 were not recoverable as they were incurred before the Applicant was bankrupt;
  - that recovery of half of the outstanding debts (as recalculated) be waived.

Key findings

- The Applicant did not dispute the income figures that were obtained from the ATO but did dispute the timeframe over which the earnings information obtained from the ATO was applied [12]. The Tribunal made inquiries with Centrelink about how income had been applied in calculating the debt and was informed that income that was used was the entire year’s income as declared in the Applicant’s tax return.
- The Tribunal found:
  - [Income] was averaged over the year and not only applied to the two 12 week periods [the Applicant] was working and earning. Obviously if [the Applicant] provided more payslips and pay information from [Employer] his debt, if any could be calculated more accurately but he is unwilling to approach [Employer] after the bad experiences he had there [24].
- The Tribunal found that recalculation should occur but that there would still be an overpayment and a debt to the Commonwealth.
- The Tribunal found special circumstances existed to justify a waiver of half of the debt [43]

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How it was decided and key facts

Outcome

The decision under review was affirmed.

Key findings

- The Applicant submitted that the earnings were not accurately included as the ATO had provided a half year figure but he had only been employed by that employer for eight days during the debt period [7].
- Centrelink averaged the Applicant’s pay over a period of months.
- The Tribunal found that in lieu of payslips which accurately set out exactly what was earned in the period, Centrelink had accurately performed the earning calculation [8].
- Having considered the evidence, the Tribunal was satisfied that in the absence of further evidence as to other periods to which the payments relate, that the amount of the overpayment as calculated by Centrelink was correct [9].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt.
How it was decided and key facts

Outcome

The decision under review was affirmed.

Key Findings

• Although the Applicant believed Centrelink had estimated her earnings and averaged these figures on a fortnightly basis to calculate the overpayment, the information she provided to the Tribunal were found to be consistent with the earnings figures used by Centrelink [22].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

Outcome

• The decision under review was set aside and the matter remitted to the Chief Executive Centrelink for recalculation of the debt.

• Centrelink was directed to take into account the payslips provided by the Applicant to the Tribunal.

Key Findings

• Centrelink used ATO data to determine that the Applicant owed a debt of over $6,500 in total [12].

• The Tribunal found that the Applicant was overpaid parenting payment and newstart allowance and accepted evidence that the Applicant reported his income on some occasions but did not do so consistently or accurately on others [22].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

Outcome

• The decision under review was set aside and remitted to Centrelink for reconsideration with the direction that the overpayment of DSP be recalculated by apportioning the $11,162.00 income payments to the Applicant over the relevant period against the fortnightly DSP payment periods relevant to the income payments, taking into account any working credits.

• The resulting overpayment was to be a recoverable debt.

Key Findings

• The Tribunal noted the debt amount was calculated based on income information obtained from the ATO through data matching by Centrelink [2].

• On the evidence presented, including the Applicant’s CUA statements and his evidence at the hearing, the Tribunal found that the income earned by the Applicant, as set out in the CUA statements, had not been taken into account in calculating his rate of DSP [12].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
**Key Findings**

- The Applicant did not dispute Centrelink’s calculations or apportionment of her income using ATO data across the relevant fortnights. The Tribunal accordingly found that the Applicant had been repaid \([12]\).
- The Tribunal checked the calculations and was satisfied they were correct \([14]\).
- The Tribunal found that the Applicant did not properly report her income and the debt was not due to sole administrative error \([17]\).
- Due to the Applicant’s medical condition, the Tribunal decided to waive the debt from the date of the decision \([26]\).
- However, the Tribunal found that the Applicant’s condition was not so compromised that she was unable to report her income for the entire period. It accordingly found that the 10% penalty should apply to the debt for the period between 24 November 2012 to 19 January 2013.

**Outcome**

- The decisions under review were set aside and remitted to the Chief Executive Centrelink.
- Centrelink was directed that the Applicant was overpaid age pension for the period between 24 November 2012 to 21 March 2013.
- Centrelink was directed that from 7 July 2016, recovery of the outstanding balance attributable to the period from 30 January 2013 to 21 March 2013 was to be waived.
- The outstanding balance for the period from 24 November 2012 to 29 January 2013 was recoverable. The 10% penalty was to be applied to this debt.

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**AAT Review Number** | **DOC ID** | **Member** | **Date**
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2016/M095528 | CTH.3761.0003.7247 | A Ducrou | 7 July 2016

**How it was decided and key facts**

**Outcome**

- The decision under review was set aside.
- The matter was remitted to Centrelink with directions:
  - to recalculate the debt in relation to two employers using payslips provided at the hearing
  - to spread income for another employer over the period and take into account payslips; and
  - that the debts in relation to two other employers were calculated correctly.

**Key Findings**

- The Tribunal found that the ATO information in relation to the Applicant’s employment with [Employer 1] for the period between 1 July 2012 to 30 June 2013 was accurate but stated:

  Centrelink has calculated the debt for [the Applicant] by dividing her total income of $32,155 by 365 to obtain a daily rate and then applying this daily rate in 14 day increments for the period 14 January 2012 to 13 July 2012. However, this is incorrect as the payslips clearly show that averaging [the Applicant’s] earnings over the entire period does not reflect the fact that her earnings were much higher in the period 1 July 2011 to 15 January 2012 (being $28,487) than they were in the period 16 January 2012 to 30 June 2012 (being $3,668.23). [the Applicant] told the Tribunal — and it accepts — that [the Applicant’s] hours of work per week dropped very significantly in January 2012 and that this was the reason that she made a claim for newstart allowance on 16 January 2012. This is reflected in a document confirming that [the Applicant] contacted Centrelink on 16 January 2012. The Tribunal therefore finds that the debt calculations in relation to [the Applicant’s] employment with [Employer] are inaccurate and will need to be recalculated based on the payslips provided \([22]\).

- In relation to the second period of earnings from [Employer 1], the Tribunal noted that the reason provided by the ARO for increasing the debt was incorrect and the overpayment would need to be recalculated on the basis that the $1,151 reported by the ATO would need to be ‘spread’ over the period between 1 July 2012 to 7 September 2012 as opposed to being deemed the income for one fortnight \([24]\).
• The Applicant stated that [Employer 2] mis-reported her income to the ATO and she had been in a dispute with the ATO over this. The Tribunal stated:

She disputed the two payslips which showed that she earned $600 per week in the month of November 2012. However, the Tribunal has no other verifiable evidence upon which to rely to amend the earnings recorded on the payslips and by the Australian Taxation Office and in the absence of further evidence, the Tribunal finds that [the Applicant] was overpaid newstart allowance in the period 29 October 2012 to 31 January 2013 when she was employed by [Employer 2] in accordance with Centrelink’s calculations [25].

• The Applicant did not dispute her income from [Employer 3] as reported by the ATO, however, the Tribunal was ‘unable to reconcile the Centrelink overpayment calculations and its treatment of this income with its statement that [the Applicant] received $831 in this period but that she declared income of $2,885 to Centrelink during this period’ [26].

• The Tribunal was satisfied with Centrelink’s debt calculations in relation to the Applicant’s income from [Employer 4].

Ultimately, the Tribunal found that the Applicant had been overpaid newstart allowance, however, the quantum would need to be recalculated [28].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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### How it was decided and key facts

**Outcome**

• The decision under review was set aside and remitted to Centrelink for reconsideration.
• The Tribunal directed Centrelink to provide the Applicant with time to provide Employer payroll information for recalculation.
• The Tribunal directed any resultant debt from recalculation was to be recovered.

**Key findings**

• The Tribunal noted the debt arose due to a data match with the ATO [2].
• The Tribunal noted it had:

  ...examined Centrelink policy in respect to raising debts for past periods following advice from the ATO about a person’s income. In general terms Centrelink policy provides that the person to whom the debt will be applied is to be provided with an opportunity to provide evidence about their past period income. If the person does not provide evidence then the match data (i.e. that provided by the ATO) is applied to their record [14].

• The Tribunal noted it ‘appreciates the pragmatic nature’ of the ARO’s discussion with the Applicant, however, the correct amount of the debt required consideration of actual earnings [18].
• The Tribunal did not find that any special circumstances existed to justify a waiver or the writing off of the debt.

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### How it was decided and key facts

**Outcome**

• The decision under review was affirmed.

**Key Findings**

• In relation to Centrelink’s calculations, the Tribunal found:

  ...The tribunal notes that in the calculation of the debt, Centrelink have taken the annual income as reported by the Australian Tax Office and averaged it on a fortnightly basis. Whilst it is preferable to undertake a week by week calculation, the tribunal finds that Centrelink had no other option in this matter given the passing of time and [the Applicant’s] lack of contemporaneous reporting [9].

• The Tribunal reviewed and was satisfied with Centrelink’s calculations [10].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

The decision under review was affirmed.

**Key findings**

• The Tribunal noted that Centrelink had data matched PAYG records from the ATO in respect of the Applicant’s earnings from his employers and found that the earnings had not been fully taken into account when assessing his DSP payments [12].
• The Tribunal noted that Centrelink invited the Applicant to provide documentation with respect to his earnings but Centrelink reported that no further documents were received [12].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and remitted to Centrelink for reconsideration.
• Centrelink was directed to reconsider the decision in accordance with the Tribunal’s reasons including the debt amount not being recoverable for the period of declared bankruptcy.

**Key findings**

• In 2016, Centrelink commenced an investigation of the Applicant’s earnings based on information provided by the ATO [2].
• Centrelink relied on ATO data to identify the discrepancy between the Applicant’s declared earnings and information from the ATO [9]-[10].
• The Tribunal noted the Applicant reported fortnightly but did not report correct income from three part-time jobs [10].
• The Tribunal noted that there was no legislative power for the recovery of a debt owed by the Applicant up to the date of bankruptcy, rather the debt became provable in his bankruptcy [15].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and substituted with the decision that the debt be waived.

**Key findings**

• The Tribunal noted that the overpayment had been calculated based on the Applicant’s annual earnings, rather than on fortnightly earnings, due to the Applicant’s inability to obtain copies of her payslips for the period in question. The Tribunal stated that the Applicant’s representative was still having difficulty obtaining the payslips in question at the time of the hearing [10].
- The Tribunal discussed making a request for the payslips following the hearing; however, given the findings made by the Tribunal under the waiver provisions the Tribunal decided it was not necessary to do this [10].
- The Tribunal found that the annual PAYG summaries were the best evidence of the Applicant’s earnings [10].
- The Tribunal did not find that any sole administrative error existed, but found that special circumstances existed to justify a waiver of the debt [23].

### How it was decided and key facts

#### Outcome
- The decision under review was set aside and remitted to the Chief Executive Centrelink for reconsideration in accordance with directions that:
  - the Applicant did not owe a recoverable parenting payment of debt for the period between 1 July 2011 to 29 June 2012 except that her entitlement to PP between 8 March 2021 to 21 March 2012 was to be recalculated as directed and any resulting debt was to be recoverable
  - the Applicant’s entitlement for the period between 30 June 2012 to 30 June 2013 was to be recalculated according to the Tribunal’s directions and the recalculated debt was recoverable and
  - the Applicant did not owe a PP debt for the period between 22 August 2013 to 22 October 2013.

#### Key Findings
- Centrelink raised the debt following a data match with the ATO [3]. The decision was varied by an ARO to increase the debt [5].
- The Tribunal found that the Applicant was not overpaid parenting payment between 23 July 2011 to 29 June 2012 because of income from the first employer. However, the lump sum she was paid (which would need to be divided into weekly amounts) would need to be taken into account for the following income year [23].
- The Tribunal noted that the Applicant informed Centrelink when she commenced work at her second employer and notified Centrelink of her income. Accordingly, any resulting overpayment was the result of an error on Centrelink’s part as the Applicant’s payments did not change to reflect the change in her income [24].
- The Tribunal found that the Applicant did not properly declare her income from her second employer for the fortnight commencing 8 March 2014 [25].
- The Tribunal undertook an extensive review of the evidence and Centrelink’s calculations. It appeared that a combination of bank statements, payslips and ATO averaging were used to calculate the debt.
- The Tribunal further stated:

  [The Applicant’s] tax records for 2011/12 showed that she earned $5,437 from [Employer 1] in the period 23 January 2012 to 27 June 2012. Centrelink apportioned this income over the period 23 January 2012 to 27 June 2012, so that [the Applicant] was recorded as earning $475.74 per fortnight. It is evident from [the Applicant’s] payslip dated 22 February 2012 that [the Applicant’s] first pay period was 16 February 2012 to 22 February 2012, and that she did not commence employment on 23 January 2012, as the year to date figure is the same as the amount she was paid on 22 February 2012. The only evidence is of three wage payments in February and March 2012, totalling $878. Regarding the remaining earnings for the 2011/12 tax year from [Employer 1], [the Applicant] told the tribunal the long service leave she was paid as part of her former employment with [Employer 1] was included in her 2011/12 payment summary for this employer, but she did not receive the payment until 9 July 2012. This was the amount she reported to Centrelink on 26 July 2012, and for which she served an income maintenance period from 26 July 2012 to 5 September 2012 [27].
- The authorised review officer recorded that there was a debt owed for the period 1 November 2012 to 14 November 2012 for the same amount of $109.68, however the tribunal was unable to determine how the authorised review officer arrived at this conclusion. There is ongoing income from [Employer 2] of $650 for fortnight recorded for this fortnight. The earnings screen for [Employer 1] shows one entry for 12 November 2012 of $493.75, and another for 14 November 2012 of $637.50, both show as notifiable events, meaning that the income was reported by [the Applicant], although it is not clear when the reports occurred. A letter sent to [the Applicant] by Centrelink on 15 November 2012 shows that Centrelink had taken into account fortnightly earnings of $650 from [Employer 2], and other earned income of $1,287.50 from 1 November 2012 to 14 November 2012. There were no payslips or other information to indicate that the income apparently taken into account by Centrelink on 15 November 2012 was incorrect. The tribunal was unable to conclude that [the Applicant] was overpaid in the period 1 November 2012 to 14 November 2012 because of the wages earned from [Employer 2] and [Employer 1]. However, as the leave payment from [Employer 1] must be taken into...
account in this financial year, there will now be an overpayment for this and other fortnights in the 2012/13 year [32]
• The Tribunal did not consider whether circumstances existed to justify a write off or waiver of the debt.

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### How it was decided and key facts

#### Outcome
- The decision under review was set aside and remitted to Centrelink for reconsideration.
- Centrelink was directed to recalculate the period of entitlement because ‘Centrelink apportioned income across the year and attributed income to fortnights when (the Applicant) was unlikely to have been working’ [19].

#### Key findings
- The Tribunal noted Centrelink apportioned income across the year and attributed income to fortnights when the Applicant was unlikely to have been working [19].
- The debt must be recalculated to more accurately reflect the Applicant’s actual earnings [40].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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### How it was decided and key facts

#### Outcome
- The decision under review in relation to part of the entitlement period was affirmed.
- The decision under review not to apply the 10% penalty was affirmed.
- The decisions under review to raise and recover debts for the 2012/2013 and 2013/2014 financial years were set aside and directed that Centrelink waive the recovery of the remainder of the debts.

#### Key findings
- The Tribunal noted that, in 2016, Centrelink commenced an investigation of the Applicant’s earnings based on information provided by the ATO and on 11 Feb 2016 a decision was made to raise and recover a debt on the basis the Applicant had not correctly declared his earnings [2].
- The Tribunal noted that, in determining the overpayment, Centrelink had some payslip information from the Applicant but otherwise apportioned the income from each of the three employers across the periods recorded in the ATO records [11].
- The Tribunal was not satisfied that Centrelink had correctly calculated the debt and stated:
  
  ...because there is now more accurate information about [the Applicant’s] income from [the Employer], and because Centrelink apportioned income across the year and attributed income to fortnights when [the Applicant] was unlikely to have been working because of illness and absence overseas [19].
- The Tribunal found that Centrelink would need to recalculate the overpayment taking into account the actual wage income shown on the employer report from [Employer 1] and apportioning income from [Employer 2] across two dates. The Tribunal found that the manner in which Centrelink calculated the Applicant’s income from two other employers was reasonable [10].
- The Tribunal found special circumstances existed to justify a waiver of the debts [35].
The Tribunal stated:

**Key Findings**

- In relation to Centrelink’s calculations, the Tribunal stated:
  
  When Centrelink originally raised the debt they obtained gross income figures from the Australian Taxation Office and then annualised these amounts as though [the Applicant] earned each wage from each employer uniformly across the financial year. This resulted in debts of $3,070 and $5,350. [The Applicant] disputed these amounts and informed Centrelink of the start and finish dates for various employers. Centrelink then calculated his fortnightly income on a linear basis; assuming he earned the amounts in an even manner over the time periods given by [the Applicant] [13].

- The Tribunal found:
  
  [The Applicant] was working on a casual basis for several employers and it is unlikely that he was paid the same amount each pay period. By apportioning the payments it is possible that the debt has been overstated. However [The Applicant] also declared payment from one employer... when he received it rather than when he earned it ($3,780) due to the fact that [Employer] were late in paying him his wages. Also, from the evidence provided, it appears that [the Applicant] has declared less earnings (in total) than received and it is therefore likely that he made some errors in reporting his earnings [15].

The tribunal decided that Centrelink’s methodology in apportioning the earnings was reasonable in the circumstances and after reviewing the debt calculations provided by Centrelink the tribunal was satisfied that [the Applicant] had been overpaid newstart allowance [16].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

**Outcome**

- The decision under review was affirmed.

**Key Findings**

- Centrelink raised the debt following a data match with the ATO [10]. The Tribunal found that Centrelink applied an averaging method to calculate the debt [12].

- The Tribunal stated:
  
  ...Other than ask [the Applicant] to produce pay advice from her employers going back to 2010 there is no evidence that the Department has done anything about requesting information from employers about the weekly/fortnightly payments to [the Applicant] over the period of the debt. Unlike [the Applicant] the Department has statutory powers to require employers to provide this information. It may be administratively convenient for the Department to use the information provided by the data match. However, given the variable nature of [the Applicant’s] income and the apparent prospective adverse effect on the calculation of [the Applicant’s] entitlement, the Department must make
some reasonable effort to obtain payroll information from [the Applicant’s] employers before adopting an averaging method to work out her fortnightly income [15].

[the Applicant’s] evidence was that some of her previous employers may not be in business. If after reasonable efforts the Department cannot obtain payroll evidence from an employer the use of an averaging method can be adopted as was the case in Halls and Provan. Given that in some cases there is very large variability in [the Applicant’s] fortnightly income I am of the view that it would be fairer to apportion the difference in actual income and reported income over the period in which that income was received rather than averaging the total actual income over the period. Adopting this method should produce a fairer result that will reflect [the Applicant’s] variable income... [16].

I have some concerns about the income attributed to [the Applicant’s] for the employer [Employer]. There is no verification of the amounts reported by [the Applicant] in the period 12 May 2012 to 6 July 2012. It is more probable than not that these amounts were part of the verified income paid to [the Applicant]. Accordingly, if no payroll information can be obtained from this employer the Department should adopt the verified amount of $5,979.65 as the total amount received by [the Applicant] over the period 12 May 2012 to 9 November 2012. The same methodology as set out in the preceding paragraph should be used to apportion the difference in the actual amount and the amount reported over the payment fortnights from 12 May 2012 to 9 November 2012 [17].

• The Tribunal found that as a full-time student, the Applicant did not have capacity to repay the debt and that a write off of the debt until she found employment and a means to repay the debt was justified.

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**How it was decided and key facts**

**Outcome**

• The decision under review was affirmed.

**Key findings**

• The Tribunal noted that Centrelink was unable to obtain payslips for the Applicant and had averaged her gross earnings out over the debt periods, except for the period from 25 December 2010 to 9 January 2011, because the ARO had accepted that the Applicant did not work during that fortnight [8].
• The Tribunal accepted that averaging the Applicant’s gross income for each financial year out over every fortnight was the correct methodology. No payslips were available [13].
• The Tribunal found that the Applicant did not declare all of her earnings and the under declarations were summarised in the ADEX debt calculation [15].
• The Tribunal did not find that any special circumstances existed to justify a write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with the direction that Centrelink reconsider the bank statement information provided by the Applicant, with the resultant debt (if any) to be recoverable.

**Key findings**

• The Applicant worked seasonally and had supplied additional evidence of her bank statements to the Tribunal that revealed what is likely after-tax deposits of her earnings, which were not previously available to Centrelink [10].
• The Tribunal stated that ‘[w]hilst the Centrelink approach to averaging was reasonable in the absence of better evidence, the Tribunal considered the new evidence renders the calculation unreliable’ [10].
• In terms of Centrelink’s reconsideration of the new material, the Tribunal noted that Centrelink may take steps to determine whether the sums paid to the Applicant’s bank account were net or gross payments, and if the sums were...
net of tax, Centrelink may wish to attempt to gross up the figures using information about standard marginal tax rates. Another alternative may be to calculate each net payment as a proportion of the total net payment and ‘gross it up’ on that basis [11].

- The Tribunal did not find that any special circumstances existed to justify a write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and substituted with the decision that no debt existed as any excess payments could not be quantified.

**Key Findings**

- The Tribunal found that Centrelink calculated the overpayment by averaging the 2012/2013 Employer earnings across the financial year and averaging the 2013/2014 income across the period of 1 July 2013 to 15 December 2013 [15].
- The Tribunal further found:

  After the hearing [the Applicant] provided a letter from [Employer] listing dates that he was on unpaid leave including during the period under review. This shows that he was on unpaid leave from 21 February 2013 to 22 February 2013; from 26 April 2013 to 19 August 2013; and from 28 August 2013 to 30 August 2013. Although this implies that he was paid for the periods he was not on unpaid leave, this is not stated by the employer. Clearly the averaging of his earnings across the period does not accurately reflect his fortnightly earnings in the period under review. The Tribunal concludes that no overpayment can be accurately quantified on the basis of earnings from [Employer] without details of [the Applicant’s] fortnightly earnings during the period under review [16].

  The papers also contain ATO data showing [the Applicant] earned $2,264 from [Employer] in the 2013/2014 financial year. Again, Centrelink has averaged this income across the year resulting in a figure of $86.84 a fortnight. It is unlikely that this is an accurate reflection of [the Applicant’s] fortnightly earnings from this employer [17].

- The Tribunal stated that no overpayment could be accurately quantified on the available information but that it was open to Centrelink to obtain details of the Applicant’s actual fortnightly income to calculate and raise a further overpayment in the future [18]-[19].

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**How it was decided and key facts**

**Outcome**

- The decisions under review to raise and recover parenting payment debts are affirmed.
- The decision under review to raise and recover a further parenting payment debt is varied.

**Key findings**

- **Centrelink relied on information from a data match with the ATO:**

  The usual procedure in the case of an ATO data-match involving earnings is that Centrelink subsequently contacts the relevant employer to obtain a breakdown of a person’s salary or wage as paid to them. For some reason Centrelink has not done this in [the Applicant’s] case. The Tribunal offered [the Applicant] the option of having her debt recalculated on this basis but warned the result could go either way. As [the Applicant] did not have a particular view, the Tribunal considers it acceptable to proceed as Centrelink has done [9].

- The Tribunal was satisfied the Applicant was overpaid parenting payment in relation to two of the debts [10].
- In relation to a further debt, the Tribunal found that the overpayment of $336.28 for the parenting payment fortnight ending 17 September 2012 is not a debt due to the absence of a notification obligation.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
### How it was decided and key facts

#### Outcome
- The decision under review was affirmed.

#### Key Findings
- Centrelink raised the debt following a data match with the ATO [2].
- The Tribunal found that in the absence of evidence to the contrary, the Applicant undertook casual employment with all the employers whose details and income amounts were supplied by the ATO. The Tribunal found that the Applicant reported some of his earnings but that not all of his income was taken into account while calculating his rate of NSA [12].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt.

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### How it was decided and key facts

#### Outcome
- The decision under review was set aside and substituted with the decision that the debt was to be recalculated.

#### Key Findings
- Centrelink raised the debt following a data match with the ATO [7].
- The Tribunal stated:

  The Centrelink note to file dated 9 February 2016 is informative. It reveals a contact between [the Applicant] and the authorised review officer, made after the authorised review officer’s decision had been finalised on 19 January 2016. The authorised review officer wrote:

  > I have looked at the scanned (pay slips) and they show the full $6848 earnings for the period July 2012 to 10 September 2012. The debt raised has averaged those earnings over the full year. Can the debt raised please be looked at again, as the Customer did not start payments until September 2012. I will re-open the Customer review, if there is a different outcome [14].

  The annotations made by Centrelink officers after the authorised review officer’s comments, show that other decision makers persisted with the averaging out of [the Applicant’s] earnings over 12 months. The review has not been re-opened by the authorised review officer, despite comments which are tantamount to an admission of error [15].

  The proper methodology was to calculate any debt on the basis of fortnightly earnings. The pay slips provided by [the Applicant] should be apportioned into Centrelink pay fortnights and any overpayment calculated on that basis [16].
- The Tribunal did not consider whether special circumstances existed to justify a write off or waiver of the debt.
Key Findings

Outcome

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with the following directions:
  1. That the Applicant was not overpaid parenting payment in the period from 7 July 2011 to the date she returned to work in or around September 2011 and no debt arose in this period.
  2. That the Applicant owed a debt for parenting payment in the period from the date she returned to work to 20 June 2012 but that the debt must be recalculated after obtaining details of the date she returned to work and the termination payments she received in October 2011.
  3. That the portion of the debt (as recalculated) for the period from 16 Dec 2011 to 20 March 2012 be waived due to special circumstances.

Key Findings

- The review concerned whether or not the Applicant was required to repay a debt for parenting payment received over and above her entitlement in the relevant period.
- Centrelink reviewed the Applicant’s entitlement as a result of a data match with the ATO in relation to her employment income. Centrelink raised the debt based on averaged payments for a period.
- The Tribunal found that the income had been incorrectly assessed and the matter should be remitted to Centrelink for investigation and confirmation of details as to when the Applicant returned to work [21]-[22].
- The Tribunal found that special circumstances existed to justify a waiver of the debt for the period from 16 Dec 2011 to 20 March 2012 [60].

How it was decided and key facts

Outcome

- The decision under review was set aside and substituted with the decision that the Applicant’s entitlement to NSA be recalculated on the basis of his actual earnings as indicated in his payslips.
- The resulting debt was recoverable.

Key Findings

- Centrelink raised the debt following a data match with the ATO [2].
- In relation to the first employer, the Tribunal found that in the absence of payslips to verify his actual gross earnings each week, the gross income as provided by the ATO was to be used to calculate his rate of NSA [9].
- The Applicant provided the Tribunal with payslips from his second and third employers. Based on the payslips reviewed by the Tribunal, the Tribunal found that the Applicant had under-declared his income and had been overpaid NSA [9]-[14].
- The Tribunal, however, directed Centrelink to recalculate the debt amount using the payslip information provided by the Applicant [15]
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt
Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt.

Key findings

- Applicant received an age pension debt of which was raised on the basis that the Applicant’s earnings were not correctly considered in calculating her rate of age pension. Centrelink calculated missing income by subtracting the total income in Applicant’s payslips from the total 2010/2011 income figure advised by ATO and averaging those sums across periods of several months [8]-[9].
- The Tribunal found that instead of averaging the sums across various fortnights, figures based on payslips should have been used when calculating the Applicant’s entitlement to age pension in the relevant period [11].
- The Tribunal remitted the matter to Centrelink so that Applicant’s entitlement to age pension during the overpayment period can be reassessed [12].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

Outcome

- The decision under review was set aside and remitted to the Chief Executive Centrelink with directions that there was a recoverable YA debt of $1,389.20 for the period between 18 November 2010 to 29 June 2011 and that the Applicant’s entitlement to NSA was to be recalculated on the basis of payslip evidence provided by the Applicant’s employers.

Key Findings

- Centrelink raised the debt following a data match with the ATO. An ARO reduced upon the provision of payslips for the 2011 financial year by the Applicant [11].
- In relation Centrelink’s calculations, the Tribunal stated:

  In this case, particularly as [the Applicant] worked on a casual basis, in order to accurately establish her correct entitlement, evidence is needed to establish what she earned in each relevant allowance fortnight. In general, the most complete, accurate and reliable evidence as to the person’s employment income is from the employer’s own records. Certainly, it is appropriate for the Department to rely on income evidence from the ATO if it is unable to gain more accurate information from employers. The tribunal is most concerned that there was no attempt made by the Department to gain access to information about [the Applicant’s] earnings directly from her employers. Thus, the tribunal deferred the matter and requested that the Secretary exercise its power to gain access to the relevant documents [15].

- The Tribunal accordingly directed Centrelink to recalculate the debt based on payslip information for the other relevant periods provided [16].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt.
How it was decided and key facts

Outcome

• The decision under review was affirmed.

Key findings

• The debt was affirmed by the ARO on internal review.
• The Applicant argued that averaging his yearly earnings evenly over the whole year would not fairly reflect his actual earnings while he was in receipt of NA. Centrelink did not obtain any payment details from the Applicant’s employer. The Applicant was able to obtain his bank records but not his weekly pay slips. The Tribunal commented this ‘is not surprising given the debt occurred four years ago’ [16].
• The Tribunal subsequently affirmed the ARO’s decision, and discussed the evidence available to the Tribunal to be able to make the decision. The Tribunal commented:

[the Applicant] provided his bank statements ... which show the deposits of his net pay.... If he was being taxed correctly this would equate to approximately $900 per pay gross; or $1,800 per reporting period; significantly more than the averaged fortnightly amount for the year [15].

The tribunal decided that a fair and equitable outcome would be to assume [the Applicant] earned $1,800 per fortnight for the period ...This amount is still enough to preclude [the Applicant] from being entitled to newstart allowance and would therefore make no difference to the overpayment calculation [17].
• The Tribunal ultimately decided that the amount of the overpayment calculation was correct, based on the information that was available to Centrelink at the time.
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

How it was decided and key facts

Outcome

• The decision under review was set aside and remitted to the Chief Executive Centrelink with a direction that Centrelink obtain payroll information from the Applicant’s employers for the relevant period.

Key findings

• Centrelink raised the debt following a data match with the ATO [3].
• The Tribunal noted that Centrelink did not provide any evidence to support its submissions in relation to the Applicant’s earnings. The Tribunal noted that Centrelink also did not provide evidence to support submissions that the Applicant worked for other employers but did not declare his earnings from those employers. The Tribunal stated: ‘Centrelink has not provided any evidence from which I could be satisfied that a debt exists’ [6].
• The Tribunal ultimately found:

[The Applicant’s] correct rate of pension in respect of a pension instalment fortnight depended, in part, on his earnings in respect of that fortnight. The best evidence of those earnings would be his employers’ payroll records. Centrelink has the power to issue notices to those employers requiring them to provide those records and it should do so with a view to accurately calculating [the Applicant’s] correct rates of pension during the period in question. Of course, if Centrelink is unable to obtain those payroll records it may need to resort to averaging [the Applicant’s] earnings over longer periods [13].

Centrelink knows how to properly investigate whether a debt exists. It also knows how to present the evidence it has gathered and the calculations it has made in a way that allows the Tribunal to properly review the decision it has made. The decision under review will be set aside and the matter will be sent back to Centrelink to allow it to commence that
process. If Centrelink decides to raise another pension debt, [the Applicant] will have review rights in respect of that decision [14].

- The Tribunal did not consider whether circumstances existed to justify a write off or waiver of the debt.

### Key Findings

#### How it was decided and key facts

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**Outcome**

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt.

**Key Findings**

- The Tribunal noted that the Applicant’s solicitor carefully examined the Applicant’s earnings during the first and second debts periods. It stated:

  [The Applicant’s solicitor] has carefully analysed [the Applicant’s] earnings during the first and second debt periods indicating the amounts earned, the Department’s apportionment of her earnings and the periods over which Mrs Barnett earned her income. [The Applicant’s solicitor] noted that [the Applicant’s] payslips indicate that she earned a total amount of $10,095.92 during the debt period which does not align with the Department’s record of ATO earnings which show for 2012 she earned $7,381. [The Applicant’s solicitor] also provided a detailed analysis of the second debt period [17].

- The Applicant’s solicitor raised various errors with Centrelink’s calculations [19]. The Tribunal accordingly determined that the matter be remitted to Centrelink for further investigation [20].

- The Tribunal did not consider whether circumstances existed to justify a write off or waiver of the original debt but did direct Centrelink, once it had recalculated the debt, to consider whether the remainder of the debts should be waived [21]-[22].

### How it was decided and key facts

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**Outcome**

- The decision under review was varied such that there was a debt but that it was to be recalculated based on payslips provided by the Applicant.

- The recalculated debt was recoverable.

**Key Findings**

- The Tribunal stated: ‘Centrelink has calculated the debts, based on apportioning an annualised figure provided by the Australian Taxation Office, as Centrelink did not have the payslips for the periods’ [16].

- The Tribunal found:

  Having carefully considered the Centrelink overpayment calculations the tribunal was not satisfied that the debts had been accurately calculated because payslips were not available when the debts were calculated. However, there are debts, in unknown amounts, for the periods 20 December 2011 to 21 June 2012 and 5 July 2013 to 4 January 2014 [17].

- The Tribunal found that the debt for the period between 20 December 2011 to 21 June 2012 could be waived due to sole administrative error [23].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt but it stated:

  The debt therefore has to be recovered. Centrelink has calculated the debt based on apportioning an annualised figure provided by the Australian Taxation Office as Centrelink did not have the payslips for the periods [42].

  However, [the Applicant] has supplied her payslips for the debt period 5 July 2013 to 4 January 2014. The debt should be recalculated on the basis of this new information provided by Mrs Gollan [43].
How it was decided and key facts

Outcome
- The decision under review was affirmed.

Key findings
- The Applicant undertook paid employment for three separate employers for the period of entitlement under review at [3] – [5].
- The Tribunal noted the ATO had provided information to Centrelink advising of gross amounts of income earned by the Applicant [7].
- The Applicant provided the ARO with detailed payslips regarding his employment with one employer and an Employment Separation Certificate from another Employer, and as a result the debt was recalculated [10]-[11].
- The Tribunal noted the Applicant did not dispute that the amounts notified by the ATO were inaccurate and the Tribunal found ‘that the amounts of gross earnings provided by the Australian Taxation Office and detailed above at paragraph 7 are accurate’ [20].
- The Tribunal was satisfied that the Applicant had been overpaid YA in the relevant period [26].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

How it was decided and key facts

Outcome
- The decision under review was set aside and remitted to Centrelink for recalculation of the debt.

Key findings
- The Tribunal commented that in the ARO’s reasons Centrelink:
  ...
  ... is simply stating that when the Australian Taxation Office (“the ATO”) has advised it of a person’s income in respect of a financial year it will raise a debt by averaging that income over the entire financial year rather than attempting to obtain evidence that would allow it to calculate the debt more accurately. If Centrelink is going to raise a debt against a social security recipient, it should take reasonable steps to calculate the debt accurately [7].
  
  In explaining why Centrelink elected to average [the Applicant’s] income over an entire financial year, the authorised review officer did not refer to [the Applicant’s] contemporaneous declarations of his income [8].

- The Tribunal noted that after the hearing it directed Centrelink to provide the Applicant’s EAN screens. It did not provide those screens but it did provide an amended schedule. The Tribunal noted that the original schedule had been incomplete and misleading [10].

- The Tribunal sent the matter back to Centrelink to calculate the Applicant’s overpayment. The Tribunal stated:
  However, it is also worth noting that even if I had accepted Centrelink’s submissions concerning the averaging of incomes, the inclusion of allowances as income, and the prospective attribution of the company’s profit, it would not have been possible to properly review Centrelink’s decisions from the documentation it provided [27].

- The Tribunal found that Centrelink should take reasonable steps to calculate the debt accurately [28].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
How it was decided and key facts

Outcome

- The decision under review was affirmed.

Key Findings

- The Tribunal noted that during the period relevant to the review the Applicant had variable earnings. A data match with the ATO revealed that the Applicant’s actual gross earnings were greater than the amount declared to Centrelink over the relevant period [7].
- The Tribunal noted that Centrelink subsequently asked for pay records, but the Applicant advised the company had closed down and it was not possible to obtain that information [7].
- The Tribunal noted that Centrelink calculated that [the Applicant] had been overpaid an amount by averaging his earnings over the relevant period. However, the Tribunal found it was evident from the Applicant’s bank statements that he was not paid a regular amount of salary, his net pay varied, and in particular he had two large payments that he received on two separate dates [9].
- The Tribunal accepted that, in those circumstances, averaging the income was a reasonable method of determining the amount the Applicant was overpaid in the relevant period [9].
- The Tribunal did not find that any special circumstances existed to justify a write off or waiver of the debt.

How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt based on payslips provided.
- The recalculated debt was waived on the basis of special circumstances.

Key Findings

- Centrelink raised the debt following a data match with the ATO.
- In relation to Centrelink’s calculations, the Tribunal stated:
  Following a data matching exercise with the ATO, the Department was advised that [the Applicant] earned $31,557 in gross payments and allowances of $2,025 for the period 1 July 2013 to 13 May 2014 from [Employer]. The Department apportioned his [Employer] earnings over the relevant period [12].
- The Tribunal noted:
  The tribunal is most curious that the Department made no attempt to ascertain [the Applicant’s] actual earnings during the relevant period and instead merely apportioned [the Applicant’s] 2014 financial year income. With the evidence now available, the Secretary must recalculate [the Applicant’s] entitlement to disability support pension during the relevant period. By the tribunal’s calculations, this will significantly reduce the quantum of the overpayment from $12,440.47 to approximately $1,400 [14].
- The Tribunal found that special circumstances existed to justify a waiver of the debt.
The Tribunal stated:

**Key Findings**

- The debt was varied by an ARO on internal review, and significantly reduced as a consequence of this review.
- In reviewing the decision, the Tribunal found that income averaging was used to calculate the debt, and deemed this to be an inappropriate way of calculating the debt, as the Applicant’s earnings were lump sums received over short periods.
- The Applicant received large lump sum payments due to the nature of her job (acting), and the Tribunal accepted that the payments should be treated as ordinary income.
- The Tribunal provided an explanation of the methodology used by Centrelink in calculating the debt. It compared the use of income averaging to the methodology set out in the relevant section of the legislation. Specifically:
  
  Thus the correct methodology is to assess payments [the Applicant] earns, derives or receives in a given instalment period (being a fortnight) as having been earned, derived or received in that instalment period and applied accordingly to the calculation of [the Applicant’s] benefits for that instalment period. There is no provision for those payments to be applied to another instalment period for the purpose of calculating her benefits for that other instalment period [18].
- The Tribunal substituted the decision with a recalculated debt using the above methodology.
- The Tribunal decided that the debt must be repaid. The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Chief Executive Centrelink for recalculation of the debt based on the best evidence available of the Applicant’s income in the relevant fortnights.
- Centrelink was directed to document the findings in a way that could be understood by a lay person.
- Centrelink was directed to also consider whether the recalculated debt should be waived on the basis of special circumstances.

Key Findings

- In relation to Centrelink’s calculations and evidence provided, the Tribunal stated:
- Taken as a whole, these documents do no more than present an assertion that [the Applicant] was overpaid $20,046.09 or perhaps, that the debt is of this amount because Centrelink’s computer says that it is of this amount. They are not documents which permit an independent check of whatever process the Secretary used to determine the amount that was recoverable [10].
- In relation to the second employer, the Tribunal found that no regard was given to two of the three payslips provided by the Applicant [13].
- The Tribunal found that ‘no objective evidence was obtained’ from the third employer [14].
- The Tribunal ultimately found:

As I noted above, the documents do not set out how the figure of $20,046.09 was reached. However, the ADEX documents suggest that the fortnightly income amounts that were taken into account were worked out by apportioning an annual amount evenly into each fortnight. The relevant Rate Calculator, in section 1067G, requires regard to be had to the person’s fortnightly amount of income and section 1073B requires that a person’s income in a particular instalment fortnight is taken to be earned evenly on each day in the fortnight [18].

The payslips, particularly those from Uniting Communities, show that [the Applicant] earned varying amounts in each fortnight, sometimes earning nothing. A calculation of her rate according to law must have regard to her income in each distinct instalment fortnight, not to her average fortnightly amount, viewed over a tax year [19].

... To exercise a debt recovery power in respect of a particular amount, the Secretary must be satisfied that the particular amount is a debt under the Act. In my view, the Secretary must be able to justify, on review, how that satisfaction was reached in relation to that particular amount. The Secretary cannot, and I am sure does not, simply declare some arbitrary amount to be a debt - a calculation process takes place, based on findings of fact as to the relevant matters, such as income amounts in individual fortnights. However, for the operative decision to be a proper and fair one, that process must be documented (or at least be capable of being documented) in a way which is capable of being checked by a reasonably informed and competent person. The decision in this case does not pass that fundamental test and I will not affirm it [22].

- Apart from directing Centrelink to consider whether the recalculated debt could be waived on the basis of special circumstances, the Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.
• Centrelink was directed to determine whether the Applicant was in receipt of YA during the periods he was employed and, if so, whether he failed to correctly declare to Centrelink details of his earnings.

**Key Findings**

• The Tribunal noted that, on the basis of information received from the ATO, Centrelink found the Applicant failed to declare income from one of his Employers [8].
• The Applicant was invited by the Tribunal to provide evidence of the dates he was employed and he sent a copy of his PAYG summary, which confirmed the dates the Applicant told the Tribunal he was working for the employer. The payment summary listed a higher amount of earnings than that which Centrelink had noted as verified income details from that Employer [9]-[10].
• The Tribunal found the Applicant had ‘raised sufficient doubts in this case as to the accuracy of the information Centrelink used to raise the two debts’ and the ‘fairest thing to do is to set aside the two debts and remit the matter to Centrelink’ [12].
• The Tribunal did not find that any special circumstances existed to justify a write off or waiver of the debt.

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<td>A Smith</td>
<td>8 December 2016</td>
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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and remitted to Centrelink for reconsideration with the following directions:
  o Centrelink make reasonable efforts to obtain payroll or other information about the Applicant’s income from the Applicant’s employer and recalculate the amount of parenting payment payable to the Applicant using that information;
  o if, after reasonable efforts, the Centrelink was unable to obtain payroll or other information from the Employer, Centrelink should recalculate the amount of parenting payment payable in accordance with directions set out in [16];
  o Centrelink disregard PAYG summary information when recalculating any parenting payment available.

**Key Findings**

• The Tribunal found ‘...it was apparent that the Department made no effort to clarify the matter of the two group certificates with the employer. A very quick enquiry with the employer would have clarified the issue’ [13].
• The Tribunal directed Centrelink that ‘...the PAYG payment summary provided by the Applicant should be disregarded in any income calculations for the debt period’ [13].
• The Tribunal found:

  Averaging income over a period such as a financial year can result in a skewing of the pension or benefit rate that is payable and as a consequence lead to overpayments that may not otherwise occur if the actual income received in the benefit payment fortnight was used to calculate the fortnightly rate of payment [14].
• The Tribunal did not find that any special circumstances existed to justify a write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and remitted to the Chief Executive Centrelink with directions to apportion the Applicant’s income from one employer across the correct Centrelink fortnights and apportion the Applicant’s income from his other employer according to paytells provided by him.
• The recalculated debt remained recoverable.

**Key Findings**

• The Tribunal was satisfied that Centrelink had used the correct earnings to calculate the Applicant’s debt for one employer [21].
• Payslip information from two other employers, however, suggested that the Applicant’s income had been incorrectly apportioned across the wrong periods [22]-[23].

• In relation to another employer, the Tribunal stated:

Centrelink used the information obtained from the Australian Taxation Office to [the Applicant’s] earnings from [Employer 1] for the period from 18 October 2012 to 30 June 2013. [the Applicant] provided evidence from [Employer 1] verifying that the earnings of $4,511 (being long service leave claimed during a period he was unemployed) were paid for the period from 1 October 2012 to 22 October 2012 (page A2). The Tribunal was satisfied these earnings should be apportioned across that period [24].

• The Tribunal also stated:

Finally, in relation to the earnings from [Employer 2], the Tribunal discussed with [the Applicant] that some of these earnings were still being averaged across the 2013/2014 year in accordance with the information from the Australian Taxation Office. [The Applicant] believed he had provided all the relevant [Employer 2] payslips to Centrelink. The Tribunal was not provided with any payslips from this employer, although the authorised review officer indicated actual pay details were obtained. The EAN screen for [Employer 2] shows earnings of $1,348 have been averaged to $51.70 across the 2013/2014 year. Given [the Applicant] earned a similar amount in an earlier three week period in June 2013, the Tribunal infers the apportionment across the year is incorrect. In light of the Tribunal’s determination that the matter is to be sent back to Centrelink for recalculation, the Tribunal considered it more efficient to finalise the decision and direct that [the Applicant] be provided the opportunity to clarify the earnings from [Employer 2] (and provide the missing payslips if necessary) [27].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decisions under review were set aside and substituted with new decisions to waive the whole of the carer payment for the period from 5 October 2011 to 25 June 2014 and the parenting payment debt for the period between 22 September 2011 to 27 July 2012 due to special circumstances.

**Key Findings**

• In relation to Centrelink’s calculations, the Tribunal stated:

Centrelink have obtained financial year gross income amounts for [the Applicant] through a data match with the Australian Taxation Office. It appears Centrelink has then applied these financial year amounts proportionally to the relevant periods of the stated overpayment. [The Applicant] gave evidence that he received personal leave and annual leave payments for approximately 23 February 2011 to 24 September 2011. He then received long service leave at half pay from 25 September 2011 until about 13 March 2012. [The Applicant] then commenced working two days per week. In about April 2012, he increased to three days per week and from May 2012 he worked four shifts per week. These changes in hours, and therefore changes in income, are not reflected in Centrelink’s calculation of [the Applicant’s] fortnightly income. …any calculation from Centrelink would need to be based on the fortnightly gross income amounts received by [the Applicant] during this period and not by an apportionment of income provided by the Australian Taxation Office for the full financial year [15].

• The Tribunal was satisfied that there were likely to be overpayments during the relevant periods as Centrelink failed to take all of the Applicant’s combined income into account. [19].

• The Tribunal found that special circumstances existed to justify a waiver of the recalculated debts in their entirety.
The Tribunal compared the income declared by Applicant 1 with the income shown by his employer and the income

Key Findings

- The decision under review was set aside.
- The matter is sent back to the Centrelink for reconsideration in accordance with the direction that the debt be recalculated having regard to the Applicant’s payslips.

Outcome

- The decision under review was set aside.
- The Tribunal noted:
  - The Applicant provided payslips to the Tribunal [11].
  - The Tribunal commended the Tribunal [12].

Key Findings

- In reassessing the Applicant’s entitlement to youth allowance, an overpayment was calculated by Centrelink on the basis that the earnings from these two employers were apportioned over the relevant financial years [10].
- The Applicant provided payslips to the Tribunal [11].
- The Tribunal noted:
  - The correct way to determine a person’s entitlement to youth allowance for a period is to have regard to the gross amount earned, derived or received by the person in respect of each fortnight in the relevant period. The result can be very different if the gross earnings are apportioned equally over a financial year, as Centrelink has done in this case. Centrelink did not obtain details of [the Applicant’s] gross income earned each fortnight and the Tribunal finds that the overpayment has not been correctly calculated [14].
  - The Tribunal remitted the matter to Centrelink for reassessment [15].
  - An amount was garnisheed from the Applicant’s income tax return [19].
  - The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

Outcome

- The decision under review was set aside and substituted with the decision that the debt be recalculated in accordance with the Applicant’s commencement of employment on 6 September 2012.

Key Findings

- The Tribunal noted that the ARO finalised their review without information from the Applicant about when she commenced her employment and the debt was calculated based on her averaged earnings from 11 July 2012, ‘...rather than the actual verified fortnightly earnings’ [12].
- The Tribunal stated: ‘In the view of the tribunal, Centrelink should use verified fortnightly earnings information when calculating the overpayment, now that the information is available’ [15].
- The Tribunal did not find that any special circumstances existed to justify a write off or waiver of the debt.

Outcome

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt on the basis of the Applicant’s actual earning patterns.

Key Findings

- The Tribunal compared the income declared by Applicant 1 with the income shown by his employer and the income
The Tribunal also stated:

• The Tribunal found that the Applicants were overpaid as they had under-declared Applicant 1’s income as they only reported income for the second week of every fortnight rather than a consolidated amount. However, the Tribunal stated:

  ...Nonetheless, the tribunal is not satisfied about the amount of the overpayment for a number of reasons - firstly, in the period ending 28 September 2012 [Applicant 1] only had gross earnings, including allowances, of $2,378.91. As the income cut out amount for a partnered person receiving age pension at that time was $2,597.60 per fortnight [the Applicants] would have had some entitlement that fortnight. Secondly, other than a single payment made in the week ending 15 May 2013 [Applicant 1] did not work and did not have income after 5 April 2013, but Centrelink has continued to maintain income of $3,396.70 per fortnight until 19 June 2013. [The Applicant’s] would have been entitled to pension between 6 April 2013 and 19 June 2013. Thirdly, there is the issue of the allowances...[15].

• The Tribunal also stated that the amount of overpayments will need to be calculated ‘as Centrelink has simply averaged [the Applicant’s] grossed up taxable income over the full period rather than considering the pattern in which it was earned’ [17].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was affirmed.

**Key Findings**

• Centrelink averaged the income of each employer and applied it against each fortnight to determine whether an overpayment had been made using ATO records. The Tribunal stated: ‘Whilst this approach is entirely legitimate it is not one favoured by the tribunal, particularly for casual employees’ [6].

• The Tribunal independently checked the debt calculations and confirmed them to be correct [13]

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and substituted with the decision that there was no debt.

**Key Findings**

• In relation to the debts, the Tribunal stated:

  The debts are said to arise because Centrelink received data from the Australian Taxation Office (ATO) that may or may not have been consistent with accurate reporting by [the Applicant’s] income from employment during those periods. Centrelink has recalculated [the Applicant’s] entitlement to Youth Allowance during those periods on an assumption that [the Applicant] received income from employment from a number of sources in regular and equal amounts, and was working at all matched employers while in receipt of Youth Allowance. These assumptions are incorrect [3].

• The Tribunal also stated:

  ...where a person fails to or inaccurately reports income from employment, overpayment of Youth Allowance is possible, with a consequential debt to the Commonwealth. Likewise, particularly in the case of students and casual workers, if taxation data of annual income amounts is relied upon and assumed to have been received in equal fortnightly
The tribunal accepts the Centrelink case which posits that it is permissible to average the earnings from each employer over each fortnight in the debt period. Further, it may very well be the case that a recalculation on fortnightly earnings would result in higher debts [18]-[19].

- The Tribunal noted Centrelink used computer software to calculate the overpayments which included the use of the Casual Earning Apportionment Tool, which apportioned the Applicant’s averaged income into Centrelink pay fortnights. The Tribunal opined there was no data entry error and the Tribunal was entitled to rely on the computer software as there was ‘...no other way to calculate the overpayments’ [21].
- The Tribunal did not find that any special circumstances existed to justify a write off or waiver of the debt.

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### Key Findings

- Centrelink averaged the Applicant’s income when calculating whether there was a debt. The debt amount was incorrect.
- The Tribunal stated:

  I will set Centrelink’s decision aside on the basis that there is no debt demonstrated to my satisfaction on the evidence before me in light of the errors, inaccuracy and false assumptions I have identified in these reason [18].

- The Tribunal made no formal directions of Centrelink, and it remained open to Centrelink to take whatever steps it considered appropriate to reconsider the matter [19].

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### Outcome

- The decisions under review were affirmed.

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### Key Findings

- The Tribunal noted that Centrelink undertook data matches throughout 2016 with the ATO, and had accepted the PAYG data match review as accurate. The Tribunal noted that Centrelink did not seek to obtain detailed payroll information from any of the Applicant’s eight employers, but did ask the Applicant to respond to discrepancies which had been detected from the data match. The Applicant, however, failed to respond and did not provide any payslips [13].

- The Tribunal stated ‘the income test for parenting payment and newstart allowance is a fortnightly income test and not an annual income test’ [13].

- The Tribunal found that, not only did the Applicant underreport his earnings, he ‘completely failed to report any earnings’ at various times [14].

- The Tribunal stated: Centrelink has averaged the PAYG data in the absence of fortnightly payslips. That is a reasonable course of action because there is no other practical way to calculate the overpayments.

- The Tribunal noted that Centrelink did not have access to the Applicant’s payslips or earnings records for each relevant fortnight and his earnings were ‘...apportioned from the group certificate records held by the Australian Taxation Office on a daily basis for the period of employment with each of his employers’ [12].

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### How it was decided and key facts

#### Outcome

- The decision under review was affirmed.

#### Key Findings

- The Tribunal noted that Centrelink did not have access to the Applicant’s payslips or earnings records for each relevant fortnight and his earnings were ‘...apportioned from the group certificate records held by the Australian Taxation Office on a daily basis for the period of employment with each of his employers’ [12].

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• The Tribunal considered ‘...the result of this approach, in this case, to be accurate when determining [the Applicant’s] potential overpayment’ and found the ARO had correctly calculated the overpayment amounts.
• The Tribunal did not find that any special circumstances existed to justify a write off or waiver of the debt.

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**How it was decided and key facts**

*Outcome*

• The decision under review was affirmed.

*Key Findings*

• Centrelink raised the debt following a data match with ATO.
• An ARO affirmed the decision.
• The Tribunal decided against adjourning the review for the Applicant to obtain detailed fortnightly payslips noting:

  It is by no means certain that the debts would be reduced by the use of detailed fortnightly payroll information. Centrelink has certainly averaged some of the income over relevant pay fortnights, but [the Applicant] is able to take advantage of income free areas, with that type of methodology. Further he has promised to obtain this information and has failed to do so [12].
• The Tribunal accepted Centrelink’s assertion that Centrelink had attempted to contact the Applicant but was unsuccessful [13].
• The Tribunal noted:

  It appears that Centrelink has used fortnightly income information where it is available, but has otherwise averaged the gross earnings over each of the relevant fortnights in which [the Applicant] worked for particular fortnights. In the view of the tribunal, that is an acceptable methodology in the absence of any information from [the Applicant] about specific fortnightly rates of pay [18].
• The Tribunal noted that Centrelink officers ‘applied a great deal of care in the calculation of the debs and generally made favourable allowances for [the Applicant]’ [20].
• The Tribunal concluded the debts were correctly calculated [24].
• The Tribunal found that no administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

*Outcome*

• The decision under review was set aside and remitted to Centrelink with redirections that:
  o Centrelink make reasonable efforts to obtain payroll information about the Applicant’s income and recalculate the debt using this information.
  o if after reasonable efforts Centrelink was unable to obtain payroll or other information it should recalculate the debt by adopting an averaging method as it had done
  o if after recalculation there is a debt in the period 23 May 2011 to 24 August 2011, it must be waived.

*Key Findings*

• The Tribunal noted that Centrelink used annual income information from the ATO and averaged the income over the period in which the income was paid [7].
• The Tribunal cited with approval other Tribunal decisions where it was decided that averaging was found appropriate in the circumstances (Halls and Secretary, Department of Education, Employment and Workplace Relations [2012] AATA 802 and Provan and Secretary, Department of Families, Community Services and Indigenous Affairs [2006] AATA 831) [8].
• The Tribunal noted that Centrelink had requested the Applicant to provide pay information from 2011 but noted that:
  Unlike [the Applicant] the Department has statutory powers to require employers to provide this information. While it may be administratively convenient for the Department to use the information provided by the ATO the Department must make some reasonable effort to obtain payroll information from [the Applicant’s] employers before adopting an averaging method to work out her fortnightly income. This is consistent with tribunal’s approach in Halls and Provan that averaging should only be adopted where there is no other available information [9].

• The Tribunal found that there was administrative error which existed to justify the write off or waiver of a portion of the debt [15].

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How it was decided and key facts

Outcome

• The debt arising from the period 16 July 2010 to 30 June 2011 was set aside upon review and remitted back to Centrelink for reconsideration in accordance with directions that:
  o Centrelink obtain relevant payroll information from employers;
  o The debt be recalculated on receipt of obtained information; and
  o Any resulting debt be recovered from the Applicant.

• The Tribunal found it ‘was not persuaded that the debt amount calculated is correct’ [16].

• The Tribunal noted that the Applicant had made reasonable attempts to obtain the information, but is not able to get sufficient information for an accurate debt calculation to be undertaken. Centrelink has powers under the social security law to gather the information that would be required. [The Applicant] has no such powers. I formed the view that the most reasonable approach would be for Centrelink to obtain information about [the Applicant’s] earnings from his employers, and recalculate the debt on the basis of that information.

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

• The decision under review was set aside and remitted to Centrelink for reconsideration.
• Centrelink was directed to issue a notice to the Applicant’s employer to provide pay records and make reasonable efforts to ensure compliance with the notice, notify the Applicant if the employer fails to provide records and give her three weeks to provide bank statements showing her earnings, and failing both these options, to recalculate the debt on the basis that the Applicant earned $4,462 at a constant daily rate throughout the relevant period.
• Centrelink was further directed to provide the Applicant with apportioned earnings schedules, EANS screens, a MultiCal schedule, an Entitlement Calculations schedule and a Debt Report schedule in respect of the recalculated debt.
• Centrelink was directed that $500 of the recalculated debt was to be waived and the balance recovered.

Key Findings

• The Tribunal noted that Centrelink chose not to exercise its statutory powers to seek income information from the Applicant’s employers but instead calculated the debt on the assumption that the Applicant had been paid at a constant
rate by her employers during the relevant period. The Tribunal noted that Centrelink: ‘...proceeded on that basis notwithstanding the fact that [the Applicant] had contemporaneously declared fluctuating earnings from each of those employers and she had not been employed by any of those employers throughout 2010-11’ [4].

- The Tribunal noted, in relation to the first employer, that Centrelink did not provide the evidence it should have, including how it processed the earnings information that Applicant had provided them via an apportioned earnings schedule and earnings screen [5].
- The Tribunal accepted the Applicant’s suggestion that if Centrelink was unable to obtain earnings information from her second employer and she was not able to provide bank statements demonstrating her earnings, Centrelink could calculate her debt on the basis of apportioned income. The Tribunal noted that ‘[i]t would be unusual to calculate a person’s gross weekly earnings in that manner, but [the Applicant] wants Centrelink to calculate her debt correctly, and that is a reasonable request’ [6].
- The Tribunal accepted earnings information in relation to the Applicant’s third employer. The Tribunal stated that while it was clear the Applicant would owe a debt but the quantum of that debt was unclear [7].
- The Tribunal further criticised Centrelink’s failure to provide information to the Applicant and to the Tribunal and noted:

To date, Centrelink has not provided that information to [the Applicant], and it has not provided that information to this Tribunal. Centrelink provided [the Applicant] and the Tribunal with the debt apportionment schedules in support of the debt amount that Centrelink now submits is incorrect. It did not provide the debt appointment schedules in support of the debt amount that it now submits is correct. It did not provide earning screens, an Entitlement Calculations schedule or a Debt Report schedule… Put simply, Centrelink did not provide the information necessary to enable this Tribunal to conduct a meaningful review of the decision to raise a debt of $4,532.69. Further, throughout the entire process that has taken more than a year, Centrelink has not exercised its statutory power to obtain the information it needed to correctly calculate the debt amount [12].

[The Applicant] stated, and I accept, that she has spent an enormous amount of time and effort trying to understand and check the factual basis of Centrelink’s calculations and the calculations themselves. It is clear that Centrelink has never provided her with the information she needed to undertake that task, but she could not have known that at the time. Centrelink controlled the process. [The Applicant] was trying to understand the process. Worse still, Centrelink provided her with information that was simply confusing. For example, it provided her with an ADEX Debt Schedule Report (which is different to a Debt Report schedule) that bore no relationship to her circumstances. It transpired that Centrelink had given her someone else’s ADEX Debt Schedule Report [13].

- The Tribunal found that ‘Centrelink’s ongoing failure to disclosure the information that was needed to undertake a meaningful review of its decision, including its failure to provide that information to [the] Tribunal, and the consequential wasting of [the Applicant’s] time and effort’ constituted special circumstances and warranted that $500 of the debt be waived [14].

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**How it was decided and key facts**

**Outcome**
- The decision under review was set aside.
- The matter was remitted to Centrelink for recalculation of the debt.

**Key Findings**
- Debt was calculated and raised by obtaining ATO information and dividing the total income reported by the number of fortnights in the year (at [2]).
- The Tribunal found the applicant was entitled to the payment for most of the relevant period and Centrelink’s calculations were therefore incorrect (at [12]-[14]).
- In relation to the period from 17 March 2015 to 16 June 2015, the Tribunal asked Centrelink to recalculate whether the applicant owed a debt as she had returned to part-time work (at [14]).
- If the applicant did incur a debt, it would have been the result of her failure to accurately report her income and a recovery fee would therefore apply in those circumstances (at [18]).
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt.
**How it was decided and key facts**

**Outcome**
- The decision under review was affirmed.
- Centrelink used income averaging to determine whether there was a debt, in lieu of other information.

**Key findings**
- The Tribunal found that the Department’s calculations were correct.
- In discussing whether the debt had been correctly calculated, and whether income averaging was appropriate, the Tribunal commented:

The relevant income test modules for working out a person’s newstart allowance or austudy payment entitlement start with using a person’s income in a payment fortnight. Where this information is unavailable the averaging method can be adopted². There is no evidence in the Department’s documents that it has attempted to obtain payroll information from [the Applicant’s] employers. It has a statutory power to do this. Ordinarily this should be done however the averaging method when applied to [the Applicant’s] calculations results in small weekly amounts that have very little effect on the amount of overpayment of his newstart allowance and austudy payment. Using the actual fortnightly amounts obtained from the employers would in my view result in a decrease in [the Applicant’s] entitlement and as such I consider the adoption of averaging in [the Applicant’s] case should be in the circumstances preferred as it is beneficial to [the Applicant] [14].

- The Tribunal ultimately decided that income averaging could be used in this circumstance, as it was beneficial to the Applicant.
- The Tribunal did not find that any special circumstances existed to justify a waiver or the writing off of the debt.

**How it was decided and key facts**

**Outcome**
- The decision under review was set aside and remitted back to Centrelink for recalculation on the basis that the Applicant’s income fluctuated over the debt period.

**Key Findings**
- The Applicant was a recipient of the DSP, mobility allowance and FTB.
- The Tribunal was satisfied that the Applicant’s income had been averaged over the alleged debt period.
- No payslips were ever provided, however the Tribunal directed that Centrelink recalculate the Applicant’s debt
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt [54].

**How it was decided and key facts**

**Outcome**
- The decision under review was set aside and substituted with decision that debt was to be recalculated and recovered based on verified fortnightly earnings and that the 10% penalty fee was not to be applied.
The Tribunal stated:

As the youth allowance income test is a fortnightly income test, Centrelink ought to recalculate the debt on the verified fortnightly income information, which is now available at [12]).

The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**Outcome**

The decision under review was affirmed.

**Key Findings**

The Tribunal noted ‘Centrelink undertook a PAYG data match with the ATO’ in 2016 and subsequently averaged out the Applicant’s earnings over the debt period based on the data match amount [8], [10].

At the hearing, the Applicant could not produce any payslips to evidence his precise fortnightly earnings during the debt period, which the Tribunal considered was ‘understandable in view of the amount of time that has elapsed’ [12].

The Tribunal accepted the accuracy of the PAYG Summary held by the ATO as evidence of the fact that the Applicant earned $1,722.06 more in income than he declared to Centrelink and concluded the Applicant ‘was probably overpaid’ [14].

The Tribunal found the PAYG Summary sourced from the ATO was the best and only evidence available and, in the absence of any information about fortnightly earnings, it was reasonable to average out the earnings over the debt period [15].

The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**Outcome**

The decision under review was set aside and remitted to Centrelink with the direction to obtain dates and payroll information from the Applicant’s employers and recalculate on receipt of that information, with the resultant debt to be recoverable.

**Key Findings**

The Tribunal noted that, as a result of a data matching process in July 2016, Centrelink undertook a review of entitlements to NSA in the 2012/13 year. Consequently, Centrelink raised and recovered a NSA debt, which was later affirmed by an ARO [3]-[4].

The Tribunal noted that the Applicant’s employer had recorded a certain period of employment. The Tribunal considered this was likely due to inconvenience on the part of the employer and was unlikely to accurately reflect the actual period in which the Applicant worked [13].

The Tribunal found that in the absence of information confirming the actual dates of employment the Tribunal was unable to accurately quantify the debt amount [14].

The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
Outcome

- The decision under review was affirmed.

Key Findings

- Centrelink raised the debt following a data match with ATO.
- The debt was recalculated and reduced after the provision of payslips from one job [24]. An ARO affirmed the decision.
- The Applicant had worked three different jobs during the debt period.
- The Tribunal noted that the Applicant provided all relevant payslips for one job at the ARO stage which clearly identified what income he earned during what period [18]. The Tribunal noted that earnings for this job had not been averaged to create a robodebt [25]. The Tribunal was satisfied that the debt arising from this employment had been calculated correctly [37].
- The Applicant stated that he was unable to obtain payslips from two other employers [21]. In relation to one of these employers, the Tribunal noted:

  While the Tribunal cannot establish from the file exactly how that income has been used to produce that debt, over each fortnight, and it may well have been averaged over the whole of the relevant financial year, the Tribunal is not satisfied that there is any error in raising this debt in these circumstances [41].

- The Tribunal found that the Applicant had underreported and at times did not report at all [34], [42].
- The Tribunal concluded that it was reasonably satisfied that the debt was ‘more likely than not to be correct’ [43].
- The Tribunal found that no administrative error or special circumstances existed to justify the write off or waiver of the debt.

Outcome

- The decision under review was set aside and remitted back to Centrelink on the basis that there is a NSA debt and the debt is written off until the Applicant is in receipt of social security payment or employment income.

Key Findings

- A data match with the ATO revealed a discrepancy in the income amounts that the Applicant had received.
- An ARO affirmed the debt amount on internal review.
- Centrelink apportioned the Applicant’s income over the year, in lieu of payslip information.
- The Tribunal commented:

  The apportionment method involves an approximation of earnings in each fortnight and can be expected to produce reasonably accurate figures across a substantial period; one would expect that overestimates of income produced by the method in some fortnights would be more or less balanced by underestimates in others. However, the apportionment method treats the person as earning a constant amount every day in a wage fortnight and in [the Applicant]’s case, over the financial year. Actual working patterns are rarely so neat [13].

- The Tribunal was unable to ascertain any employment information as the Applicant did not retain any payslips, and the employer had been deregistered. In lieu of this the Tribunal had no other option but to use income averaging. In the circumstances, the Tribunal was satisfied that the calculations were correct.
- The Tribunal found that circumstances existed to justify a write off of the debt until the Applicant received a social security payment or employment income.
How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with the direction to recalculate the debt taking into account actual wage income shown on employer reports, with any resulting debt to be recoverable.

Key Findings

- The Tribunal noted that Centrelink had raised the debt according to the earnings information supplied by the ATO [18].
- The Applicant was not willing to supply Centrelink with his earnings information and would only submit tables that he had compiled [8].
- The Tribunal subsequently obtained detailed pay records from the Applicant’s employers for the period in question, which showed that the Applicant did not receive income over certain periods [9].
- The Tribunal stated: Overall the tribunal was not satisfied that Centrelink has correctly calculated the debt in this case because there is now more accurate information about [the Applicant’s] income from employment. Centrelink have apportioned income across the year and attributed income to fortnights when [the Applicant] was clearly not working. Centrelink will need to recalculate the overpayment taking into account the actual wage income shown on the employer reports [10].
- The Tribunal did not find that any sole administrative error or special circumstances existed to justify a waiver or the writing off of the debt.

How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for reconsideration with directions that:
  o there was debt of NSA for entitlement period 1;
  o Centrelink was to verify the Applicant’s income from employment for entitlement period 2 by directly requesting information from his employers; and
  o the Applicant’s entitlement to parenting payment and NSA across entitlement period 1 and 2 be reassessed using his actual fortnightly income from each of his employers, rather than average income figures.

Key Findings

- The Tribunal noted that the Applicant expressed particular concern that Centrelink’s current debt calculations were based on averaged income figures and included income that he had earned in periods when not receiving Centrelink payments. The Applicant advised he had previously raised this concern with Centrelink and was advised that needed to obtain a fortnightly breakdown from his employers, which he had been unable to do [4].
- The Tribunal was satisfied the debts were incorrect [6].
- The Tribunal observed that Centrelink had wide-reaching statutory powers that allow it to obtain income information from employers and such powers had been routinely used in the past to verify the income of its customers. The Tribunal therefore directed that Centrelink request the necessary income information from the Applicant’s employers, ‘rather than the onus be placed on [the Applicant]’ [9].
- The Tribunal did not find that any special circumstances existed to justify a write off or waiver of the debt.
How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink to be redetermined in light of directions that:
  a) No debt or debt component is able to be founded on extrapolations from ATO records;
  b) The earnings components of any recalculated debts as may be raised must be based on and confined to any fortnightly salary records obtainable in the exercise of statutory powers to do so; and
  c) Debt amounts (if any) as so varied are recoverable debts (not able to be waived).

Key Findings

- The Tribunal noted that Centrelink for its part argued that in the absence of payslips kept by the Applicant, it is appropriate to extrapolate annual ATO earnings figures as average amounts of income in relevant YA rate calculation payment periods [2].
- The Tribunal referred to Centrelink’s submission which noted relevantly:

  It is a normal part of the Department’s responsibilities and processes to check to see if a recipient has fulfilled their obligation to advise of a change in circumstance.

One way of doing this is through data matching with the ATO and this has been occurring since 1990.

The department engages with recipients where there is a difference in the income the recipient reported to the department and the income recorded by the Australian Taxation Office.

The responsibility to explain any differences between the income identified from data matching and the information held by the department is, and always has been, on the recipient in the first instance.

Previously, where a recipient failed to respond or was unable to provide the required information, the department would request additional information from third parties on their behalf. Recipients now carry more of that responsibility.

[31] The Tribunal found that the changed practice as outlined above did not absolve Centrelink from its legal obligation to obtain sufficient information to found a debt in the event that the ‘first instance’ contact with the recipient is unable to unearth the essential information about actual fortnightly earnings [italics in original] [33].

- The Tribunal noted that it is a matter of record that when [the Applicant] did supply the information referred to in the final paragraph [payslips for July 2010 to July 2012], Centrelink has chosen not to change the decision, as it was able to do, instead urging me to find that information not to be material to the size of the debt [35].

- The Tribunal also noted the following from Centrelink’s supplementary submission:

  ... Further, when taking into account the Mcdonald ruling, the Tribunal should consider the material supplied at the hearing to determine if the decision is correct. The Applicant may provide further information which may result in a reassessment of the debt however, if this is not forthcoming the Tribunal can rely on income details provided by the ATO. As part of the reassessment and review process the department has indicated to [the Applicant] that if additional information is provided by her, this can be considered further in regard to the debt raised. [49]

- The Tribunal noted the above para properly reflects the ‘model litigant’ and the statutory obligation that decision-makers must use their ‘best endeavours to assist the Tribunal to make its decision in relation to the proceeding.’

- The Tribunal noted that the overpayment ‘methodology’ — involving extrapolation of ATO employment income information over a period, divided to produce an average fortnightly, and then applied to YA payment periods to raise a debt — at best raises no more than ‘sufficient doubt about the accuracy of past payments as to warrant the exercise of powers of enquiry held by Centrelink’ [56].

- The Tribunal found that, on the present facts, Centrelink is unable to advance sufficiently convincing proofs of a debt or debt amount and no debt arises in law. The Tribunal reasoned that Centrelink has not established the proposition it was required to establish [52]. Accordingly, the failure to establish the overpayment leads to the default of no debt [59].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
The Tribunal concluded:

The Applicant did not dispute that she had been overpaid.

Key Findings

Centrelink did not provide documents identifying the applicant’s actual fortnightly income. Rather, it provided payment summaries provided by 11 of the applicant’s employers that extended over a long period. The Tribunal found Centrelink attributed employment income from the 11 employers evenly over the period stated in the summaries (at [21]-[22]).

The Tribunal was not satisfied that the above was an accurate calculation of fortnightly employment income (at [23]).

The Tribunal concluded:

...in considering the scant information Centrelink has provided, and the implausibility that the earnings attributed per fortnight per employer are accurate, the Tribunal cannot, on the calculations provided by Centrelink, be satisfied to any reasonable degree that [the Applicant] received employment income in the three fortnights that he received newstart allowance and the Tribunal so finds [27].

The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

The Tribunal concluded:

...In conclusion, in considering the scant information Centrelink has provided, and the implausibility that the earnings attributed per fortnight per employer are accurate, the Tribunal cannot, on the calculations provided by Centrelink, be satisfied to any reasonable degree that [the Applicant] received employment income in the three fortnights that he received newstart allowance and the Tribunal so finds (at [27]. emphasis added).

An ARO affirmed the debt amount on internal review.

The Applicant did not dispute that she had been overpaid.

The Tribunal commented:

The amount of the debt proposed by Centrelink is based on the apportionment of Australian Taxation Office supplied information about [the Applicant]’s income from employment in the relevant period. [The Applicant] told the tribunal her income from employment varied by small amounts over the relevant period [8].

The Tribunal commented that Centrelink will need to take further action to accurately determine the Applicant’s debt based on verified fortnightly income.

The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

The Tribunal reiterated: ‘She said she had been contacted by a debt collection agency and was fearful she would have to repay the debt as a lump sum’ [29].
AAT Review Number | DOC ID | Member | Date
---|---|---|---
2016/S103893 | CTH.0032.0002.0053 | M Horsburgh | 15 March 2017

How it was decided and key facts

Outcome

- The decision under review was set aside and substituted with the decision that there was no debt.

Key Findings

- The Tribunal found, based on the information it was given, that it appeared that Centrelink had calculated the applicant’s income by dividing his overall income that financial year into weekly amounts. If so, this was not compliant with s 1073 of the Social Security Act 1991 (Cth), ‘which specifically excludes income from remunerative work from that way of calculating income’ [8].
- Centrelink did not provide evidence that the Applicant had earnings in the period from 2 March 2011 to 11 June 2011. The Tribunal instead found that Centrelink’s records revealed the applicant had been terminated on 6 May 2011 and did not undertake any remunerative work [13].
- The Tribunal commented:

  This evidence reveals that [the Applicant’s] employment was terminated on 6 May 2011, so he had no possible earnings after that date. Apart from this, there is no evidence of any kind that [the Applicant] received remuneration from work with his former employer in the period from 2 March 2011 to 5 May 2011. On the contrary, the Centrelink file documents show that he did no remunerative work. I point out not only that the income claimed to have been earned by [the Applicant] apparently derives from a process not in accordance with section 1073 of the Act, but that the evidence to which I have referred was available to the authorised review officer in coming to her decision. I find that [the Applicant] has no debt. If any debt arises from the termination payments that he received, and I am not suggesting that there is any such debt, it will need to be calculated and raised separately [13].

- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

AAT Review Number | DOC ID | Member | Date
---|---|---|---
2016/S103853 | CTH.3761.0003.7162 | W Kennedy | 20 March 2017

How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt on the basis of further information provided by the Applicant.

Key Findings

- Centrelink raised the debt following a data match with the ATO which revealed a discrepancy between the Applicant’s reported income and income declared to the ATO. The decision was affirmed by an ARO [2]-[3].
- The Tribunal accepted the Applicant’s evidence that he reported his income as instructed by Centrelink [9].
- The Applicant accepted that he was overpaid, however, calculated his overpayment to be over $900 less than that calculated by Centrelink [14]. The Tribunal stated that the evidence provided by Centrelink was not sufficient to confirm the Applicant’s claims as to why there were errors in its calculation, however, that there was a ‘very good chance’ he was correct in relation to all of them, including the claim that Centrelink had averaged his income for one period [15]-[16].
- In relation to averaging, the Tribunal stated:

  ...it is not entirely clear that the Department applied an averaging strategy, however, given that it did not have access to fortnightly information it appears likely that it has done so. The debt calculation might have been more accurate if the information in the bank statements had been used, however, as noted above, this information is problematic because it provides only net payments rather than earnings. Given the lack of information the Department may have no choice but to apply an average across the period [18].

- The Tribunal found that it was obvious Centrelink had made some errors [21].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

Royal Commission into the Robodebt Scheme cxi
Key Findings

The decision under review was set aside.

Centrelink was directed to request pay records and recalculate any potential debt and recovery fee owed.

**Outcome**

- The decision under review was set aside.
- Centrelink was directed to request pay records and recalculate any potential debt and recovery fee owed.

**Key Findings**

- The Tribunal found there was a discrepancy between the declared income as shown on Centrelink records and on which payment of newstart allowance was based, and her actual income, as evidenced by her ATO records. These ATO records show that her income must have exceeded the amounts declared to Centrelink each fortnight during the relevant period [16].
- The Tribunal found, however, that the debt had not been calculated correctly:

  In this case, no effort has been made by Centrelink to obtain actual wage records from [employer], even though such records would very likely be readily available if requested. Instead it has simply been assumed that the total year earnings can be apportioned equally to each fortnight across the relevant financial year. However, that is not consistent with the requirements of the legislation. The actual pay records are critical to the proper calculation of the overpayment [17].
- The Applicant claimed Centrelink’s records were incorrect but the Tribunal did not accept this evidence. It is notable, however, that the Applicant said she attended quarterly meetings at Centrelink to provide payslips, etc. as evidence that she still qualified for the benefit. While Centrelink records showed the Applicant attended these meetings, they claimed there was no evidence that payslips were provided (at [24]).
- The Tribunal concluded that 10% penalty was correctly imposed but is subject to change when Centrelink recalculate the debt [35].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

**Outcome**

- The Tribunal affirmed the decisions under review.

**Key Findings**

- It was noted the Centrelink documents showed that Centrelink apportioned the gross earnings amounts as advised by the ATO over the Centrelink instalment periods that fell within the ATO-advised employment periods. This resulted in constant levels of gross earnings being applied [13].
- The Applicant disputed that this method of apportionment calculated her fortnightly earnings accurately – her position was that her earnings were not consistent from fortnight to fortnight as her shifts, hours of work, and pay rates varied [13].
- The Applicant provided records from her employer that only showed the hours she worked and provided no details of pay received. She was unable to recall what her hourly pay rates were or what additional amounts she received for sleepovers or penalty rates [14].
- The Tribunal ‘preferred the ATO-advised information as the best evidence available of [the Applicant’s] earnings in the period under review’ and noted the earnings she reported (as recorded in the EANS screens records) were a great deal lower than the total earnings identified by the ATO information. The Tribunal found this did ‘not bear out [the Applicant’s] claims that she always overestimated her earnings and is consistent with her earnings being under-reported.
The Tribunal also stated:

- The Tribunal did not find that any special circumstances existed to justify a write off or waiver of the debt.

### AAT Review Number

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### How it was decided and key facts

#### Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation of the Applicant’s entitlement to NSA having regard to payslips, with any resulting overpayment to be recovered.

#### Key Findings

- The Tribunal noted:

  ...the apportionment method involves an approximation of earnings in each fortnight of a particular period and treats the person as earning a constant amount every day in a wage fortnight. This was not necessarily the situation in [the Applicant’s] case. This is what [the Applicant] considers to be unfair as he often did not have regular and constant amounts from his employers [30].

- The Tribunal also stated:

  ...in circumstances where there is no documentary evidence as to a person’s actual earnings during a particular period, the Tribunal accepts the apportionment method as the most appropriate method to be employed to determine the person’s entitlement to newstart allowance during a relevant period [31].

- The Tribunal did not find that any special circumstances existed to justify a write off or waiver of the debt.

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### How it was decided and key facts

#### Outcome

- The decision under review was set aside.

- The matter was remitted to Centrelink for recalculation of debt.

#### Key Findings

- The Tribunal followed previous decisions which stated that income averaging can be used where that is the best information available (at [8]).

- The Tribunal, however, was not satisfied that the incoming averaging in this case was appropriate, at least in relation to one employer (at [7]-[9]). The Tribunal stated:

  While it appears that the Department has not sought payroll information from the employers I am satisfied were such information obtained there would be no difference to the average used by the Department in its calculations [8].

  In regard to the income used from [Employer], I am not satisfied that averaging of income is appropriate. I require the Department to either request the payroll information from the employer or alternatively accept the earnings as shown by the ATO match was received by [the Applicant] in the period 24 March 2011 to 5 April 2011 and recalculate [the Applicant’s] entitlement to newstart allowance.

- The Tribunal found that the Applicant’s conduct was at least reckless in relation to his reporting obligations and therefore refused to waive the 10% penalty (at [18]).

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
Outcome

• The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with the directions that:
  o there was a debt in a certain amount arising out of a certain period;
  o part of the debt attributable to the payment received from Maribyrnong Council be waived; and
  o the balance of the debt was to be recoverable.

Key Findings

• The debt related to a lump sum payment that the Applicant had received as wages in arrears as well as a debt related to the Applicant’s earnings from an employer.
• In relation to the earnings from an employer, the Tribunal accepted that the ATO information was ‘the best available evidence of [the Applicant’s] earnings’ from one of her employers. It was noted the ATO-advised earnings were apportioned evenly over the relevant Centrelink instalment periods to produce fortnightly income to which the relevant income test was applied. The Tribunal considered this approach was appropriate having regard to the limited information available [16].
• The Tribunal was satisfied that waiver of the part of the debt attributable to the lump sum payment was appropriate [26]-[27].

Outcome

• The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with the directions that:
  o Centrelink obtain payroll information from the Applicant’s employers;
  o Having regard to the payroll information obtained, Centrelink undertake a recalculation; and
  o Having regard to the recalculation, Centrelink make a fresh decision as to whether or not the Applicant has a debt that is required to be repaid.

Key Findings

• The Tribunal noted that it was Centrelink’s assertion that data matches between its records and the records of the ATO demonstrated that the Applicant did not always fully declare her earnings from employment [12].
• The Tribunal stated:
  
  I accepted that [the Applicant’s] earnings with both [Employer 1] and [Employer 2] were variable and not a constant amount each fortnight over the period during which Centrelink says she was overpaid. This means that the amount of the excess payment calculated by Centrelink – being $2,945.86 – where earnings have been averaged is unlikely to be correct. I therefore decided to set aside the decision under review, on the basis that the amount of the debt calculated by Centrelink cannot, on the balance of probabilities, be correct [24].
• The Tribunal stated that given the Applicant has attempted to obtain more accurate payroll information from both her employers and failed to do so, it would be reasonable for Centrelink to use its information gathering powers to obtain accurate information about earnings [25].
• The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.
The Tribunal stated:

Key Findings
• The decision under review was set aside and the debt was not to be repaid due to special circumstances.

Outcome
• The decision under review was set aside and the debt was not to be repaid due to special circumstances.

Key Findings
• An ARO affirmed the decision on internal review.
• The Tribunal stated:
  As to waiver of recovery it was submitted that this debt was raised by averaging [the Applicant]'s earnings over two financial years as has been done with many other Centrelink customers, without obtaining actual verified earnings and dates. The way that ADEX has averaged out [the Applicant]'s declared earnings is inherently wrong. In view of the circumstances of how the debts arose it was submitted that there should be waiver under special circumstances in this case [20].

... The authorised review officer acknowledged that the method of calculation of the overpayment/ debt being part payslips and part apportioning was “not ideal” but this was considered a reasonable method of calculation of the overpayment. The Tribunal did not concur with that conclusion given the circumstances of this case [26].

Outcome
• The decision under review was set aside and substituted with a decision that any debt should be waived due to ‘sole Centrelink error’.

Key Findings
• Centrelink advised the Applicant that he would be precluded from Newstart Allowance (NSA) because of a failure to supply documents (at [10]).
• The claim was then recorded as ‘no longer current’ because of the return of a letter seeking information (at [11]).
• A short time later, the application was granted because the information requested had been correctly provided by the Applicant but lost by Centrelink (at [12]).
• The Member did not find that the Applicant’s failure to provide income information after the NSA had been cancelled was a failure to act in good faith, as expressed by the ARO (at [15]).
• In relation to the calculation of the debt, the Tribunal stated:
  I have used the words ‘potentially attributable’ advisedly. This is because on the information provided to me [the Applicant’s] earnings appear to have been derived from tax records of annual income in the 2012-13 financial year... Because income can and does fluctuate, extrapolation of a fortnightly rate achieved by dividing the annual income by a number of fortnights fails to reach the required level of ‘satisfaction’ I am required to achieve in order to find a debt in the quantum suggested (at [19]).

The short reason for this is that, while such tax office information more than justifies Centrelink in exercising its powers to require employers to supply fortnightly payment records, it is insufficient to establish a precise debt quantum as is required under the application of the Full Federal Court in McDonald and the High Court’s “Briginshaw principle” (at [20]).
• The Tribunal also stated that it could not be satisfied that the debt had been accurately calculated because “in the absence of precise fortnightly earnings for the relevant payment fortnights I cannot put a figure on that overpayment debt” [32].
• Any overpayment was due to the ‘sole error’ of Centrelink [at [42]-[45]):

....having reviewed the chronology of action previously set out...I cannot find any contribution by [the Applicant] to the generation of the overpayment beyond the cumulative mistakes made by Centrelink [at [45]].

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside.
• The matter was remitted to Centrelink for recalculation and Centrelink was directed to waive any debts arising from the recalculation.

**Key Findings**

• Several letters sent to the Applicant claiming he owed debts in the amount of $673.75, reassessed to $550.38, reassessed again to $0.00, reassessed again to $34,231.00 and finally reassessed to $311.21.
• An ARO confirmed the amount of $311.21 to be correct.
• The Tribunal found that the Applicant did not receive transparency or finality in the process and that the 5 different calculations themselves undermined confidence in the administrative processes (at [42]). This constituted special circumstances to justify a waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was affirmed.

**Key Findings**

• The debt arose due to underreporting of income by the Applicant.
• The Applicant was employed on a casual basis with irregular hours.
• Centrelink conducted a data match with the ATO.
• Centrelink apportioned the Applicant’s annual income over the reporting periods [11].
• The Applicant argued that the method of apportioning income used by Centrelink is mathematically incorrect and not lawful. He stated that Centrelink has not based the debts on fact but on assumption and opinion [13].
• The Tribunal found that the Applicant did not fully declare his income.
• The Tribunal further stated:

  The apportionment method involves an approximation of earnings in each fortnight of a particular period and treats the person as earning a constant amount every day in a wage fortnight. This was not necessarily the situation in [the Applicant’s] case. This is what [the Applicant] considers to be unfair as he said that he often did not have regular and constant earnings from his employers [17].

  The tribunal explained to [the Applicant] at the hearing that, in circumstances where the ATO amount is different to the declared amount of income and there is no documentary evidence as to a person’s actual earnings during a particular period, Centrelink uses the apportionment method as the most appropriate method to be employed to determine the person’s entitlement to newstart allowance during a relevant period. [18]

  As [the Applicant] has not kept payslips or records, his employers have not been able to provide any details of [the Applicant’s] pay during these periods and earnings were under-declared, the tribunal accepts that the apportionment method is the most appropriate method to determine [the Applicant’s] earnings [19].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
The Tribunal noted that it was not clear how the debt was calculated and why the Applicant’s record was not amended.

Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation.

Key Findings

- The Tribunal compared the Applicant’s weekly earnings report, as provided by his employer, with the data used by Centrelink to raise the debt and was not satisfied that Centrelink used the correct figures (at [10]).
- However, the Tribunal also found that the Applicant was incorrectly reporting his income because he was reporting on a two-week delay basis. Additionally, because the reporting period was different to the Applicant’s pay weeks, he would have needed to make the necessary adjustments (at [12]). The Tribunal was not satisfied that Centrelink’s calculation included the correct gross earnings of the Applicant for each fortnight (at [13]).
- Accordingly, there would be some overpayment after the recalculation.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

How it was decided and key facts

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<th>AAT Review Number</th>
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<tr>
<td>2017/M108103</td>
<td>CTH.0032.0002.0364</td>
<td>N Campbell</td>
<td>11 April 2017</td>
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Outcome

- The decision under review was set aside and remitted to Centrelink.
- Centrelink was directed to recalculate the debt for the period from 16 June 2011 to 18 June 2012 with regard to the Applicant’s actual earnings.
- Centrelink was also directed that 50% of the debt was to be waived.

Key Findings

- Centrelink raised the debt following a data match with the ATO [10].
- The Tribunal noted that it was not clear how the debt was calculated and why the Applicant’s record was not amended to reflect a reduction in the debt, as calculated by a subject matter expert [11].
- The Tribunal noted that the earnings used by Centrelink did not accord with the Applicant’s actual earnings, which varied [12].
- The Tribunal found that while there was likely an overpayment overall, this would need to be calculated taking into account the Applicant’s actual earnings.
- The Tribunal found that the debt did not arise solely due to administrative error [20].
- The Tribunal found that special circumstances existed and waived 50% of the debt [29].

How it was decided and key facts

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<td>F Hewson</td>
<td>18 April 2017</td>
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Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation on the basis of the Applicant’s actual fortnightly earnings.

Key Findings

- The Applicant sought internal review of the decision by an ARO. The debt was affirmed.
- The Applicant incorrectly reported her after tax earnings and not her gross earnings. This explains the discrepancy.
- Despite this, income averaging was used by Centrelink to calculate the debt. The Tribunal directed Centrelink to
recalculate the debt on actual fortnightly earnings, per the payslips provided.

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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<td>M Martellota</td>
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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and substituted with a new decision that no debt is owed. Any amounts already recovered are to be remitted to the Applicant.

**Key Findings**

- The Applicant received parenting payments.
- An ARO reduced the debt on internal review.
- A data match with the ATO revealed a discrepancy and a debt was raised.
- The Applicant was unable to obtain historical pay records from her employer. She was given the option to obtain bank records, but because of the time that had lapsed the Applicant was likely to incur a cost.
- The Tribunal stated:

  Clearly the Department in calculating the date have taken income derived from ATO records and apportioned this amount over each fortnight of the debt period. This approach fails to take into account the actual earnings for each fortnight period and as such does not provide a precise or acceptable calculation of any alleged overpayment [19].

- The Tribunal was left in a state of doubt as to the existence of a debt. The Tribunal was satisfied that the Applicant had acted reasonably in her attempts to provide further information to Centrelink, but practical difficulties prevented her from doing so.
- The Tribunal commented at [22]-[24]:

  The tribunal notes that the Department in its role as decision maker has powers which would have allowed it to request information either from the former employer or to obtain copies of [the Applicant]'s bank statements in order to verify the disputed earnings. It appears (perhaps for policy reasons) the Department has chosen not to exercise these powers and instead has placed the onus upon [the Applicant] to produce evidence to counteract the debt the Department has calculated [22].

  ...

  In this matter the tribunal does not consider an exercise of its own inquisitorial powers is an appropriate course of action, given the size of the debt and the time that has passed since the alleged overpayments [23].

  It appears to the tribunal that in not being satisfied as to the existence of the debt the tribunal can either set aside the decision under review and substitute it with a finding that there is no debt or set the decision aside and send it back to be re-determined in accordance with directions that require the Department to exercise its powers to obtain further information so as to allow a more precise calculation of any overpayment. This could be done by obtaining further information from her former employer or by requesting copies of [the Applicant]'s bank statements from her financial institution - these should show the net amount of earnings and upon grossing up those figures the Department could recalculate the debt [24].

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<td>J Leonard</td>
<td>20 April 2017</td>
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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and substituted with decision that there was no debt.

**Key Findings**

- The Tribunal found that Centrelink did not obtain details of the Applicant’s fortnightly income and there is no explanation for how her income was apportioned (at [10]).
The Tribunal determined:

The correct way to determine a person’s entitlement to age pension for a period is to have regard to the gross amount earned, derived or received by the person in respect of each fortnight in the relevant period. The result can be very different if the gross earnings are apportioned over a period, as Centrelink appears to have done in this case (at [16]).

The Tribunal found that the Applicant notified Centrelink of all necessary working arrangements, including her ceasing work after being diagnosed with breast cancer. It also noted that her declared income was lower in the relevant period than calculated by Centrelink and that, even so, she had been underpaid age pension for three fortights (at [18]).

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<td>Terry Carney AO</td>
<td>20 April 2017</td>
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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink for reconsideration with directions that:
  - No debt or debt component is able to be founded on extrapolations from ATO records;
  - The earnings component of any recalculated debts as may be raised must be based on and confined to any fortnightly salary records obtainable in the exercise of statutory powers to do so; and
  - Debt amounts (if any) as so varied are recoverable debts.

**Key Findings**

- The Tribunal noted the Applicant was engaged in episodic work with 13 different employers all of comparatively short duration [6].
- The Tribunal made note that the ARO had stated the Applicant ‘agreed that the data match be used’, to which the Applicant rejected saying this. The Tribunal accepted the Applicant’s evidence and stated that ‘applicants are not in a position to make informed decisions about the implications of any such “acceptance”, so I would have put it to one side in any event’ [12].
- The Tribunal found that, as Centrelink had calculated the debt on the basis of averages derived from the ATO, and had not utilised its powers to obtain fortnightly earnings figures, there is insufficient evidence to establish an overpayment debt or its size [6].
- The Tribunal noted that the papers provided to the Tribunal and the Applicant by Centrelink were ‘simply awful’ with a random mixture of font types and sizes that made it ‘illegible’ [13].
- The Tribunal found that, as the Applicant’s income fluctuated from fortnight to fortnight, ‘the extrapolation of a fortnightly rate achieved by dividing an ATO annual income figure by a number of fortights fails to reach the required level of “satisfaction” I am required to achieve in order to find a debt in the quantum suggested by Centrelink’ [17].
- The Tribunal opined the ATO information was insufficient to establish a precise debt quantum as required under the application of the Full Federal Court in McDonald and the High Court’s Briginshaw principle [18].
- The Tribunal stated that in previous cases when ‘asked to provide detailed submissions, Centrelink has accepted that while “the onus of proof lies with claimant however … this can be obscured by the duties required of the [then] Director-General”’ (emphasis and italics in original). The Tribunal stated that the ‘default outcome’ is always a product of the legislation, whichever way it falls, and concluded that if Centrelink is unable to advance sufficiently convincing proofs of a debt or debt amount, then no debt arises in law [38]-[39].
- The Tribunal found no proven overpayment of any quantum [45].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and substituted with decision that there was no overpayment.

**Key Findings**

- The ARO claimed the Applicant did not report any earnings for the relevant fortights, however, the Tribunal found the
online records provided do not support this finding (at [15]).

- The Tribunal found there was no explanation as to why Centrelink determined, for a particular period, that arrears were payable to the Applicant (at [16]-[17]).
- The Tribunal found:

  Centrelink did not obtain details of [the Applicant’s] fortnightly earnings and in reassessing his entitlement to newstart allowance his earnings were averaged ($1,127.35 per fortnight). The correct way to determine a person’s entitlement to newstart allowance for a period is to have regard to the gross amount earned, derived or received by the person in respect of each fortnight in the relevant period. The result can be very different if the gross earnings are apportioned over a period, as Centrelink has done in this case (at [19]).

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink for recalculation with the recommendation that further information be sought from the Applicant’s employer.

**Key Findings**

- The primary issue was determining the decision under review as the Applicant’s complaint was not that there was a debt but that it had been changed (at [5]).
- The Tribunal found Centrelink’s responses were inconsistent with their records and further found it needed to request further information multiple times (at [6]-[11]).
- The Tribunal found that ATO information did not show when the Applicant had ceased work and information was needed in relation to the precise dates he worked and the amounts he earned (at [18]).
- The Tribunal found Centrelink did not provide any detail on how the debt was calculated or the period to which the overpayment relates. It did not seek information from the Applicant’s employer. Accordingly, the Tribunal was not satisfied that general ATO information was sufficient to establish an overpayment (at [19]-[20]).
- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt..

**Key Findings**

- The Applicant did not dispute that he may have a debt on the basis that he may have made reporting errors, however, argued that Centrelink had calculated his debt incorrectly by averaging the income data obtained from the ATO (at [12]).
- The Tribunal found the Applicant incorrectly reported his income (at [18]). It but also, however, found that:
  
  [the Applicant’s] correct entitlement to NSA must be worked out under the rate calculator in section 1068 of the Act. The income test requires the department to work out [the Applicant’s] ordinary income on a fortnightly basis. Section 1073B of the Act also requires that employment income earned over all or part of an instalment period is to be apportioned over each day in the instalment period (at [19]).
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
Outcome

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with directions that:
  - Centrelink make reasonable efforts to obtain payroll or other information about the Applicant’s income from his employers as shown in the data match information provided by the ATO and recalculate the amount of NSA payable;
  - If after reasonable efforts Centrelink was unable to obtain payroll or other information from the Applicant’s employers, it should recalculate the amount of NSA to the Applicant adopting an averaging method for those employers as it has presently done.
  - If after recalculation of the amount of NSA payable to the Applicant there was an overpayment, the amount was a debt to the Commonwealth and must be repaid.
  - If there was a debt to the Commonwealth, Centrelink had satisfied the technical requirements of s 1233 and lawfully recovered any debt from the Applicant’s tax refund.

Key Findings

- The Tribunal found Centrelink apportioned the Applicant’s income even though they had not requested payslips or payroll information from the Applicant’s employer for the entitlement periods under review [20].
- The Tribunal noted that the Applicant provided the Tribunal with copies of his bank records in the debt period. The Tribunal noted some issues with accepting this as a complete record because it was net figures and without payslips the Tribunal could not be satisfied this was the only income received by the Applicant [22].
- The Tribunal noted:
  - Centrelink have the power to request the relevant payslips and perform a proper allocation of the Applicant’s income across the alleged debt period. This would not be an arduous task; it would require the issuing of four pieces of correspondence and recalculating the debt with the relevant dates and amounts from when the Applicant was actually paid [24].
  - In relation to garnishee action, the Tribunal stated that it only had jurisdiction to find whether there was any error of fact or law in the issuing of the garnishee notice [30].
  - The Tribunal was satisfied that Centrelink had satisfied the technical requirements of s 1233 of the Social Security Act; however, the “…overpayment – its existence and correct calculation – still needs to be properly determined” [43].

Outcome

- The decision under review was set aside and the matter was remitted to Centrelink for recalculation on the basis of the payslips provided by the employer.

Key Findings

- An ARO affirmed the decision on internal review.
- The debt was raised as a result of a data match with the ATO.
- The Tribunal is satisfied the Applicant was overpaid, but Centrelink should recalculate the exact amount of the debt based on the updated payslip information provided.
- The Tribunal was not satisfied that the general information from the ATO was sufficient to establish a debt, or that the debt had been correctly calculated.
Key findings

- Centrelink raised an AUST debt $6,475.35 for the period from 16 November 2012 to 27 June 2013 and a sickness allowance (SKA) debt of $1,490.81 for the period 28 August 2012 to 4 October 2012. The debt was calculated following a data match between Centrelink and the ATO, which disclosed gross income. Centrelink averaged the total income evenly over the whole financial year [8].
- The Applicant sought a review and ARO varied the decisions, reducing the debt to $3,740.34 and the SKA debt to $1,301.34 for the same debt periods.
- The Tribunal was satisfied that there is an error in the calculation of debts. Centrelink averaged the total income out evenly over the whole financial year [27]. All debts should be recalculated and then are recoverable.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

Outcome

- The decisions under review were set aside and remitted to Centrelink for reconsideration.
- The decision under review was set aside.
- The matter is remitted to the Centrelink for reconsideration in accordance with the directions contained in the Tribunal’s reasons for decision.

Key findings

- The Applicant had three debts: 1) a parenting payment debt of $4,972.29; 2) a parenting payment debt of $1,612.47; 3) a Newstart allowance debt of $58.27. An ARO reviewed and affirmed the debts.
- The Applicant had 9 different employers. Centrelink apportioned earnings across its instalment periods. It is unclear if this was based on ATO information.
- The Tribunal stated: Centrelink has maintained that it calculated the debt amounts correctly notwithstanding its receipt of evidence which establishes the contrary. Centrelink was not required to maintain a position that it knew to be incorrect. Even at that late stage, Centrelink could have belatedly taken reasonable steps to correctly calculate the quantum of the debts. If it had taken those steps during the five months from when the authorised review officer made her decision until when the Tribunal was able to hear [the Applicant’s] application for review it is highly likely that the application for review could have been finalised without further delay [18].
- The Tribunal was not satisfied with Centrelink’s calculation of debt and directed it to be recalculated. The Tribunal stated that it may take Centrelink some time to obtain the evidence and it will then need to consider whether to waive recovery of some or all of the debts.
- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.
How it was decided and key facts

Outcome
- The decision under review was set aside and remitted to Centrelink for recalculation of the debt based on the Tribunal’s findings regarding the Applicant’s gross earnings set.
- The decision to add a 10% penalty was set aside because the Tribunal was satisfied the Applicant had a reasonable excuse for declaring inaccurate earnings in the debt period.

Key Findings
- Centrelink initiated an online compliance intervention review of the Applicant’s entitlement based on a discrepancy between the earnings declared to Centrelink and the earnings reported by PAYG summary to the ATO. The Applicant provided some payslips. The ARO decision added a 10% penalty.
- The Tribunal stated:
  "The authorised review officer explained that gross earnings of $413 and $419 for the pay periods missing payslips was calculated in the following way: ‘by using bank statements provided the difference in the YTD income has been apportioned across the period’. Centrelink did not provide copies of the payslips and bank statements used to calculate the debt; the Tribunal was unable to make sense of this explanation [18]."
- However, the Tribunal was satisfied the ‘Gross Pay Estimator’ on the ATO website represented the best available method to estimate the Applicant’s gross pay for the pay period’s missing payslips [18].
- The Tribunal was satisfied the Applicant had a reasonable excuse for her failure to provide accurate earnings information and found that s 1228B, the additional 10% penalty, did not apply [30].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

Outcome
- The decision under review was set aside and substituted with decision that there was no debt.

Key Findings
- The Tribunal found the Applicant understood his reporting requirements well and it was clear that Centrelink’s income averaging did not reflect his actual income on a fortnightly basis (at [13]).
How it was decided and key facts

Outcome
- The decision under review was set aside and remitted to Centrelink for reconsideration.
- Centrelink was directed to obtain actual payroll information from the Applicant’s employers.

Key Findings
- An ARO affirmed the debt on internal review.
- Centrelink had used income averaging to determine the amount of the debt, despite the Applicant’s income fluctuating each fortnight. The Tribunal was not satisfied these calculations were correct and remitted the decision back to Centrelink for recalculation.
- The Tribunal stated: ‘the methodology applied by Centrelink, which simply averaged the ATO-advised income over the period advised by the ATO, cannot be relied upon as being correct’ [25].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

Outcome
- The decision under review was set aside and the matter remitted to Centrelink for recalculation of the debt on the basis that verified fortnightly earnings information be obtained by Centrelink.

Key Findings
- Centrelink undertook data matches with the Australian Taxation Office (ATO) throughout 2016.
- Centrelink did not seek detailed payroll information from his two employers.
- Centrelink has averaged [the Applicant’s] earnings from both employers over all the fortnights in the 2011 financial year.
- The Tribunal stated:

  [The Applicant] argues that Centrelink ought to use its coercive powers to obtain the relevant payroll information. He said that the debt has not been established with proper evidence. He alleges fraud and unfairness [10].

  [The Applicant] takes issue with Centrelink’s methodology. In particular, he feels it is unfair to average out his earnings from [Employer], because he did not work for that company throughout most of the debt period. It is unclear if detailed payroll information can ever be obtained by Centrelink, even if a request is made. These debts go back several years. [11].

  The ARO commented that debts can only be calculated on the information currently available. According to the authorised review officer, the best method for working out [the Applicant’s] fortnightly income is the averaging method [12].
- The Tribunal set aside the 10% penalty and further found:
- The tribunal will set aside the debt and direct that Centrelink recalculate the debt after making appropriate enquiries of the [the Applicant’s] former employers. These types of matters have to be approached on a case by case basis. In the view of the tribunal, [the Applicant] is a Centrelink client who will not be satisfied with anything less than a calculation of the debt based on actual verified fortnightly payroll information [17].
- The Tribunal did not consider whether circumstances existed to justify the write off of or waiver of the debt.
The Tribunal reasoned:

**Key Findings**

- An ARO affirmed the debt on internal review.
- Centrelink had used income averaging to determine the amount of the debt. The Applicant had multiple employers throughout the period.
- Centrelink did not consider any specific information about earnings for individual pay periods during the entire year [17].
- The Tribunal commented:

  The tribunal appreciates that in this case there were a large number of employment periods and employers which were the subject of a matching of data between the Department and the ATO (33 data match instances in all). To obtain information about earnings for each fortnight for each employer over a five-year period will no doubt be administratively onerous. Nevertheless, that is not a reason to now misapply the law [26].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

### Outcome

- The decision under review was set aside and remitted to Centrelink for reconsideration with the direction that Centrelink obtain payroll records from the Applicant’s employers.

### Key Findings

- The Applicant did not dispute any debts raised in respect to one employer, accepting that he may have forgotten to report his income (at [11]).
- In relation to the second employer, however, the Applicant noted he was paid in “drips and drabs” and was still owed over $3,800 in entitlements (at [13]). The nature of his work with this employer was very variable (at [14]).
- The Tribunal reasoned:

  However, Centrelink has calculated the amount of the overpayment by averaging [the Applicant’s] earnings as reported to the Australian Taxation Office (ATO). The tribunal was not satisfied that this is an accurate reflection of the overpayment. The apportionment method involves an approximation of earnings in each fortnight of a particular period and treats the person as earning a constant amount every day in a wage fortnight. This was not the situation in [the Applicant’s] case [17].

- The Tribunal found:

  Given that the calculation of the overpayment was sourced from information from the ATO, without any verification from [Employer] or without reference to payslips, the tribunal was not satisfied that the calculation accurately reflected the widely variable earnings of [the Applicant]. It is also unclear how [the Applicant’s] allowances have been treated. Any direct reimbursement for travel and parking costs should not be included as part of gross earnings (at [19]).

- The Tribunal ordered that Centrelink recalculate the debt based on verified earnings data contained in the Applicant’s submissions.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
Royal Commission into the Robodebt Scheme

How it was decided and key facts

Outcome

- The decision under review was affirmed.

Key Findings

- Centrelink, after a data match, determined the Applicant owed a debt of $12,815.14 and also decided to impose a 10% penalty. An ARO affirmed the decision.
- Centrelink apportioned the Applicant’s income to calculate the debt, however, as the Applicant informed the Tribunal that he was working 38-40 hours per week even when employed casually, the Tribunal stated:
  ...the Tribunal is satisfied that it is appropriate to apportion his earnings evenly over the relevant period as even if he was working slightly less than 38 hours in a given week, he would not be entitled to newstart allowance for that period. Based on his gross income of $1,717.06 per fortnight, the Tribunal determines [the Applicant] was not entitled to newstart allowance in this period [12].
- The Tribunal also found that the Applicant did not have a reasonable excuse for failing to report his income and the 10% penalty was correctly imposed [14].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt. The Tribunal found that the debt was not raised due to sole administrative error and the debt was recoverable as the Applicant was aware of his obligations but failed to fulfil them [17]-[21].

Outcome

- The decision under review in relation to the NSA debt was affirmed.
- The decision under review in relation to the FTB debts was set aside and substituted with a decision that that there were no FTB debts to the Commonwealth with respect to maintenance income retrospectively assessed by Centrelink.

Key Findings

- The Tribunal noted that in 2015 Centrelink started a review about the Applicant’s correct rate of NSA and commenced that review by undertaking a data match with the ATO. This showed that the overall income declared to Centrelink was less than the gross income recorded by the ATO throughout the debt period.
- The Tribunal noted:
  ... prior to the hearing, the tribunal’s Case Manager approached [the Applicant] to ask if she could provide all of the relevant payslips The authorised review officer had commented that the debt had been partly raised on averaged earnings, but also calculated on fortnightly payslips, where that information was available. [The Applicant] told the tribunal that she does not have the payslips and could not provide them. She does not otherwise require Centrelink to recalculate the debt based on verified fortnightly payroll information [14].
- The Tribunal concluded that the debt had been correctly calculated [15] and should be recovered by modest instalments [23].
- The Tribunal was not satisfied that a debt existed in relation to the family tax benefit [40].
The Tribunal noted that:

### How it was decided and key facts

#### Outcome
- The decision under review was set aside and substituted with the decision there was a debt but part of it was to be recalculated in accordance with the finding that averaging was inappropriate for those jobs where work was not undertaken for more than a day or two.
- Centrelink was directed to waive 25% of the debt due to special circumstances.

#### Key Findings
- Centrelink raised the debt following a data match with ATO. The data match revealed there were 41 employers matched to the Applicant [3].
- An ARO affirmed the decision but found that no recovery fee should be applied.
- The Applicant worked on a casual basis as an extra in television/advertising on one-off casual engagements [28].
- The Tribunal noted that Centrelink had apportioned income equally over the financial year for some jobs where group certificates did not confine the period of employment [25].
- The Tribunal found that the Applicant had underreported his earnings [26].
- The Tribunal observed that some employers provided dates spanning the entire financial year even though it was unlikely the Applicant worked more than a day or so [34].
- The Tribunal noted that:

  [T]he employment periods on the ATO data do not accurately reflect the dates over which [the Applicant] is likely to have derived the income. This also means that in calculating the debt, Centrelink's calculations are unlikely to reflect the correct entitlement of [the Applicant] [35].

- Even so, the Tribunal noted that:

  [W]here there has been an under declaration of income, it may be appropriate for Centrelink to rely on the best available evidence to make a retrospective decision about a person’s correct entitlement to NSA. That is, where there is no dispute that an amount of income has been derived in a particular financial year or period, it is appropriate for earnings to be averaged over that period if there is no better evidence to more precisely place the dates worked.

- The Tribunal concluded that averaging was appropriate where it was reported that employment spanned an entire financial year and no better evidence was available about timing and frequency of payments [37].
- The Tribunal noted that for some other jobs, the commencement date of employment more likely reflected the date work was undertaken [28]. The Tribunal concluded the debt should be recalculated for these employers to reflect this rather than being averaged over a longer period in order [42].
- The Tribunal found that special circumstances existed to justify the waiver of 25% of the debt [64].

### How it was decided and key facts

#### Outcome
- The decision under review was set aside and remitted to Centrelink for recalculation of the debt.

#### Key Findings
- The Tribunal found that along with the data matched earnings obtained from the ATO, Centrelink had an email from one of the Applicant’s employers providing a breakdown of her actual earnings for each week in the review period and that this was not considered by the ARO (at [11]).
- The Tribunal was not satisfied the debt had been correctly calculated (at [13]).
- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.
How it was decided and key facts

Outcome

• The decision under review was affirmed.

Key Findings

• The Applicant was receiving the pension during the period the alleged debt was raised. In assessing whether the Applicant had received the correct amount of benefits, Centrelink apportioned the data over each fortnight.
• The Applicant worked full time and his income did not vary each fortnight. The Tribunal was satisfied that the use of income averaging assisted Centrelink to correctly calculate the debt for the relevant period given that the Applicant’s fortnightly earnings were consistent.
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

How it was decided and key facts

Outcome

The decision under review was affirmed.

Key Findings

• The Tribunal noted that Centrelink had undertaken data matching with the ATO as a compliance measure throughout 2015/16, which showed that the Applicant was employed and received earnings over a period of time that were not declared to Centrelink. The ARO averaged these earnings across each fortnight and calculated the debt accordingly [8].
• The Tribunal included in its decision extracts of exchanges between the Applicant and the ARO as recorded in the ARO’s notes, and stated:

  The concerning aspect to the above exchanges is that Centrelink is raising a debt against [the Applicant], but putting the onus on him to disprove it. There should be no onus in this context. On [the Applicant’s] submissions, he was only with that putative employer for a few weeks and had earned no income. However, at hearing [the Applicant’s father] conceded that there may or may not have been a cash payment, but he was uncertain [17].

  Centrelink has coercive powers to request information. [The Applicant] does not have any capacity to compel [the Employer] to provide information to him [18].
• The Tribunal also noted that, prior to the hearing, the Tribunal had given serious consideration to requiring Centrelink to request information from the Employer in the nature of payroll books, payslips, and detailed payroll information. However, this was not done as it appeared that the Employer could not be identified and his whereabouts were unknown [20].
• The Tribunal stated that Centrelink was using the best evidence available at this time, which was the official ATO public record. The Tribunal found it was reasonable to average those earnings over the debt period and the recovery of the debt should be affirmed [27].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
**Key Findings**

**How it was decided and key facts**

**Outcome**
- The decision under review was affirmed.

**Key Findings**
- The Applicant declared income from various employers. Centrelink noticed discrepancies between the income that was declared and the ATO’s data. Centrelink recalculated rates of Newstart allowance on the basis that she had received income reported at constant rates during her periods of employment [3].
- As the Applicant had not attempted to retrieve her payroll records, the Tribunal was satisfied that ATO’s evidence was the most accurate available.
- The Tribunal was satisfied that debt calculation was correct and debts are recoverable.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

**How it was decided and key facts**

**Outcome**
- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with directions that:
  - Centrelink request pay records from the Applicant’s previous employers;
  - if any of the requests for pay records from the Applicant’s employers were not satisfied, Centrelink use evidence from the Applicant’s bank records to calculate her likely gross fortnightly income from that particular employer for the relevant period.
  - any overpayment of YA and NSA is to be recalculated in accordance with the pay records and/or bank statements.

**Key Findings**
- The Applicant told the Tribunal that she disagreed with the debt because Centrelink had apportioned her income, assuming that her earnings for each employer were constant over the period, when they were actually variable [9].
- The Tribunal pointed out that the ATO records showed that the wages the Applicant declared fortnightly were under-reported [10].
- The Tribunal noted the Applicant conceded she inadvertently declared net earnings, not gross earnings to Centrelink [11].
- The Tribunal found it was ‘not satisfied that the debt had been correctly calculated’ [14] and stated that ‘no effort has been made by Centrelink to obtain actual wage records from the three employers’ [15].
- The Tribunal found: ‘Centrelink’s approach to debt calculation in this case is entirely inconsistent with the requirements of the legislation. The actual pay records are critical to the proper calculation of the overpayment’ [15].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
Outcome

- The decision under review was set aside and a new debt was raised.
- The debt was to be waived due to special circumstances.

Key Findings

- An ARO varied the debt on internal review.
- The Tribunal commented:

  ...The utility of the hearing was undermined by Centrelink’s failure to provide the documentation that would have allowed for a meaningful review of its calculation of the debt amount. In response to further requests, Centrelink ultimately provided that documentation. It also recalculated the debt amount to be $1,414.52 [1].

- Centrelink calculated the debt on the “unfounded assumption” that the Applicant earned a constant daily rate [7].
- The Tribunal further stated:

  Centrelink did not provide that documentation to [the Applicant] and when the matter was listed for hearing before the Tribunal some six months later, it did not provide that documentation to the Tribunal. It was only after the Tribunal hearing, and after the Tribunal specifically requested that documentation (which should have provided in the ordinary course), and after Centrelink had provided an inadequate response, and after the Tribunal had noted the inadequacy of that response and reiterated its request, that Centrelink provided that documentation, at which point it effectively conceded that its previous calculation had been incorrect [7].

- The Tribunal found that special circumstances existed to justify a waiver of the debt.

Outcome

- The decision under review was set aside and substituted with a decision that there was no debt.
- Centrelink was directed to return any monies already paid in relation to the debt raised.

Key Findings

- The Tribunal commented:

  I will comment here that, if the only information available to Centrelink was the annual amount as shown by the ATO, any recalculation of [the Applicant’s] newstart allowance payments would require a mathematical apportionment over the year and not an attribution of income to each period in which it was earned. Such an apportionment would be in breach of sections 1072 and 1073 and, therefore, wrong, regardless of whether or not she had correctly declared her earnings in each period (at [9]).

- The Tribunal found that despite the ARO’s claims, the debt could not have been calculated based on actual income information obtained from the Applicant’s employer as Centrelink had not contacted the employer. The Tribunal concluded that the ARO’s statement was ‘at the least, misleading’ and that ‘information from the ATO is not information from [the Applicant’s employer]’ (at [10]).
### How it was decided and key facts

**Outcome**
- The decision under review was affirmed.

**Key Findings**
- The Tribunal considered the ARO’s calculation of the debt, and was satisfied they were correct. Centrelink’s debt calculations reflected the best available evidence regarding the amounts of income earned by the Applicant, and the periods during which she worked.
- The Applicant knowingly underdeclared her income on a number of occasions as she had no money for rent. The Applicant’s other extenuating and difficult family situation were also acknowledged by the Tribunal.
- The Tribunal deferred making its decision until it could obtain further relevant documents. Centrelink and the Applicant both provided further documents in response to the Tribunals request.
- Ultimately the Tribunal affirmed the decision.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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### How it was decided and key facts

**Outcome**
- The decision under review was set aside.
- Centrelink was directed to recalculate the debt and obtain any records from the Applicant’s bank for the periods unavailable to him.

**Key Findings**
- The Tribunal found that Centrelink raised a debt beyond the date that the Applicant ceased work and noted that ‘The averaging method applied by Centrelink is patently unfair’ (at [4]).
- The Tribunal found that Centrelink did not accept the Applicant’s bank statements despite the fact that debtors in ‘robo-debt’ matters were usually invited to provide bank statements and these were clearly the better evidence than the ‘grossed up’ net figures Centrelink seemingly relied on (at [5]-[6]).
- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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### How it was decided and key facts

**Outcome**
- The decision under review was set aside.
- The matter was sent back to Centrelink for reconsideration in accordance with the direction that the Applicant’s entitlement be recalculated on the basis that her earnings from her employer for the period from 14 July 2012 to 22 March 2013 were $9,518.75.

**Key Findings**
- Following a data match with the ATO, Centrelink decided to raise and recover a debt of an overpayment of NSA. Centrelink averaged the Applicant’s income over a period [10], [11].
• The Tribunal found:

The flaw in both of these calculations is that they do not take into account the fact that a significant amount of [the Applicant’s] income for the financial year was received after [the Applicant’s] NSA was cancelled with effect from 23 March 2013. This is documented in the payroll report provided by [the Applicant] at folio A6. Of course the reason the Department’s calculations do not take this crucial fact into account is because the information was not obtained by the Department and was not supplied by [the Applicant] prior to the original decision and the decision of the ARO [12].

• The Tribunal found that the Applicant did under-report her income and that the Department would need to recalculate the debt [13].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and substituted with the decision that the Applicant had a YA debt of $1,778.49 for the relevant period.
- The Tribunal found that the 10% penalty did not apply.

**Key Findings**

- The review concerned whether the Applicant had a recoverable YA debt. The debt was raised because Centrelink determined using information from the ATO that the Applicant had received income from employment that was greater than the amounts considered by Centrelink when calculating the Applicant’s YA entitlements during the debt period [2].
- The Tribunal accepted that the ATO figures should be used in calculating whether or not the Applicant had been overpaid YA [8].
- The Tribunal considered the debt calculations made by the ARO and was satisfied that the Applicant was overpaid YA of $1,778.49 during the debt period.
- The Tribunal was satisfied there were no special circumstances in the present case to justify waiving or writing off the debt.
- The Tribunal stated that, having had the benefit of discussing the matter with the Applicant at the hearing, the Tribunal was satisfied the Applicant had no intention of misleading Centrelink when reporting her income and found the 10% penalty should not be added to the debt [19].

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink for reconsideration.
- Centrelink was directed to recalculate based on verified earnings from the Applicant’s Employer.
- In recalculating the debt, Centrelink was directed that earnings from one of the employers must take into account the Applicant’s termination date.
- The recalculated debt was to be recovered in full.

**Key Findings**

- The Tribunal noted the original debt was raised ‘after conducting a data match with the Australian Taxation Office’ at [2].
- The Tribunal also referred to the decision of the ARO to remove the 10% penalty fee at [3].
- The Tribunal found ‘taxable income from [Employer] for the 2013/2014 year was apportioned equally over the full year
and does not take into account [the Applicant’s] evidence that she worked for only a short time into the 2013/2014 financial year. On the evidence provided by [the Applicant], this assumption made by Centrelink and apportioning the earnings in this way is incorrect’ at [12].

- The Tribunal stated:

  Given that the calculation of the overpayment was sourced from information from the ATO, without any verification from her employers or without reference to payslips, the tribunal was not satisfied that the calculation accurately reflected the earnings or the actual periods of time when [the Applicant] worked, in particular for [Employer]. Centrelink has also not made available to the tribunal any primary information (payslips) or secondary information (information from the ATO or earnings reported by [the Applicant]) in regard to earnings from [Employer] [13].

- The Tribunal agreed with the ARO that no recovery fee should be applied to the debt.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**
- The decision under review was set aside and remitted to Centrelink for recalculation of the debt.

**Key Findings**
- An ARO varied the debt on internal review.
- This decision concerned an age pension debt.
- The Tribunal commented:

  Tribunal finds that she did work consistently throughout the debt period, and so averaging her total income over 26 fortnights per financial year would not create injustice to her by “distorting” her income [27].

- A ‘work bonus’ was not taken into consideration in calculating the Applicant’s entitlements to social security payments. Given this, the Tribunal was not satisfied the debts had been correctly calculated.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**
- The decision under review was set aside and substituted with the decision that the Applicant was overpaid DSP in a different amount over the relevant period and recovery of the recalculated debt was to be waived.

**Key Findings**
- The Tribunal noted that Centrelink used apportioned earnings to calculate the overpayment when payslips were not available.
- The Tribunal was satisfied the amount of DSP disability support pension overpaid to the Applicant over two particular periods were debts due to the Commonwealth in different amounts to that which Centrelink arrived at.
- The Tribunal noted that the reason the amount of the debt is higher than that calculated by Centrelink was because Centrelink did not have all the payslips and the payment summary from the Applicant’s Employer.
• According to the Tribunal, the debt over a precise period arose because the Applicant did not report his income in time.
• The Tribunal found that no sole administrative error existed.
• The Tribunal found that special circumstances existed to justify the waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside.
• Centrelink was directed to obtain earnings information from the Applicant’s employers and recalculate the debt amount by ‘correctly apportioning the applicant’s earnings... according to law’.

**Key Findings**

• The debts were raised following a data match with the ATO. The Tribunal noted that while there were no payslips available, the number of hours the Applicant reported working each fortnight varied, as did her income [12].
• The Tribunal was satisfied that the Applicant had been overpaid as her declared income was less than it should have been. It was not, however, satisfied with the amount of the debt and stated:

  Nevertheless, the tribunal is not necessarily satisfied as to the amount of the debt said to be owed. This is because, in the Department’s calculations, it has averaged [the Applicant’s] income over longer periods than any single fortnightly instalment period. As the applicant’s income/hours of work fluctuated each fortnight, the approach taken by the Department in calculating the debts is not the correct application of section 1073B of the Act [14].

While it would certainly have been easier for the Department to obtain total income information from the ATO and average it, rather than obtaining specific weekly/fortnightly pay information from [the Applicant’s] employers, administrative expedience is no reason to misapply the law [15].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was affirmed, however, the 10% recovery fee was set aside.

**Key Findings**

• The Tribunal was satisfied that Centrelink’s application of averaging was reasonable [12].
• As Centrelink did not take the Applicant’s ordinary income into account, the Tribunal was satisfied that there were overpayments in the amounts stipulated by Centrelink [13].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside.
• The Tribunal agreed with the calculations but found that the Commonwealth’s right to recover the debt was replaced by its right to prove the debt as the Applicant had declared bankruptcy.
Key findings

- Although the Applicant claimed that her hours varied fortnightly, she conceded she may have inadvertently reported her net income.
- The Tribunal was satisfied with the income averaging approach as the Applicant was unable to provide sufficient evidence of how much she earned each fortnight (at [18]).

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How it was decided and key facts

Outcome

- The decision under review was set aside and the debt remitted to Centrelink for recalculation.

Key Findings

- The Tribunal was not satisfied with the Applicant’s credibility or her explanations for the discrepancies in her reported income.
- Equally, the Tribunal was not satisfied that Centrelink calculated the debt correctly as it did not obtain documents identifying the Applicant’s fortnightly pay.
- The Tribunal found:
  - The legislation requires a determination to be made about the employment income earned during each fortnightly instalment period; particularly in circumstances where earnings are variable, Centrelink’s method of averaging the total earnings for a period identified in a PAYG summary is likely to lead to an inaccurate calculation of the debt (at [21]).
  - The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

- The decision under review was set aside.
- The Tribunal found that there was no debt.

Key Findings

- The Tribunal found that while income averaging may be an appropriate method to use in some circumstances, it failed in this case as the Applicant worked casual hours and only worked for the relevant employer for five weeks. His payments ceased when he obtained full time employment. Accordingly, the process of income averaging was a ‘formula that produce[d] a skewed outcome’ (at [5]).
- The Tribunal noted Centrelink did not have the opportunity to cross-reference reported income with the Applicant’s bank statements for an earlier resolution (at [7]).

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How it was decided and key facts

Outcome

- The decisions under review were set aside and remitted to Centrelink for recalculation of the debt.
- Centrelink was directed to obtain the Applicant’s pay records from one employer and calculate the debt based on pay records for both employers.
- Centrelink was directed to use averaged income using ATO data ‘if and only if’ pay records could not be obtained.
- Centrelink was directed to calculate the 10% penalty similarly.
• The recalculated debt and penalty were recoverable.

Key Findings

• Centrelink raised a debt based on a data match with the ATO. The ATO data was used to calculate the debt, however, this amount was recalculated using the Applicant’s payslip information once he provided it. Centrelink also decided to impose a 10% penalty of $1,643 [3].
• The Tribunal found that the debt had not been calculated correctly and stated:

  Nevertheless, the tribunal was not satisfied that the debt has been correctly calculated by Centrelink. The relevant income test for newstart allowance requires a person’s income to be taken into account when it is first earned, derived or received. A fortnightly income test applies. In this case, no effort was made by Centrelink to obtain actual wage records from [Employer 1] or [Employer 2], even though such records would very likely be readily available if requested. Instead, it has simply been assumed that the total year earnings can be apportioned equally to each fortnight across the relevant period of employment. However, that is not consistent with the requirements of the legislation. The actual pay records are critical to the proper calculation of the overpayment. [The Applicant] has now provided payslips from [Employer 1]. Centrelink will need to take those payslips into account in determining his income in the relevant period and will need to request the pay records from [Employer 2] in order to arrive at a correct debt calculation. Only if payslips cannot be obtained would it be acceptable to apportion income equally for the period of employment [14].
• The Tribunal found that the mandatory pre-conditions to warrant a write-off were not met [19].
• The Tribunal found that the Applicant had knowingly failed to provide the correct information about his income to Centrelink and therefore waiver was not available [27].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt. The Tribunal found that there were no special circumstances warranting a waiver [26].
• The Tribunal found that the 10% penalty should be imposed as the Applicant failed to provide correct information about his earnings (based on payslip information) and did not provide an adequate explanation for significantly under-reporting his income. The Tribunal accordingly found that it ‘could only conclude that [the Applicant] either knowingly or recklessly failed to comply with his obligation to provide the correct information to Centrelink in relation to his earnings’ [31].

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How it was decided and key facts

Outcome
• The decision under review was affirmed.

Key Findings
• The Applicant supplied some pay advices. For one portion, Centrelink apportioned applicant’s YTD earnings. The Tribunal stated:

  In the absence of pay advices, Centrelink has evenly apportioned [the Applicant’s] [employer] earnings from 1 July to 29 October 2014 using the year to date earnings figure on his pay advice for the fortnight ending 12 November 2014. I offered [the Applicant] the option of requiring Centrelink to obtain pay advices for this gap but he indicated a preparedness to proceed on the present information. I consider the apportionment reasonable in the circumstances as it appears [the Applicant] had consistent work during this period [10].
• The Tribunal found that the Applicant was overpaid austudy.
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
How it was decided and key facts

Outcome
- The decision under review was set aside.
- The Tribunal found that there was no debt.

Key Findings
- The Tribunal commented:
  - It appears Centrelink has taken information from the ATO about the annual sum paid by [Employer] to [the Applicant], and averaged it. There is no obvious record in the materials of any attempts by Centrelink to obtain information from the employer [9].
  - The Tribunal was not satisfied the debt was accurate, or existed at all, and set aside the decision.

How it was decided and key facts

Outcome
- The decision under review was set aside and substituted with the decision that there was no debt.

Key Findings
- The Tribunal found:
  - the Department has not provided sufficient evidence that [the Applicant’s] earnings during the periods when he was in receipt of NSA were in excess of the amounts he declared. It has not provided an indication of the fortnightly income that it has assumed nor has it provided a clear calculation of the debt. Some of the numbers it has apparently relied upon or produced are clearly incorrect [13].

- The Tribunal found that there was no evidence the Applicant under-reported their income, and as a result had not been overpaid.

How it was decided and key facts

Outcome
- The decision under review was set aside and remitted to Centrelink for recalculation.
- Centrelink was directed that penalties did not apply but the debt was still recoverable.

Key Findings
- The Tribunal found Centrelink’s use of income averaging in this situation satisfactory as the Applicant declined to provide payslips and gave evidence that his income was stable and consistent each week (at [7]-[8]). It further stated:
- There has been averaging of income to determine the debts (notwithstanding it seems on [the Applicant’s] evidence
income did not tend to fluctuate), the relevant period commenced some seven years ago thereby creating a disadvantage for [the Applicant] with recalling events from then and there is scant contemporaneous evidence in the Centrelink records from that time related to reporting contacts [16].

- The Tribunal did, however, note that the relevant period for the debt commenced about seven years prior and this created a disadvantage for the Applicant in terms of having to recall events. The Tribunal also noted Centrelink had ‘scant’ records from that time related to reporting contacts (at [16]). It accordingly waived the penalties applied.

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

- The Tribunal found that the 10% penalty should not apply [16].

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<td>A Grant</td>
<td>31 May 2017</td>
</tr>
</tbody>
</table>

**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink for recalculation on the basis of pay information provided by the Applicant.

- Any remaining debt from recalculation was recoverable

- No penalty fee as to be applied to any recalculated debt.

**Key Findings**

- The Tribunal noted the original debt had arisen ‘after an income reconciliation was conducted with information obtained from the Australian Taxation Office’ with a 10% penalty fee applied at [1].

- The Tribunal noted the Applicant requested a review of the decision where the ARO affirmed the debt but ‘decided that no recovery fee would be charged’ at [2].

- The Tribunal found upon assessment of one period of employment using payslip information that it:

  ...strongly indicates that it is not appropriate to use the annualised income declared by [Employer] to assess her parenting payments as this will lead to an unreliable assessment of her rate of entitlement on a fortnightly basis. The debt will need to be recalculated to properly attribute [the Applicant’s] earnings from [Employer] across the fortnights they were earned. Nonetheless, [the Applicant] has not accurately declared her income from [Employer] and she may have been overpaid once the correct [Employer] income is used to reassess her rate of payment together with her other income information [16].

- In relation to one set of employment information, the Tribunal noted that actual earnings appear to have been added to apportioned earnings and the Applicant’s income may have been double counted [17].

- In relation to another employer, the Tribunal noted that apportioning income would lead to an inaccurate assessment of the rate of parenting payment given that the applicant did not work every fortnight for this employer [20]. Similar findings were made in relation to a further employer at [24].

- The Tribunal found it likely that the Applicant would have a debt once the calculations are made in accordance with the decision [28].

- The Tribunal found that no 10% penalty fee was to be applied to the debt in this case [32].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and the debt remitted to Centrelink for recalculation.

- Centrelink was directed that no debts existed for the second relevant period.
Key Findings

- For the first period, the Tribunal was satisfied that the Applicant underreported her income but was uncertain whether Centrelink’s calculations were correct as their method was not clear (at [23]).
- For the second period, the Tribunal was unsure why Centrelink believed the Applicant owed a debt given they did not contend she was working during the period. The Tribunal noted the Applicant had been declaring her income and found it difficult to ascertain the basis on which Centrelink determined she owed a debt (at [24]).
- The Tribunal noted that Centrelink did not provide sufficient evidence to substantiate that the Applicant was overpaid NSA for the second period (at [26]).
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt.
- The debt was to be recovered.

**Key Findings**

- The Tribunal found that the Applicant’s employment payment schedule and Centrelink’s reporting schedule did not align. Centrelink apportioned the income at a daily rate, however, but the Applicant worked irregular shifts which led to the raising of the debt.
- The Tribunal found:
  
  Centrelink has calculated the overpayment based on her apportioned fortnightly earnings because, in its submission, it is the best (but not the perfect) evidence on point. [7].

  I find that she did not accurately declare her earnings. I find that Centrelink’s calculations of her earnings are the best evidence on point, subject to what follows. [12].

- The Applicant did not provide all payslips until after the hearing. The matter was remitted for recalculation on this the basis of this information. The Tribunal member considered it to be “the best evidence on point” [13].
- The Tribunal found there was no sole administrative error or special circumstances to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt.

**Key Findings**

- The Tribunal found:
  ...[the] calculation of the debt based on average earnings is not fair or reasonable in this case. Centrelink has also applied a 10% penalty amount because it alleges [the Applicant] recklessly provided incorrect information. This is simply not proven, because it is possible that [the Applicant] did properly declare his earnings for the periods in which he was receipt of newstart allowance (at [13]).

- The Tribunal also accepted the Applicant’s evidence that he provided payslips to Centrelink at the time that he declared his income, however, that these were no longer held on his record and he was unable to obtain them from his employer as they were a small enterprise (at [12]).

- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.
**Outcome**

- The decision under review was set aside.
- Centrelink was directed that no debt was owed.

**Key Findings**

- The Tribunal found itself unable to decide, on the evidence before it, whether Centrelink’s calculations were correct. It noted that income averaging was used and also that there was no direct evidence that the Applicant had income greater than he had already disclosed to Centrelink for the relevant period (at [10]).
- The Tribunal also noted that:
  
  `[n]o information has been provided by Centrelink to support the reliability and accuracy of the debt calculations. It is unclear, based on the evidence before it, what methodology was used to ascertain [the Applicant’s] income in the calculation (at [10]).`

**Outcome**

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with the direction that Centrelink obtain employer payroll information.

**Key Findings**

- The Tribunal stated the Applicant described her employment as seasonal work and there are periods where she received no income [8].
- The Tribunal noted that:

  ‘...Centrelink has raised [the Applicant]’s debts relying on information received through data matching. While a number of the data matching reports in the Centrelink papers specifically relate to shorter periods, a relatively large number of them refer simply to the period of a particular financial year (that is, the earnings identified are expressed as relating to a period commencing 1 July of a year and ending 30 June of the following year). On the basis of [the Applicant]’s description of her employment, I do not consider it likely that that is an accurate reflection of [the Applicant]’s pattern of earnings from her employment. In light of the nature of the work undertaken by [the Applicant], the approach adopted by Centrelink seems likely to lead to conclusions that [the Applicant] incurred debts during periods in which she had no earnings. Given the information that is likely to be available to Centrelink but which has not yet been gathered (see discussion below), I consider that to be an unnecessary risk’ [11].

- The Tribunal found apparent that Centrelink did not attempt to gather more accurate information about the Applicant’s earnings and that Centrelink chose not to use its information gathering powers to obtain relevant information from institutions about the exact dates on which the Applicant worked and how much she was paid for such work [13].
- The Tribunal then concluded:

  ‘...unless the payslips that [the Applicant] has already supplied to Centrelink provide all of the information, Centrelink must seek to gather specific information about [the Applicant]’s periods of work (and related wages) from her employers. If necessary, that information when received could be combined with information from her bank statements in order to develop a more certain understanding of the periods in which [the Applicant] worked and what she was paid.

- The Tribunal directed Centrelink to gather relevant available information about the periods in which she was employed and what payments she received for that employment [17].
- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.
### Key Findings

**Outcome**

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt.

**Key Findings**

- The Tribunal noted that Centrelink averaged the Applicant’s income and the ARO refused to substantially as the Applicant was unable to provide evidence of his income across the relevant fortnights at the time. When the Applicant provided bank statements, he was directed to apply to the Tribunal (at [6]).
- Based on the Applicant’s bank statements, the Tribunal concluded that the Applicant may have been repaid a small amount in respect of one employer and that ‘it was wrong for Centrelink to average his income across the entire 2013/2014 year’ (at [7]).
- The Tribunal made the same finding in respect of the second employer (at [8]).
- The Tribunal found that no 10% penalty was to be applied to any recalculated debt [10]-[11].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

### How it was decided and key facts

#### Outcome

- The decision under review was set aside and substituted with the decision that there was no debt.

#### Key Findings

- The Tribunal was not satisfied that averaging the income as reported to the ATO, as Centrelink had done, was an accurate reflection of the overpayment. It found:
  - The apportionment method involves an approximation of earnings in each fortnight of a particular period and treats the person as earning a constant amount every day in a wage fortnight. This was not the situation in [the Applicant’s] case. [the Applicant] reported to the tribunal that in the early months of his work with Unitised, which included the debt period, he was working about one day and sometimes two days a week for the first three months (at [13]).

#### How it was decided and key facts

**Outcome**

- The decision under review was varied to the extent that parenting payment debt is $2,429.15.

**Key Findings**

- An ARO reviewed the decision and reduced the debt.
- The Tribunal found that not all of the Applicant’s earnings were taken into account by Centrelink [22].
- The Tribunal agreed with Centrelink's use of averaging:
  - Information obtained by Centrelink from the Australian Taxation Office shows that [the Applicant’s] gross salary was $18,458, with payments ending on 30 May 2012. In the absence of any evidence about [the Applicant] actually worked, it seems appropriate that this income be apportioned evenly over the period 11 October 2011 to 30 May 2012 [25].
- The Tribunal applied averaging income to determine that the Applicant was precluded from entitlement to parenting payment [26].
The Tribunal did not include the Applicant’s allowance in debt calculations as it was unclear what the allowance related to [27].

The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

### How it was decided and key facts

#### Outcome

- The decision under review was affirmed.

#### Key Findings

- Centrelink undertook an ATO data match [11]. The Tribunal found that the Applicant effectively accepted the overpayments.
- The Tribunal decided that it was appropriate for Centrelink to average out the salary over all the fortnights in the 2012/2013 financial year [13].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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The Applicant’s debt was calculated on the basis of payment declared by the Applicant in his tax return. The Department had applied an assumption of a constant rate of income over a period. The Applicant agreed this was accurate and the Tribunal was satisfied the amount of the debt was correct.

The Applicant did not dispute the debt but requested that some of it was waved due to special circumstances.

The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

An ARO affirmed the debt amount on internal review.

Centrelink used income averaging to calculate part of the debt. The Tribunal was not satisfied that the debt was correctly calculated.

Other issues surrounding the correct identity of the Applicant were raised.

The Tribunal considered the decision to raise a debt to be unsafe.
Centrelink was directed to reconsider the decision in accordance with the Tribunal’s reasons.

**Key Findings**

- The Tribunal found that while the Applicant had been under-reporting her income by providing net rather than gross pay, Centrelink had also not calculated the debt correctly.
- The Tribunal noted Centrelink made no attempt to obtain actual wage records from the Applicant’s employer but had assumed that the relevant fortnightly earnings could be apportioned equally in each fortnight across the relevant period despite being made aware that the Applicant’s income varied each fortnight. This approach was ‘entirely inconsistent with the requirements of the legislation’ [14].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

**Outcome**
The decision under review was set aside and remitted to Centrelink for recalculation of the debt.

**How it was decided and key facts**

### Table 1: AAT Review Number DOC ID Member Date

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**How it was decided and key facts**

### Table 2: AAT Review Number DOC ID Member Date

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**Outcome**
The decision under review to raise and recover the NSA debt was affirmed.

**Key Findings**

- The Tribunal determined that the 10% penalty should not be applied.
- The Tribunal discussed whether the Applicant wished to have the matter remitted to Centrelink for the department to seek payslips from the Employer. The Applicant was advised there was always the potential for a debt to increase or decrease depending upon the figures ultimately provided. The Applicant said ‘she did not want any more delay and just wanted to concentrate upon the debt penalty and waiving the debt on a special circumstances basis’ [15].
- The Tribunal found income disclosed by the ATO had been apportioned evenly across the entitlement period at [17]-[18].
- The Tribunal found the 10% penalty had been improperly applied [26].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

**How it was decided and key facts**

### Table 3: AAT Review Number DOC ID Member Date

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**Outcome**
The decision under review was set aside and remitted to Centrelink for reconsideration.

**Key Findings**

- Centrelink was directed to reconsider the decision in accordance with the Tribunal’s reasons.
- The Tribunal noted that, following the hearing, the Tribunal sought further materials from Centrelink, and in particular, an explanation as to why Centrelink wrote to the Applicant on 6 Dec 2016 advising him that his debt had been recalculated to $0. Centrelink advised this event never took place [3].
- The Tribunal observed it assessed the Applicant as a very credible witness and had no hesitation accepting his evidence. The Tribunal accepted the Applicant’s records (a detailed table setting out the hours he worked and his gross pay based on his own records) as accurate.
The Tribunal noted that the Applicant’s records plainly reveal problems in the Centrelink assessment of applying averages based on payslips [7].

The Tribunal remitted the matter to Centrelink to recalculate the debt based on the Applicant’s data setting out the days he worked and his gross payment for each day worked [9].

The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside.
- The Tribunal substituted a new decision that the matter is remitted back to Centrelink with the direction to recalculate the overpayment based on employer payroll information.

**Key Findings**

- The Tribunal noted that Centrelink obtained information from the ATO about the Applicant’s employment earnings and apportioned the earnings evenly over the employment period stated on the payment summaries provided by the various employers to the ATO. The Applicant was unable to provide payslips.
- The Tribunal noted:
  A number of the employers gave the entire financial year as the pay period, whereas in fact [the Applicant] was generally only employed for a small part of the year and in some cases for one day only. Apportioning the earnings is likely to produce an inaccurate debt calculation as [the Applicant]’s earnings were ‘lumpy’ and some of the income was earned when she was not in receipt of income support. Other difficulties include the fact that the employer’s name is different on the information provided to the ATO than that reported by [the Applicant] at [12]-[13].
- The Tribunal found ‘that the amount of the overpayment calculation was incorrect and sends the matter back to Centrelink for the overpayment to be recalculated’ [17].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and was remitted to Centrelink for recalculation of the debt.

**Key Findings**

- An ARO varied the debt on internal review.
- Due to the nature of his casual employment, the Applicant did not always accurately report his income. The Tribunal was satisfied a debt existed.
- In light of payslip information, Centrelink averaged out some of the Applicant’s earnings. The Tribunal concluded this was “a most unsatisfactory basis” for determining the Applicant’s debt.
- The Tribunal remitted the decision to Centrelink for recalculation in accordance with the directions outlined in the Tribunal’s reasons.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation.
- Centrelink was directed that the debt was to be waived.

Key Findings

- The Applicant claimed she had been subject to the ‘robo-debt’ scheme [5].
- The Tribunal found that Centrelink’s calculations assumed the Applicant had earned over $3,000 for the relevant period, however, this was not the case and calculated her gross sum was much lower [9].
- The Tribunal stated:
  
  In the Tribunal’s assessment, there are exceptional factors here. [The Applicant] has presented medical evidence in respect of her psychiatric treatment, severely exacerbated by the “robo-debt”. The Tribunal accepted Centrelink’s actions had a profound adverse impact on [the Applicant’s] mental health. Centrelink is pursuing a debt which occurred over five years ago despite its routine matching with the Australian Taxation Office; the excessive delay is inexplicable [19].

- The Tribunal found that special circumstances existed to justify a waiver of the debt.

AAT Review Number | DOC ID | Member | Date
---|---|---|---
2017/B108033 | CTH.0032.0002.0182 | S Letch | 23 June 2017

How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt.

Key Findings

- The Tribunal found that, although the ARO did not note it, income averaging was used to identify and raise the debt; this was contrary to the requirements of the Social Security Act 1991 (Cth) s 1073B. In particular, the Tribunal found that apportioning income in this case ‘produced artificial and arbitrary results’ [9].
- The Tribunal found that ‘special circumstances’ existed to justify waiving any unrecovered balance that may ultimately exist.

AAT Review Number | DOC ID | Member | Date
---|---|---|---
2017/S108616 | CTH.0032.0002.0699 | H Horsburg | 26 June 2017

How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink with directions that:
  - the non-payment was to be dealt with correctly in relation to calculation of any debt;
  - the Applicant’s earnings from one employer was to be determined on the basis of documented evidence; and
  - Centrelink was to consider whether to waive the debt on the basis of sole administrative error.

Key Findings

- Employer 1:
  - The Tribunal noted that the employer’s pay records did not match Centrelink’s fortnights and T Documents ‘did not show how the Secretary had reached the findings as to amounts earned in each Centrelink fortnight. The Secretary remedied this lack after the hearing, in response to my request for clarification’ [10].
• The Tribunal was satisfied the Centrelink’s calculations were based on amounts substantiated by payslips and their apportionment was correct [10].
• The Tribunal noted an amount was withheld and there was no explanation as to why [12]-[13].

Employer 2:
• The Tribunal found the Secretary had made various assumptions about the Applicant’s income and it was unclear on what these were based [25]-[26].

Employer 3:
• The Tribunal was satisfied that these calculations were based on payslip information [25].

Employer 4:
• The Tribunal was satisfied that these calculations were based on payslip information [27].

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### How it was decided and key facts

**Outcome**

- The decision under review was set aside and substituted with the decision that no debt was owed.

**Key Findings**

- The Tribunal found it was unsafe in this case to calculate the Applicant’s entitlements based on an allocation of her annual income across an entire financial year as if it was earned equally over each relevant fortnight [15].
- The Tribunal also found there were fortnights where the Applicant may have been underpaid as she spent some weeks on no pay and in treatment and recovery from very serious illnesses in the period under review [15].

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### How it was decided and key facts

**Outcome**

- The decision under review was set aside and the Tribunal remitted the decision back to Centrelink to recalculate the debt using payslip information.

**Key Findings**

- The debt amount was initially varied by the ARO on internal review.
- On review, the Tribunal found that the Applicant had not correctly declared all of the income she received from her two different employers. The Applicant received benefits she was not entitled to.
- Centrelink provided some payslip material in support of the raising of the debt, but it was incomplete.
- In regards to using income averaging, the Tribunal commented:

  Her earnings actually varied in the debt period, and there were some periods in which she did not have any earnings. Centrelink’s method of averaging her earnings was therefore not reflective of her actual fortnightly earnings throughout the relevant period. The tribunal considers that the debt will need to be recalculated, in line with the tribunal’s findings in relation to [the Applicant’s] income in the relevant period [21].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
The Applicant told the Tribunal that the debts did not make sense as the amounts reduced when he provided Centrelink.

The Tribunal commented:

**Outcome**

- The decision under review was set aside and substituted with the decision that there were three newstart allowance debts and that the third amount of $1,459.62 was reduced by $1,479.62 to $378.53.

**Key Findings**

- Centrelink raised following a data match with the ATO [6]. The Applicant told the Tribunal that the debts did not make sense as the amounts reduced when he provided Centrelink with payslips [21]. The Applicant was, however, unable to provide all payslips [20].
- The Tribunal scrutinised Centrelink’s calculations and in relation to the debt of $1,858.15 particularly found that:
  
  ...the assertion by the authorised review officer based on ATO advice that [the Applicant] earned $14,765 from Randstad (less tool allowance – amount not stated) in the period from 15 February 2012 to 21 March 2012 to be implausible. This would have meant that [the Applicant] earned an amount of approximately $2,953 per week over a five week period. There is no group certificate or other evidence from the ATO about this amount [29].

  ...that a debt calculation by Centrelink (pages 112 and 118 of the Tribunal papers) indicated that there was an overpayment during that 5-6 week period (15 February 2012 to 21 March 2012) of $493 per fortnight for two fortnights and $493.62 for one period, totalling an amount of $1,479.62. This was based on earnings in those three fortnights for [the Applicant] of approximately $3,000 to $6,000 per fortnight. The Tribunal finds these earnings amounts to be implausible [35].

  As a result of all of the Tribunal’s findings set out above the Tribunal finds that the debt amount of $1,858.15 should be reduced by an amount of $1,479.62 to an amount of $378.53 [36].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and the Tribunal remitted the decision back to Centrelink to recalculate the debt using payslip information.

**Key Findings**

- The Applicant was a recipient of the DSP during the period in question. Given his disabilities, his father was his representative, and was the person who had assisted the Applicant to report his earnings to Centrelink during the period.
- The Tribunal was not satisfied with the debt calculations provided by Centrelink, and concluded that income averaging was not appropriate in the circumstances.
- The Tribunal commented:
  
  Centrelink has calculated the debt by apportioning the total gross amount over the debt period. The apportionment method involves an approximation of earnings in each fortnight of a particular period and treats the person as earning a constant amount every day in a wage fortnight. As can be seen from the payslips provided to the Tribunal, [the Applicant’s] gross earnings varied [21].

  - Centrelink was directed to recalculate the debt, taking into account the Applicant’s actual fortnightly gross income.
  - The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
### How it was decided and key facts

**Outcome**
- The decision under review was affirmed.

**Key Findings**
- Centrelink raised the debt following a data match with ATO.
- An ARO affirmed the decision.
- The Applicant did not contest Centrelink’s calculation of the Applicant’s fortnightly income based on ATO information. The Tribunal noted that there was no other evidence to suggest that a fortnightly income other than Centrelink’s calculation should be preferred [15].
- The Tribunal examined Centrelink’s calculations and determined no error [17].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

### How it was decided and key facts

**Outcome**
- The decision under review was set aside and remitted to Centrelink for recalculation of the debt based on actual earnings.
- No 10% penalty was to be imposed.

**Key Findings**
- An ARO varied the debt amount on internal review.
- The Applicant worked for a number of employers.
- Not all payslips were available to the ARO on internal review.
- Centrelink applied averaging of income in lieu of pay slip information [16].
- The Tribunal was not satisfied the debts had been correctly calculated and remitted the decision for recalculation.

### How it was decided and key facts

**Outcome**
- The decision under review was set aside and remitted to Centrelink for recalculation of the debt.
- The debt was to be written off for a period of three months from the date of the decision.

**Key Findings**
- The Tribunal noted that Centrelink calculated the debt using income averaging which did not take into account fortnightly fluctuations of income [8].
- The Tribunal was satisfied that there was a debt but was uncertain about the quantum [9].
- The Tribunal found that the Applicant lacked the capacity to repay the debt and accordingly wrote off the debt for a period of three months [16].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
- The Tribunal found that the 10% penalty should not apply [25]-[26].
The Applicant provided the Tribunal with payslips and the Tribunal stated it ‘crosschecked these payslips with the net amounts deposited to [the Applicant’s] bank account and was satisfied that they were an accurate representation of her earnings over the period’ [8].

The Tribunal noted Centrelink’s recalculation of the overpayment based on the Applicant’s payslips reduced the debt by almost half, to an amount which was less than the Applicant’s mother had already repaid to Centrelink on her daughter’s behalf [24].

The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**Outcome**

The decision under review was set aside and remitted to Centrelink with directions that the debt be recalculated. Centrelink was directed not to apply the 10% penalty and that the outstanding balance of the debt was to be waived.

**Key Findings**

- Debt was originally calculated based on ATO data.
- The Tribunal found the Applicant reported his income incorrectly for some fortnights:
  
  The tribunal acknowledged that is difficult for casual employees with varying hours of work to report earnings accurately and noted the particular difficulties that [the Applicant] faced due to the requirement his employer imposed on him to postpone the submission his timesheets [21].

- The Applicant believed that his income should not be apportioned over 14 days because he didn’t work weekends and public holidays (application of s 1073B).

The Tribunal found discrepancies between the ATO-provided data and the Applicant’s payslips and stated:

...The reasons for the inconsistencies were not apparent from the payslips. However, a possible explanation is that not all of the payslips were made available to [the Applicant]. Having regard to the correlation between the payslip gross taxable salary amounts and the ATO-provided gross taxable salary figure the tribunal considered that the payslips were the best evidence that was available of the salary [the Applicant] received from [Employer] for the 2014/2015 financial year [14].

- The Tribunal undertook its own calculations using the Applicant’s payslips and found some differences to Centrelink’s calculations. It accordingly found that a recalculation of the debt would be required [15].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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### How it was decided and key facts

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<td>CTH.3761.0005.6863</td>
<td>T Bubutievski</td>
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### Outcome

- The decision under review was varied to reduce the debt owed in accordance with Centrelink’s recalculation, with any amount repaid in excess to be refunded by Centrelink.

### Key Findings

- The Tribunal noted that the debt had been calculated on the basis of an ‘average fortnightly earnings amount ... based on total earnings for [the Applicant] for the financial year’ as reported to the ATO by the Applicant’s Employer. The Tribunal noted the calculation was made in the absence of the Applicant’s payslips for the relevant period [7].
- The Applicant provided the Tribunal with payslips and the Tribunal stated it ‘crosschecked these payslips with the net amounts deposited to [the Applicant’s] bank account and was satisfied that they were an accurate representation of her earnings over the period’ [8].
- The Tribunal returned the matter to Centrelink for recalculation on the basis of the payslips provided and Centrelink subsequently recalculated the debt based on the Applicant’s ‘actual earnings’ [8].
- The Tribunal noted Centrelink’s recalculation of the overpayment based on the Applicant’s payslips reduced the debt by almost half, to an amount which was less than the Applicant’s mother had already repaid to Centrelink on her daughter’s behalf [24].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
How it was decided and key facts

Outcome

- The decision under review was affirmed.

Key Findings

- Centrelink received information from the ATO regarding the Applicant’s earnings from employment over the relevant period. Centrelink apportioned the income over the six-month period and identified an overpayment when compared with the earnings the Applicant declared during the period. Centrelink also imposed a 10% penalty [2].
- The Tribunal noted:
  The debt under review was calculated based on an averaged income figure rather than on actual fortnightly income figures. As there is no information available from the employer about what [the Applicant] was paid fortnight to fortnight, it is not possible to apply the actual earnings to each fortnight. Centrelink has taken the total amount paid to [the Applicant] by [employer] in the fortnight period 17 July 2014 to 23 January 2015, ($25,535), and divided it into 12 equal amounts of $1,871 for each full fortnight in that period (pro rata) [12].
  - The Tribunal stated in relation to income averaging:
  - There can be problems with averaging income earned over a number of months or a year, rather than applying the actual income earned each fortnight, if the income is variable, particularly if sometimes the income is over declared and sometimes under declared. However in [the Applicant] case, the available evidence shows a nett under declaration of income in the period under review [13].
- The Tribunal was satisfied that the ARO’s calculation of the debt was correct [14].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

How it was decided and key facts

Outcome

- The decision under review was set aside and substituted with the decision that a debt was owed but was to be waived.

Key Findings

- The Tribunal found that the Applicant’s earnings had not been fully taken into account in calculating her original rate of NSA [10].
- Centrelink apportioned the Applicant’s pay for the relevant fortnights based on summary income information used to calculate her original allowance. The Tribunal noted there was a discrepancy between the amount of gross income the Applicant earned for the period, as apportioned by Centrelink for the fortnight, and the amount declared to Centrelink at the time [11].
- The Tribunal found that special circumstances existed to justify a waiver of the debt.

How it was decided and key facts

Outcome

- The decisions under review (to raise a debt and apply a 10% penalty fee) were set aside and remitted to Centrelink for recalculation of the debt based on the Applicant’s payslips.
Key Findings

- A data match revealed a discrepancy between ATO data and the Applicant’s reported income [12].
- The Tribunal found that Centrelink had assumed the Applicant earned income for a number of periods for which payslip information confirmed he did not work. The Tribunal was therefore not satisfied that the debt had been calculated correctly [17]-[19].
- Apart from this last period of the debt, I find that Centrelink did not provide sufficient evidence so as to explain their calculations and why there is a debt in the fortnights where [the Applicant] does not appear to have earned any income (according to his pay slips). They have not done so in this case, despite being alerted to this issue in the request for further submissions [21].
- The Tribunal found that the 10% penalty should not apply [24]-[26].
- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with directions that:
  - there was no debt in respect of income support bonus payments;
  - payslips were to be obtained directly from the employer; and
  - all debts were to be recalculated attributing the earnings from particular employers to the respective fortnightly periods reflected on the payslips; and
  - earnings from other particular employers were to remain as currently attributed.

Key Findings

- The Tribunal noted the original debt was raised by Centrelink based on data matching and PAYG summaries from the ATO [2].
- The Tribunal was ‘satisfied that the fortnightly earnings of [the Applicant] have been attributed evenly over the financial year, when according to her oral evidence, they were earned largely over a significantly lesser period’ at [11].
- The Applicant submitted at hearing ‘that she attempted to access payslips from all of her previous employers however, she was only successful with [Employer]’ and that ‘it is likely she only worked for up to five months of the year.’ The Tribunal was not satisfied that the debt as calculated was correct. The Tribunal was also satisfied that there were periods where under-stating of declared income had occurred. [13].
- The Tribunal directed the Department to exercise its power to obtain pay information from Employer.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

- The decision under review was set aside and substituted with the decision that one half of the recalculated debt should be waived due to the existence of special circumstances.

Key Findings

- The Tribunal referenced Centrelink’s calculations which showed a discrepancy between declared gross earnings and the earned gross payments reflected in the Applicant’s ATO information [15].
- The Tribunal stated it was not satisfied that Centrelink had correctly calculated the debt because not all of the necessary information was available to it at the time, noting the Applicant had now provided details of monies paid into her bank.
account by one of her employers, some payslips, PAYG payment summaries, and a list of net payments into her bank
account relating to a different employer [19]-[20].

- The Tribunal directed Centrelink to use the above information to recalculate the debt [21].
- The Tribunal determined that one half of the recalculated be waived due to special circumstances [45].

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and substituted with a decision that there was no debt.

**Key Findings**

- The Tribunal was not satisfied that the debt had been calculated correctly as Centrelink had used ATO data to apportion
annual income rather than payslips provided by the Applicant [10]-[12].

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and substituted with the decision that the Applicant did not owe a debt for NSA
payments in respect of 2014/15.

**Key Findings**

- The Tribunal noted that in 2016 Centrelink undertook a data match with the ATO and concluded that the Applicant had
been overpaid Newstart Allowance in 2014/15.
- The Tribunal noted that the ARO reviewed and changed Centrelink's initial decision, finding that a debt was owed for a
precise period and no recovery fee should be imposed. The Tribunal noted that the change occurred because the ARO
recalculated the debt using information from the Applicant’s employers which showed actual dates worked and pay
received [5].
- The Tribunal noted that as no pay information could be obtained from one of the Applicant’s employers (the Applicant
had three employers in total over the relevant period), the ARO apportioned earnings from that particular employer
evenly across the financial year [10].
- Following provision of the Applicant’s tax return to the Tribunal, the Tribunal found that the Applicant had declared the
correct income to Centrelink. Accordingly, the Tribunal found there was no debt for this period or any other period [13].

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**How it was decided and key facts**

**Outcome**

- The decision under review was affirmed.

**Key Findings**

- Centrelink raised the debt following a data match with the ATO.
- The Applicant was invited to provide earnings information, which she accepted. The Applicant did not, however, provide
Centrelink with further information and the debt was calculated purely based on ATO information [6].
- The Applicant claimed that she was receiving income from her previous employer ‘in dribs and drabs’ and that she did
not declare a large portion of her income as it was paid in arrears [19]. The Tribunal noted that the Applicant was invited
to provide bank statements to verify this claim, however, she did not do so [19].
• The Tribunal found that the Applicant was further overpaid as she did not declare insurance payments from her superannuation fund [20]-[23].
• The Tribunal made findings about the Applicant’s overpayment on the basis of evidence from the ATO and Centrelink [28].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome
• The decision under review was set aside and remitted to Centrelink for recalculation of the debt.

Key Findings
• An ARO affirmed the debt amount.
• The Applicant had a large number of employers.
• Centrelink apportioned the Applicant’s income over the relevant financial years in lieu of payslip information.
• The Tribunal was not satisfied that the debt is correctly calculated and remits the decision to Centrelink for recalculation.
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome
• The decision under review was set aside and the matter was remitted to Centrelink for recalculation of the debt.
• Centrelink was directed to exercise its powers to obtain earnings information.

Key Findings
• The Tribunal found that it was clear that income averaging was used as the Department had assumed the Applicant was employed throughout the 2010/11 financial year [12].
• The Tribunal noted:
  ‘The evidence is that [the Applicant] was not employed for most of the relevant period. The amount of debt determined for [the Applicant] for the relevant period was based upon a rate of NSA that had been incorrectly calculated’ [13].
• The Tribunal further noted that payroll information needed to be obtained to determine the proper debt amount [14].
• The Tribunal noted the 10% penalty should not be applied.
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome
• The decision under review was set aside.
• The Tribunal was not satisfied that the Applicant had been overpaid YA in the amount as calculated by Centrelink.

Key Findings
The Tribunal noted that in arriving at the overpayment figure, Centrelink took the Applicant’s annual gross income from her various employers and averaged it across a period (in most instances, the relevant financial year).

With this averaged income, Centrelink had used a start or end date if it was known to it. For example, the earnings from [Employer] had been assessed from 21 March 2014 onwards. Where an end date for employment was not known, as was the case with [Employer], Centrelink had continued to assess income until the end of the financial year.

The Tribunal stated:

‘given the identical income figures used by Centrelink and the arbitrary periods for which income has been averaged across, it is likely that the income used to calculate [the Applicant’s] debt does not correspond with her actual earnings in given fortnights’ [12].

The Tribunal found that an accurate assessment of the Applicant’s entitlements required verification of her actual income during the fortnights in question. The Tribunal noted that Centrelink had far-reaching statutory powers that allow it to obtain income information from employers and that Centrelink had routinely used such powers in the past to verify the income of social security recipients.

The Tribunal directed Centrelink to request income information from the Applicant’s various employers, and once this information was obtained, to reassess the Applicant’s entitlement to youth allowance in light of her actual fortnightly income, rather than use average income figures.

The Tribunal also directed that Centrelink reconsider the issue of whether a 10% penalty should apply after details of the actual fortnightly income have been obtained.

The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

### How it was decided and key facts

#### Outcome

- The decision under review was set aside.
- The Tribunal was not satisfied with the amount calculated as the overpayment.

#### Key findings

- The Tribunal noted the debt was based on an averaging of the Applicant’s taxable income evenly throughout the year.
- The Tribunal found that the Applicant reported less income than she received and appears to have made an error when determining what amount should be reported during the leave period.
- The Tribunal noted it had difficulty understanding how the authorised review officer calculated the debt and it was not clear where the earnings figure in the Multical calculations came from.
- The Tribunal was satisfied that the debt in this case was partly due to incorrect reporting of income as the total amount declared as earnings by the Applicant did not equate to the gross amount received.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
and found that the Applicant had significantly under-declared his gross income [12].

- The Tribunal further noted that any possible effect of income averaging was lessened by the fact that the Applicant worked consistently, even if on casual terms. The Tribunal noted that Centrelink also may not have averaged small amounts which would have been in the Applicant’s favour. The Tribunal noted that the calculations have were checked thoroughly and were accurate [12].
- The Tribunal found that the debt could not be written off [16].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside.
- Centrelink was directed to raise and recover a NSA debt of $758.10 for the period from 17 July 2013 to 6 August 2013.
- Centrelink was directed to investigate whether the Applicant owed a debt for three specific fortights in 2014.

**Key Findings**

- The Tribunal noted that Centrelink raised a portion of the debt on the basis the Applicant earned certain amounts of income over various fortights, but the hearing papers did not include any evidence that she earned that income.
- Following the hearing, the Tribunal arranged for a request to be forwarded to Centrelink requesting evidence that she earned that income and failed to declare that income.
- The Tribunal noted that Centrelink responded by advising they have corrected the debt and it does not include the periods referred to as the customer did not earn any income during those periods.
- The Tribunal stated:

> ‘Centrelink appears to have submitted that its two inconsistent calculations of the overpayment are both correct. I am unable to reconcile those calculations and I consider them both to be unreliable’ [15].

- The Tribunal also stated that the evidence provided by Centrelink was in an ‘unsatisfactory state’ [17].
- The Tribunal found that despite the debt being ‘solely due’ to administrative error, it could not be waived on this basis as the Applicant could not be found to have received the payments in good faith [19].
- The Tribunal found that no special circumstances existed to justify a waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was affirmed.

**Key Findings**

- Centrelink raised the debt following a data match with the ATO [2]. The ARO recalculated the debt on the basis that one of the payment summaries provided by the ATO had been duplicated [3].
- The Tribunal found that in calculating the overpayment for the period from 1 July 2011 to 30 June 2012, Centrelink had apportioned the Applicant’s income within the periods nominated on the payment summaries [9].
- It noted that the ‘…period form 1 July 2010 to 30 June 2011 [was] still more problematic…’ because the Applicant was only granted newstart allowance from 7 December 2010 and thus the period prior to that was outside the debt period. The Tribunal determined that the only way to determine the Applicant’s income from 7 December 2010 was via payslips/bank records, which the Applicant did not have [10].
- The Tribunal ultimately determined that, for at least part of the period, the Applicant was overpaid as Centrelink was not aware of his full income [11].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
### How it was decided and key facts

#### Outcome
- The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the basis that the Applicant’s earnings in the 2013/14 financial year were as advised by the ATO.
- The Tribunal also directed the resulting debt remained recoverable.

#### Key Findings
- A debt was raised following a review of entitlement and data match with the ATO where it was discovered that not all of the Applicant’s earnings from employment had been considered to calculate his rate of age pension [1].
- The Tribunal stated:
  
  It appears that the two payslips [the Applicant] provided when he was first granted the age pension (in 2010), amounted to $1,218.28 per fortnight and Centrelink then maintained this income amount throughout the period under review [9].

- The Applicant’s annual income was averaged and apportioned over the Centrelink fortnightly pay periods [10].
- The Tribunal was not satisfied this was correct [14]. The Tribunal estimated there would still be an overpayment [14].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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### How it was decided and key facts

#### Outcome
- The decisions under review by the Tribunal were set aside and the Tribunal remitted the decisions back to Centrelink to recalculate the debt using correct payslip information.

#### Key Findings
- The ARO varied the debt slightly on internal review. The Tribunal subsequently set aside this decision and remitted the decision back to Centrelink for recalculation, given the calculations were not based on the Applicants’ actual earnings each fortnight.
- The Tribunal commented:
  
  It is evident that in calculating the debt, the Department applied averaging of income received by [the Applicant] from the various employers through the 2012/13 and 2013/14 financial years. The effect has been that income was incorrectly attributed throughout the relevant period because [the Applicant’s] actual income from employment was not apportioned as required by section 1073B of the Act [12].

  In such circumstances the Tribunal is satisfied the debts under review are not correct and need to be recalculated using payroll records of actual earnings for each fortnight during the relevant period [13].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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### How it was decided and key facts

#### Outcome
- The decision under review was set aside and remitted to Centrelink for recalculation of the debt using payslip information.
**Key Findings**

- The ARO affirmed the decision on internal review.
- The Applicant said he had tried to get payslip information so that he could report his income, but was unsuccessful. The Applicant was aware that he had not declared his income accurately, and so received social security benefits that he was not entitled to. There was a basis for the debt.
- While the ARO had used income averaging to calculate the debt, the Tribunal was not satisfied that this was an appropriate method of calculation, as it did not take into account the Applicant’s actual fortnightly earnings.
- The Tribunal further found:

  ...Centrelink has averaged income from each employer over the period covered by each respective PAYG Summary. This means that [the Applicant’s] has been attributed to have income at a constant daily rate for each employer. This totally disregards [the Applicant’s] evidence about the variability of his employment. [11]

  ...Centrelink must seek more detailed information from the relevant employers and recalculate the overpayment based on [the Applicant’s] actual pattern of earnings. The methodology it has used to calculate the overpayment is a methodology of last resort, and could only be used if detailed information was not available. [13]

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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### How it was decided and key facts

**Outcome**

- The decision under review was set aside and the matter remitted to the Chief Executive Centrelink for recalculation of the debt.
- Centrelink was directed to obtain the Applicant’s payroll information from her employers, re-calculate her debt on the basis of that information and make a fresh decision as to whether or not the Applicant had a newstart allowance debt that was required to be repaid.

**Key Findings**

- The Tribunal noted that Centrelink determined the Applicant owed a debt on the basis of a data match with the ATO. It further noted that Centrelink appeared to have calculated the debt by averaging the Applicant’s earnings from each employer over the relevant period and was not satisfied that this was correct [17].
- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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### How it was decided and key facts

**Outcome**

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt.

**Key Findings**

- An ARO affirmed the debt amount.
- The Tribunal found that the Applicant did not always accurately report her income.
- Centrelink used income averaging in lieu of payslips. The Tribunal was not satisfied the debt had been correctly calculated.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
The decision under review was set aside.

Key findings
- Centrelink obtained the Applicant’s income through a data match with the Australian Taxation Office and averaged the income he received over a certain period on a weekly basis and applied this weekly average to a separate period, thereby calculating the debt.
- The Tribunal has reviewed the time and wages records and has come to the conclusion that the averaging of the Applicant’s income over the relevant period would not provide an accurate view of his income on a weekly basis for the purpose of the NSA income test.
- The Tribunal concluded that the overpayment calculation would need to be recalculated on the basis of the weekly income information contained in the actual payroll report, which the Tribunal requested that Centrelink obtain from the Applicant’s Employer.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

The decision under review was set aside and remitted to Centrelink for recalculation of the debt.

Key Findings
- A 10% penalty was imposed on the debt.
- An ARO affirmed the debt amount.
- Centrelink used income averaging to calculate the debt in lieu of actual payroll information.
- The Tribunal directed Centrelink, with the assistance of the Applicant to recalculate the debt.

The decision under review was set aside.

Key findings
- The Tribunal noted that the overpayment was calculated by Centrelink on the basis that the gross annual income from the Applicant’s two employers was apportioned evenly over the FY.
- The Tribunal stated that the correct way to determine a person’s entitlement to youth allowance in accordance with the Rate Calculator is to have regard to the person’s ordinary income on a fortnightly basis in the relevant period. The Tribunal noted ‘the result can be very different if the gross earnings are apportioned equally over a financial year, as Centrelink has done in this case’ [13].
- The Tribunal stated that as Centrelink did not obtain details of the Applicant’s gross income earned each fortnight, the
Tribunal is not satisfied based on the Applicant’s oral evidence that apportioning earnings over a financial year results in an accurate determination of his entitlement to youth allowance in the relevant period [13].

- The Tribunal was not satisfied that the overpayment was correctly calculated [13].

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink with the direction that the debt be reinvestigated and recalculated having regard to the Tribunal’s reasons.

**Key Findings**

- The decision concerned two debts. Debt 1 related to undisclosed weekly compensation and Debt 2 to understated earnings [10].
- The Tribunal found, in relation to Centrelink’s calculations, that:
  
  Yet another issue with Centrelink’s calculations is that it has apportioned [the Applicant’s] [Employer] earnings over the entire 2010/11 tax year. However, [the Applicant] said she did not start work for [Employer] until February 2011 at the earliest [23].

- The Tribunal found that Debts 1 and 2 were wrongly calculated:

  Regarding [Employer], fortnightly earnings details should be obtained. [The Applicant] herself may have retained her pay advices but, if not, the details will need to be obtained from [Employer]. If neither option is possible, the better approach will be to apportion [the Applicant’s] earnings across the actual periods worked for this employer [26].

- The extent of any overpayment of parenting payment was unclear and the debt should have been recalculated [28].
- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was affirmed.

**Key Findings**

- The matter concerned whether the Applicant received amounts of NSA in excess of her entitlements.
- The Tribunal reported that the Applicant noted evidence at folio 121 of a data matching record which indicated she was paid $5,390.00 over the relevant period. The Tribunal stated: ‘I discussed Centrelink’s apportionment process, noting in particular situations where the data match information is the only information about a person’s earnings’ [9].
- The Tribunal ‘did not identify any errors in Centrelink’s calculation of the quantum of [the Applicant’s] debt’ [15].
- In relation to the 10% penalty, the Tribunal was satisfied that the Applicant recklessly provided false or misleading information to justify the 10% penalty being added to the debt [17].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
How it was decided and key facts

Outcome
- The decision under review was set aside.
- The matter was remitted to the Secretary for reconsideration with the Secretary to obtain earnings information for the Applicant for the 2010/11 financial year.
- The debt was to be recalculated by correctly apportioning the Applicant’s earnings in each instalment period.

Key Findings
- The Tribunal found that the amount of debt determined for the Applicant for the relevant period was based upon a rate of carer payment that had been incorrectly calculated for the purposes of s 1064 of the Act because averaging of income was used rather than the application of s 1073B to actual periodic income. In such circumstances, the Tribunal was satisfied the debt under review was not correct and needed to be recalculated [9].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

How it was decided and key facts

Outcome
- The decision under review was set aside and substituted with the decision that the matter be remitted to the Chief Executive Centrelink to obtain further evidence about the Applicant’s earnings and recalculate the overpayment.
- Any resulting overpayment was to be considered a recoverable debt.

Key Findings
- The Tribunal found that apportioning the earnings was likely to produce an inaccurate debt calculation as the Applicant’s earnings were ‘lumpy’ [16].
- The Tribunal found that Centrelink should obtain information from these employers about the actual amounts paid in each reporting period and recalculate the overpayment, with the resulting overpayment to be a debt to the Commonwealth pursuant to s 1223 of the Act [16].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

How it was decided and key facts

Outcome
- The decision under review was set aside and remitted to the Chief Executive Centrelink for reconsideration in accordance with the direction that Centrelink obtain further information and reconsider the debt.

Key Findings
- The Tribunal observed that Centrelink appeared to have averaged financial information without attempting to obtain fortnightly pay information, payslips, or banking records. The documents supplied to the Tribunal revealed no obvious source for the pay information it applied [5].
- The Tribunal noted there was subsequently better evidence available (the Applicant’s fortnightly payslips) and stated: There is now better evidence available. The matter will be remitted to Centrelink with a direction that it reconsider and recalculate any debt by seeking from [the Applicant] his payslips; although [the Applicant] indicated he has all relevant...
payslips, to remove any doubt, if it transpires there is any missing information, the Tribunal will direct that Centrelink seek the information from [the Applicant’s] employer, and failing that, seek from [the Applicant] his banking records. If [the Applicant] is unable to supply those records, Centrelink should use its information gathering powers to request such information directly from [the Applicant’s] bank [6].

- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and substituted with the decision that the Applicant’s debt be recalculated, taking into account the earnings set out at [40] in the decision, with the recalculated debt to be recovered in full.

**Key Findings**

- The Tribunal observed that Centrelink had recalculated the Applicant’s entitlements in the debt period by averaging out incomes for those employers from whom no payroll records were available.
- The Tribunal agreed with the Applicant that averaging his gross income from one employer over the debt period overstated his earnings for the purpose of calculating the Newstart allowance debt.
- The Tribunal agreed that Centrelink officers made a decision based on the best available evidence.
- The Tribunal noted that, unless Centrelink is able to obtain more accurate information, the amounts deposited into the Applicant’s bank account should be used.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside.
- The Applicant’s entitlement to newstart allowance over a certain period was to be recalculated on the basis of the apportioned income set out in the table at [13].

**Key Findings**

- The Tribunal considered the details of the Applicant’s earnings throughout the debt period and apportioned her income on the basis that she worked weekdays during school terms and did not work on public holidays or pupil free days.
- The Tribunal concluded that the amount of overpayment must be recalculated on the basis of the apportioned income.
- The Tribunal found that only the overpayment for the period between 6 July 2010 to 19 July could be waived due to sole administrative error.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside.
- The matter was remitted to the Chief Executive Centrelink for reconsideration and recalculation, with the recalculated debt to remain recoverable.
Key Findings

- The Tribunal noted that Centrelink apportioned the Applicant’s earnings from one of her employers by averaging the total amount reported to the ATO for the period identified by the Employer in the PAYG summary.
- Whilst the Tribunal recognised there was a discrepancy between the total amount apparently reported to the ATO and the amounts represented by the payslips plus the grossed-up net payments from her bank account, the Tribunal preferred the specific evidence from the payslips and bank account regarding the Applicant’s earnings for the purposes of calculating her fortnightly rate of NSA.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the basis of the Tribunal’s findings regarding the Applicant’s income.

Key Findings

- The Tribunal noted that, according to data match information provided to Centrelink by the ATO, the Applicant worked with a particular employer over a period of time and had gross earnings of a certain amount. The Applicant disputed he had this amount of gross earnings and told the Tribunal the ‘disputed debt was over three years ago and it was difficult for him to get complete payslips’ [16], [18].
- The Applicant did however source his final payslip which listed the year-to-date ordinary earnings and overtime, which the Applicant accepted as reflecting the ‘best available evidence’ of the Applicant’s gross year to date earnings [18].
- The Tribunal found that Centrelink’s method of averaging earnings was ‘not reflective of his actual fortnightly earnings throughout the relevant period’ and would need to be recalculated in line with the Tribunal’s findings in relation to the Applicant’s income in the relevant period [35].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

- The decision under review was affirmed.

Key Findings

- The Applicant received four NSA debts between 2010 and 2014.
- Centrelink obtained information from the ATO concerning the Applicant’s earnings during particular financial years or parts of financial years and, in the absence of any further evidence on point, Centrelink assumed that she earned her wages at a constant daily rate throughout the relevant period [4]. Centrelink recalculated her rates of NSA accordingly.
- The Tribunal explained to the Applicant that it could remit the matter with directions to issue notices to employers and recalculate the debt but that it could increase or decrease and stated:

  I also alerted her to the fact that Centrelink had not imposed a 10% penalty in respect of any part of the overpayments (which was appropriate given the imprecise nature of the evidence that it used to calculate the overpayments), but if Centrelink was provided with more precise information, such as payroll records, it would have to reconsider whether to impose a penalty: section 122BB of the Act [5].

- The Tribunal accepted the debt calculations as correct [5].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
The Tribunal stated that:

### How it was decided and key facts

**Outcome**

- The decision under review was set aside.
- The matter was remitted to Centrelink for recalculation with directions that:
  - No debt or debt component is able to be founded on extrapolations of fortnightly earnings whether from ATO records or employer statements of unapportioned total earnings for a period of employment greater than a fortnight;
  - The earnings components of any recalculated debts as may be raised must be based on and confined to any payslip or bank records for precise fortnights obtainable in the exercise of statutory powers to do so.

**Key Findings**

- The Tribunal found that, as Centrelink had calculated the debt on the basis of averages derived from the ATO or unapportioned figures supplied by the Applicant and had not utilised its powers to obtain fortnightly earnings figures, there was insufficient evidence to establish an overpayment debt or its size [6].
- The Tribunal stated that, having found that the Applicant’s income fluctuated from fortnight to fortnight, an extrapolation of a fortnightly rate achieved by dividing ATO annual or other income figures for a stated period by the number of fortnights in that period, failed to reach the required level of ‘satisfaction’ the Tribunal is required to achieve about the precise income earned in each individual fortnight, before being able to determine a debt in the quantum suggested by Centrelink [18].
- The Tribunal stated that:
  - while such ATO information may more than justify Centrelink in exercising its powers to require employers (or banks) to supply fortnightly payment records, it is insufficient to establish a precise debt quantum as is required under the application of the Full Federal Court in McDonald and the High Court’s ‘Briginshaw principle’ [19].
- The Tribunal further stated:
  - I do not accept that the key changes introduced by Centrelink’s online compliance intervention (OCI) for raising and recovering debts (as outlined in a recent Ombudsman’s report) absolves Centrelink from its legal obligation to obtain sufficient information to found a debt in the event that its ‘first instance’ contact with the recipient is unable to earth the essential information about actual fortnightly earnings [23].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

The decision under review was set aside and substituted with the decision that the Applicant was overpaid NSA in a different amount, with that debt to be recoverable.

**Key Findings**

- The Tribunal noted that a data match with the ATO indicated that the Applicant had declared less earnings than she had received.
- The Tribunal found the Applicant should not have had any earnings apportioned over a precise period, finding those earnings should have been recorded in a previous period when they were earned. The Tribunal accordingly found the debt calculations were incorrect over that period.
How it was decided and key facts

Outcome

- The decision under review was set aside and was remitted back to Centrelink for recalculation.

Key Findings

- An ARO varied the debt on internal review.
- The Applicant declared net income instead of gross income.
- Centrelink did not calculate the debt based on the Applicant’s actual fortnightly earnings. The Tribunal could not be satisfied that the debt amount was correct. The Tribunal stated:

  Centrelink did not obtain details of [the Applicant]’s gross income earned each fortnight and the Tribunal is not satisfied based on [the Applicant]’s oral evidence that apportioning earnings over a financial year results in an accurate determination of his entitlement to newstart allowance in the relevant period. The Tribunal was not satisfied that the overpayment was correctly calculated [14].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

How it was decided and key facts

Outcome

- The decision under review was set aside.
- The matter was sent back to the Chief Executive Centrelink for reconsideration and recalculation of the debt, with the resulting debt to be recoverable.

Key Findings

- The Tribunal observed that, by using the taxable income contained in ATO records, Centrelink calculated a debt by apportioning the respective earnings equally over the periods of employment.
- The Tribunal noted that the authorised review officer did not refer to s 1073B of the Act in coming to the conclusion that a debt could arise from this method and stated that '[a]pportioning] earnings in that way is contrary to the provisions of that section and the Act supplies no alternative method such as that assumed by the authorised review officer’ [9].
- The Tribunal stated the apportionment had ‘produced artificial and arbitrary results’ [9].
- The Tribunal was satisfied that the Applicant had a debt, but was not satisfied that it has been properly calculated in accordance with the provisions of the Act, noting a correct calculation required actual information about the Applicant’s earnings that could be obtained only from his former employers [12].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
• The Tribunal was satisfied that, on the basis of an examination of further documents received from the Applicant’s employers setting out her fortnightly pays, Centrelink’s calculation of the Applicant’s income during the relevant periods and, particularly, the allocation of the income to particular fortnights was incorrect.

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the basis of the Applicant’s recently supplied payslip information.

**Key Findings**

• The Tribunal noted that, on 26 November 2015, following receipt of information about the Applicant’s annual employment income from the ATO, Centrelink decided to raise and recover a (“robo”) debt of youth allowance. According to Centrelink, the Applicant had not fully disclosed her casual earnings from her Employer [1].

• At the time when an ARO affirmed recovery of the debt, fortnightly income information was not available. Instead, in accordance with its usual procedures in the absence of better evidence, Centrelink averaged the Applicant’s yearly income over the alleged debt period. Following the Applicant’s application to the Tribunal, the Applicant’s representative (her mother) provided the Tribunal with the Applicant’s weekly payslips from her Employer [2].

• The Tribunal stated that, as new evidence not available to previous decisions was now available, the appropriate course was to remit the matter back to Centrelink to recalculate the debt on the basis of the Applicant’s payslip information [4].

• The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside.

• The Tribunal directed that the matter be sent back to Centrelink for re-determination in light of directions that:
  a) No debt or debt component could be founded on extrapolations of fortnightly earnings whether from Australian Taxation Office records or employer statements of (unapportioned) total earnings for a period of employment greater than a fortnight;
  b) The earnings components of any recalculated debts as may be raised must have been based on and confined to any payslip (or back-calculations of gross earnings from bank records) for precise fortnights obtainable in the exercise of statutory powers to do so (if set in train);
  c) Debt amounts (if any) as so varied were not recoverable debts (due to waiver); and
  d) Any monies over-recovered were to be repaid.

**The Parties’ Submissions**

• The Tribunal noted that the Applicant was of the view she should not owe any debts because she correctly advised Centrelink about all employment and earnings.

• The Tribunal noted that Centrelink disagreed with this view because the Applicant could not supply payslips, and also concluded that recovery of the debt amounts is not to be waived due to any Centrelink error or special circumstances.

**Key Findings**

• The Tribunal found that across the two alleged debt periods the Applicant was engaged in episodic or ongoing work with six different employers, of varying duration and employment conditions.

• As Centrelink had calculated the debt on the basis of averages derived from the ATO, and had not utilised its powers to obtain fortnightly earnings figures, the Tribunal found there was insufficient evidence to establish an overpayment debt or its size.
- The Tribunal found that any overpayment as may be found is to be waived due to special circumstances.
- The Tribunal stated:

> Because I have found that [the Applicant’s] income fluctuated from fortnight to fortnight I find that extrapolation of a fortnightly rate achieved by dividing ATO annual or other income figures for a stated period by the number of fortights in that period fails to reach the required level of ‘satisfaction’ I am required to achieve about the precise income earned in each individual fortnight, before being able to determine a debt in the quantum suggested by Centrelink [14].

- The Tribunal further stated:

> [W]hile such ATO information more than justifies Centrelink in exercising its powers to require employers (or banks) to supply fortnightly payment records, it is insufficient to establish a precise debt quantum as is required under the application of the Full Federal Court in McDonald and the High Court’s ‘Briginshaw principle’ [15].

- The Tribunal found the overpayment ‘methodology’ – involving extrapolation of ATO employment income information over a period, divided to produce an average fortnightly, and then applied to NSA payment periods to raise a debt – at best raised ‘no more than the sufficient doubt about the accuracy of past payments as to warrant the exercise of powers of enquiry held by Centrelink’. The Tribunal noted ‘[i]t is too uncertain, and too slight a basis to satisfy the Briginshaw standard in a fortnightly rate debt matter such as the present’ [44].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside.
- The matter was sent back to the Chief Executive Centrelink for reconsideration in accordance with directions that the rate of newstart allowance be recalculated, with the resultant debt to be recoverable.

**Key Findings**

- The Tribunal stated that, in calculating any overpayment, earnings were to be allocated to the relevant fortnight and not apportioned over the debt period [23].
- The Tribunal observed that the Department allocated a particular payment across a certain period, when the Tribunal found the payment represented earnings for a particular fortnight.
- The Tribunal was satisfied that the Applicant under-declared her income during the debt period, and by application of s 1223 of the debt, that overpayment to be calculated by the Department would be a debt due to the Commonwealth [32].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside.
- The matter was remitted to Centrelink for redetermination with directions that:
  a) No debt or debt component could be founded on extrapolations of fortnightly earnings whether from ATO records or employer statements of (unapportioned) total earnings for a period of employment greater than a fortnight;
  b) The earnings components of any recalculated debts as may be raised must have be based on and confined to any pay slip (or back-calculations of gross earnings from bank records) for precise fortights obtainable from the Applicant or in the exercise of statutory powers to do so;
c) Debt amounts (if any) as so varied were recoverable debts (not able to be waived); but otherwise
d) Any monies over-recovered were to be repaid.

Key Findings

- The Tribunal found that during the alleged debt periods the Applicant was engaged in episodic or ongoing work with eight different employers of varying duration and employment conditions. As Centrelink had calculated the debt on the basis of averages derived from the ATO, and had not utilised its powers to obtain fortnightly earnings figures, there was insufficient evidence to establish an overpayment debt or its size [6].
- The Tribunal noted the key points the Applicant asked the Tribunal to accept (and which were accepted) were:
  a) That Centrelink incorrectly assumed that all ‘end dates of employment’ as advised by employers to the ATO were accurate representations of the actual end date of that employment.
  b) That Centrelink was wrong to claim that the Applicant’s presumed earnings involved overlapping receipt of both actual earnings and NSA payments, when after-tax earnings records showed otherwise.
  c) That Centrelink was not correct in assuming that the Applicant’s earnings were either from ongoing employment (it was often intermittent in character) or that the amount of fortnightly earnings was a constant figure (they fluctuated) [11].
- The Tribunal found that the extrapolation of a fortnightly rate achieved by dividing ATO annual or other income figures for a stated period by the number of fortnights failed to achieve the level of ‘satisfaction’ required to be reached in relation to the precise income earned in each individual fortnight, before being able to determine a debt in the quantum suggested by Centrelink [14].
- The Tribunal reasoned that, while such ATO information more than justified Centrelink exercising its powers to require employers (or banks) to supply fortnightly payment records, it was insufficient to establish a precise debt quantum as required under the application of the Full Federal Court decision in McDonald and the High Court’s ‘Briginshaw principle’ [15].
- The Tribunal did not accept that the key changes introduced by Centrelink’s OCI for raising and recovering debts absolved Centrelink from its legal obligation to obtain sufficient information to found a debt in the event that its ‘first instance’ contact with the recipient is unable to unearth the essential information about actual fortnightly earnings.
- The Tribunal stated that the overpayment ‘methodology’ is ‘too uncertain, and too slight a basis to satisfy the Briginshaw standard in a fortnightly rate debt matter’ [43]. It further stated that ‘within the terms of McDonald... the failure to establish the overpayment leads to the default of no debt’ [45].
- The Tribunal noted that Centrelink relied on a methodology which was incapable, other than in rare instances of unchanging fortnightly income, of addressing the architecture of fortnightly rate payments [40].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

- The decision under review was affirmed.

Key Findings

- The decision under review for the Tribunal involved determining whether the Applicant was overpaid NSA [1].
- The Tribunal noted ‘the hearing papers include data match information from the Australian Taxation Office (ATO). This data shows that [the Applicant] was paid by a range of different employers and organisations over the debt period’ [13].
- The Tribunal stated that Centrelink had ‘obtained detailed earnings information wherever possible from the multiple employers who engaged [the Applicant] from time to time. Her earnings were erratic and variable’ and ‘some averaging of income has been necessary, in the absence of detailed payslip information’ [19].
- The Tribunal found the Applicant ‘significantly under-reported her income; she did make a report in most fortnights, but on most occasions inaccurately reported zero earnings’ [27].
- The Tribunal found the 10% penalty fee applied [29].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
How it was decided and key facts

Outcome

The decision under review was affirmed.

Key Findings

- The Applicant assumed that by declaring her income for FTBs, Centrelink would also take these into account for her fortnightly parenting payments. Given this was not the case, the Applicant received benefits she was not entitled to and a debt was raised.
- The Tribunal stated:

  [the Applicant] told the tribunal that she thought that by providing estimates each year for the purpose of determining her FTB entitlements, she was meeting the reporting requirements for her parenting payment. She believed that her annualised income estimates for FTB were then also used to assess and determine her fortnightly rate of parenting payment [13].

  In calculating the debt, Centrelink has used the information from the ATO to recalculate [the Applicant’s] rate of parenting payment. The method used by Centrelink was to evenly allocate the income earned from each employer across the period for which she was declared to work for that employer [15].

  In the absence of more detailed evidence from [the Applicant] regarding the income earned during this period, the best information available to the tribunal is contained in the PAYG payment summaries. The tribunal therefore accepts Centrelink’s apportionment of income sourced from the ATO as an acceptable estimate of income earned over this period and is satisfied that the correct apportionment was used and the overpayment is correctly calculated [18].

- The Tribunal was satisfied that the Applicant did not correctly report her income, and owed a debt.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

How it was decided and key facts

Outcome

- The decision under review was affirmed.

Key Findings

- The Tribunal accepted the ATO data in relation to the Applicant’s earnings and noted that Centrelink apportioned the Applicant’s income throughout her employment period. The Applicant did not have payslips for the period [15].
- The Tribunal noted that the ARO provided the Applicant with an opportunity to provide information that evidencing the fact that the income was earned during periods where she was not in receipt of newstart allowance, however, the Applicant declined to do so. Accordingly, the ARO relied on ATO information [16].
- The Tribunal accepted Centrelink’s calculations and was unable to find that the Applicant correctly declared her income [17]-[19].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
How it was decided and key facts

Outcome

- The decision under review was affirmed.

Key Findings

- Centrelink raised a debt on the basis that the correct amount of the Applicant’s income from employment had not been taken into account in setting her rate of parenting payment [3].
- The Tribunal found ‘that there were a number of small discrepancies between the income [the Applicant] earned and the amount she declared’ [14].
- The Tribunal stated
  
  The tribunal notes that in calculating the debt, the Department has averaged [the Applicant’s] income from [Employer] over the period it was earned. Income should be attributed to the instalment fortnight in which it is actually earned; however as there was no information before the Department or the tribunal which shows that income on a weekly or fortnightly basis (e.g. pay advices) the tribunal accepts that averaging is the appropriate way of attributing the income to the period it was earned. [15]

- The Tribunal found that the Applicant was overpaid [16].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with directions that Centrelink reconsider the debts once Centrelink obtained fortnightly pay information from the Applicant’s employers, and should that material be unavailable, Centrelink make reasonable efforts to obtain the Applicant’s banking records.

Key Findings

- The Tribunal observed that, ‘like “robo debts”, Centrelink had taken data-matched Australian Taxation Office (ATO) information and averaged it over the purported work period’. The Tribunal noted that, of all the employers, the materials only contained fortnightly pay information from one particular employer and averages based on the limited information transmitted to Centrelink from ATO records were applied for the Applicant’s four other employers [4].
- The Tribunal was not satisfied that the quantum of the debts was accurate in the absence of better evidence and directed that Centrelink obtain from the Applicant’s alleged employers more detailed weekly or fortnightly pay information. The Tribunal noted that, should that material be unavailable, Centrelink was directed to make reasonable efforts to obtain the Applicant’s banking records to “gross up” sums paid to the Applicant’s account [5].
- The Tribunal did not consider whether circumstances existed to justify a write off or waiver of the debt.
AAT Review Number DOC ID Member Date
2017/M112011 CTH.3761.0004.0701 A Schiwy 18 September 2017

How it was decided and key facts

Outcome
- The decision under review was affirmed.

Key Findings
- Centrelink originally calculated the debt based on PAYG information obtained from the ATO, however, recalculated the debt based on payslip information from three of the Applicant’s employers [13].
- No payslips were provided for two of the Applicant’s employers and the payments were averaged over two reporting periods each [14].
- As the Applicant did not provide any further information, the Tribunal was satisfied with the calculations [15].
- As the Applicant was repaying the debt at $50 per fortnight, the Tribunal found the debt could not be written off [18].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

AAT Review Number DOC ID Member Date
2017/M109711 CTH.0032.0002.0402 N Campbell 19 September 2017

How it was decided and key facts

Outcome
- The decision under review was set aside.
- The matter was sent back to the Chief Executive Centrelink for reconsideration in accordance with the direction that the Applicant’s entitlement to NSA be recalculated in light of the Employment Declaration received from the Applicant’s former employer, with any recalculated debt to be recovered.

Key Findings
- At an earlier hearing the Tribunal decided to defer making a decision to request that Centrelink obtain from the Applicant’s former employer his time and wages records for the relevant period.
- The Tribunal noted that Centrelink initially obtained, through a data match with the ATO, the Applicant’s gross income for the 2011/2012 FY and averaged this amount over the financial year.
- The ARO amended the amount of the debt on the basis of the Applicant’s reported income in a set period and then averaged the remainder of the income, which Centrelink stated had not been reported, over the full financial year.
- The Tribunal was not satisfied that the averaging of income over the whole FY would accurately lead to the correct calculation of the Applicant’s entitlement to NSA over the relevant period, and hence deferred making a decision until the former employer’s time and wages records were received.
- The Tribunal was satisfied from the Employment Declaration provided by the Applicant’s former employer that the averaging of the Applicant’s income over the period of employment would not fairly reflect the income earnt in each fortnight [15].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

AAT Review Number DOC ID Member Date
2017/M111430 CTH.3039.0024.5334 N Campbell 25 September 2017

How it was decided and key facts

Outcome
- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with the direction that the Applicant’s entitlement to parenting payment in the relevant periods be recalculated pursuant to income details provided by, or to be provided by, her employers. Any recalculated debt is to be recoverable.
Key Findings

The Tribunal noted that Centrelink had initially obtained, via a data match with the ATO, the Applicant’s gross income for the relevant periods and averaged this income over these periods [12].

Following the provision of payslips by the Applicant, the ARO amended the amounts of the debts and, where payslips were not provided, the ARO averaged the income over the remaining periods as reported on the data matches [12].

The Tribunal was not satisfied that the averaging of income over periods when payslips were not provided by the Applicant accurately reflected the Applicant’s income [15].

The Tribunal noted it deferred making a decision to request Centrelink to obtain the Applicant’s wage records from her relevant employers [7].

As at 22 September 2017, the Tribunal had received a pay history report from one of the Applicant’s employers, but no pay records had been received from two other employers [8].

The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

The decision under review was set aside and the matter was remitted to Centrelink for reconsideration in accordance with the direction that the debt be recalculated using information about the Applicant’s income in the debt period contained in her bank account statements.

Key Findings

The Tribunal noted that, following a data matching exercise with the ATO, a Centrelink Officer raised three separate debts of YA [2].

The Applicant subsequently provided bank account statements for much, but not all, of the debt period [4].

The Applicant was unable to obtain payslips as the owners of the businesses she worked for had moved offshore and the businesses no longer operate [12].

The Applicant was satisfied there was an overpayment but was not satisfied the debt had been correctly calculated. The Tribunal found the appropriate course was to remit the matter back to Centrelink for reconsideration in accordance with the direction that the debt be recalculated using the Applicant’s bank account details [13]-[14].

The Tribunal noted it would be in the Applicant’s interests to provide her bank account statements for any of the debt period not already provided [14].

The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

The decisions under review were set aside.

The matter was sent back to the Chief Executive Centrelink for reconsideration in accordance with directions that there was a debt overpaid to the Applicant, that the amount of the debt is to be recalculated, that recovery of the outstanding balance of the debt from a particular period is waived, and that a penalty of 10% is not to be applied to the debt once recalculated.

Key Findings

The Tribunal noted that in its calculations Centrelink applied ATO-advised earnings across the relevant Centrelink instalment periods, except for a period of employment where payslips were available to Centrelink.

The Applicant supplied documents to the Tribunal which included payslips from all of her employers during the period under review. These were not previously provided to Centrelink.
The Tribunal accepted that the gross earnings shown in the payslips accurately reflected the Applicant’s earnings, noting the payslip information was the best evidence available of what the Applicant earned during the period under review and it should be applied in determining the overpayment.

The Tribunal found that special circumstances existed to justify a waiver of the remainder of the debt for the period between 17 November 2014 to 24 June 2015.

The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt.

The Tribunal found that the 10% penalty should not apply.

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How it was decided and key facts

Outcome

The decision under review was set aside and substituted with the decision that the Applicant did not have a debt for the period under review.

Key Findings

The Tribunal observed that, in calculating the overpayment, Centrelink apportioned an average income figure from each of the Applicant’s employers across the relevant fortnights.

The Tribunal noted that whilst the Applicant had consistently maintained throughout the review process that average income figures used by Centrelink did not reflect his actual income for the fortnights in question, Centrelink had declined to change its decision in the absence of corroborating evidence [5].

The Applicant had since provided the Tribunal with copies of his bank statements and submitted at the hearing that these bank statements corroborated his assertion that the averaged income figures used by Centrelink were incorrect.

Having reviewed the bank statements, the Tribunal accepted the Applicant’s submission.

The Tribunal was satisfied that the averaged income figures used by Centrelink in determining that the Applicant was overpaid were incorrect [8].

Given the Applicant declared income for all of the fortnights he actually worked and the total income he declared was more than he earned from both his employers, the Tribunal concluded there is likely to have been no overpayment. It followed that the Applicant did not have a debt for that period [9].

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How it was decided and key facts

Outcome

The decision under review was set aside.

The matter was sent back to the Chief Executive Centrelink for reconsideration in accordance with directions that:

a) Centrelink use its information gathering powers under the SSA to obtain payroll information from the Applicant’s employers for a particular period;

b) Following receipt of that material, Centrelink undertake a re-calculation to determine if the Applicant was paid more than she was entitled to over the relevant period; and

c) Having regard to that re-calculation, Centrelink to make a fresh decision as to whether or not the Applicant has a NSA debt.

Key Findings

The Tribunal noted that the information upon which Centrelink had based its decision to raise and seek to recover a NSA debt was obtained through a data match with the ATO. Initially, Centrelink calculated the debt by averaging the Applicant’s earnings from each employer over the period Centrelink asserted that they related to.

Following the Applicant providing Centrelink with payslips and other evidence, the assessment of the Applicant’s income from various employers had been adjusted and the amount of the debt amended. However, the earnings from the employers without payslips were being determined by averaging the Applicant’s earnings from those employers over the period Centrelink asserted they related to.
• The Tribunal noted the Applicant:

• The Tribunal decided to set aside the decision under review, on the basis that the amount of the debt calculated by Centrelink could not, on the balance of probabilities, be correct.

• The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with the direction to recalculate two periods of entitlement: one where the Applicant did not work and the other where the Applicant’s income was $69.51.

**Key Findings**

• The Applicant submitted that the calculations undertaken by the Department to average his income from payslips across days in each reporting period results in inaccuracies. The Tribunal noted:

  In the fortnight ending 1 October 2012, the Department have apportioned his income as $850.40 using that methodology. [the Applicant] gave evidence that did not work during that fortnight. That evidence is supported by a printout of [the Applicant’s] shifts obtained from his employer and the relevant payslips. I accordingly find that in the fortnight ending 1 October 2012, [the Applicant’s] income was nil [9].

• In relation to a separate fortnight which Centrelink apportioned the Applicant’s earnings across, the Applicant gave evidence that he worked no shifts with that employer during that fortnight. This evidence was corroborated by the record of his shifts. Accordingly, the Tribunal accepted the Applicant’s evidence as total payment for that fortnight [10].

• The Tribunal noted the Applicant:

  ...submitted that the debt should not extend back to July 2012 as it did not initially form part of the period audited by the Department. He claimed to have not prepared to address the period from July to September 2012 at the hearing before the Tribunal. ... [The Applicant] also gave evidence of the significant burden placed on him by having to obtain employment records from a period of three years ago [16].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and remitted to Centrelink for recalculation of the debt using payslip information.

**Key Findings**

• The Tribunal reviewed all of the Applicant’s fortnightly income statements and the calculations made by Centrelink. Centrelink had not calculated the debt on the basis of the Applicant’s actual fortnightly earnings, and so could not be satisfied that the debt was correctly calculated.

• The Tribunal specified the relevant pay periods where the Applicant may have been over or underpaid, and remitted the decision back to Centrelink for recalculation based on actual fortnightly earnings.

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
### How it was decided and key facts

#### Outcome

- The decision under review was affirmed.

#### Key Findings

- Centrelink obtained payslip information from various employers of the Applicant which, the Tribunal stated, revealed that the Applicant was ‘systematically under-declaring her earnings’ [11].
- Additionally, the Tribunal found that the Applicant had informed Centrelink that she was still enrolled as a full-time student when she had withdrawn early in the semester. Therefore, the youth allowance paid to her in the semester on the basis that she was a full-time student was an overpayment [13].
- In relation to Centrelink’s calculations, the Tribunal stated:
  
  The other two debts cover overlapping periods with multiple employers and data of varying kinds. Much of the debt is covered through pay slips, which allows the debt each fortnight to be determined with some precision. In some other cases, the available data is for earnings over a short period but without fortnight-by-fortnight detail, and some data appears to be annual data derived from tax records. This data has been averaged, in the absence of better data. On the basis of the available information, the best possible estimate of [the Applicant’s] debt has been made, with great attention to detail and careful use of the data. A recovery fee has been included in the larger debt. [The Applicant] did not contest the calculation of the debts. I find that [the Applicant’s] debts are $8,274.63 for the period 9 June 2009 to 11 January 2013; and $7,091.72 for the period 7 December 2010 to 2 May 2014 [16].
- The Tribunal found that there was no sole administrative error or special circumstances warranting the debt to be written off or waived.

### How it was decided and key facts

#### Outcome

- The decision under review was varied such that the debt increased in sum.

#### Key Findings

- The Tribunal noted the difference between reported and actual earnings came to light through data matching with the ATO [12].
- The Applicant subsequently obtained and submitted payslips, pay registers, lists of hours worked and rates paid, and emails verifying claims for payment [12].
- The Tribunal stated that the earnings information made available is not complete, as the payment records did not cover the entire period or were otherwise incomplete [13].
- The Tribunal stated:
  
  Where no detailed information is available the income reported by the ATO has been averaged over the period in which it was reported to have been earned; where the pay slips or other records are incomplete, earnings greater than those documented are averaged over the period that the records do not cover, or pay amounts for each fortnight have in some cases been derived from year-to-date figures [13].
- The Tribunal concluded that this approach had meant that for certain fortnights income had been averaged where pay information was incomplete. The Tribunal was satisfied that the calculations represented the best that could be done with the available data [14]-[15].
- The Tribunal found the debt should be increased by $650 to include the student start-up scholarship payment that she was not qualified to receive [21].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
The Tribunal concluded that:

**Key Findings**

- The Applicant was employed by four different employers for the period of entitlement under review [8]. In relation to three employers, the Tribunal found the Applicant’s income was averaged and apportioned over the period of his employment and applied to certain fortnights [11] – [14]. The Tribunal was not satisfied this accurately reflected the Applicant’s entitlement [12].
- The Tribunal was satisfied that the Applicant was paid sickness allowance in excess of his entitlement, but concluded that the amount of the overpayment needs to be recalculated taking into account income earned, including actual income from one employer and the date of earnings from another [14].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

**Outcome**

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt.

**How it was decided and key facts**

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**Outcome**

- The decision under review was set aside. As the debt was unable to be quantified, the Tribunal found there was no recoverable debt.

**Key Findings**

- The Applicant received newstart allowance from 2012-2013. She had no payslips, timesheets or superannuation.
- The Applicant disputed the apportionment of earnings calculated by Centrelink, stating that she did not earn this amount in the fortnights in question [10].
- The Tribunal noted:
  
  The apportioned earnings by Centrelink were taken from averaging [the Applicant’s] total earnings in the period under review. The tribunal notes that entitlement to, and the rate of, newstart allowance is based on a fortnightly calculation of income and assets and did not accept the approach taken by Centrelink has resulted in an accurate amount of overpayment being calculated [11].

- The Applicant and Centrelink both tried to seek extra information, with no success.
- The Tribunal concluded that:
  
  \[\ldots\] the actual earnings of [the Applicant] on a fortnightly basis in the period 5 July 2012 to 17 June 2013 are unable to be ascertained. The tribunal did not consider that averaging [the Applicant’s] annual income was an appropriate approach considering the manner in which fortnightly entitlement to newstart allowance is calculated. As a result, the tribunal concluded that it could not be satisfied on the evidence before it of the amount of overpayment in this case [13].
Key findings

- The Tribunal found that ATO data was used to apportion her earnings from a particular employer [13].
- The Tribunal stated:

  Of course, the best evidence would be [the Applicant’s] payslips. It is most unfortunate that there is no available documentation regarding [the Applicant’s] actual income during the relevant period. However, the Department’s starting point appears to be an assumption that [the Applicant] did not meet her obligation to accurately report her employment income. In the tribunal’s view this flies in the face of the principles of natural justice. The evidence from the ATO does not indicate that she did under-report during this period, though it is a possibility as her reporting was not verified. However, there is insufficient evidence to suggest that she in fact under-reported [15].

- The Tribunal did not consider issues of special circumstances or sole administrative error.

Outcome

- The decision under review was set aside and substituted with the decision that there was no overpayment.

Key findings

- The Applicant was paid bi-monthly rather than fortnightly, as recorded by Centrelink. This led to errors in calculating parenting payments accurately.
- The Tribunal stated:

  Centrelink did not provide any information about the deposits made to [the Applicant’s] bank account. They also did not provide any documents indicating what [the Applicant’s] taxable income was from [the Employer] during the debt period. The authorised review officer stated that they relied on information from the ATO but this information was not provided to the tribunal [16].

- 50% of the debt was waived. The Tribunal found that special circumstances existed to justify a waiver of 50% of the debt.

Outcome

- The decision under review was set aside.
- The matter was remitted for recalculation, with the debt to be recovered.

Key findings

- The Tribunal stated:

  Using the taxable income contained in the ATO records, Centrelink calculated a debt by apportioning the respective
earnings equally over the periods of the debt... Apportioning earnings in that way is contrary to the provisions of that section and the Act supplies no alternative method such as that assumed by the authorised review officer. Moreover, the apportionment has produced artificial and arbitrary results [9].

Given that the calculation of the debt under review was done without reference to, and contrary to, the provisions of the legislation, I am satisfied that [the Applicant] does not have the debt as calculated by Centrelink [10].

- The Tribunal found that the debt was to be recalculated and that the 10% penalty should not be applied.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

### How it was decided and key facts

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#### Outcome

- The decision under review was affirmed.

#### Key Findings

- In relation to the first debt, the Tribunal noted that Centrelink had considered employment information from the Applicant’s employer to calculate any overpayment [11].
- In relation to the second debt, the Tribunal found that Centrelink had used ATO information and compared it to the Applicant’s declared income for the relevant period [14].
- The Tribunal was satisfied with Centrelink’s calculations and found that they were based on the best available information [15].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt [18]-[22].

### How it was decided and key facts

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<td>CTH.3761.0005.7714</td>
<td>K Juhasz</td>
<td>11 December 2017</td>
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#### Outcome

- The decision under review was affirmed.

#### Key Findings

- The Tribunal noted the Applicant’s debt was not raised or calculated as a result of data matching from the ATO, ‘a process coined a “robo-debt”’[18]-[19]. However the Tribunal noted:
  
  ...the income declared by [the Applicant] did not match the income provided by the ATO and employer. There were a number of employers on the match data that had not been declared at all by [the Applicant]' [20].

- The Tribunal stated ‘it was the employers who provided the dates worked and the specific amounts’ the Applicant was paid [19]. The Tribunal noted the Applicant:
  
  ...worked for 20 employers in the alleged debt period, and it was the employers who provided the dates worked and the specific amounts she was paid. Often the periods the Applicant worked for these employers was quite brief – under a month. The longest period she worked for a single employer was for ... approximately six and a half months. The shortest was [Employer] where she worked for one day’ [19].

- The Tribunal noted that this was not a circumstance where requesting payslips would remedy the Applicant’s complaint given the Applicant stated that numerous employers had misrepresented her income to the ATO [23].

- The Tribunal stated:
  
  [The Applicant]’s information provided as to dates worked has been used by Centrelink to distribute her earnings over the period she specified. In these circumstances where there is no objective evidence of employers making
misrepresentations to the tax office concerning [The Applicant]’s income, the income used by Centrelink to determine her DSP rate is correct [24].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and substituted with the decision that there was a debt for overpayment of YA arising from a certain period, but that the entirety of the debt was to be waived.

**Key Findings**

- The Tribunal noted that Centrelink raised a debt in this matter based on ATO information [9].
- The Tribunal expressed some concerns about the averaging of income over particular periods and considered that this was ‘a not inappropriate approach in the circumstances of this particular case’ [13].
- The Tribunal accepted the findings of Centrelink that there had been some incorrect declaration of income and the Applicant had been overpaid [13].
- The Tribunal found that no sole administrative error existed, but was satisfied that special circumstances existed to justify waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was affirmed.

**Key Findings**

- The Applicant confirmed that she did not report her earnings in relation to one employer and accepted that she was overpaid youth allowance due to this. However, the Applicant was concerned her Centrelink had apportioned her gross earnings evenly over the debt period rather than using payslip information to calculate the overpayment as the original debt amount was greater than the payments the Applicant had received [10].
- As the Applicant did not provide payslips from her employer and the Applicant did not keep a record of her gross earnings during the relevant period, the Tribunal considered that the ATO information was the best evidence that was available of her income from this employer and arrived at the same calculations as the ARO [19].
- The Tribunal ultimately found that because the Applicant’s reported gross earnings were lower than her actual gross earnings, she was overpaid youth allowance [22].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt [31].
- The Tribunal found that the garnishee procedures were correctly followed [33].

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• The Tribunal noted that the Applicant had been unable to obtain payslips for the relevant period and stated that, by ‘averaging [the Applicant’s] annual earnings for the financial year ending 30 June 2014 and accepting he accurately reported his earnings for the fortnight ending 5 July 2013’, it was possible to arrive at the Applicant’s total income across this period [8].
• The Tribunal found that the Applicant had underreported his income and was overpaid NSA [9].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

• The decision under review was affirmed.

Key findings

• The Tribunal noted:

  [The Applicant] believed that an examination of the last payslip before he ceased Austudy (which he had provided to Centrelink) clearly demonstrates that the debt has been over-assessed using income too high because of the annualisation and allocation process used by Centrelink. He undertook to provide that payslip to the tribunal and subsequently did so [12].
• The Tribunal noted that, according to the debt calculations and the matched information provided, the ATO reported that the Applicant earned $40,537 in the FY year 1 July 2010 to 30 June 2011. This was then divided into 26 fortnightly payments of $1,554.84 and allocated across the Centrelink fortnights to reassess his entitlements because the Applicant did not provide payslips over this period [13].
• The Tribunal ‘affirmed the existence and recovery of the debt’ from the Applicant, noting the income covered by the payslip provided by the Applicant reached the same outcome as the debt decision ‘despite the difference in income information used to reach that conclusion’ [15].
• The Tribunal also affirmed the decision to garnishee against the Applicant’s tax return [29].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

• The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with directions that Centrelink exercise its powers to obtain earnings and payroll information from two of the Applicant’s employers for separate periods and recalculate the debts by ‘correctly apportioning’ the Applicant’s earnings ‘in each instalment period according to law’.
• Any recalculated debts were to be recoverable.

Key Findings

• The Tribunal noted that Centrelink obtained financial records from the ATO for the Applicant for the 2011/12, 2012/13, and 2013/14 Fy’s and conducted a data-match exercise [2].
• The Tribunal stated:

  ... [it was] clear and undisputed that in calculating the debts, the Department applied an averaging of the income received by [the Applicant]. The effect has been that income was incorrectly attributed throughout the relevant period because [the Applicant’s] actual income from employment was not apportioned as required by section 1073B of the Act.
• The Tribunal stated the Applicant’s earnings were not the same from one period to the next and so an averaging of her annual income did not reflect her actual income for each social security payment period [12].
• The Tribunal was satisfied the debts under review were not correct and needed to be recalculated [12].
• The Tribunal stated the Department must obtain payroll records from the Applicant’s employers for the relevant periods [13].

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**How it was decided and key facts**

**Outcome**

• The decision under review was affirmed.

**Key findings**

• The Applicant advised the Tribunal that she was not working with a particular employer for the full amount of time indicated on the PAYG summary. She stated she was undertaking reception work for a law firm and was paid but not provided with payslips [9].
• The Tribunal did not accept on the evidence before it that the Applicant was only employed for a six-week period with her employer and found that the ‘best evidence before it was the PAYG information’ provided by the ATO to Centrelink about the Applicant’s gross earnings [11].
• The Tribunal was satisfied that the 10% penalty was correctly applied to the Applicant’s debt and affirmed this aspect of the decision [26].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decisions under review to raise and recover two austudy payment debts for separate periods were affirmed.
• The decision under review concerning the NSA debt for a particular period was set aside and remitted to Centrelink for reconsideration using the correct payslip information.

**Key findings**

• The Tribunal noted that, while the Applicant reported earnings to Centrelink during the relevant periods, information received by Centrelink from the ATO indicated that the full amount of her earnings was more than had been notified to Centrelink. On that basis, Centrelink raised various debts. Those debts were varied when further information (for example, payslips and bank account statements) were received by Centrelink [8].
• The Applicant advised the Tribunal that she was not disputing that an overpayment had occurred but did dispute that the overpayment was her fault.
• In relation to the NSA debt, the Tribunal considered it reasonable to assume that the total of amounts used in Centrelink’s calculations should correspond with the year-to-date figure appearing in the Applicant’s payslips. As that was not the case, the Tribunal was not satisfied that the figures used by Centrelink in its apportionment table were accurate. The Tribunal stated that Centrelink will need to recalculate this debt after first ensuring that the correct information is used in the calculations [15].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with the direction that employment income data be obtained from the Applicant’s employer over a certain period so the Applicant’s DSP debt can be accurately determined, with the resulting debt to be recoverable.

Key Findings

- The Tribunal noted that, following a data match between the ATO and Centrelink, Centrelink determined the Applicant had under-reported his employment income from his employer over a certain period [7].
- The Tribunal noted it explained to the Applicant the following:
  Centrelink offers people who appear to have debts because of under reported income following data matches with the ATO an opportunity to obtain payslips from their former employer(s) so the data from the payslips can be used to verify the debt. In the absence of employer data Centrelink averages the income advised to it by the ATO and determines a debt based on the averaged data [10].
- The Tribunal also stated it ‘appreciates Centrelink utilises the ATO provided information as the “best” information available in the absence of employer provided payslips’ [16].
- The Tribunal cited two paragraphs from the Commonwealth Ombudsman’s report stating to the effect that the debts raised by OCI are accurate based on the information available to DHS at the time the decision is made [17].
- The Tribunal found it was evident from the ARO’s notes that it was probable the debt calculation was not accurate due to the way the Applicant’s allowances have been treated and as the debt period was ‘possibly too short’ [18].
- The Tribunal was satisfied the Applicant received overpayments of DSP and concluded it would be preferable if Centrelink contacted the Applicant’s employer to obtain the Applicant’s pay records for a certain period, ‘so that the applicant’s debt could be calculated on the basis of his actual income in that period, and that his allowances be properly considered’ [21].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

How it was decided and key facts

Outcome

- The decision under review was varied (to a different debt amount).
- The decision to impose a 10% was set aside and substituted with a decision that a penalty should not be imposed.

Key findings

- The Tribunal found that a data match and subsequent receipt of further payroll details indicated that not all the income from employment was declared by the Applicant. As a result he was paid more newstart allowance than he was entitled to receive.
- The Tribunal noted that the Applicant had assisted in providing Centrelink with payslips so that his entitlement to newstart allowance can be calculated based on fortnightly earnings rather than an average taken from ATO records. Centrelink had made several calculations and variations to the debt amount since the initial decision to raise a debt due to more accurate information becoming available.
- The Applicant was not disputing the income amounts that had been recorded for the majority of his earnings where he had payslips. The Applicant did not agree with the averaging that has occurred over some fortnights when he only worked for several days in some periods.
- The Tribunal stated that whilst the Applicant did not agree that some earnings that had been averaged over a fortnightly pay period accurately reflected his casual dates of work, he acknowledged that he did not have the details of actual dates of work. The Tribunal was satisfied that the method of apportionment best represented the available evidence [25].
The debt was varied slightly to reflect where the Tribunal was not satisfied that Centrelink’s calculations were correct. The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

### How it was decided and key facts

#### Outcome

The decisions under review in relation to the NSA debt for the period 16 March 2013 to 16 July 2013 and the YA debt were set aside in accordance with the direction that Centrelink reconsiders these debts after obtaining fortnightly income information from the Applicant’s employers.

The decision under review in relation to the NSA debt for the period 13 March 2013 to 9 April 2013 was set aside in accordance with the direction that Centrelink reconsiders the debt in accordance after obtaining fortnightly income information from the Applicant’s employers.

#### Key Findings

The Tribunal stated:

The Centrelink materials do not contain any employer reports detailing fortnightly income, nor [the Applicant’s] bank statements. Rather, it seems Centrelink has, consistent with its initial “robo debt” procedures, averaged the income information from the Australian Taxation Office across financial years [7]

In the absence of more accurate information about [the Applicant’s] fortnightly income, the Tribunal is not satisfied she misreported her income, or that debts exist in the calculated sums [8].

The best evidence of [the Applicant’s] income would be in the form of information supplied by her employers. There is no evidence Centrelink took any steps to attempt to obtain such information [9].

... 

- The Tribunal directed Centrelink to write to the Applicant’s employers to obtain information about the Applicant’s fortnightly income and recalculate the alleged debts. Further, in the absence of information directly obtained from any particular employer, Centrelink was directed to obtain the Applicant’s bank records. In the event the Applicant did not have bank records for the entire period covering all employers, Centrelink was directed to obtain information directly from the Applicant’s bank [9].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
The Applicant submitted:

for one of the debts she had not worked in the period specified, and for the others she had been employed over an inconsistent period and had declared some of her earnings rather than equally distributed income as calculated by Centrelink [3].

• The Tribunal stated that for one employer the Applicant:

had obtained payslips and demonstrated her earnings were not equally distributed over the six month period she worked there. She had varying shifts and had worked overtime in this period so her earnings changed week to week [11].

• The Tribunal further stated:

Although it is usual practice for Centrelink to rely on ATO records to determine an income a person was paid there are serious issues with accepting that [the Applicant]’s earnings were properly advised to the ATO by her employers, [Employer]. There is clear evidence that her employers failed to pay her superannuation as the ATO were pursuing this debt on [the Applicant]’s behalf [16].

• The Tribunal found that parts of the Applicant’s income was not earned equally across the debt period and the matter should be sent back to Centrelink to calculate the debt using accurate data [19].

• The Tribunal was not satisfied that the Applicant had a reasonable excuse for failing to disclose the correct income she earned from these employers and the 10% recovery fee (on any final debt amount calculated) is to be imposed [25].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with directions that:
  o Centrelink obtain earnings and any payroll information for the Applicant from the Applicant’s employer;
  o The debt be recalculated ‘by correctly apportioning the applicant’s earnings in each instalment period according to law’;
  o Should the earnings information be unable to be obtained, then the income from that employer attributed to the Applicant for the 2005/06 year is to be disregarded in recalculating the debt; and
  o The recalculated debt is to be recovered from the Applicant.

**Key findings**

• The Tribunal noted that the Department obtained payroll information from one of the Applicant’s employers as well as taxation records from the ATO for the 2005/06 FYs and conducted a data-match exercise [2].
• The Tribunal noted that payroll information was not received from one of the Applicant’s employers [2].
• The Tribunal stated it was clear from the earnings apportionment record and ARO notes that in calculating the debts under review the Department had applied ‘an averaging of the [Employer] income for the 2005/06 year’ with the result being that ‘income was incorrectly attributed throughout the relevant period because [the Applicant’s] actual income from employment for each fortnight was not apportioned as required by section 1073B of the Act’ [10].
• The Tribunal was satisfied the debt under review was not correct and needed to be recalculated [12].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
The Tribunal stated:

**Key findings**

- The Applicant received Austudy and NSA, and had casual employment.
- The Tribunal stated:
  
  It is evident that in calculating the debts, the Department applied an averaging of the annual income received by [the Applicant]. The effect has been that income was incorrectly attributed throughout the relevant period because [the Applicant’s] actual income from employment each fortnight was not apportioned as required by section 1073B of the Act [11].
- In relation to s 1073B of the Act, the Tribunal stated:
  
  the recipient of a social security payment is taken to have earned one-fourteenth of the total amount they receive from employment income during a fortnightly instalment period on each day of that period. This is referred to as the daily apportionment of earnings [8].
- The amount of debt had been incorrectly calculated because the Applicant’s earnings were not the same from one period to the next. Averaging her annual income does not reflect her actual income [12].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

The decision under review was set aside.

The Tribunal stated:

- The decision under review was set aside.
- The debt was remitted for reconsideration, with Centrelink to obtain earnings and payroll information.
- The debt is to be recalculated by correctly apportioning the Applicant’s earnings in each instalment period according to law.

**Outcome**

- The decision under review was set aside.
- The debt was remitted for reconsideration, with Centrelink to obtain earnings and payroll information.
- The debt is to be recalculated by correctly apportioning the Applicant’s earnings in each instalment period according to law.

### How it was decided and key facts

#### Outcome

- The decision under review was set aside.
- The debt was remitted for reconsideration, with Centrelink to obtain earnings and payroll information.
- The debt is to be recalculated by correctly apportioning the Applicant’s earnings in each instalment period according to law.
Outcome

- The decision under review was set aside and substituted with the decision that the Applicant had a recoverable debt but that any amount due was waived.

Key findings

- The Tribunal found:
  
  The Centrelink papers were so poorly structured as to be opaque about how much the Applicant was alleged to have under-reported his earnings. There is no evidence of what he declared per fortnight in the period under review. There are no payslips. There are no notations of web/telephone contacts from the Applicant or hard copy earnings reports on file. There is a statement that he declared $6,528 in earnings to Centrelink during the 2010/11 financial year but no references as to where this figure was derived. In addition the payslips cannot be obtained retrospectively as the employer is no longer in business [10].

- The Tribunal also found ‘the simple averaging of his annual taxable income ... is clearly incorrect as the papers at least confirm that for a large period he was in receipt of full disability support pension because he was so sick’ [13].

- The Tribunal concluded ‘that the amount of the debt calculated by Centrelink cannot, on the balance of probabilities, be correct’ [13].

- The Tribunal found the Applicant to be a ‘witness of truth’ [19].

- The Tribunal found there were exceptional factors in the Applicant’s case and made the following remarks:

  [The Applicant] has a psychiatric condition, exacerbated by the “robo-debt”, for which he requires ongoing treatment. Centrelink’s actions had a profound adverse impact on his mental health. ... Centrelink is pursuing a debt which occurred over seven years ago despite its routine matching with the Australian Taxation Office; the excessive delay is inexplicable [22].

  ...

  When these statements are included in the context of poor Centrelink records of what he actually declared as income, and the incorrect use of averaging as an acceptable method of calculating a fortnightly payment, the Tribunal cannot be satisfied that Centrelink has calculated or raised this debt correctly [23].

- The Tribunal found special circumstances existed to justify a waiver of any part of the debt above $2,700 [25].

 Outcome

- The decision under review was set aside, with Centrelink directed to recalculate the debt on the basis of the income received by the Applicant in the reporting period [42] (in relation to each reporting date the income to be assessed was the income the Applicant received in the relevant reporting period which relates to the reporting date).

Key findings

- The Applicant accumulated the debt while receiving Newstart Allowance. He worked part-time and reported his earnings from time to time.

- The Tribunal stated:

  Centrelink did not properly explain to him how the debt was determined and the information provided in the documents did not assist him because it was impossible to interpret which documents represented the calculations, and how they were undertaken [28].
• The debt total had been amended about four times and the latest figure was over $8,000 less than the original amount.
The Applicant had no confidence at all in Centrelink’s final calculation and simply no longer believed he owed Centrelink
any money [29].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of
the debt. No special circumstances were found [55].
• The Tribunal stated:

It would have been preferable for Centrelink to have given [the Applicant] more time or else sought to obtain the
payroll records from [the Applicant’s] employers before determining the debt initially. Particularly so because [the
Applicant] was working full time for significant periods. This fact alone should have caused the earnings to be
investigated more fully before a debt was calculated [52].

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How it was decided and key facts

Outcome
• The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt.

Key Findings
• Centrelink raised the debt following a data match with the ATO.
• The Tribunal found that apart from the Applicant’s bursary from one employer and two university scholarships, the debt
had been ‘calculated using a certain amount of averaging’ [19].
• The Tribunal found that detailed payslip information from [Employer 1] had otherwise been used to calculate the largest
part of the debt.
• The Tribunal found:

I have checked the calculation carefully; although it would clearly be better to recalculate the debt using detailed and
accurate earnings information for each fortnight, it appears to me that in the absence of that detailed information the
approach adopted regarding earnings from the [Employer] and [Employer] is unlikely to produce any gross errors in the
debt calculation [20].

The debt is to be recalculated as follows:

• income from the [Employer 2] is to be averaged over the period from early July to late November 2011; and
• earnings from other sources are to be assigned as in the hearing papers [21].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of
the debt.

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Outcome
• The decision under review was affirmed.

Key Findings
• The Tribunal noted that the Applicant had objected to Centrelink apportioning a lump sum leave payment she received
over one year as she had been working on and off at the employer and the payment related to 9 of the 20 years the
Applicant had been working there [16].
• The Tribunal found that as there was no way of apportioning this income over 9 years, Centrelink’s approach of
apportioning it over 52 weeks was correct [17].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of
the debt.
Outcome

- The decision under review was set aside and the debt was waived.
- Monies recovered were to be refunded to the Applicant.

Key findings

- The debt arose due to a youth allowance overpayment.
- The Tribunal accepted the Applicant’s evidence that the undeclared income of $9,983 was likely to have been earned during the period he was not in receipt of youth allowance.
- The Tribunal could not be satisfied that the Applicant earned $882.22 per fortnight during the review period.
- Accordingly, the Tribunal was not satisfied that the debt calculations were correct or that the Applicant had been overpaid.
- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

Outcome

- The decision under review was set aside and remitted Centrelink with directions that the debt be recalculated, with the recalculated debt to be recovered.

Key findings

- The Tribunal noted that, in raising the original debt, Centrelink appears to have ‘averaged out’ the Applicant’s income for the 2013/14 financial year over the whole of that financial year. This meant that she was treated as having an income of $551.76 per fortnight when in fact she had no employment at all for those five months (causing a so called ‘robo-debt’) [19].
- The Tribunal noted that Centrelink conducted two further recalculations of the debt after the Applicant produced relevant payslips and that the reason for the considerable difference between the amount of the debts is not readily apparent to the Tribunal.
- The Tribunal was not satisfied that the Applicant’s casual income has been correctly taken into account, and so was not satisfied that the debt had been correctly calculated. The Tribunal stated that the Applicant’s income used in the debt calculations for each fortnight of the debt period needed to be carefully rechecked against the payslip evidence [33].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

Outcome

- The decision under review was set aside and remitted Centrelink for reconsideration, in accordance with the direction that Centrelink make reasonable efforts to obtain correct payroll information and recalculate the debt.

Key findings

- The Applicant’s debt was raised in relation to a youth allowance debt, over which time she was working two casual jobs.
- She has been disadvantaged by Centrelink raising the debt some seven years after the relevant period because she has
not been able to obtain pay records from her employers to show what she actually earned in the relevant fortights [21].

- Centrelink had applied an averaging method to work out the Applicant’s fortnightly income rather than obtain payroll information from her employers [23]. The Tribunal stated:

The tribunal has previously noted that it is not always possible to obtain evidence of a person’s weekly or fortnightly income and in such instances the approach has been to average the income amounts across all fortights in the period covered by the amount [25].

[the Applicant’s] case differs from those above. Other than asking [the Applicant] to produce pay advice from her employers going back to 2010 there is no evidence that Centrelink has done anything about requesting information from employers about the weekly/fortnightly payments to [the Applicant] over the period of the debt. Unlike [the Applicant] Centrelink have statutory powers to require employers to provide this information. It may be administratively convenient for Centrelink to use the information provided by the data match. However, given the variable nature of [the Applicant’s] income and the apparent prospective adverse effect on the calculation of [the Applicant’s] entitlement, Centrelink must make some reasonable effort to obtain payroll information from [the Applicant’s] employers before adopting an averaging method to work out her fortnightly income [26].

- It further stated that if, after reasonable efforts:

  ...Centrelink cannot obtain payroll evidence from an employer the use of an averaging method can be adopted as was the case in Halls and Provan. Given that in some cases there is variability in [the Applicant’s] income it would be fairer to apportion the difference in actual income and reported income over the period in which that income was received, rather than averaging the total actual income over the period. Adopting this method should produce a fairer result that will reflect [the Applicant’s] variable income” [27].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt. No special circumstances were found and the debt was not waived.

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**How it was decided and key facts**

*Outcome*

- The decision under review was affirmed.

*Key Findings*

- Centrelink raised the debt following a data match with the ATO which showed that he earned income from a significant number of employers and his total earnings for the year were significantly higher than he reported [9].
- The Tribunal noted that Centrelink accepted the Applicant’s reported incomes as accurate and averaged other unreported earnings over the entire year or over a shorter period if the ATO data identified the need [11].
- The Tribunal offered the Applicant an opportunity to provide bank statements/information about his accounts to enable Centrelink or the Tribunal to obtain further information to enable a more accurate calculation, however, the Applicant ceased communicating with the Tribunal and failed to provide the necessary documentation [12].
- The Tribunal ultimately concluded:

  In all the circumstances I can reach no conclusions other than that [the Applicant] earned more in the year than he reported; that I have no satisfactory evidentiary basis for assigning his earnings to periods when he was not being paid newstart; and that therefore, on the balance of probabilities, he was overpaid newstart. The amount of that overpayment is a debt due to the Commonwealth [14].

- The Tribunal found no error in Centrelink’s calculations based on the information available [15].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt [17]-[20].
The Tribunal stated:

**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and the matter remitted to Centrelink for reconsideration.

**Key findings**

- The Applicant disputed the approach taken by Centrelink in determining that he had been overpaid and the quantum of any overpayment.
- The Tribunal stated:

  [the Applicant] noted that the payslips in the Centrelink papers show that his earnings varied widely and he accordingly submits that the approach taken by Centrelink to determine whether he has been overpaid is flawed [19].

I accept that there are times when the apportionment approach adopted by Centrelink will be reasonable and appropriate. However, Centrelink has specific information gathering powers under the legislation. In my view, prior to adopting the apportionment approach, Centrelink should make all reasonable efforts to gather any more accurate information that might be available. Once accurate information is obtained, Centrelink will be able to reconsider whether [the Applicant] has a debt. If [Employer] no longer has relevant records, then I would accept the apportionment approach as being reasonable in the circumstances [20].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
- The Tribunal stated:

  [the Applicant] noted that the payslips in the Centrelink papers show that his earnings varied widely and he accordingly submits that the approach taken by Centrelink to determine whether he has been overpaid is flawed [19].

I accept that there are times when the apportionment approach adopted by Centrelink will be reasonable and appropriate. However, Centrelink has specific information gathering powers under the legislation. In my view, prior to adopting the apportionment approach, Centrelink should make all reasonable efforts to gather any more accurate information that might be available. Once accurate information is obtained, Centrelink will be able to reconsider whether [the Applicant] has a debt. If [Employer] no longer has relevant records, then I would accept the apportionment approach as being reasonable in the circumstances [20].

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Royal Commission into the Robodebt Scheme
recalculated on the basis of that evidence’ [9].

- The Tribunal found the decision to raise the debt was invalid by reason of procedural unfairness and ‘[u]nless the primary evidence can be obtained and the debts recalculated using that evidence, the unfairness is incurable’ [10].

### How it was decided and key facts

#### Outcome

- The decision under review was set aside and substituted with the decision that the Applicant had an NSA debt to the Commonwealth, with 50% of the above debt to be waived due to special circumstances.

#### Key Findings

- The Tribunal noted that matched data from the ATO received by Centrelink indicated the Applicant received more income than was declared to Centrelink [9].
- The Applicant agreed with the income amounts that Centrelink had used in calculating the debt and the Tribunal was satisfied that the debt was calculated correctly [10].
- The Tribunal was satisfied that the Applicant had been overpaid in the amount calculated by the ARO [12].
- The Tribunal found that special circumstances existed to justify waiver of half of the debt.

### How it was decided and key facts

#### Outcome

- The Tribunal set aside the decision under review and substituted the decision that the Applicant had no debt, with any monies recovered to be repaid to the Applicant.

#### Key Findings

- The Tribunal stated:

  What is clear is that income in this case has been apportioned by Centrelink using data provided by the Australian Taxation Office. This is generally an appropriate method of assessing overpayments, however fails in this particular case as [the Applicant] was a casual employee, working flexible hours and only worked for the employer in question for a period until the end of April 2014. She did not work until the end of the financial year and so the process of averaging income across the balance of the financial year is a formula that produces a skewed outcome [6].

- The Tribunal was satisfied on the basis of contemporaneous file notes, NSA declaration forms, and bank statements that the Applicant ceased her employment on a specific date and so had not been overpaid benefits over a certain period (as she was unemployed) [9].
- The Tribunal was satisfied that no debt exists [10].
- The Tribunal did not consider issues of sole administrative error or special circumstances.

### How it was decided and key facts

#### Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation otherwise than by resort to the averaging of his income.
Key findings

- The Tribunal noted that, as a consequence of a data match inquiry with the ATO, the Department formed the view that the Applicant had under-reported his income over the period and decided to raise debts against him [2].
- The Tribunal referenced an extract from the Department’s letter of 23 October 2015 which set out the Applicant’s annual gross income from each employer as per the ATO data match and noted ‘the income ... is divided to give a daily rate then averaged to each fortnight in the financial year. This is then applied to your record for any period that you were current’ [7].
- The Applicant stated he had not retained and was unable to obtain copies of all the payslips; however, he was able to provide bank statements showing the receipt of net income from each employer [8].
- The Tribunal concluded that averaging of income was not authorised by the Social Security Act and the debts raised against the Applicant had not been validly calculated [15], [17].
- The Tribunal referenced the commentary of Professor Terry Carney AO in an article titled ‘The New Digital Future for Welfare Debts without Legal Proofs or Moral Authority?’ [2018] UNSW Journal Forum 1, pages 6-7 [17].

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How it was decided and key facts

Outcome

- The decision under review was set aside and substituted with the decision that the Applicant did not have a debt to the Commonwealth for the relevant period.

Key Findings

- The Tribunal noted that, in the absence of any evidence about the particular periods which the Applicant received the income identified by way of Centrelink data-match in, Centrelink had averaged the sum across the entire 2012/13 year [5].
- The Tribunal stated:

  Given that [the Applicant] only received newstart allowance from October 2012 to April 2013 – half the 2012/2013 year – and given that, by its own admission, Centrelink has arbitrarily averaged income across the year, this raises the question whether [the Applicant] actually has a debt to the Commonwealth [8].

- The Tribunal was satisfied on the evidence before it that the Applicant did not receive any income during the relevant period and ‘certainly did not receive the averaged income figures used by Centrelink in determining that she was overpaid newstart allowance’ [11].
- The Tribunal did not consider whether circumstances existed to justify a write off or waiver of the debt.

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How it was decided and key facts

Outcome

- Decision under review was affirmed.

Key findings

- The Applicant did not report all income to Centrelink correctly as she had multiple casual jobs, so was overpaid. She did not dispute that she had a debt, but was concerned with the passage of time that had passed, and the closure of some employers meant she was unable to obtain evidence of the details of her income.
- The Applicant submitted that her tax return may have been garnished, but this was not directly addressed by the Tribunal.
- The Tribunal commented:

  The Tribunal accepts the calculations that Centrelink has undertaken as to the amount of the overpayment are likely, on the balance of probabilities, to be correct. It notes, however, that the lack of payslips and the time that has passed
since then makes it very difficult, and in some cases impossible, to assess the exact amount for each employer for each fortnight [18].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt based on pay records.

**Key findings**

- The Tribunal found that the debt was calculated by averaging the Applicant’s employment income and that the problem with this was that her employment was not continuous [12].
- The Applicant obtained further pay records which were not taken into account by Centrelink in calculating any overpayment [13].
- The Tribunal found that the overpayment and consequential debt requires recalculation taking into account the Applicant’s pay records [13].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt.

**Key findings**

- Centrelink raised the debt following a data match with the ATO and calculated the debt using ATO information [10]-[11].
- The Applicant sought a review of a parenting payment debt of $17,720.60. An ARO affirmed this decision.
- In relation to Centrelink’s calculations, the Tribunal found:

  On the basis of the declared income to the ATO and in particular earnings from [Employer], Centrelink calculated an overpayment of parenting payment by averaging [the Applicant’s] employment income over each fortnight of the financial year in which it was earned. The problem with this is that [the Applicant’s] employment was not continuous. She worked in the fortnights during teaching semesters but outside of this she had no income in particular fortnights. Given the income test for parenting payment is based on fortnightly income, this can have a substantial affect on any overpayment calculation. [the Applicant] obtained pay records from the university to establish her employment and fortnightly earnings, but there was delay in her obtaining the by then archived records. The records were uploaded by [the Applicant] online to Centrelink but either before their receipt or unaware of their receipt, the debt decision was affirmed by the authorised review [12].

  The pay records now form part of the Centrelink file. It means there is highly relevant pay information that has not been taken into account in calculating any overpayment. The overpayment and consequential debt requires recalculation taking into account [the Applicant] pay records [13].
- Tribunal determined that the debt required recalculation taking into account pay records.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
### How it was decided and key facts

**Outcome**
- The decision under review was set aside and the matter was remitted to Centrelink for recalculation of the debt for the relevant period on the basis of additional payslips and bank statements provided to the Tribunal.
- The resulting debt and recovery fee were recoverable.

**Key findings**
- The Tribunal noted there was no evidence in the Centrelink documents that the Applicant had discussed or sent evidence to Centrelink of his earnings during the debt period [10].
- Following the hearing, the Applicant provided 14 payslips to the Tribunal (A1 to A70). This information was not available to Centrelink at the time when the Applicant's entitlements were calculated, and the Tribunal considered that the further documentation now provided is required to be needed to be assessed and the Applicant's entitlements to be recalculated [16].
- The Tribunal found that the 10% penalty should apply as the Applicant failed to provide information about income [18]. In relation to the 10% penalty, the Tribunal found that as the Applicant failed to provide information about income, a debt recovery fee should be applied [18].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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### How it was decided and key facts

**Outcome**
- The decision under review was affirmed.

**Key findings**
- The Tribunal noted that Centrelink's efforts to obtain payslips from the employer in question had been unsuccessful.
- The Tribunal accepted that, in the circumstances of this particular case, it was appropriate to apportion earnings across the months of July 2014 to March 2015 in the absence of the employer providing the information requested [11].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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### How it was decided and key facts

**Outcome**
- The decision under review was affirmed.

**Key findings**
- The Tribunal noted that the overpayment alleged by Centrelink was revealed by a data match with the ATO [3].
- Centrelink conceded that the debt for continuing payments was caused solely by administrative error, but submitted that the payments were not received in good faith [3].
- The Tribunal was satisfied that the overpayment had been correctly calculated by Centrelink [15].
• The Tribunal found there had been a crossover of entitlement when the Applicant was subsequently successful for temporary incapacity benefits pursuant to her superannuation fund [11], but Centrelink failed to adjust the Applicant’s entitlements until the ATO data match occurred [13].
• There is no mention in the decision of any other evidence used by the Centrelink or provided by the Applicant (such as payslips or wage records) to assist with calculations.
• Although the Tribunal acknowledged there had been significant administrative error and the Applicant has a debilitating condition, it was not persuaded there were circumstances to support a conclusion that she should retain the payments which she was not entitled to [33].

How it was decided and key facts

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**Outcome**

• The decision under review was set aside and substituted with the decision that the matter be remitted to the Chief Executive Centrelink for recalculation of the debt on the basis of the Applicant’s declared income.
• Centrelink was directed that half of the recalculated debt was to be waived due to special circumstances.

**Key Findings**

• The Tribunal found that Centrelink had payslips for all but 2 employers. For the two employers, Centrelink ‘annualised’ (apportioned) the Applicant’s gross earnings across the period of employment stated by the employers [15].
• The Applicant was unable to recall the periods during which she worked for these employers and was unable to obtain bank statements [16].
• The Tribunal noted that as the Applicant’s income from her primary employer was high enough that she was not being paid benefits for a significant period, it was likely that she was not recording casual income during this time. However, the Tribunal also stated:

  [the Applicant] did declare the correct amount of her casual earnings from [Employer 1] and [Employer 2], and the debt is to be recalculated on the basis that she earned nil income from these employers during the fortnights ended 19 August 2010, 16 September 2010, 10 June 2011 and 24 June 2011. For the fortnights ended 7 January 2011, 21 January 2011 and 4 February 2011 the income to be included from [Employer] should be as declared by [the Applicant] ($155, $365 and $216 respectively) [16].

• The Tribunal found that there were 7 fortnights where the Applicant had not correctly declared her income based on payslips and this resulted in an overpayment [17]-[21].
• The Tribunal found that the debt could not be written off but found that special circumstances existed to justify a waiver of half of the recalculated debt.

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**Outcome**

• The decision under review was set aside and the matter remitted to Centrelink for reconsideration.
• The debt was to be recalculated by correctly apportioning the applicant’s actual earnings in each period.

**Key findings**

• Centrelink used income averaging to calculate the debt.
• The Applicant did not dispute that he may have a debt, but he disputed the apportionment of his income over the whole financial year, given the sporadic nature of his work in the film industry as a freelancer. The Applicant provided payslips for the debt period to the Tribunal.
• Given the Tribunal was not satisfied with Centrelink’s calculation method, Centrelink was to obtain earnings and payroll information for the Applicant from the relevant employers and recalculate the debt.
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
How it was decided and key facts

Outcome
- The decision under review was set aside and the matter remitted to Centrelink for reconsideration. The debt was to be recalculated by correctly apportioning the applicant’s actual earnings in each period.
- 75% of the debt was to be waived due to special circumstances.

Key findings
- The ARO varied the debt amount on internal review.
- The Tribunal ultimately found that in calculating the debt, Centrelink made a number of apportionment errors and the debt amount was incorrect.
- The Tribunal was unable to specify exactly how much the debt is, because there are clearly errors in the income attributable to each employer.
- The debt was to be recalculated by correctly apportioning the applicant’s actual earnings in each period.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder if the debt.

How it was decided and key facts

Outcome
- The decision under review was set aside and substituted with the decision that the Applicant did not have a parenting payment (single) debt or NSA debt over the relevant periods, with any money reclaimed to be reimbursed to the Applicant.

Key Findings
- The Tribunal deferred its decision-making process to enable the Applicant to locate a payslip relevant to the period, which was provided after the hearing. Although the Tribunal found the evidence was not relevant for the debt period, it found the payslip corroborated the Applicant’s evidence about the way he was paid [7].
- The Tribunal stated its understanding was that, in the absence of evidence from the debtor (payslips or bank entries), Centrelink averaged the income recorded by the ATO over the period advised by the ATO and calculated the person’s debt as if the employment income had been earned regularly throughout the period [14].
- The Tribunal noted that it seems probable that averaging the Applicant’s employment income disadvantaged him and may have created a debt where one does not exist [17].
- The Tribunal deferred its decision-making process to enable the Applicant to seek information from his bank about payments into his account from his employer [23].
- The Tribunal found that, based on the Applicant’s evidence and its analysis of Centrelink’s papers, the Applicant’s employment with a particular employer preceded his claim for NSA and he was not required to report income from that employer. Therefore, he was not overpaid NSA [25].
How it was decided and key facts

Outcome

- The decisions under review in relation to the NSA debt of $9,565.38 and carer payment debt were varied.
- The decision relating to NSA debt of $2,581.08 was set aside and remitted to Centrelink with the directions that the overpayment for the period under review was to be recalculated to exclude any NSA repaid by the Applicant as the result of previous NSA debts.
- Centrelink was directed that recovery of the debt was to be written off until 17 July 2019.

Key Findings

- The Tribunal did not specify the material or methodology for which Centrelink used to raise the debt other than the Applicant ‘had under-declared her earnings from various different employers’ [2].
- The Tribunal stated:
  Centrelink has since reassessed [the Applicant]’s entitlement using payslips provided by [the Applicant] or, where these were not available, by using average fortnightly income amounts derived from her annual income from her employers [4].
- The Applicant told the Tribunal that she did not dispute Centrelink’s calculations that she had been overpaid because she did not understand the debt paperwork and could not tell if errors had been made or not.
- The Tribunal examined the Centrelink calculations and identified one potential error in relation to the calculation of the NSA debt which indicated Centrelink did not consider debts previously paid [5].
- The Tribunal found that the Applicant did not have capacity to replay a debt and so it was appropriate to write off the debts for a period equalling 12 months [15].

How it was decided and key facts

Outcome

- The decisions under review were affirmed.

Key findings

- The Applicant’s nominee and grandfather applied for review by the Tribunal and attended the hearing in-person on behalf of the Applicant.
- The Tribunal noted there was no dispute about the existence of debts. The Tribunal discussed with the Applicant’s grandfather during the hearing Centrelink’s calculation of the income-related debt, and its application of an average based on annual income (rather than obtaining more detailed information about fortnightly pay from the Applicant’s employers). The Tribunal explained that, depending where the numbers fell, a calculation based on more detailed fortnightly earnings information could potentially result in the debt increasing, not decreasing. The Tribunal noted [the Applicant] expressed no strong view about Centrelink’s calculation methodology [13].
- In this particular case, the Tribunal was prepared to accept the broader approach applied by Centrelink and was satisfied that Centrelink satisfactorily calculated all three debts [14].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt [24].
The Tribunal stated:

How it was decided and key facts

Outcome
- The decision under review was set aside and substituted with the decision that entitlement to NSA is to be recalculated based on payslips from the Applicant’s employer, with any resulting debt to be recoverable without the imposition of a recovery fee.

Key Findings
- The Tribunal noted that on 10 August 2016 Centrelink commenced a review of entitlement (online compliance intervention), including data matching with the ATO, and it was discovered that not all income from employment had been declared [3].
- The Applicant subsequently provided payroll information from her employers as requested by Centrelink and her debt was subsequently reduced to a debt amount plus a 10% penalty [4].
- The Tribunal noted the Applicant was a seasonal employee in agriculture and her work hours were very irregular and there would have been times when she earned more and had no income [9].
- The Tribunal stated:

Centrelink averaged her earnings over the three-month periods, but there would have been times that she did not have any income within each BAS period. Thus, averaging the income over the three-month period is not an accurate reflection of her actual earnings for each of the Centrelink fortnightly pay periods [12].
- The Applicant advised the Tribunal that she has now been able to locate payslips from one of her employers which she previously was unable to locate. The Tribunal concluded it was ‘fair to recalculate [the Applicant’s] entitlement to newstart allowance in the period under review again, based on pay information to be obtained from her’ [17].
- The Tribunal found that the Applicant did not refuse or fail to provide her income from work, did not deliberately misrepresent her income, and was not reckless in reporting her income – therefore, the Tribunal found no 10% penalty fee was to be imposed [19].
- The Tribunal did not consider issues of sole administrative error or special circumstances.

How it was decided and key facts

Outcome
- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with directions that:
  - The debt is to be recalculated taking into account ‘verified income for the relevant periods’;
  - The debt is to be fully recovered if, upon recalculation, there remains a debt;
  - If there is a recoverable debt, the 10% penalty is not to be applied;
  - Any repayments are to be remitted to the Applicant if it is found she has not been overpaid NSA.

Key Findings
- The Tribunal noted that the Department based its conclusions as to overpayment upon the data matching information it received from the ATO [11].
- The Tribunal stated that the Department had:
  - taken [the Applicant’s] earnings from [Employer] and apportioned this over 365 days, resulting in a working week income calculation of $1,024.11. According to the Department documents, the earnings utilised by the Department had not been verified [16].
- The Tribunal stated:
  - In the absence of evidence verifying [the Applicant’s] actual income and relevant dates of earning, the Department has taken income derived from ATO records and apportioned this amount over each fortnight of the debt period to calculate
the debt. In the tribunal’s view this approach fails to take into account the actual earnings for each fortnight period; the actual periods that [the Applicant] was actually employed and the actual periods that she was actually in receipt of newstart allowance and required to report. As such the debt amount does not reflect a precise or acceptable calculation of any alleged overpayment [18].

- The Tribunal stated that, in order to ensure a proper calculation of any overpayment, the Department should ‘exercise its powers to obtain relevant information either from her former employer or by requesting relevant copies of her bank statements in order to ensure a more acceptable calculation of any alleged overpayment’ [21].
- Should there be a debt upon recalculation, the Tribunal was not satisfied that the provisions of the Act re application of the 10% penalty were met [24].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt (should there be a debt once recalculated).

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**Outcome**

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with the directions that:
  - there was no debt of NSA for the relevant entitlement period; and
  - there was a NSA debt for a separate entitlement period but the debt is to be waived on the basis of special circumstances.

**Key findings**

- The Tribunal noted ‘the basis for all three debts was that the correct amount of earnings was not taken into account in the payments made to [the Applicant]’ [5].
- The Tribunal noted the Applicant submitted she should not have been required to keep payslips and bank account details given the debt associated with her work with one particular employer had occurred such a long time ago. The Tribunal stated the Applicant had ‘…on numerous occasions, offered to give her authority to Centrelink to try to obtain the payroll details’ and struggled with homelessness [20].
- The Tribunal noted that a ‘data-matching exercise … compared the actual income provided to Centrelink by the ATO with the income declared by the Applicant’ [17]-[18].
- The Applicant gave evidence:
  
  …that she disputed the income amounts given by an employer on the final group certificate. In relation to the last group certificate given, she had challenged them saying that the amount listed was not correct. However, by that stage her relationship with them was breaking down and nothing was done about it. She had also raised it with her accountant but he was of the view that unless it could be changed by the employer, the ATO would record what the employer said [24].

- The Tribunal accepted the Applicant’s evidence about the unusual arrangements at her former workplace for ‘depositing monies into her account, her variable work hours there and her approach to her employer about what she considered was an overinflated income amount submitted to the ATO’ [26]

- The Tribunal noted that Centrelink did not calculate the debt using payslips or grossed up amounts from bank accounts and [the Applicant] has not been able to obtain payroll details or bank details. The tribunal was not satisfied that Centrelink’s calculation accurately reflected the overpayment [27].

…

On the basis that Centrelink has evenly apportioned the earnings over the debt period without regard to payslips, and given her variable hours and the unusual business practices outlined at the hearing, Centrelink’s calculation is not correct [29].

In relation to the lesser debt, the Tribunal also found it was faced with the same problem of not having payroll data or bank statements showing payments which can be grossed up. The Tribunal concluded that ‘even if the debt was sent
back for recalculation on the basis that the listed earnings were from the other employer, not all of the debt amount will be accounted for’ [32].

- The Tribunal was satisfied there were special circumstances in the Applicant’s case to justify a waiver of remainder of the debt outstanding at the date of the hearing [50].

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and substituted with the decision that the Applicant has a debt but the debt is waived due to sole administrative error.

**Key Findings**

- The issue for the Tribunal was whether the honorarium the Applicant received was income for the purposes of calculating his rate of NSA during the relevant period [5].
- The Tribunal noted that

  While honorarium is not included in the definition of income in the Act it is included in the Social Security Guide (the guide); the guide is the policy guide that is used by Centrelink and is referred to if the policy is not inconsistent with the objectives of the Act. The tribunal will also apply the guidelines unless there are cogent reasons for not doing so (see Re Drake and Minister for Immigration and Ethnic Affairs (No 2) (1979) 2 ALD 634 at 639-645) [10].
- The Tribunal stated it was ‘...unclear on how the debt was apportioned over the financial years and why the debt was’ from a certain period [15].
- The Applicant submitted that he sought advice from Centrelink in relation to whether his honorarium was income and was told that it was not. The Tribunal found that the debt was attributable solely to administrative error and was satisfied that he received the overpayments in good faith. The Tribunal thereby waived the debt [28].

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**How it was decided and key facts**

**Outcome**

- The decision under review to raise a carers payment and newstart allowance debts were affirmed.
- The decision to recover the debts was waived on the basis of special circumstances.

**Key Findings**

- The ARO affirmed the original debt amount.
- The Applicant did not correctly notify Centrelink of his income during the relevant period, and so received more benefits than they were entitled to.
- In lieu of evidence of the Applicant’s actual periodic earnings, Centrelink apportioned his income over the relevant fortnights.
- In setting aside the decision, the Tribunal commented:

  To correctly quantify the debt, Centrelink requires information about [the Applicant’s] actual periodic earnings rather than using an ‘averaging’ approach. Nevertheless, the tribunal accepts [the Applicant] was paid more than his correct entitlement (the specific amount yet to be quantified) and this overpayment constitutes a debt owed to the Commonwealth [21].
- The debts were ultimately waived on the basis of the Applicant’s special circumstances.
Outcome

The decision under review was affirmed.

Key findings

- The Tribunal noted that Centrelink, following having already raised two previous debts against the Applicant during the period of 2010 to 2011, completed a data-match with records from the ATO and took the view that the Applicant had further under-declared his income. Centrelink raised a third debt against him [3].
- The Tribunal noted that the debt was calculated by taking the Applicant’s yearly earnings over the period and averaging them across the fortnights during which he worked and received DSP. The Tribunal stated:

For some social security benefits averaging is not a permissible method of calculating entitlements, but it is permissible — indeed, it is mandated — for calculating DSP entitlement. For example, whilst, in the case of youth allowance, section 1067G of the Act sets out how it is to be calculated and provides, in Point 1067G — H23 of Module H in that section, that, generally speaking, ordinary income is to be taken into account in the fortnight in which it is first earned, derived or received. Thus youth allowance cannot normally be averaged. Similar provision is made in relation to newstart allowance in section 1068, Module G of the Act.

- The Tribunal also noted the commentary of Professor Terry Carney AO in an article titled ‘The New Digital Future for Welfare Debts without Legal Proofs or Moral Authority?’ where Professor Carney impugned the validity of averaging both from a mathematical and legal perspective [13].
- The Tribunal stated, however, that:

DSP is treated differently by the legislation. Whereas Step 1 in the relevant module containing the income test for youth allowance and newstart allowance calculations is: Work out the amount of the person’s ordinary income on a fortnightly basis. The same step in the DSP calculation, found in section 1066A, Module F1 of the Act (for persons under 21) is: Work out the amount of the person’s ordinary income on a yearly basis. The stipulation is the same for persons over 21 (section 1064). Sections 1073A and 1073B then mandate the averaging of that income.

- The Tribunal concluded that it was lawful and proper of Centrelink to calculate the Applicant’s entitlement for a relevant period ‘by reference to his annual earnings averaged over the period’ [15].
- The Tribunal was satisfied that the debt was validly raised [15].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

Outcome

- The decision under review was set aside and substituted with the decision that the matter be remitted to Centrelink to obtain further evidence about the Applicant’s earnings and recalculate the overpayment, with the resulting debt to be recoverable.

Key Findings

- The Tribunal noted Centrelink received information from the ATO about the Applicant’s employment income from a number of employers and decided to raise and recover a debt [3].
- The Tribunal noted that Centrelink obtained payroll details from one of the Applicant’s employers, [Employer], but only requested information for the 2012-13 year. The Tribunal stated the debt ‘appears to have been calculated on the income figures being prorated across the relevant pay periods (apart from the 2012-13 [Employer] income)’ [14].
- The Tribunal found that ‘apportioning the earnings evenly is likely to produce an inaccurate debt calculation as [the Applicant’s] earnings were “lumpy”’ [16].
- The Tribunal decided that Centrelink should obtain information from all of the Applicant’s employers about the ‘actual
amounts paid in each reporting period and recalculate the overpayment’ and, if the payslips cannot be obtained from the employers, Centrelink are to obtain the Applicant’s bank statements and gross up the payments from the amounts she received into her bank account [16].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with the direction that Centrelink reconsider the debts in accordance with para 2 of the reasons.

**Key Findings**

- The Tribunal noted that the matter first came to light as a result of a data match with the ATO for the 2012/13 to 2015/16 income years, which indicated that the Applicant had worked for 16 different employers during that period and the Applicant earned more than the sums he declared to Centrelink [16].
- The Tribunal noted that, with the exception of one employer, Centrelink had calculated the debt using ATO information to average the Applicant’s income over the period he worked for each employer as advised to the ATO [17].
- The Tribunal was not satisfied the debts had been correctly calculated ‘because the actual gross income [the Applicant] has earned in respect of each week or fortnight has not been established’ [20].
- The Tribunal stated:

  Centrelink did give [the Applicant] the opportunity to provide evidence of the income he earned during the period, but he has not provided that evidence. In the tribunal’s view Centrelink’s job in establishing a debt is not yet complete. It is not appropriate (or legally correct) for Centrelink to raise a debt based on incomplete data and then to require the applicant to disprove that debt amount. Centrelink has powers which allow it to gather information from third parties, such as employers. There appears to have been no effort made by Centrelink to exercise those powers, once the evidence was not forthcoming from [the Applicant] [20].

- The Tribunal noted that, should Centrelink contact the Applicant’s employers and be unable to obtain more accurate weekly or fortnightly wage information, the Tribunal will direct that Centrelink make reasonable efforts to obtain the Applicant’s banking records to “gross up” sums paid to his account to calculate his gross weekly or fortnightly income [22].
- The Tribunal also stated:

  If information regarding weekly or fortnightly income cannot be obtained, firstly from the relevant employer or secondly from [the Applicant’s] banking records, then (and only then) it is open to Centrelink to rely on the ATO information in respect of that particular employer and to average the gross income paid over the period advised by the ATO [22].

- The Tribunal did not consider issues of sole administrative error or special circumstances.
June 2011, and the same figure of $5,876 as the declared amount (Tribunal Papers, page 86). Another gives $12,636 gross pay for the 2012/13 financial year and $25 as the amount declared [11].

- The Tribunal found it was not plausible that those discrepancies corresponded to actual misreporting and not plausible that Centrelink, having understood the Applicant to be in long-term secure employment, would not query a failure to report any income. The Tribunal stated they do, however, raise a ‘plausible inference of administrative error’ [12].
- The Tribunal found that the overpayment was due to administrative error in failing to properly record the Applicant’s reported earnings [13].
- The Tribunal found it was not necessary to consider the question whether the debt should be waived in any event due to special circumstances [14].

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**How it was decided and key facts**

**Outcome**
- The decision under review was affirmed.

**Key Findings**
- Centrelink raised the debt following a data match with the ATO [6].
- The Tribunal found that the best evidence available to Centrelink was the Applicant’s gross income as provided by the ATO and was consequently satisfied with Centrelink’s calculations of the debt [34]-[37].
- The Tribunal noted that the Applicant was asked by an ARO to provide payslips/other information to assess whether she received income irregularly [40]. Ultimately, the Tribunal found that:
  
  ...[the Applicant’s] income free area in each fortnight of the debt period was already exhausted by the declared income and she never received sufficient income to lose her entitlement altogether. That means, every additional dollar received in the period would be excess income [42].

- Based on this evidence, the Tribunal was satisfied that even if [the Applicant’s] earnings had fluctuated slightly from week to week in the debt period this would not have affected the overall debt amount. In other words, [the Applicant’s] payslips were not required for Centrelink to calculate her correct entitlement, as the information needed to do that was available in other forms. In other words, [the Applicant’s] debt was 50% of the additional income amount of $2,487.47 which had not been declared to Centrelink [43].
- The Tribunal is satisfied that [the Applicant] was overpaid $1,243.73 from 2 July 2011 to 10 February 2012 and that this is a debt to the Commonwealth under section 1223 of the Act [44].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**
- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debts in accordance with income information received from the Applicant’s employers.

**Key Findings**
- Centrelink raised and calculated the debts based on information provided by the ATO [15]. The Tribunal stated:

  It appears to me that Centrelink obtained annual income amounts from the ATO and averaged these amounts for the relevant debt periods. However, I find that the pay information provided by [Employer] is inconsistent with the annual totals provided by the ATO and further, as the fortnightly pay amounts varied from one fortnight to the other, I cannot be satisfied that the debt calculations provided by Centrelink are accurate [19].
In any event, the hearing papers indicate that an annual income amount from [Employer] as reported from the ATO was averaged over the 2011 to 2012 financial year to calculate the debt for that period [21].

Given the information recently provided by [Employer] to Centrelink, I cannot be satisfied that the debt has been correctly calculated [22].

This apparent averaging of the ATO data match does not allow for an accurate debt calculation where the fortnightly amounts paid are not the same [23].

- The Tribunal did not consider whether special circumstances existed to justify a write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was affirmed

**Key Findings**

- Centrelink raised a debt based on overpayment of YA and NSA.
- The debt used information provided by the ATO [6].
- The Tribunal stated the Applicant conceded at the hearing that while he probably did not fully inform Centrelink about his earnings during the debt period, however, he:

  ...was not prepared for Centrelink to garnishee his tax return to offset the debt [the Applicant] was concerned that Centrelink may have over recovered the debt amount as his tax return was garnished for two years [18]-[19].

- The Applicant was unable to access payslips and/or bank statements and was not sure that the information from the ATO was correct. He was frustrated at being unable to dispute it as he the information as he did not have written evidence [20]-[21].
- The Tribunal accepted the ATO information in the absence of any other evidence to dispute the amounts of earnings and the periods during which they were earned [24].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
- The Tribunal found that the debt had been recovered or nearly fully recovered by way of garnishee of the Applicant’s tax returns.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and substituted with the decision that the debt be recalculated in accordance with directions that the Tribunal consider further evidence as outlined in the reasons.

**Key findings**

- The Tribunal noted that Centrelink had received PAYG data-matching information from the ATO for the 2012/2013 FY with gross earnings from seven different schools and an employment agency and subsequently wrote to the Applicant asking her to confirm the information provided by the ATO [5].
- The Applicant did not have payslips from all employers but provided her bank statements for the period into an account which her income was paid and was able to find out from different schools the number of hours she worked for them in that year. The Tribunal noted that ‘[u]sing that information, Centrelink reassessed [the Applicant’s] entitlement for the debt period’ [7].
• The Tribunal found:

Centrelink’s assessment appears to be based on the instalment period in which an income amount was received which is not how [the Applicant] was required to report her income. In other words, Centrelink’s assessment is, in part, comparing apples and oranges.

... A more correct assessment would be to assess each receipt of income as income having been derived in the fortnight ending at least a day before the pay day [43]-[44].

• The Tribunal found it could not be satisfied that the Applicant had a debt given the Applicant had 'provided new information and there are concerns about the apportionment of [the Applicant’s] income in the debt period' [47].

• The Tribunal did not consider the issues of waiver or write off by way of sole administrative error or special circumstances, except to say that the Applicant agreed that repayment of a debt would not cause her undue hardship [49].

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**How it was decided and key facts**

**Outcome**

The NSA debt decision for the period 31 January 2015 to 9 March 2015 is affirmed and recoverable.

The other decisions under review are set aside and remitted to Centrelink for reconsideration in accordance with directions that:

- Centrelink make enquiries with the Applicant’s employers to obtain more specific earnings information;
- Once that earnings information is obtained, Centrelink is to reconsider whether the Applicant has been overpaid and, if so, in what amount;
- Any debt arising due to her unreported earnings from a particular employer was ‘clearly incurred by fraud and must be recovered’ [37];
- In relation to any other debt arising, Centrelink will need to determine whether they have been incurred by fraud (taking into account all information that is then available) and if the answer to that question is “yes” then those debts must be recovered. If the answer is “no” then those debts could be written off as irrecoverable at law [37].

**Key Findings**

- The Tribunal noted that the Centrelink papers included data matching information from the ATO which advised that the Applicant was paid particular arounds by specified employers over stated periods [7].

- The Tribunal stated:

  Centrelink apportioned those earnings into fortnightly periods over the periods advised by the ATO. Centrelink then applied the income test using those fortnightly apportioned amounts and raised Debt No1 to Debt No3. In the decision below I refer to that approach as the “apportionment approach” [8].

- The Tribunal noted that the ARO advised that the Applicant was declared bankrupt on 20 February 2015 and was discharged from bankruptcy on 21 February 2018 [10].

- The Tribunal was satisfied that the Applicant received amounts of social security payments in excess of her entitlements, but was not satisfied that Centrelink had correctly calculated the quantum of the other three debts. The Tribunal stated that Centrelink had

  ... adopted the apportionment approach when calculating those debts. I accept that there will be times when that approach will be reasonable and appropriate. Significantly however, Centrelink has specific information gathering powers under the legislation.

  ... prior to adopting the apportionment approach, Centrelink should make all reasonable efforts to gather any more accurate information that might be available.

  ... Of course, if any of the employers no longer have relevant records, then I would accept that the apportionment approach would be a reasonable and appropriate approach in relation to [the Applicant’s] earnings from that employer [18].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
Outcome

The decision under review was set aside and remitted to Centrelink with directions that:

- fortnightly payslips be acquired from the Applicant’s employers and the Applicant’s DSP and age pension debt be recalculated accordingly
- the recalculated debt was due to the Commonwealth and
- the value of the recalculated debt was to be reduced by the amount already repaid, with the balance of the debt waived due to special circumstances.

Key Findings

- The Tribunal noted that, following receipt of electronic data from the ATO, a review of entitlement took place in February 2016 indicating the Applicant had received a greater amount of income than that declared to Centrelink [3].
- The Tribunal noted soon after the Applicant asked for the initial debt decision to be reviewed it became evident that Centrelink had ‘duplicated the earnings’ of the Applicant, resulting in Centrelink’s second decision to amend the DSP and age pension debt [4].
- The Tribunal noted that the Applicant did not dispute the gross income recorded on the PAYG Summaries received by the Department through the data match process. The Tribunal stated:

  In the period 29 June 2011 to 25 June 2013, the Department has attributed 1/26th of those sums over each of the 26 fortnights in the financial year. The tribunal is not satisfied that this method results in an accurate calculation of [the Applicant] entitlement to DSP, given that there are clearly periods throughout the year where he would receive little if any payment from [Employer] [15].

... 

In order to accurately calculate the DSP and age pension entitlement of [the Applicant], it is necessary to access his fortnightly payslips from [Employer] in the relevant period [16].

- The Tribunal found that special circumstances existed to justify a waiver of the debt [39].

Outcome

- The decision under review was set aside.
- The matter was remitted to Centrelink for reconsideration with direction to obtain payroll details from the Applicant’s employers.

Key Findings

- A debt was raised on the basis that certain income earned by the Applicant, identified from the records of the ATO as part of Centrelink’s data matching, had not been properly taken into account in calculating the amount of benefits paid to him [6].
- The Tribunal found that the Applicant worked on a casual basis, his earnings varied each fortnight and he did not actually earn the averaged amount each fortnight. The earnings had not been verified by Centrelink via payslips or by employers at [25].
- The Tribunal subsequently directed Centrelink to obtain the Applicant’s correct earnings from his Employers against the figures provided by the Applicant to the Tribunal at [33].
- The Tribunal found the Applicant’s income was averaged over the entitlement period and stated:

  If averages of income over larger periods are used then the result generated by the rate calculator is likely to be erroneous. The error will be compounded when one takes into account that income bank credits or debits are
generated by the rate calculator each fortnight and then applied to the running balance of the income bank (or working credits, as the case may be) [31].

- The Tribunal stated that it was:

  ...not in a position to calculate the correct amount of any debt and for that reason it is appropriate that the matter be remitted to Centrelink so that the correct amount of any overpayment during the relevant period may be verified or calculated on the basis of [the Applicant’s] fortnightly earnings [43].

- The Tribunal made no findings on special circumstances.

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**How it was decided and key facts**

**Outcome**

- The decision under review was affirmed.

**Key Findings**

- The issues for consideration included whether the Applicant was overpaid Disability Support Pension for the period from 28 March 2012 to 17 June 2014.
- The Tribunal noted ‘Centrelink received information from the Australian Taxation Office (ATO) that the Applicant had received gross payments’ in certain amounts from his employer [4].
- The Tribunal:

  examined the Centrelink Multical debt calculations in the Tribunal papers and noted that the summary and detail of the calculations shows that [the Applicant] was paid $41,324.70 in disability support pension payments and was entitled to $27,028.07.

16. The Tribunal noted that the debt amount totals for each of the three years are consistent with the increasing undeclared amounts as indicated by ATO information compared with Centrelink records [15]-[16].

- The Tribunal found it ‘could see no discrepancy in the Multical debt calculations’ and found ‘on the available evidence that [the Applicant] has been overpaid disability support payments in the debt period as stated by the authorised review officer’ [17] – [18].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was affirmed.

**Key Findings**

- The Tribunal noted that, after receiving information from the ATO in 2018, a data match was undertaken which confirmed the Applicant’s income was higher than that applied in the assessment of entitlements [3].
- An internal review identified that annual leave and maternity leave payments were not taken into account at the time of the claim for parenting payment, resulting in an overpayment [3].
- The Tribunal found Centrelink’s calculation to be correct [5].
- The Applicant asked the Tribunal to waive the debt either due to sole administrative error (maintaining she gave Centrelink all of the information required at the time of her claim) and/or the special circumstances of the case [4].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
### How it was decided and key facts

**Outcome**

- The decision under review was set aside and remitted to Centrelink with the direction that the Applicant’s entitlement is recalcualted based on payslips with any recalculated debt to be recovered in full and payments made in excess to be refunded.

**Key Findings**

- The debt was initially determined after a data match with ATO and on the basis of averaging earnings during the 2011 financial year.
- The Tribunal found that there was only a small discrepancy ($1.62) between the payslips and the earnings declared by the Applicant, and therefore it was unlikely there was an overpayment.
- The Tribunal noted that the Applicant provided payslips to Centrelink after the ARO's decision but his request for review was refused.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

### How it was decided and key facts

**Outcome**

The decision under review was set aside and with the decision that:
- the NSA debt for the period between 30 July 2012 and 30 November 2013 be waived; and
- the NSA overpayments for the period between 29 November 2014 and 19 February 2015, be remitted to Centrelink for recalculation of the debt having regard to payroll information.

**Key Findings**

- The Tribunal noted following a review prompted by information received from the ATO, Centrelink formed the view that the Applicant had under-declared his income [1].
- In relation to the Applicant’s employment with a particular employer, the Tribunal noted that the Department had ‘erroneously found that this employment occurred in the subsequent financial year’ and had also averaged the Applicant’s earnings from the Employer across the whole 2011/12 financial year ‘when he was in fact only working for a fraction of that year’ [7].
- In relation to the NSA debt arising between 30 July 2012 and 30 November 2013, the Tribunal was satisfied that the payment of NSA was solely attributable to administrative error and the payments were received in good faith. Accordingly, the Tribunal found the debt must be waived [14].
- In relation to the debt between December 2014 and February 2015, Centrelink relied on information obtained through the ATO to prove that the Applicant derived certain income during that period. The Tribunal noted that the information obtained from this particular Employer was a business record extracted from its payroll which records fortnightly payments to the Applicant and there was no record of these having been declared [15].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt [20].
How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for reconsideration with the direction that Centrelink recalculate the debt after using their information-gathering powers to request records.

Key Findings

- Centrelink raised the debt following a data match with the ATO.
- Centrelink had calculated the debt by redistributing the Applicant’s income from payslips except for a six-month period where apportionment was used as there were no payslips from the Applicant.
- The Tribunal criticised the apportionment method:

  Centrelink have the legislative power to request the relevant missing payslips from this employer and undertake the correct apportionment of [the Applicant’s] income. Prior to adopting the apportionment approach, Centrelink should make all reasonable efforts to gather any more accurate information that might be available. Once that information is obtained, Centrelink will be able to accurately calculate the amounts that [the Applicant] was overpaid. Of course, if any of the employers no longer have relevant records, then it would be accepted that the apportionment approach would be reasonable and appropriate however until all reasonable steps are exhausted the current calculations are incorrect [18].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation by correctly apportioning the applicant’s actual earnings in each period.
- Any outstanding debt was to be recovered from the Applicant.

Key findings

- The Applicant disputed some of the evidence provided to the Tribunal relating to his income from respective his employers.
- The Tribunal commented:

  The rate calculator for newstart allowance requires the calculation of income on a fortnightly basis and according to section 1073 of the Act ordinary income is to be taken into account in the fortnight in which it is first earned, derived or received. Incorrectly assigning income to a different fortnight can result in a skewing of the rate payable and as a consequence any debt. The tribunal has previously noted that it is not always possible to obtain evidence of a person’s weekly or fortnightly income and in such instances the approach has been to average the income amounts across all fortnights in the period covered by the amount. In Halls and Secretary, Department of Education, Employment and Workplace Relations [2012] AATA 802 (Halls) the tribunal considered that it was appropriate for Centrelink (the relevant department’s delivery agency) to use an averaging method to calculate fortnightly income because in the circumstances it was the best available information that could be provided by the employer and the applicant. In Provan and Secretary, Department of Families, Community Services and Indigenous Affairs [2006] AATA 831 (Provan) the issue of averaging fortnightly income was considered appropriate however this was in circumstances where the employer had shut down and Mr Provan did not have any pay advice or other information that would assist in working out his periodic income [26].
The averaging method applied by Centrelink in this case is potentially unreliable as [the Applicant’s] fortnightly earnings may have varied throughout the relevant period, and the “averaging” approach applied by Centrelink may not have reflected [the Applicant’s] actual earnings... [27]

On the best available information, noting [the Applicant’s] was not able to provide any further information about variations in his fortnightly income from [employer], the tribunal accepts the averaging method applied by Centrelink [28].

The tribunal considers that the debt will need to be recalculated, in line with the tribunal’s findings in relation to [the Applicant’s] income from [the Employer] being $286 per fortnight in the relevant period [29].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**
- The decision under review was affirmed.

**Key findings**
- The Tribunal noted the Applicant was very disappointed that it had taken Centrelink so long to raise the debts as he had recently destroyed all records he held, such as work diaries [10].
- The Tribunal noted that the decision of the ARO clearly set out what Centrelink have on the record for earnings declared by the Applicant in comparison to the relevant PAYG data and found:

  There is a discrepancy between the amounts declared and [the Applicant’s] corroborated earnings. [The Applicant] did not deny he earned those amounts, his issue was raised with the unlikelihood that he would have under declared to the extent suggested by Centrelink and the suggestion of Commonwealth error [17].

- The Tribunal checked the debt as ‘comprehensively reassessed by the ARO’ and did not find any error in those calculations [18].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**
- The decision under review was set aside and remitted to Centrelink for recalculation of the debts as directed paragraphs 10-12 of the reasons.

**Key findings**
- The Tribunal found the Applicant’s debt was ‘required to be recalculated using the actual income the Applicant received during the debt period’ [10].
- The Tribunal directed Centrelink to follow up with the employer to confirm the Applicant’s cessation date and once confirmed the debt should be recalculated using the actual income figures provided by the employer within the Tribunal papers [12].
- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.
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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt with the direction that Centrelink obtain payslips or bank accounts for the relevant periods.

**Key Findings**

- Centrelink raised the debt following a data match with the ATO and then averaged the Applicant’s income over the debt period.
- The Tribunal was not satisfied that the debt amount was correct as the Applicant worked casual jobs and there was an absence of specific information including payslips and new debt calculations from Centrelink [14].
- The Tribunal stated:

  The tribunal does not accept the apportionment of income in relation to this matter based on data matching from the ATO. The tribunal accepts that the evidence from [the Applicant] is a correct reflection of her income during this period. The tribunal is unable to determine the precise amount of the debt; this is because there was enough evidence presented by [the Applicant] to indicate that apportioning income in the way that Centrelink has, at least in the first debt calculations (folio 18) is not fair or reasonable. Centrelink’s recalculated debt apportionments, once income from [Employer 1] and the [Employer 2] were included, were not provided to the tribunal for the tribunal to check the debt calculations. Finally, in the absence of precise fortnightly income for the relevant payment fortnights the tribunal is unable to determine that an overpayment amount if any, is correct [16].
- The Tribunal found that there was no administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- Decision under review was affirmed. The Tribunal was satisfied with the ARO’s debt calculations.

**Key Findings**

- This matter was previously appealed to the AAT in 2016. In 2016, the Tribunal remitted the decision back to Centrelink for recalculation. The Applicants are now reviewing the 2016 decision.
- The Applicants claim that Centrelink provided incorrect information following the previous AAT review.
- The Applicants disputed all of the income material provided by the relevant employers, and claimed that the information provided by Centrelink and the employers was falsified. The Tribunal did not accept this argument.
- The Tribunal approved the use of income averaging, in circumstances where it is the best information available. Some of the Tribunal’s comments included:

  ... the tribunal considered that the information that the ATO provided about [the Applicant’s] employment and earnings from these entities was reliable and was the best evidence that was available [33].

  ...The tribunal compared the information from the labour hire firms and employers and the ATO-provided information with the authorised review officer’s findings regarding [the Applicant’s] employment and his earnings. The tribunal also compared Centrelink’s apportionment of [the Applicant’s] earnings over the debt periods with the labour hire, employer and ATO-provided information. The tribunal agreed with the authorised review officers findings with two exceptions [34].
- The Tribunal was ultimately satisfied that:

  ...the information that Centrelink obtained was correctly applied in calculating the overpayments and that the matters
that member Amundsen raised for further investigation were resolved [35].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt.

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How it was decided and key facts

Outcome

- The decision under review was affirmed.

Key Findings

- The Applicant’s debt was raised on the basis the Applicant did not report her full earnings when compared to ATO information. An ARO affirmed the decision.
- The Tribunal found that Centrelink had apportioned earnings for three consecutive fortights and endorsed this approach:

  Whilst is was submitted that on page 76 of the Tribunal papers, apportioned earnings for three consecutive fortights ending 28 November 2011, 13 December 2011 and 27 December 2011 appeared to be exaggerated compared with actual earnings, the Tribunal compared apportioned earnings compared with actual income for those fortights together with three preceding fortights and two later fortights. This revealed that actual and apportioned income was similar ($5,056.19 compared with $5,026.74). The Tribunal having compared apportioned and actual earnings over a longer period, is satisfied that those for the three identified fortights are not exaggerated [29].
- The Tribunal did not contest with the submission that the information from ATO and the figures from Centrelink’s apportioning were different:

  Further it was submitted that the ATO amount of $5,530 for three employers during that 2011-2012 is less than the apportioned amount of $7,151.15, and that indicates that the Centrelink amounts are incorrect. The Tribunal noted that there are potentially a variety of reasons why these amounts could differ [30].
- The Tribunal concluded that the debt calculations were correct based on the finding that apportioned earnings matched actual earnings:

  The Tribunal has found on the evidence available that the apportioned earnings match the actual earnings for this period. As detail of ATO figures is not available it is not possible to scrutinise these further. As stated the Tribunal accepts that the apportioned earnings calculated by Centrelink reflect the actual earnings for that period [31].

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How it was decided and key facts

Outcome

- The decision under review was affirmed.

Key Findings

- Centrelink raised the debt following a data match with the ATO and calculated the debt using apportioned income. However, the Tribunal was satisfied with Centrelink’s calculations and that apportionment was appropriate [11].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
### How it was decided and key facts

**Outcome**
- The decision under review was set aside, and the debt is written off for a period of two years.
- A 10% recovery fee was applied, but was waived by the Tribunal on review.

**Key findings**
- The ARO recalculated and reduced the Applicant’s debt on internal review.
- The Applicant conceded that she did not always report her income accurately, and may have been overpaid in the period in which she received Centrelink benefits.
- The Tribunal commented:
  [the Applicant’s] overpayment came to light as the result of data matching between Centrelink and the Australian Taxation Office (ATO). Initially, Centrelink calculated [the Applicant’s] debt by apportioning her annual income, as recorded by the ATO, across the relevant period. [The Applicant] subsequently supplied payroll information from her employer about her fortnightly earnings which allowed Centrelink to more accurately calculate her debt... [12].
- The Tribunal was ultimately satisfied that Centrelink's revised calculations were correct.
- The Applicant was found to have special circumstances due to severe financial hardship and the debt was written off for a period of two years.

### How it was decided and key facts

**Outcome**
- The decision under review was set aside and substituted with the decision that the Applicant does have a debt, but it needed to be recalculated using payslip information, with the recalculated debt to be recoverable.

**Key Findings**
- The Tribunal noted evidence in the Centrelink papers of ATO match information regarding the Applicant’s earnings from three different employers, payslip information from one of his employers, and the Applicant’s bank statements [11].
- The Tribunal asked Centrelink to confirm whether the Applicant’s payslip information was used to calculate the debt on a fortnightly basis based on what was earned each fortnight or whether his annual income was averaged across the year. The Tribunal noted Centrelink's response was:
  [Employer 1]: The period of the debt from 10/02/12 to 05/04/12 is calculated from Bank Statements supplied by the customer during the appeal process, the customer said he did not have payslips for this period. (Per DOC 19/07/18 and Multical for this period is scanned 16/07/18 - please see pages 461 and 349 - 353 of the s37 papers).
  [Employer 2]: From Customer First/Activities Tab/PAYG/Notes Tab: “Customer advised of payslip details: No, Bank statements uploaded but not all are readable. Recipient verbally provided earnings from bank statements”
  [Employer 3]: From Customer First/Activities Tab/PAYG/Notes Tab: “Customer advised of payslip details: Yes and recipient verbally provided earnings from payslips”
  [Employer 4]: From Customer First/Activities Tab/PAYG/Notes Tab: “Customer advised of payslip details: No, Bank statements uploaded but not all are readable. Recipient verbally provided earnings from bank statements” [12].
- The Tribunal stated in relation to employer 4 that Centrelink noted there was a $314.09 discrepancy arising over a date period that ‘CO accepts as it is below 5% of ATO match data’ and, over a different date period, Centrelink noted that a ‘discrepancy of $427.68 over’ was ‘deemed acceptable between ATO match’ [13].
- The Tribunal was satisfied that the debt calculations reflected the income the Applicant reported, but was not satisfied.
that Centrelink had correctly input and apportioned the Applicant’s income ‘because of the allowed margins of error’ noted above [15].

- The Tribunal asked Centrelink to obtain payslips from the Applicant’s employers during the relevant period as there were still payslips outstanding [16].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink with a direction that the debt is recalculated on the basis of bank records.

**Key Findings**

- Centrelink raised the debt following a data match with the ATO.
- As the debt was raised for the period between 3 March 2012 and 22 June 2012, the Applicant did not have any payslips given the passage of time.
- Centrelink calculated her debt by averaging the income reported by the ATO.
- After an ARO affirmed the decision, the Applicant provided bank statements.
- The Tribunal found that there was a discrepancy between the bank records evidencing her income and Centrelink’s information [7].
- The Tribunal concluded that Centrelink must recalculate the debt using the Applicant’s bank records [7].

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and substituted with the decision that the debt was written off until 1 September 2019.

**Key Findings**

- Centrelink raised the debt following a data match with the ATO.
- The Tribunal was satisfied that Centrelink did not use income averaging but had worked out the actual gross income per Centrelink fortnight, except for income from casual employment with a recruitment agency in 2014/2015 as there was no evidence as to when the income was precisely earned [21].
- The Tribunal found that the Applicant had not declared any income for 2014/2015 [26], as well as 2015/2016 period [30].
- The Tribunal was satisfied that Centrelink had calculated the debt correctly [32].
- The Tribunal concluded that any debt was written off until 1 September 2019 due to proven incapacity to repay the debt [45].

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**How it was decided and key facts**

**Outcome**

The decision under review was set aside and substituted with the decision that the debt was waived.

**Key Findings**

Royal Commission into the Robodebt Scheme
• Centrelink raised the debt following a data match with the ATO.
• Centrelink raised debts in two separate periods.
• The applicant had provided some payslips for one employer but did not provide any payslips from other employers.
• Centrelink used some bank statements to determine periods worked as well as net income.
• For the first period, the Tribunal was not satisfied that the debt calculation was correct as it was unclear how Centrelink had apportioned income over a Centrelink fortnight [15, 16 and 19].
• For the second period, the Tribunal was not satisfied there was a debt given the absence of payslip information and banks statements, and even though the Applicant had over-reported her income. The Tribunal found that there was no debt for this period. [18].
• The Tribunal noted that any debt needed to be recalculated using actual payslip information [19].
• The Tribunal found that special circumstances existed to justify a waiver of the remainder of the debt.

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### How it was decided and key facts

#### Outcome

• The decision under review was set aside and remitted to Centrelink to obtain verified income information for the Applicant and recalculate the debt on this basis.
• Centrelink was directed not to apply the 10% penalty.

#### Key Findings

• The Tribunal noted the following in relation to Centrelink’s calculations:

  According to the Department they have calculated the debt by taking the amounts reported by the ATO and ‘...in the absence of any information regarding the exact days worked ...the amounts have been apportioned...’[1] On this basis the Department concluded that [the Applicant] had been paid $30,515.53 when only entitled to $10,213.57. This approach fails to take into account the actual earnings for each fortnight period and as such does not provide a precise or acceptable calculation of any alleged overpayment [12].

• It was not apparent to the Tribunal what attempts the Department have made to verify actual earnings either through obtaining copies of [the Applicant’s] payslips from his former employers or by obtaining relevant bank statements. The Department in its role as decision maker has the power to request this information [13].

• The Tribunal found that the debt could not be waived on the basis of sole administrative error as the Applicant had contributed to the debt by not advising of the relevant changes in his income as required [26].

• The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

• The Tribunal found that the 10% recovery should not be applied as it ‘made little sense to the tribunal that a person who was correctly reporting under one payment would take it upon themselves to directly or recklessly not so comply in relation to another payment’ [31].

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### How it was decided and key facts

#### Outcome

• The decision under review was set aside and substituted with the decision that the debt was be recalculated to take into account the Tribunal’s findings on Centrelink’s calculations and actual gross earnings from payslips.

#### Key Findings

• The Applicant held numerous jobs. The Applicant could only produce payroll information for some jobs.

• The Tribunal disagreed with Centrelink’s approach to apportion some income solely on ATO information:

  Centrelink has relied on the information provided by the ATO to apportion the income from the other employers which refer to periods from 1 July to 30 June in the relevant financial years. On the basis of that information Centrelink has assumed that [the Applicant] earned a consistent daily rate of earnings from those employers over the whole financial years.
year. The Tribunal was satisfied that did not occur because [the Applicant] worked as a casual teacher with intermittent earnings [20].

- The Tribunal noted that averaging was appropriate where the Applicant did not know when she worked in that role:

As the date of employment is not known the Tribunal was satisfied that the income of $352 reported as being earned in the period 1 July 2010 to 30 June 2011 is to be apportioned across the whole of the year which equates to a daily rate of $0.9643 as shown in Centrelink’s apportionment calculations on page 43 of the documents. Only the apportioned income from 4 March 2011 to 30 June 2011 is taken into account.

- The Tribunal found that as the Applicant provided payroll details, Centrelink’s should take into account the actual gross earnings in the period they were earned for recalculation [22].
- The Tribunal found that the debt should be recalculated to take into account any adjustments to the accrual and depletion of working credit [23].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt.

### How it was decided and key facts

It was not clear whether income averaging was applied to calculate the debt that was affirmed on review.

**Outcome**

- The decision under review was affirmed.

**Key Findings**

- The issue for the Tribunal to determine in this matter related to whether the Applicant was overpaid Newstart allowance whilst working for two separate employers for the period of entitlement under review [1].
- The Tribunal stated the Applicant ‘conceded that he had not always declared his income to Centrelink’ and accepted the calculations made by the ARO which was based on payslips and data matching information received from the ATO [6].
- The Tribunal found that the Applicant was paid more than he was entitled due to false and misleading information provided by him and a 10% penalty applied [7].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

### How it was decided and key facts

**Outcome**

- The decision under review was affirmed.

**Key Findings**

- Centrelink raised the debt following a data match with the ATO [2].
- In relation to the debt calculations, the Tribunal noted:

  Centrelink’s use of PAYG information from the ATO to calculate the debt was discussed at the hearing. [the Applicant] raised a concern that her earnings were averaged over the PAYG periods. The Tribunal explained that a request could be made to Centrelink to use its powers to request payslip or payroll information from her employers; however, it is unknown how more accurate information from the payslips would affect the amount of the debt. At her request, the Tribunal allowed [the Applicant] time after the hearing to decide whether she wished to pursue further payslip or payroll evidence from her employers. [the Applicant] advised registry staff that she did not wish to pursue obtaining payslip or payroll evidence. Accordingly, the ATO information showing that her employment income was more than the amounts
she declared to Centrelink is not disputed. On that basis, [the Applicant] agrees that a debt arises under the law and that the debt is not attributable to administrative error [13].

- In relation to a garnishee notice sent to the Applicant’s employer in respect of her wages, the Tribunal found that Centrelink first sought to recover the debt via a payment arrangement, however, that the Applicant failed to enter into such an arrangement. The Tribunal referred to evidence that the Applicant ‘advised that she did not receive correspondence about the online compliance review (employment income confirmation letters) sent to an address in Spotswood’ [35]. Accordingly, the garnishee notice was issued to correctly [38].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**
- The decision under review was set aside and substituted with the decision that there was no debt.

**Key Findings**
- Centrelink raised a debt following a data match with the ATO.
- An ARO affirmed the debt but removed the recovery fee from using the following method:
  
  ...the debt has been calculated by using ATO data match...however customer did provide a payslip...this payslip is outside of the debt period. Subtracting this amount from the data match results in a fortnightly income of $1,412.18 instead of $1,457.84 used from the data match...decided to remove the recovery fee rather than send for debt to be recalculated...I am satisfied that these amounts roughly offset each other [14].

- The Tribunal criticised the ARO’s approach:
  
  The Department further notes that it has taken this approach because [the Applicant] has failed to provide them with payslips so at allow actual income amounts to be verified. As a result the Department have apportioned income over the debt period. In the tribunal’s view the approach taken by the Department to ‘roughly’ work out the debt amount and then on the basis of this to remove the recovery fee as a means to roughly offset amounts is not appropriate. It fails to take into account the actual earnings for each fortnight period and as such fails to provide a precise or acceptable calculation of any alleged overpayment. This approach also fails to properly address the criteria relevant to the application of a recovery fee under section 12288 of the Act [15].

- The Tribunal found that Centrelink had based the debt on an incorrect finding that the Applicant worked for a period when she didn’t. The Tribunal noted:
  
  It is apparent that the Department has not taken any acceptable steps to verify actual earnings in this matter, clearly in its role as a decision maker the Department has the power to request relevant information either from [the Applicant’s] employers or by obtaining copies of her bank statements [16].

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**How it was decided and key facts**

**Outcome**
- The decision under review was set aside and remitted to Centrelink for reconsideration with the direction that Centrelink establish that there was a debt.

**Key Findings**
- Centrelink raised a debt following a data match with ATO.
- The Tribunal noted that Centrelink calculated the debt by using the ATO information to average the Applicant’s income over the period she worked for each employer [14].
The Tribunal was not satisfied that the debt was correctly calculated as the actual gross income the Applicant earned in respect of each week or fortnight had not been established [21].

The Tribunal criticised Centrelink’s role in obtaining evidence:

In the tribunal’s view the Department’s job in establishing a debt is not yet complete. It is not appropriate (or legally correct) for the Department to raise a debt based on incomplete data and then to require the applicant to disprove that debt amount. The Department has powers which allow it to gather information from third parties, such as employers.

There appears to have been no effort made by the Department to exercise those powers once the evidence was not forthcoming from [the Applicant] [21].

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and substituted with the decision that no debt was proven.

**Key Findings**

- Centrelink raised a debt following a data match with ATO.
- The debt was reduced and the recovery fee was waived after the Applicant provided payslips.
- The Tribunal criticised Centrelink’s approach in apportioning the Applicant’s annual income over the whole year:

  This form of apportionment is not permitted by section 1068 which requires income to be brought to account in the fortnight in which it is earned and the payslips provided by [the Applicant] confirm, as one would expect, that her income varied significantly from fortnight to fortnight [7].

- The Tribunal found that there was a contradiction in Centrelink’s own figures for the Applicant’s reporting which meant that it was not satisfied the Applicant undertaxed her income [8].

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink with the direction that Centrelink obtain the Applicant’s pay information from their former employer.

**Key Findings**

- Centrelink raised a debt following a data match with ATO.
- The Tribunal considered the Commonwealth Ombudsman’s report, including the statement by the Ombudsman that incomplete information may affect the debt amount [12].
- The Tribunal found that the Applicant had been ‘disadvantaged by the method used by Centrelink to calculate his debt, because it presumed his 2012/2013 annual earnings of $24,187 could be averaged out to $927.72 per fortnight’ [13].
- The Tribunal found that the Applicant’s income varied significantly from fortnight to fortnight due to study [13].
- The Tribunal agreed with the ARO’s decision that if a debt was found for one period, then it should be waived due to sole administrative error [18].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt.
### How it was decided and key facts

#### Outcome

- The decision under review was affirmed.

#### Key Findings

- The Applicant’s debt was calculated using income apportioned from ATO data. The Tribunal stated:
  
  The debts as originally calculated and raised by the Secretary involved the equal apportionment of income per fortnight over the employment periods declared by the two employers in the ATO data match. In the absence of any other information, the Tribunal considers this a legitimate approach.

  ...

  Where other employment and income information is available, and in particular payment information for particular fortnights, this must be taken into account. This ensures that income is not apportioned by [Centrelink] over fortnights in which there was in fact no earnings, or reduced earnings [15].

- The Tribunal was satisfied that the calculations were correct.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write-off or waiver of the debt.

### How it was decided and key facts

#### Outcome

- The decision under review was set aside and remitted to Centrelink with the direction that debt should be recalculated on the basis of the bank statements.

#### Key Findings

- Centrelink raised a debt following a data match with ATO and on the basis of two payslips.
- The Applicant did not dispute the Centrelink’s method of averaging her annual income as she earned a regular amount each fortnight, except for some irregular additional overtime payments [15].
- The Tribunal was not satisfied with the averaging used by Centrelink as the applicant’s bank statements indicated that she did not receive the same net pay each week [17].
- The Tribunal concluded that there were now bank statements available which provided actual information about the Applicant’s net pay [18].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write-off or waiver of the debt.

### How it was decided and key facts

#### Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the basis of information to be obtained from the Applicant’s employers or bank statements.

#### Key Findings
• The Applicant sought review of a decision made by the Department to seek recovery of debt raised using ATO information, which include a 10% penalty.
• The Applicant was aware of the cut-off point for earnings in a fortnight, and at times reported less than he received.
• The Tribunal found that the Applicant was overpaid in some periods [43]-[44]. It, however, stated:

However, that is not to say that the Tribunal can be satisfied that Centrelink’s debt calculation was correct. Centrelink retrospectively determined [the Applicant’s] correct entitlement on the basis that in the 2013/14 and 2014/15 tax years his income from [Employer] was earned at a regular rate over relevant periods of employment. That is, the income was averaged over those periods in which Centrelink determined [the Applicant] had worked. Centrelink exempted a period from February to June 2015 for which [the Applicant] had provided a medical certificate. However, [the Applicant] did not receive any social security payments on five of the fortnights in question and only received small amounts on other fortnights [48].

• The Tribunal noted there was no evidence that Centrelink attempted to seek payroll information from two employers [49].
• The Tribunal further stated:

The Tribunal agrees with [the Applicant] that, given his irregular work pattern, an averaging of his income over an entire year is inappropriate and not reflective of the manner in which he was required to report his income. It is not a fair way to assess his correct entitlement to NSA in the debt period [50].

• The Tribunal found that although it could only conclude that the Applicant did not correctly declare all of his employment income to Centrelink, it could not be satisfied that the debt was correctly calculated [52].
• The Tribunal found that Centrelink should obtain further information to correctly determine the Applicant’s entitlement and how much debt he owed [53].
• The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

• The decision under review was set aside and remitted to Centrelink with directions that the debt is to be recalculated to include income where the Applicant failed to report and to not include irrelevant income.

Key Findings

• The Tribunal noted the ARO apportioned ATO income over the financial year of 2010 to 2011 [6].
• The ARO affirmed the decision on the basis the Applicant worked for four employers during the debt period.
• The Tribunal found that the income from [Employer 1] is to be taken into account as the Applicant failed to report these earnings. The Tribunal did dispute Centrelink’s apportionment method [28].
• The Tribunal found that the income from [Employer 2] should not be included as the Applicant commenced employment after Centrelink payments ceased [30].
• The Tribunal found that the income from [Employer 3] is not to be taken into account as the income and dates had not been verified by Centrelink and the Applicant stated he never earned income from th [37].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

• The decision under review was set aside and remitted to Centrelink for recalculation of the debt by correctly apportioning the applicant’s actual earnings in each period.
• Centrelink was directed to obtain earnings and payroll information for the applicant from the relevant employers.

Key findings
A $6,000 debt was raised on the basis of ATO data matching. The Applicant was deaf, so a social worker assisted him during the period in question to report his fortnightly earnings, which often fluctuated.

The Tribunal was not satisfied that income averaging was an appropriate method of calculation in the circumstances, as it did not properly reflect the Applicant’s actual fortnightly earnings.

The Tribunal stated:

While averaging of that income over the relevant period may approximate his earnings, that method is not an accurate measure for the purposes of section 1064 (the carer payment rate calculator) because the income was not apportioned as required by section 1073B for each fortnightly social security payment period [10].

In calculating the debt, the Department applied an averaging of the income received by [the Applicant] from his employers for the relevant period. The effect has been that income was incorrectly attributed throughout the relevant period because [the Applicant’s] actual income from employment was not always consistent [11].

The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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### How it was decided and key facts

**Outcome**

- The decision under review was set aside and remitted to Centrelink with the direction that the debt was to be recalculated taking into account the Applicant’s employment income and 50% of the debt is to be waived.

**Key Findings**

- Centrelink raised the debt following a data match with the ATO.
- The Tribunal noted that after the Applicant provided bank statements Centrelink calculated her income for a period by ‘glossing up’ her net income [11].
- The Tribunal noted that Centrelink apportioned the Applicant’s annual gross payment evenly over a period where there were no bank statements [11]. The Tribunal noted that the Applicant had provided evidence of her net income for this period during the hearing and concluded the matter should be remitted to Centrelink to take this information into account [12].
- The Tribunal found that special circumstances existed to justify the waiver of 50% of the debt [29].

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### How it was decided and key facts

**Outcome**

- The decision under review was set aside and remitted to Centrelink with the direction that the debt was to be recalculated taking into account the Applicant’s bank statements and that Centrelink obtain proof of earnings from former employers.

**Key Findings**

- The Applicant was employed casually and worked irregular hours.
- The Applicant contested that income needed to be reviewed on a fortnightly basis rather than averaging [18].
- The Tribunal suspected there was a debt after comparing the Applicant’s pay statements with reported income, acknowledging the Applicant’s difficulties in reporting as a casual worker [24].
- The Tribunal noted that it was unable to reconcile some of the income amounts used by Centrelink with the Applicant’s pay statements [25].
- The Tribunal concluded that there was a substantial amount of documentation from which an actual fortnight amount could be ascertained and obtained by Centrelink using their powers [25].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
### How it was decided and key facts

#### Outcome
- The decision under review was set aside and remitted to Centrelink with the direction that the debt was recalculated based on verified earnings in payslips.

#### Key Findings
- Centrelink raised a debt after a data match with ATO.
- The debt arose due to a lump sum payment of arrears of employment income due to the Applicant’s employer underpaying her.
- Centrelink had asked the Applicant to determine what her adjusted fortnightly earnings would have been if she had been paid at the correct rate. Based on these adjusted earnings, Centrelink first raised the debt by assessing the earnings when they were first earned [18].
- The Tribunal took issue with the ARO’s method of apportioning the arrears evenly across the period. The Tribunal noted that there was no legislative basis to apportion the arrears in this way [19].
- The Tribunal concluded it was necessary to recalculate the debt in accordance with the verified earnings set out in payslips and must also include relevant proportions for arrears [24].

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### How it was decided and key facts

#### Outcome
- The decision under review was set aside and remitted to Centrelink with directions that it obtain verified income information so as to allow for a more precise calculation of any overpayment and a recovery fee is not to be applied.

#### Key Findings
- The Applicant stated that he provided payslips when the debt was first raised [14].
- The Applicant was employed on a casual basis so his income would vary from fortnight to fortnight [14].
- The Tribunal criticised Centrelink’s use of income averaging to raise the debt:
  
  This approach fails to take into account the actual earnings for each fortnight period and as such does not provide a precise or acceptable calculation of any alleged overpayment. According to the Department they say they took this approach because [the Applicant] failed to provide evidence of his actual income however if he now provides that evidence then the Department will recalculate the debt [15].
- The Tribunal cited with approval Re SDHFCSIA and George [2011] AATA 91 which considered the requisite standard of proof to determine whether a debt was owed [16]. Applying this case, the Tribunal concluded it was ‘left in a state of doubt as to the correct calculation of the debt’ [17].
- The Tribunal concluded that Centrelink can obtain further information from the Applicant or his former employers or by requesting copies of bank statements [17].
- The Tribunal found that no administrative error or special circumstances existed to justify the write off or waiver of the debt.
- The Tribunal rejected the applicability of the recovery fee as it was not satisfied the Applicant knowingly or recklessly failed to declare his income [25].
How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt.

Key findings

- The Tribunal found Centrelink calculated part of the Applicant’s debt by apportioning the Applicant’s income as notified by the ATO, evenly across all the relevant weeks [9]. It stated: ‘This is contrary to the provisions of 1073B of the Act and I cannot affirm a debt calculated on that basis. Other parts of her debt have been calculated properly using her payslips’ [9].
- The Tribunal found that the Applicant had a debt. However, the Tribunal ordered that the debt be recalculated. As the Applicant was willing to repay the debt after it is correctly calculated, the debt was not waived [16].

How it was decided and key facts

Outcome

- The decision under review was set aside and substituted with the decision that the balance of the debt unpaid at 30 August 2018 was waived.

Key findings

- Centrelink raised the debt and applied a 10% penalty following a data match with the ATO [8].
- Centrelink used payslips provided by the Applicant to recalculate part of the Applicant’s debt. Where payslips were unavailable, however, Centrelink apportioned the income according to the ATO information across the whole year. The Tribunal found that:

This process is contrary to the provisions in sections 1073B and 1073C of the Act. This casts into doubt the calculation for the 2010/2011 year. It may be that [the Applicant] has a debt for this period, but it will not be the debt calculated by this faulty method [9].
- The Tribunal concluded that while the Applicant owed a debt, Centrelink was unable to satisfy itself as to the amount [10].
- The Tribunal found that special circumstances existed to justify a waiver of the remainder of the debt as at 30 August 2018.

How it was decided and key facts

Outcome

- The decision under review was set aside and substituted with the decision there is a sickness allowance debt but 50% is waived.

Key findings

- The Applicant was in receipt of sickness allowance. The debt arose due to the Applicant failing to inform Centrelink of increases in his superannuation payments and his income from [Employer].
- The Applicant provided PAYG summaries from his superannuation payments. The Tribunal noted:
- It was clear from the PAYG summaries that [the Applicant’s] AIA payments increased over the years. Centrelink averaged out the gross payments shown on the PAYG summaries over the periods they were earned. This would not provide an accurate result as the dates of the increases in payments are not known; however the tribunal was satisfied that
obtaining the actual payments per fortnight would not substantially affect the debt calculations [13].
• The Applicant also received $1,395 over a four-week period from [Employer]. The Tribunal concluded that averaging issues did not arise as the income was only over two fortnights [14].
• The Tribunal found that the calculation was correct [16].
• The Tribunal found that special circumstances existed to justify the write off or waiver of half of the debt.

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**Outcome**

• The decision under review was set aside and remitted back to Centrelink for reconsideration in accordance with the direction that the debt be recalculated in line with paragraph 15 of its reasons, with the recalculated debt to be recoverable.

**Key findings**

• The Tribunal noted that, prior to the hearing, the Applicant provided further information to the Tribunal, including a Statement of Financial Circumstances, a submission, a PAYG payment summary and payslips from one employer, and an earnings history report from another employer [6].
• The Tribunal asked the Applicant if she could provide payslips for the entire period under review and she said this would be difficult because at the relevant time payslips provided by her employer were hardcopies and not available online. She said there may be payslips filed away in her previous home, but she did not have access to that home to look for them. The Tribunal noted the Applicant advised it was likely that fortnightly earnings were in the order of the amount as ‘averaged’ by Centrelink [14].
• The Tribunal found that the Applicant did not correctly notify Centrelink of her income throughout the relevant period and she was paid more than her correct entitlement [18].
• The Tribunal found:
  - The averaging method applied by Centrelink in this case is potentially unreliable as [the Applicant’s] fortnightly earnings may have varied throughout the relevant period, and the average figure applied by Centrelink may not have reflected [the Applicant’s] actual earnings [21].
• The Tribunal however accepted the averaged figure applied by Centrelink as the Applicant did not dispute it [21].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**Outcome**

• The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the basis of payslips from Commonwealth Bank.
• Centrelink was directed to refund any over-recovered monies to the Applicant.
• The Tribunal affirmed the decision to garnishee the Applicant’s tax return.

**Key findings**

• The Tribunal noted that match data with the ATO was obtained by Centrelink for the 2013/14 and 2014/15 financial years, and following the matching of ATO financial year income with the income that the Applicant reported to Centrelink while receiving NSA Centrelink determined that the Applicant was overpaid NSA [6].
• The Tribunal found:
  - ...apportioning income can, at times, be an inaccurate way of determining income for a period. Apportioning may cause income to appear higher than what the person actually earnt within a given Centrelink fortnight [12].

Royal Commission into the Robodebt Scheme
• The Tribunal was not satisfied that apportioning the income from ATO information, ‘given the ad hoc nature of [the Applicant’s] work up until he commenced employment with Evolution Traffic Control is an accurate reflection of his income and therefore the debt amount’ [20].
• The Tribunal stated:
  ...withholding [the Applicant’s] tax return was particularly harsh in the circumstances when the debt was being reviewed and was actually reduced once [the Applicant] provided some of his payslips for Evolution Traffic Control [37].
• The Tribunal, however, found that as it was likely that the Applicant would have a debt and outstanding debt amounts to be recovered, it was appropriate that this money not be refunded to the Applicant [38].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**Outcome**

• The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the basis of the Applicant’s payslips.
• The recalculated debt was recoverable.

**Key Findings**

• Following a data match with ATO records, Centrelink raised a debt against the Applicant arising from overpayment of Youth Allowance due to the match showing the Applicant had understated her income [3]-4. The debt was affirmed by the ARO upon internal review [6].
• The Tribunal stated:
  Where payslips are not available for the period under review Centrelink has used the gross annual income provided by the ATO and calculated the rate payable by averaging the income amounts across all fortnights in the period covered by the ATO income [16].
• The Applicant provided payslips, bank statements and her calculations of the debt to the Tribunal [11]. The Tribunal noted the Applicant did not dispute the existence of a debt but disputed the amount calculated by Centrelink using the averaging method [21]. The Applicant’s evidence indicated that she did not work consistently every fortnight and did not earn income for some periods [20].
• The Tribunal stated: ‘Consequently the averaging method used by Centrelink to calculate the rate payable to her has produced an inaccurate result’ [20].
• The Tribunal found that there was evidence that the Applicant had been overpaid youth allowance but that the rate of payment should be recalculated on the basis of her actual payslips [22].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**Outcome**

• The decision under review was affirmed.

**Key findings**

• The Applicant received a parenting payment debt of $11,167.06. This decision was reviewed and affirmed by an ARO.
• The Applicant stated that she was required to estimate income for some of the period as Centrelink fortnights did not align with her paid work. Her income varied during the period and she was not earning the same amount every fortnight [7]. The Applicant did not think that she had been overpaid during the period and that she had reported correctly. She did not believe the data matching process accounted for the variations of income during the period [9].
• The Tribunal stated:
  ‘In the absence of more detailed evidence from [the Applicant] regarding the income earned during this period, the tribunal accepts Centrelink’s apportionment methodology applied to the total income earned, as set out in each of the relevant years’ tax return, as an acceptable estimate of fortnightly income earned over the period’ [10].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and remitted to Centrelink with the direction that Centrelink obtain dates and payroll information from the Applicant’s employers and recalculate on receipt of that information, with the resultant debt to be recoverable.

**Key Findings**

• A debt was raised by Centrelink following ATO information which showed the Applicant may not have always fully declared his income whilst in receipt of NSA. The Tribunal noted this was not in dispute by the Applicant [15].
• The Tribunal examined the debt calculations by Centrelink and noted the debt was calculated on the basis of payslips from one of the Applicant’s employers and the averaging of earnings reported by the ATO for two more employers [16].
• The Tribunal found that the debt amount calculated by Centrelink could not be correct [18].
• The Tribunal stated:
  [The Applicant’s] evidence was that he worked for [Employer] for a period of only 10 days. [The Applicant] also stated that he worked for [Employer 2] on an ad hoc basis, when cover was required, and this would have averaged only one day of work each month. Clearly, Centrelink’s calculations based upon an average of the earnings from [Employer 1 and Employer 2] over the specified periods cannot be correct. [The Applicant] told me that he had made efforts to obtain payslips or other payroll information from [Employer 1 and Employer 2], but had been unsuccessful [17].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decisions under review were varied so that the Applicant had a debt totalling $6,491.09 and the debt was written off pursuant to s 1236 of the Social Security Act 1991 until Centrelink determines that the Applicant has the capacity to repay the debt.

**Key Findings**

• The Tribunal noted the use of ATO information:
  The ATO advised Centrelink that the Applicant had employment income of $31,518 for the period 1 July 2011 to 30 June 2012 from [employer]. As there was no specific information about when that income was earned, it was appropriate to apportion it over the full financial year, resulting in a fortnightly income amount of $1,205.61 (the apportioned income) [7].
• The Tribunal noted to the Applicant that information in the Centrelink papers indicated that he had been asked to provide bank statements covering the relevant period but had failed to do so. The Applicant provided the Tribunal with copies of some bank statements which had pages missing (only odd numbered pages were provided).
• The Tribunal noted that it was evident that the Applicant’s gross payments from his Employer exceeded the apportioned income as calculated by Centrelink and was satisfied that the apportionment approach adopted by Centrelink is the most appropriate method for determining whether the Applicant had been overpaid. Using that approach the Tribunal
was satisfied that the Applicant received amounts of NSA in excess of his entitlements and found that the Applicant had the debt as calculated by Centrelink [19].

- The Tribunal was satisfied that the Applicant failed to provide full information to Centrelink about his earnings and, accordingly, found that the 10% penalty must be applied [20].
- The Tribunal found there were no special circumstances in the Applicant’s case to justify the waiving of his debt [33]-[34].
- The Tribunal noted the Applicant’s evidence at the hearing was that he had no source of income and found that he did not have capacity to repay the debt. Accordingly, the Tribunal concluded that the debt should be written off until such time as Centrelink determined that he has the capacity to repay the debt [35].

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**How it was decided and key facts**

**Outcome**

- The decision under review was affirmed.

**Key Findings**

- The Tribunal determined the application on the papers.
- Centrelink raised a debt following a data match with ATO.
- The Tribunal noted that Centrelink had apportioned the ATO income over the relevant period [11].
- The Applicant then provided her bank statements to Centrelink [12].
- The Tribunal opined that the Applicant’s bank statements do not paint ‘a clear and certain picture of [the Applicant’s] earnings’ [16]. The Tribunal noted that there were a number of cheque/cash deposits into the Applicant’s account but there was no information to explain the source of the payments [15].
- The Tribunal accepted Centrelink’s income averaging method:

In determining whether [the Applicant] has been overpaid, the ideal situation would obviously be that her precise employment details would be available. However, as that is not available, I am satisfied that the apportionment approach adopted by Centrelink is the most appropriate method for determining whether [the Applicant] has been overpaid. Using that approach I am satisfied that [the Applicant] received amounts of YA in excess of her entitlements [17].

- The Tribunal found that no administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and substituted with the decision that there was no debt.

**Key Findings**

- Following an ATO data matching process in October 2018, Centrelink undertook a review of the Applicant’s entitlement to NSA. This was undertaken on the basis that the data match showed earnings from employment were not properly taken into account for the period 10 July 2010 to 5 September 2016. Centrelink raised two NSA debts, which were later affirmed by an ARO [3]-[4].
- The Applicant undertook casual employment, mostly as a Teacher for the period 10 July 2010 to 5 September 2016 with some periods of no work and nil earnings or periods where the Applicant was not in receipt of NA but were still included [25].
- The Tribunal identified there were further variables in the calculation of the Applicant’s income as a teacher including casual days of employment pay more than short term contract days [37] and delay in the [Employer’s] payment of casual teachers demonstrated by the Applicant’s payslips [16].
- The Tribunal commented:
ATO data-matching enables the identification of gross earnings from a particular employer which have either not been declared to Centrelink or not fully declared to Centrelink. A person’s entitlement to a payment is then reviewed and an overpayment may be identified. Where actual earnings are not available for an employer, Centrelink entitlement reviews use an average fortnightly earnings figure calculated by dividing a person’s gross earnings by the number of days the person worked, using information from the group certificate [12].

- The Tribunal found on five occasions, there was no evidence the Applicant under declared his earnings and no evidence he was overpaid NA over the 2010/2011 - 2016/2017 financial years [15], [21], [27], [32], [38], [41].

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and substituted with the decision that there was no debt and no penalty be imposed.

**Key Findings**

- A debt was raised by Centrelink in May 2018 following ATO earnings information which showed the Applicant may have been overpaid Sickness Allowance whilst employed as a Teacher for the 2015/2016 financial year [3].
- The debt was affirmed by an ARO [4].
- The Tribunal stated:

  Centrelink has apportioned the earnings over the debt period and found that [The Applicant] has a legally recoverable debt to the Commonwealth totalling $5,206.54 and, further, that because of him failing to declare his income, a 10% penalty totalling $520.65 should also be imposed [10].

- The Applicant submitted to the Tribunal that he had not earned income in the period under review. The Tribunal noted that this was consistent with submissions and information he had previously provided to Centrelink [11].
- The Tribunal took into account the Statement of Service provided by the Applicant [13] and the information requested from the Applicant’s Employer for the period of nil income claimed by the Applicant.
- The Tribunal concluded:

  Based on the further information provided by the [Employer], the Tribunal found that the best evidence before it was that [the Applicant] did not earn income from the [Employer] between 23 September 2015 and 28 June 2016. The decision to apportion his total income for the financial year across the debt period is set aside and the Tribunal substitutes its decision that there is no debt of sickness allowance in this period. As the decision to impose a penalty is reliant on the debt itself, the decision to impose the 10% penalty is also set aside [15].

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the basis of the Applicant’s payslips and working credits, with the recalculated debt to be recoverable.
- Centrelink was directed that no 10% penalty was to be applied, and any repayments in excess of the recalculated debt be repaid to the Applicant.

**Key Findings**

- Following information received from the ATO, Centrelink raised a debt in October 2016 as it was discovered that the Applicant’s earnings had not been taken into account in calculating NSA [5]. Centrelink adjusted the overpayment amount to $1,737.86 and added a 10% recovery fee to the debt [6]. The Applicant’s income tax return refund was garnisheed and the debt was repaid in full [8].
- The Tribunal noted:
It is evident in the earnings scrutiny link averaged [the Applicant’s] income from [Employer] over the duration of his employment. The authorised review officer also confirmed that earnings were averaged over the group certificate period [21].

- The Tribunal considered payslips provided by the Applicant [21].
- The Tribunal found:

  In [the Applicant’s] case the Tribunal is not satisfied that averaging his income over the duration of his employment with [Employer] was an accurate method of determining his income on a fortnightly basis. The Tribunal accepts [the Applicant’s] statements that his income fluctuated from week to week depending on the number of hours worked and whether he was required to work away from home or not. The payslips provided reinforce his statements about the fluctuating hours worked and thus the variable gross income he earned each week [25].

- The Tribunal found that it was likely that the Applicant had been overpaid but not to the extent Centrelink contended [26]. The Tribunal directed Centrelink to reassess the overpayment based on the Applicant’s actual earnings as detailed in his payslips [26].
- In relation to the 10% penalty fee, the Tribunal found that the Applicant:

  ... was cooperative with Centrelink processes and that he provided payslips in an attempt to resolve the overpayment issue. Therefore, the Tribunal finds that a recovery fee should not be added to the debt [29].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with the direction that overpayment of NSA be recalculated by apportioning and assessing the Applicant’s earnings as directed.
- Any remaining overpayment was a debt to be recovered in full.

**Key findings**

- The Tribunal noted that the debt was raised after a data match of the Applicant’s assessed taxable income for the 2010/11 tax year, and as seven years had elapsed since then the Applicant was unable to obtain and supply either payslips or bank statements [4], [6].
- The Tribunal noted that ‘historic data matching presents some challenges where the timeframe is such that the applicant cannot provide payslips or bank statements to verify the timing of earnings’ [12].
- The Tribunal noted that ‘[t]he ARO himself expresses some uncertainty about the accuracy of the apportionment’ [12].
- The Tribunal also noted ‘[t]he ARO found flaws in the original calculation of the overpayment as a result of double counting of earnings from two employers and reduced the overpayment’ [18].
- The Tribunal noted it had received evidence from the Applicant that justifies a further recalculation of any overpayment of NSA as follows:
  a) Income from [Employer 1] should be apportioned over the period 21 July 2010 to 13 February 2011 and assessed. The data match gave this figure as $3,489;
  b) Income from [Employer 2] ($200) should be assessed as being received on 2 October 2010; and
  c) Income from [Employer 3] should be apportioned over the period 14 February 2011 to 30 June 2011 but only the income so apportioned between 16 February 2011 and 11 May 2011 should be assessed, because [the Applicant’s] newstart allowance was cancelled on 12 May 2011. This figure is $4,329.06, as calculated by Centrelink at page 14 of the papers (the data match figure of $6,817 at page 103 was her income from this employer for the whole of the 2010/11 financial year).
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
### How it was decided and key facts

#### Outcome
- The decision under review was set aside and substituted a decision that the Applicant’s entitlement be recalculated on the basis of the Applicant’s payslips.

#### Key Findings
- Centrelink calculated and raised a YA debt against the Applicant in October 2018 on basis of information provided by the ATO [4].
- In relation the ATO information, the Tribunal stated:
  
  However, periods of employment declared to the ATO are not always reliable in relation to casual employees: many employers nominate the whole financial year even if the earnings are earned over discrete periods. That, of course, is one of the reasons why Centrelink asks recipients of social security payments to review and advise whether the information from the ATO is correct [28].
- The Tribunal noted that the Applicant provided payslips from his employer however the debt was not recalculated by Centrelink on the basis of the new pay information provided [8]. The Tribunal noted that the Applicant said an officer from Centrelink had told him his debt could not be recalculated because the matter had already been reviewed by an ARO [23].
- The Tribunal commented in relation to apportioning income:
  
  The Tribunal finds that it is inappropriate to apportion the income from [Employer] over the entire 2011/12 financial year and is satisfied that Centrelink’s latest debt calculations incorrectly assume the income was earned over the entire financial year. This, again, will require a recalculation to determine [the Applicant’s] correct entitlement [41].
- The Tribunal was satisfied the applicant had been overpaid parts of the debt period but that the debt was likely significantly smaller than the amount calculated by Centrelink [43].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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### How it was decided and key facts

#### Outcome
- The decision under review was affirmed.

#### Key Findings
- The Tribunal noted that Centrelink initially calculated the debt by taking into account information form the ATO and the Applicant’s bank statements [3].
- The Tribunal noted that, following the hearing, the Applicant provided documents to the Tribunal including PAYG payment summaries and records from his tax agent. The Tribunal noted the information in these documents corresponded with the information that Centrelink received from the ATO and confirmed he had received a superannuation lump sum of $10,000 in 2015 [13].
- The Tribunal noted that Centrelink did not take the lump sum superannuation into account when calculating the overpayment.
- The Tribunal found that the earnings that the Applicant reported to Centrelink did not correspond with the ATO-advised income, and for some Centrelink instalment periods the Applicant over-reported his earnings, while for others he under-reported or did not report any earnings [15].
- The Tribunal noted it was evident from Centrelink’s records that ‘Centrelink used both ATO and bank statement information’ and, for periods where the Applicant had not been able to provide bank statements, ‘ATO information was used’ [16].
The Tribunal noted that Centrelink had asked the Applicant to provide payslips but he was not able to do so.

In the circumstances the Tribunal found that the ATO-provided information and the bank statement information (where provided) was the ‘best evidence that was available of [the Applicant’s] ordinary income from his employment and of the long service leave he received’ [16].

The Tribunal did not find that any sole administrative error or special circumstances existed to justify a waiver or the writing off of the debt.

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**How it was decided and key facts**

**Outcome**

- The decisions under review in relation to the three debts were affirmed.
- In relation to the debt arising from the period 21 December 2012 to 27 June 2014, the Tribunal set aside the decision under review and substituted the decision that the Applicant did not incur a debt for this period.

**Key findings**

- The Tribunal noted that, according to the ATO data match contained in the Centrelink material, the Applicant worked for a number of employers in the relevant period [10].
- The Tribunal noted in relation to a particular debt that Centrelink had apportioned earnings over the financial year and his actual earnings for each fortnight had not been provided [11].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with the direction that the Applicant was overpaid during the period from 4 April 2014 to 21 July 2014.

**Key Findings**

- The PPS debt was calculated following a data match with the ATO showing the Applicant’s gross income earned from relief and contract teaching [2], [6].
- The initial PPS debt was calculated at $5,499.30 then varied to $5,235.18 and varied again by the ARO to $5,328.57 [2].
- The Tribunal stated: ‘In making its calculations Centrelink has apportioned the income equally over each fortnight during the period it was earned according to the ATO records’ [12].
- The Tribunal found there was an overpayment, but only as it relates to income of $8,459 earned during the period 4 April 2014 to 21 July 2014 which was not taken into account by Centrelink when calculating the Applicant’s rate of payment [15].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink with the direction that it obtain payroll information from one former employer.
The Tribunal raised concern with an unknown document. The Tribunal concluded that the debt should be recalculated because of this document and the apportioning issue [39].

The Tribunal found that no administrative error or special circumstances existed to justify the write off or waiver of the debt.

### Key Findings

- Centrelink raised the debt following a data match with the ATO.
- The debt was recalculated and reduced multiple times after the Applicant provided payroll statements and payslips.
- The Applicant worked four different jobs during the relevant period.
- The Tribunal noted that for part of the debt, Centrelink used income averaging. The Tribunal noted, ‘[i]t is possible that the apportioning of the income does not accurately reflect [the Applicant’s] actual earnings in the relevant period’ [37].
- The Tribunal noted that Centrelink was entitled to rely on ATO evidence absent evidence from the Applicant about actual irregular earnings [38].
- The Tribunal raised concern with an unknown document. The Tribunal concluded that the debt should be recalculated because of this document and the apportioning issue [39].
- The Tribunal found that no administrative error or special circumstances existed to justify the write off or waiver of the debt.

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### How it was decided and key facts

### Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt.
- Centrelink was directed to make relevant enquiries of the Applicant’s employers with a view to gathering more specific information about his earnings.

### Key findings

- The Tribunal noted there was a clear disparity between the Applicant’s income as declared to Centrelink and the income held on record by the ATO. The Tribunal noted this ‘may be attributable to error in the disclosure of “in the hand” income rather than gross’ [14].
- The Tribunal noted that within the hearing papers there was no evidence of any attempt by Centrelink to obtain a more accurate estimate of when the Applicant’s income was earned within the particular Centrelink fortnights. The Tribunal stated:

  [Employers] (contracting for the ATO) are major employers’ and ‘one would infer that working as contractors for the ATO, it would be relatively simple for Centrelink to obtain details of what [the Applicant] was paid in the relevant Centrelink fortnights to satisfy itself of the accuracy of the debt [18].

- The Tribunal noted its intention to remit the matter to Centrelink with a direction that Centrelink request payslip and/or earnings and then recalculate the debt by using figures received, recalculated within the Centrelink fortnights. It further stated:

  Of course, if after enquiries are made the relevant employers advise that this information is not in existence, then the ATO data can be used as this will be the best means of calculation available to Centrelink [19].

- In considering the issue of sole administrative error, the Tribunal stated the circumstances were not ones that would raise waiver in that context, as following the ATO data match, the ‘onus is on the individual declaring their earnings to do so accurately and if the ATO records record a higher income, the resultant debt cannot be found to be at the error of the Commonwealth’ [25].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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### How it was decided and key facts

### Outcome

- The decision under review was set aside and substituted with the decision that there was a debt but the recalculated debt be waived.
Key Findings

• Following a data match with the ATO, Centrelink raised a NSA debt of $4,395.19 as the information showed the Applicant’s earnings were not properly taken into account between 25 October 2012 and 21 June 2013 [3]. Centrelink subsequently revised and reduced the debt amount to $2,976.97. The ARO affirmed the debt but further revised the debt amount to $1,388.86 [5].

• In relation to income averaging generally, the Tribunal stated:

  ATO data matching enables the identification of gross earnings from a particular employer which have either not been declared to Centrelink or not fully declared to Centrelink. A person’s entitlement to a payment is then reviewed and an overpayment may be identified. Where actual earnings are not available for an employer, Centrelink entitlement reviews use average fortnightly earnings. This is calculated by dividing a person’s gross earnings by the number of days the person worked, using information in the group certificate [12].

• The Tribunal found:

  Centrelink initially averaged [the Applicant’s] earnings from [Employer] across the period 1 July 2012 to 30 June 2013. Subsequently, her earnings were averaged over the period 1 July 2012 to 9 November 2012 [16].

• The Tribunal stated:

  There is insufficient evidence available to do anything other than average [the applicant’s] earnings over the period of her employment, 19 November 2012 to 12 December 2012 which affects the three Centrelink fortnights between 10 November 2012 and 21 December 2012 [22].

• The Tribunal also took into consideration the Applicant’s bank statement and payslips [17]-[18].

• The Tribunal found the Applicant underdeclared her income for the period 25 October 2012 to 7 November 2012 and 19 November to 12 December 2012, and the amount of that overpayment, around $50, was to be recalculated [24].

• The Tribunal found that the criteria for waiver under Subsection 1237AAA(1) was met given that the recalculated debt was or was likely to be less than $200 and further action to recover the debt was not cost effective [29].

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How it was decided and key facts

Outcome

• The decision under review was set aside and remitted to Centrelink for recalculation on the basis of payslips to be obtained from the employer and payslips before the Tribunal. The Tribunal directed 50% of the resultant debts be waived and the balance recoverable without penalty. The Tribunal directed if payslips could not be obtained for the period 11 August 2014 to 16 June 2015, no debt existed.

Key Findings

• Centrelink raised two DSP debts after a data match with the ATO showed the Applicant did not report all income received from casual employment during the period 11 August 2014 to 16 June 2015 and 20 September 2018 to 25 October 2018 [1], [5]-[6], [10].

• Centrelink apportioned the Applicant’s income to calculate the debt [7] and stated:

  The tribunal is not satisfied that apportioning income from all employers in the way that Centrelink has done has resulted in the correct debt amount being raised for this period; it is the tribunal’s view based on the evidence before it that if payslips are obtained for this period then the debt in all likelihood will be less than the apportioned debt [11].

• The Tribunal stated it was not satisfied that a debt penalty fee should be imposed given the Applicant’s health condition was a reasonable excuse as to not always being aware of reporting requirements [15].

• The Tribunal noted it was not satisfied Centrelink apportioned the Applicant’s verbal reporting of income for the period 20 September 2018 to 25 October 2018, and directed Centrelink to recalculate on the basis of the payslips provided [16]-[18].

• The Tribunal found special circumstances existed to justify the part waiver of the debts.
How it was decided and key facts

Outcome

- The decision under review was affirmed.

Key Findings

- Centrelink raised the debt following a data match with the ATO. Centrelink used the Applicant’s payslips for periods where she could provide them, however, where she was unable to, Centrelink apportioned her income using the ATO data [17].
- The Tribunal found that it was appropriate for Centrelink to use income averaging in the circumstances as it was the best available information [18], [21].
- The Tribunal found that there was no sole administrative error or special circumstances warranting the recalculated debt to be written off or waived.

How it was decided and key facts

Outcome

- The decision under review was set aside and substituted with the decision that there is a debt to be recalculated on the basis of payslips, with the recalculated debt recoverable with no penalty imposed.

Key Findings

- Centrelink raised two debts in respect of PPS totalling $22,286.99 for the period 10 June 2010 to 16 January 2013, and NSA totalling $32,172.59 for the period 20 January 2013 to 29 June 2016, including a penalty fee of $3,125.04 [2]. The debts and application of penalty fee were affirmed by the ARO upon internal review [3].
- The Applicant was employed by four separate education institutions during the debt periods under review [10].
- The Tribunal stated:

  Centrelink became aware that there may have been an overpayment of parenting payment and newstart allowance to [the Applicant] as a result of a data matching exercise with the Australian Taxation Office (ATO) and that the overpayment was subsequently calculated using a combination of [the Applicant’s] payslip data and ATO matching data [11].

  The tribunal is satisfied that Centrelink’s calculations of the overpayment of parenting payment and newstart allowance to [the Applicant] are roughly correct because they are based on ATO data, however, it would be more accurate to use payslip data to ensure any debt amount is correct [12].

- The Tribunal considered the financial circumstances of the Applicant and found that a penalty is not to be imposed [35].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with the directions that:
  o Centrelink obtain and utilise the Applicant’s actual fortnightly incomes in determining whether the Applicant had a YA debt for the entitlement period under review; and
  o If a debt resulted from the recalculation, it was to be recovered.
Key findings

• The Tribunal referenced the Commonwealth Ombudsman’s report ‘into the raising of debts in the way this debt was raised’ and included the following extract:

    We are also satisfied that if the customer can collect their employment income information and enter it properly into the system, or provide it to DHS to enter, the OCI can accurately calculate the debt. After examination of the business rules underpinning the system, we are satisfied the debts raised by the OCI are accurate, based on the information which is available to DHS at the time the decision is made.

    However, if the information available to DHS is incomplete, the debt amount may be affected. It is important for the system design for customers to respond to information requests from DHS so decisions are made on all available information [11].

• The Tribunal noted that the Applicant and her representative advised the Tribunal that they:

    ... could not pair the employment income the applicant received (i.e. into her bank account) and that amount attributed to her by Centrelink. They appreciated the applicant might have under-reported income on occasions when she was paid late and estimated her income. They also appreciated the way income is apportioned by Centrelink.

• The Tribunal sought additional information from Centrelink which advised the overpayment/debt was calculated in part by averaging the ATO data and noted the debt could only be calculated accurately by using the Applicant’s actual fortnightly incomes. The Tribunal also stated that:

    It concluded further information is required about the applicant’s actual fortnightly income throughout the relevant period before the overpayment debt can be calculated accurately. It is open to Centrelink to use its statutory powers to obtain pay records from past employers or the applicant’s bank statements [13].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

• The decision under review was affirmed.

Key Findings

• Centrelink determined that the applicant was overpaid NSA totalling $372.23 following a data match with the ATO. A comparison of the income data showed a discrepancy in declared earnings compared to the Applicant’s payslips. An ARO affirmed this decision on 6 February 2019 [4].

• In determining whether there was a debt of NSA, the Tribunal stated:

    The Rate Calculator for newstart allowance requires the recipient to provide income on a fortnightly basis. A recipient will usually provide that income based on payslips received for the fortnight. Where payslips are not available for the period under review, Centrelink has used the gross annual income provided by the ATO and calculated the rate payable by averaging the income amounts across all fortnights in the period covered by the ATO income [9].

• The Tribunal was satisfied that the Applicant had been overpaid NSA because the amounts declared by the Applicant were less than the amount earned due to the difference in reporting periods [12].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
### How it was decided and key facts

**Outcome**
- The decision under review was set aside and substituted with the decision that the debt for the period 30 August 2014 to 30 June 2015 be waived and no debt exists for the period 1 July 2015 to 18 December 2015.

**Key Findings**
- Centrelink raised a YA debt of $2,083.03 as a data match from the ATO indicated the Applicant under-declared her income during the relevant periods [3]-[5].
- The Tribunal noted the debt for the period 30 August 2014 to 30 June 2015 was calculated on the basis of payslips, and payslips and deposits of net income for the period 1 July 2015 to 18 December 2015 [4].
- The Tribunal stated:
  The Rate Calculator for youth allowance requires the recipient to provide income on a fortnightly basis. A recipient will usually provide that income based on payslips received for the fortnight. Where payslips are not available for the period under review, Centrelink has used the gross annual income provided by the ATO and calculated the rate payable by averaging the income amounts across all fortnights in the period covered by the ATO income. In [the Applicant’s] case where payslips have not been available, Centrelink has reconstructed the gross amount earned from the net amounts as stated in her bank statements [15].
- The Applicant did not dispute the debt but advised that she now understands that the debt was caused by the difference between her reporting periods and her earnings periods [17].
- The Tribunal found it could not be satisfied:
  ...that there is a debt for the period 1 July 2015 to 18 December 2015 in the absence of the source documents which Centrelink has used to determine [the Applicant’s] gross income for that period. Centrelink advised the tribunal that bank statements for the following period could not be located [19].
- The Tribunal found there is no debt for the period 1 July 2015 to 18 December 2015.
- The Tribunal found that special circumstances existed to justify the waiver of the debt for the period 30 August 2014 to 30 June 2015 [30]-[31].

### How it was decided and key facts

**Outcome**
- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with directions that:
  - Centrelink obtain earnings and payroll information from the Applicant’s employers;
  - the event payroll information was unavailable, banking records were to be obtained to identify employment income and a grossed-up amount for each instalment period was to be applied;
  - the debt was to be recalculated by correctly apportioning the Applicant’s earnings in each instalment period according to law;
  - any recalculated debt was to be recovered from the Applicant.

**Key findings**
- The Tribunal noted that the Department obtained taxation records for the Applicant from the ATO and then used that information to determine the debts now under review. The Tribunal stated it was clear that in calculating the debts, the Department applied an averaging of the income received by the Applicant, with the effect being that income was incorrectly attributed throughout the relevant period because the Applicant’s actual income from employment was not apportioned as required by s 1073B of the Act [10].
- The Tribunal found that the amount of the debt determined for the Applicant for the relevant period was based upon a rate of YA that had been incorrectly calculated in accordance with s 1067G of the Act. The Tribunal stated: '[t]his is
because her earnings were not the same from one period to the next and so an averaging of annual income does not reflect her actual income for each social security payment period’ [11].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was affirmed.

**Key findings**

- The Tribunal noted that, following a data match with the ATO (which included the 2012/13 tax year), Centrelink became aware that the Applicant had a taxable income of a certain amount for a certain period. The Applicant accepted the figure as correct [7].
- The Applicant advised the Tribunal that she worked consistently over this period, although her earnings may have varied if she worked extra hours.
- The Tribunal noted that Centrelink had not been able to obtain more specific fortnightly earnings data; however, the Applicant did not challenge the fact that Centrelink had apportioned her earnings over the period. The Tribunal considered it a reasonable approach in the circumstances [8].
- The Tribunal found that as the Applicant had variable earnings and did not have relevant pay advices when she had to declare her earnings, she needed to calculate (or estimate) her earnings. The Applicant conceded she may have made errors in that process [9].
- The Tribunal found that the Applicant’s earnings were understated and accepted Centrelink’s calculations [9].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink with the direction that Centrelink recalculate the debt taking into account the Tribunal’s findings.

**Key Findings**

- Centrelink raised the debt following a data match with ATO.
- The Applicant worked multiple different jobs during the relevant period.
- The Tribunal requested Centrelink obtain the Applicant’s work diary from one previous employer to provide more detail than the monthly payslips provided [6]. The documents were no longer held on file by the former employer due to the passage of time [7]. The Tribunal concluded:

  Unfortunately in these circumstances although the income distribution will not be unequivocally accurate the Tribunal must apply the system best available to it after exhausting all practical avenues to achieve the preferable result [29].

- The Applicant contended that Centrelink had ‘changed and varied the debts so many times that she had serious doubts as to the accuracy of their final calculations’ [11].
- The Tribunal found that one part of the debt did not exist as the Applicant ceased work during that period [27].
- The Tribunal found that Centrelink failed to apply a termination payment for one job [41].
- The Tribunal found that no administrative error or special circumstances existed to justify the write off or waiver of the debt.
How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt.
- Centrelink was directed to obtain payroll information for the Applicant and recalculate the debt on the basis of that information.
- Any resulting debt would be recoverable.

Key Findings

- The Tribunal noted that Centrelink calculated the Applicant’s debt by apportioning her income, as stated by ATO data, on the basis that it was earned evenly over the payment periods notified by the employer [11]. The Tribunal stated:
  
  Given the irregular nature of [the Applicant’s] income, the tribunal decided that the debt calculation was likely to be significantly flawed and the correct pay information should be obtained from [the Applicant’s] employers by Centrelink [13].
  
- The Tribunal found that as the debt was due to the Applicant incorrectly reporting her income, there was no basis for a waiver.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt [23].

How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the basis of bank statements with the recalculated debt to be recoverable.

Key Findings

- Centrelink raised four separate NSA debts against the Applicant within the period from 9 August 2011 to 18 May 2015 [1]. The debts totalled $4,556.79 and were calculated on the basis of data matching between Centrelink and the ATO [2]. An ARO affirmed the decision on 9 February 2017 [3].
- The Tribunal commented the Applicant noted Centrelink had calculated his debt on the basis of apportioning ATO income and the Applicant expressed this was not likely to be an accurate estimate of any overpayment he received [6].
- The Tribunal noted the Applicant found it difficult to obtain payslips and provided the Tribunal with bank statements [7].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

How it was decided and key facts

Outcome

- The decision was set aside and remitted to Centrelink for recalculation on the basis of confirmed payslips and study period.

Key Findings

- Centrelink raised an austudy debt for the period of 25 February 2012 to 14 December 2012 on the basis of information received from an ATO data match [1].
• Following the data match, the Applicant provided Centrelink with payslips and bank statements displaying net income but subsequently advised the Applicant in a letter to report gross earnings. Centrelink calculated the debt on the basis of the Applicant’s payslips [10].
• The Tribunal commented the Applicant did not dispute the existence of a debt, confirming difficulties in reporting accurately on gross income with late payslips and income deposits [11]-[12].
• The Tribunal stated:
  
  the Tribunal cannot be satisfied that the amount of [the Applicant’s] Austudy debt as calculated by Centrelink for the period from 25 February 2012 to 14 December 2012 is correct. This is because Centrelink’s calculation for weeks where [the Applicant] was unable to provide a payslip is based on an average of her weekly earnings over the whole of the financial year from 1 July 2011 to 30 June 2012 [15].
• The Tribunal found that it was appropriate, and accurate, for Centrelink to recalculate the Applicant’s average weekly earnings based on her known earnings over the period [16].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

### AAT Review Number | DOC ID | Member | Date
--- | --- | --- | ---
2019/S133963 | CTH.3761.0006.0065 | K Dordevic | 30 May 2019

**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with directions that:
  
  o the Applicant’s entitlement to NSA be recalculated on the basis he was not employed by one particular employer; and
  
  o only amounts received from a different employer from a specific period are considered.

**Key findings**

• The Applicant provided bank statements which indicated the dates that deposits were made into his account from his employers. The Tribunal noted the Department calculated his entitlement to NSA on the basis of these statements, but as the bank statements did not include deposits from two of his employers, the income that the Applicant received from those employers was apportioned over the financial year [10].
• The Tribunal found that a liquidator was appointed to two of the Applicant’s employers and therefore it was not possible for the Applicant, or the Tribunal, to access payslips from these employers [11].
• Prior to the hearing, the Applicant provided his bank statements for the period 9 May 2012 to 8 Jan 2013. The Tribunal found these portions must be grossed up and entitlement to NSA recalculated on this basis [15].
• The Tribunal stated that as the Applicant’s bank statements for the 2013 FY did not directly refer to income received from a particular employer, it was appropriate for the Department to annualise the income over the FY, apportioning $1.21 per fortnight income for the period between 23 January to 19 March 2013 [16].
• The Tribunal concluded that the Applicant did not fully declare his employment income during the relevant period and was satisfied there would be an overpayment of NSA during the relevant period [17].
• The Tribunal determined that only waiver in the special circumstances of the case is of possible application in the matter and concluded that none existed to justify the write off or waiver of the debt [24].

### AAT Review Number | DOC ID | Member | Date
--- | --- | --- | ---
2019/M134283 | CTH.3761.0006.0168 | S De Bono
M Reid | 12 June 2019

**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and remitted to Centrelink for recalculation of the debt using payslip data.
• Centrelink was directed that 50% of the recalculated debt was to be waived on the basis of special circumstances.
• Centrelink was directed that the interest charge was not to be applied.
• Centrelink was directed that the remainder of the debt was to be written off until 30 June 2020.
Key findings

- The Tribunal was ‘not satisfied that the amounts earned were earnt in the period that the income has been apportioned to’ and, based on the information from the Applicant, that the calculations contained in Centrelink’s ADEX Debt Schedule Report were correct [11].
- The Tribunal found there were ‘fundamental flaws in apportioning income in this manner’ [17].
- The Tribunal noted that while it would not go through each apportionment calculation separately, it was not satisfied with the calculation of the debt or the debt amount [19]. The Tribunal found that the debt needs to be recalculated using actual payslip data to ensure the debt is correctly calculated [24].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt [37]-[38].
- The Tribunal found the decision to apply an interest charge to the debt was incorrect [46].

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How it was decided and key facts

Outcome

- The decision under review was varied so that:
  - the applicant’s debt was reduced to a specified amount;
  - no 10% penalty was imposed; and
  - no interest charge was imposed.

Key findings

- The Tribunal noted that the Applicant had provided a copy of his bank statement to the Tribunal that had record of individual payments redacted ‘for reasons the Tribunal does not understand’. The Tribunal noted that it appeared the Applicant considered it was up to Centrelink to prove the amount of his earnings [10].
- The Tribunal stated:
  In view of the fact that [the Applicant] has withheld more precise information about his salary, the Tribunal is entitled according to ordinary rules of proof, to apportion the aggregate over the period of employment according to the Australian Taxation Office [10].
- The Tribunal found there was no basis to assign a 10% penalty to the figure for the following reasons:
  (a) because the Department’s calculation of the debt was too high and
  (b) because the lack of any explanation as to how the debt was arrived justified the Applicant’s attempts to query the calculation. So far as concerns the Applicant’s failure to report his earnings, the Tribunal is mindful of the complaint the Applicant made at the time of having trouble reporting online as well as the fact that, at the time he was paid his salary (29 July 2016), his allowance had been cancelled and he had not yet been paid any allowance in respect of the period of earning - so he was technically not obliged to report. Of course, that changed a month later, when he was paid arrears of allowance, but it means that it is not appropriate for any penalty to be applied. The same reasoning applies to the imposition of the interest charge. The Tribunal is satisfied that it is reasonable to exempt the Applicant from both of these impose [19].
- The Tribunal noted the same reasoning applied to the imposition of the interest charge [19].

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How it was decided and key facts

Outcome

- The decision under review was set aside and substituted with the decision that the NSA debt was revoked.

Key Findings

- Centrelink raised the debt following a data match with the ATO. While the Tribunal found that the ATO’s data in relation to the Applicant’s income was correct, it noted that:
...Centrelink has simply apportioned [the Applicant’s] earnings over the entire tax year and effectively imposed a misplaced onus on her to establish why this approach is unsuitable. One would have thought that, in circumstances where [the Applicant] was in receipt of newstart allowance for only eight months of the tax year and her explanation was that she stopped her newstart allowance because her wage had significantly increased, Centrelink would have been more cautious [7].

- The Tribunal found that the Applicant accurately declared her income during the relevant period and that ‘...Centrelink’s apportionment approach in this instance [was] defective’ [12].

### AAT Review Number: 2019/M134588

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### How it was decided and key facts

**Outcome**

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt for the period from 24 July 2014 to 20 November 2015 on the basis of the Applicant’s income, as identified in the decision.
- Centrelink was directed that the debt for the period between 24 July 2014 to 17 August 2014 was waived.
- The balance of the debt was recoverable.

**Key Findings**

- The Tribunal found that Centrelink based its debt calculations on ATO data by averaging the Applicant’s gross income to fortnightly amounts and applying those amounts evenly across the relevant period [21].
- The Applicant’s evidence was that he worked on a casual part-time basis and his income was variable. The Tribunal further found that Centrelink did not use the Applicant’s correct income to determine his youth allowance [23].
- The Tribunal further noted:
  
  The “averaging” method applied by Centrelink in its original debt calculations is potentially unreliable as [the Applicant’s] fortnightly earnings varied throughout the relevant period, and the “average” figure applied by Centrelink evenly across each fortnight in the relevant period may not have reflected his actual earnings [25].

  The bank statements show the actual deposits made into [the Applicant’s] bank account by his employers and show his net earnings vary from fortnight to fortnight. Clearly [the Applicant’s] income varies from that determined by Centrelink using the “averaging” method. Nevertheless, the tribunal accepts [the Applicant’s] youth allowance was not calculated using his correct income throughout the relevant period [27].
- The Tribunal found that Centrelink’s failure to place the Applicant on reporting for the period of 24 July 2014 to 15 August 2014 caused the debt for that period to result solely from administrative error and waived that portion of the debt on that basis [41].
- The Tribunal found that there was no sole administrative error or special circumstances warranting the recalculated debt to be written off or waived

### AAT Review Number: 2019/B135052

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### How it was decided and key facts

**Outcome**

- The decisions under review were affirmed.

**Key findings**

- Two debts were raised following a data matching information received from the ATO.
- The Applicant argued that Centrelink included allowances (e.g. travel allowances) when calculating his debt. Centrelink confirmed that allowances were not included in their calculation [9].
- The Applicant stated that during the debt period, he had multiple employers and may have incorrectly declared income.
- The Tribunal found that, in the absence of any more certain information, the apportionment approach was appropriate in the absence of ‘more certain information’ [11].
• The Tribunal was satisfied that Centrelink has correctly calculated the amounts of the Applicant’s debts [14].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome
• The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt.
• The Tribunal recommended the Centrelink consider the Applicant’s 2011 austudy entitlements having regard to the 2010, 2011 and 2012 employment periods stated in the statement of service by [the Employer].

Key Findings
• Centrelink raised the debt following a data match with the ATO [2].
• The Applicant objected to Centrelink’s apportionment of his taxable income in the debt calculations [7]. The Tribunal accordingly invited the Applicant to provide payslips or bank statements to allow Centrelink to verify the timing of his earnings and apportion them accurately across the relevant fortnights [9].
• The Tribunal directed Centrelink to recalculate the debt taking into account a statement of service from the Applicant’s employer stating the Applicant was employed with them in 2010, 2011 and 2012 [11].
• The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome
• The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with the following conclusions reached in the Tribunal’s reasons:
  o In relation to the 2013/14 debt, Centrelink must seek to obtain accurate earnings information over the relevant time from the Applicant’s employers and recalculate on the basis of this information;
  o In relation to the 2016/17 debt, the debt is to be recalculated in accordance with the Tribunal’s findings. Should the Applicant fail to provide bank statements within 21 days, Centrelink is entitled to re-calculate the 2016/17 debt using the apportionment approach.

Key findings
• The Tribunal noted that Centrelink had apportioned earnings amounts across periods specified by the ATO to conclude that the Applicant had been overpaid NSA [7].
• The Tribunal noted to the Applicant that, despite being asked by Centrelink on three different occasions to provide copies of payslips or bank statements so his debt could be calculated as accurately as possible, he had failed to provide any additional information. In response the Applicant commented he considered it illegal for Centrelink to ask him to provide information from so long ago [9].
• The Tribunal found that ‘prior to adopting the apportionment approach, Centrelink should make all reasonable efforts to gather any more accurate information that might be available’. The Tribunal considered it appropriate to set aside the 2013/14 debt decision and require Centrelink to seek to obtain accurate information about the Applicant’s earnings over the relevant time from his employers [10].
• In relation to the 2016/17 debt, the Tribunal found it was unlikely that payslips could be obtained from the Applicant’s employers as both employers were no longer operational. The Applicant did not provide bank statements because of the cost and as he did not consider the information gleaned would ‘result in an accurate picture for the purposes of determining whether he had been overpaid’ [18]. The Tribunal did not consider the cost of obtaining same would be particularly onerous and stated:
  While I acknowledge that bank statements might not provide as accurate a picture as payslips, in the absence of those latter documents, bank statements are likely to provide the most accurate information available [19].
• The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.
### Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt.

### Key Findings

- The decision under review for the Tribunal involved determining whether the Applicant was a University Student undertaking casual employment and a debt was raised for overpayment of Youth Allowance following a data match between Centrelink and the ATO [2].
- The Applicant sought review as he believed averaging had been used to calculate the amount he earned each week [13]. The Tribunal gave the Applicant time to gather additional records for his earnings, which he did not provide [18].
- The Tribunal accepts that the Applicant was paid more in youth allowance than his entitlement during the relevant period [20].
- The Tribunal was satisfied that the Applicant had a debt to the Commonwealth but the actual amount of the debt still remains unclear [21].
- The Tribunal found ‘the imposition of a debt where a person’s earnings from casual employment are variable is not unusual. The tax information indicates that earnings were greater than the figures that Centrelink had in its records’ [29].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

### How it was decided and key facts

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### Outcome

- The decision under review was set aside and substituted with the decision that no debt had been proved.

### Key Findings

- After obtaining data match information from the ATO, Centrelink raised a YA debt of $5,001.65 on the basis that the match showed Applicant had under-declared his income between 27 August 2016 and 16 June 2017 [1]. An internal review affirmed the debt in May 2019 [2].
- The Tribunal stated and found in regards to the calculation of the debt:

  [The Applicant] told the Tribunal that he worked on a casual basis and his hours varied significantly. He was concerned that the Department had averaged his income across the whole of the year. It is apparent from the Department’s recalculation, at Tribunal papers, page 23 under the column headed Apportioned Actual Income, that this is indeed what the Department has done [5].
- The Tribunal noted that the Act does not authorise the calculation of youth allowance by reference to the averaging of income in this case [7].
- The Tribunal referred to Professor Terry Carney’s viewpoint on the validity of averaging, noting:

  In this regard, the Tribunal notes the commentary of Professor Terry Carney AO in the following article: The New Digital Future for Welfare: Debts Without Legal Proofs or Moral Authority? [2018] UNSW Law Journal Forum 1, especially at pages 6–7, where Professor Carney impugns the validity of averaging both from a mathematical and legal viewpoint. Clearly, with regard to casual employees on fluctuating wages, the averaging of income can produce distortions in the calculation of social security entitlements so as to give rise to phantom debt balances, when no overpayment has actually been made [7].
- The Tribunal found that the calculation had not been properly performed and that a debt was not validly raised [8].

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The decision under review was set aside.

Key Findings

Centrelink raised the debt following a data match with the ATO.

The Tribunal stated:

[The Applicant] did not provide bank statements and/or pay slips to verify her employment for the whole of the review period and the authorised review officer stated:

Please be advised that the debt amount, as it stands, has been reassessed by applying the ATO reported annual income for periods where you have not provided any verification of income.

The Centrelink debt calculations appear to have apportioned an amount per fortnight for the periods where [the Applicant] has not verified her income [16]-[17].

The Tribunal found it likely that the Applicant had been overpaid however was not satisfied that the debt has been correctly calculated:

This is because the actual gross income [the Applicant] earned, if any, in respect of each week or fortnight has not been established. Centrelink has relied in part on averaging gross income, as advised by the ATO for periods where [the Applicant] has not verified her income. It appears Centrelink have treated this income as fortnightly income and apportioned it as described in paragraph 11 when it was commission income which should be apportioned over 52 weeks rather than fortnightly. The tribunal finds that apportioning income according to the ATO data does not accurately reflect when [the Applicant]’s income by commission was earned at [22].

The Tribunal directed Centrelink to use powers to obtain pay information from employers and banking records [24].

The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

The decision under review was set aside and remitted for reconsideration on the basis Centrelink seek to obtain pay information from the Applicant’s employers for recalculation.

Key Findings

Following a data-match with the ATO, the information showed the Applicant was paid by more than 10 specified employers during the debt period [10].

Centrelink subsequently raised a NSA debt of $4,382.63 for the period from 12 December 2014 to 10 February 2016. An ARO affirmed the debt [1].

The Tribunal stated it was apparent Centrelink used the ATO information to apportion, on a daily basis, the Applicant’s earnings over the period [11].

The Tribunal found:

…it was unlikely in the extreme that the apportioned daily amounts referred to could possibly affect the Applicant’s true earnings situation. There must be some doubt about Centrelink’s underlying assumption that the income reported to the ATO was received at a constant rate for the periods identified by the ATO. Moreover, Centrelink’s ultimate conclusions based on that assumption (namely, that [the Applicant] was earning such daily amounts as $1.86 and $14.26) are unsustainable as a matter of fact [14].
The Tribunal commented in instances where the apportionment would be appropriate:

In Halls and Secretary, Department of Education, Employment and Workplace Relations [2012] AATA 802 the tribunal considered that it was appropriate for Centrelink to use an averaging method to calculate fortnightly income because in the circumstances it was the best available information that could be provided by the employer and the applicant. In Provan and Secretary, Department of Families, Community Services and Indigenous Affairs [2006] AATA 831 the issue of averaging fortnightly income was considered appropriate; however this was in circumstances where the employer had shut down and Mr Provan did not have any pay advice or other information that would assist in working out his periodic income [12].

The Tribunal found prior to adopting the apportionment approach, Centrelink should make reasonable efforts to gather pay information on the basis of their information obtaining powers [16]. The Tribunal also stated it was not yet satisfied of the debt as calculated by Centrelink [19].

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How it was decided and key facts

Outcome
- The decision under review was varied such that the debt was written off for a period of 6 months.

Key findings
- A debt was raised based on the overpayment of Newstart Allowance following a data match with the ATO [13].
- The Tribunal examined Centrelink’s calculations and did not identify any errors [14].
- The Tribunal stated the Applicant submitted medical opinion she was ‘severely impacted’ and ‘receiving treatment’ for an ongoing health issue for the duration of the entitlement period under review [28].
- The Tribunal found appropriate under the Applicant’s circumstances to write off the debt for a period of six months [29].

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How it was decided and key facts

Outcome
- The decision under review was set aside and substituted with the decision that any NSA debt outstanding as at the date of the hearing be waived.

Key findings
- The Tribunal noted ‘the calculations of the debt are on the basis of the averaging of income advice received from the Australian Taxation Office (ATO)’ [11].
- At the hearing, the Applicant explained that she no longer has any payslips given she was forced to move home due to poor health and her Employer was now in liquidation so had no opportunity to regain access to them [11].
- The Tribunal carefully checked the Department’s debt calculations and was satisfied they were correct but noted:
  Of course, it is possible that the debt may be somewhat less if there was evidence regarding the Applicant’s actual (and not average) income during the relevant period. However, as this evidence is not available the tribunal is satisfied that the best available evidence required averaging her employment income over the relevant period [13].
- The Tribunal found that special circumstances existed to justify a waiver of the remainder of the debt as at the date of the decision [17], [24].
How it was decided and key facts

**Outcome**

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the basis of bank statements, with the recalculated debt to be recoverable.

**Key Findings**

- After obtaining data match information from the ATO, Centrelink raised a YA debt of $5,033.47 on the basis that the Applicant’s earnings had not been taken into account between 4 July 2014 to 19 June 2016. Centrelink also applied a 10% penalty fee raising the debt to $5,522.59 [1]. An ARO affirmed the debt [2].
- The Tribunal found:

  Centrelink apportioned [The Applicant’s] annual income, as reported by the ATO, to the fortnights when youth allowance was potentially payable to [the Applicant] and found that she had been overpaid $5033.47 during the debt period.

  Fortnightly apportionment of annual income provides an estimate of fortnightly earnings, however actual fortnightly earnings may be different, especially when employment is casual and hours of work vary from fortnight to fortnight [15]-[16].

- The Tribunal stated:

  The account statements provided by [the Applicant] record deposits from her employers during the period under review. The tribunal accepts that these deposits are a complete record of [the Applicant’s] earnings during the debt period [19].

  The tribunal is of the view that [the Applicant] is entitled to have her overpayment recalculated, having reference to her actual fortnightly earnings and not apportioned earnings [20].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

How it was decided and key facts

**Outcome**

- The decision under review was set aside and remitted to Centrelink to recalculate the debt using payslip information (to be obtained by Centrelink).

**Key findings**

- The Applicant did not report her income accurately and therefore received benefits she was not entitled to.
- Centrelink calculated the Applicant’s debts in reliance on the net amounts received in the Applicant’s bank account, and not the gross income figures. Centrelink used income averaging to calculate the debts in lieu of payslips.
- The Tribunal commented in relation to Centrelink’s calculation methods:

  Centrelink’s method of calculating gross earnings from net amounts disclosed by bank statements appears to be inherently problematic. Amounts below the threshold at which tax becomes payable have, nevertheless, been “grossed up” and overall, those calculations appear to have either overestimated or underestimated [the Applicant’s] gross earnings from employment. Inaccuracies in Centrelink’s assessment of [the Applicant’s] ordinary income during the relevant periods will, more likely than not, lead to inaccuracies in the debt calculations [39].

Centrelink expects accuracy in the reporting of ordinary income from those who are in receipt of income support payments. In my view, it is only reasonable to expect a similar level of accuracy from Centrelink where it asserts debts are owed [40].
• The Tribunal was not satisfied with Centrelink’s calculations, as they were not based on the Applicants actual fortnightly income.
• Given this, the Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**
• The decision under review was set aside and the matter was remitted to Centrelink for reconsideration in accordance with the recommendation that Centrelink give due consideration to the additional information provided to the Tribunal by the Applicant, and if appropriate, recalculate the debt.

**Key findings**
• The Tribunal noted that the Applicant had provided Centrelink with a limited number of payslips to assist its review and the ARO had said they were unable to use them because they were photocopies of parts of the payslips and did not include the Applicant’s name [9].
• The ARO’s letter to the Applicant had stated: ‘Without evidence to the contrary, your employment income has been averaged and applied as per the payment summary information as advised by the ATO’ [10].
• The Applicant subsequently provided the Tribunal with seven payslips from the relevant employer [12].
• The Applicant said he could obtain bank statements for the relevant period but this was complicated because he had changed banks, the account was closed, and it had been in joint names with his former partner [13].
• The Tribunal told the Applicant it was reluctant to wait until August and suggested he ring them. At the date of the decision he had not provided the bank statements. Follow up calls by the Tribunal produced the following response: ‘Applicant returned missed call. He advised that Member Cox can proceed to make decision. He is leaving for QLD and will be trying to get additional statements but doesn’t want to hold up the process’ [14].
• The Tribunal found there was an overpayment of NSA but there was additional information and it would be desirable for Centrelink to consider that information and, if appropriate, recalculate the overpayment [15].
• The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**
• The decision under review was set aside and substituted with a decision that
• The Applicant incurred an austudy payment/NSA debt of $6,260 for the period 3 July 2010 to 28 June 2015.
• The Tribunal found the 10% penalty fee was not to be applied.
• The Tribunal affirmed the decision to recover the Applicant’s debt by way of garnishee action of his income tax return.

**Key findings**
• Centrelink received information from the ATO in relation to the Applicant’s gross income from employment from 2010 to the end of 2014/2015 financial year [6]. Centrelink equally apportioned the income amounts from each of the employers between the dates of employment as advised by the ATO [7].
• The Tribunal noted that the Applicant did not take issue with the income amounts which the ATO confirmed. He also did not dispute that he may have, on occasions, accidentally reported an incorrect amount of employment income [21].
• The Tribunal noted that the Applicant stated he no longer has any of the payslips from the period between 2010 and 2015 because it was ‘such a long time ago’. The Applicant provided bank statements from 2015 to Centrelink but stated he did not know whether they were considered or not [22].
The Tribunal stated the information provided by Centrelink:

...was not very helpful because although Centrelink provided a document showing the newstart allowance and austudy payment received by [the Applicant] in the relevant period this did not appear to tally completely with the revised ADEX document [23].

Although the Tribunal found that the income information from the ATO was correct regarding the Applicant’s income, the Tribunal found there was insufficient evidence about what income was being declared to Centrelink over the period from 2010. The Tribunal noted that Centrelink had not provided information about the Applicant’s reporting other than the occasional notes that the Applicant has reported [24].

The Tribunal also stated that, while there was apparently a significant disparity between the income earned by the Applicant (according to the ATO figures) and the total amount declared, the Tribunal was mindful there ‘were very significant periods of time during this approximate five year period when [the Applicant] was not receiving any income support payments’ [25].

The Tribunal found:

Centrelink’s method of calculation ignores the fluctuating income of [the Applicant] and has the potential to reduce his entitlements to newstart allowance by ascribing income to fortnights when he may not have earned any or only a small amount of income. However, because Centrelink has not provided clear evidence of [the Applicant’s] fortnightly reporting of his income it is not possible for the Tribunal to determine whether the “equal apportionment” method has disadvantaged [the Applicant] or not [26].

The Tribunal also stated that, in the absence of ‘compelling evidence about [the Applicant’s] reported income and when exactly (in which fortnights) it was earned’, the Tribunal considered it reasonable to determine that, in addition to the $1,260 overpayment (due to the WorkCover payments), the Tribunal should add a modest estimated overpayment amount of $1,000 per year to take account of the inaccuracies in the Applicant’s reporting of his income [27].

In relation to the 10% penalty fee, the Tribunal was not persuaded that the Applicant failed or refused to provide information regarding his employment income and concluded that the 10% penalty fee was not payable [29].

In relation to Centrelink’s decision to request that the ATO garnishee his income tax refund in repayment of the debt, the Tribunal stated it did not have the power to determine the merits of the garnishee action, but could only decide whether there was any error in the issuing of the garnishee notice [35]. The Tribunal concluded that recovery by way of garnishment was lawful and that the garnishee action proceeded in compliance with the Social Security Act [48].

The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

The decision under review was set aside and remitted to Centrelink to recalculate the debt using payslip information (to be obtained by Centrelink).

**Key findings**

- The Applicant’s debt amount was affirmed by an ARO on internal review.
- The tribunal stated:

  Averaging income throughout the relevant period does not accurately reflect his periodic income in the circumstances [9].

  It is not correct to apply averaged fortnightly income in the calculation of youth allowance payments for the period [the Applicant] was employed by [employer]. The effect of using averaging is that income was incorrectly attributed throughout the relevant period. As a result, the income was not apportioned as required by section 1073B of the Act [10].

- The Tribunal was not satisfied the calculations were correct, because it was not based on the Applicant’s actual fortnightly earnings. The Tribunal remitted the decision back to Centrelink for recalculation.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
How it was decided and key facts

Outcome

- The decision was set aside and the debt was waived.

Key Findings

- The Tribunal noted Centrelink had initially obtained, via a data match with the ATO, the Applicant’s gross income for the 2015/2016 FY and subsequently raised an NSA debt of $2,974.38 for the period 14 July 2015 to 11 July 2016 [3]. Centrelink amended the debt to $1,350.76 on the basis of payslips provided by the Applicant [4]-[6].
- An ARO affirmed the debt and amended the amount to $1,103.52 [7].
- The Tribunal referenced the following ARO note on the calculation of the debt in their reasons for decision:

  In her letter informing [the Applicant] of her decision the authorised review officer said: As you could not provide the relevant payslips or bank statements for the entire period under review, the debt was calculated utilising the payslip details you did provide and gross earnings as noted on your group certificates. For periods in which you did not provide payslips, your earnings were apportioned equally over the period [10].

- The Tribunal was satisfied that on the basis of further pay and bank information provided by the Applicant that the Applicant had a debt and that the debt was calculated incorrectly [13]-[14].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

Outcome

- The decision was set aside and remitted to Centrelink for reconsideration and recalculation of the debt.

Key Findings

- Centrelink raised two NSA and YA debts totalling $2,414.24 following an ATO data match for the period from 15 September 2012 to 25 April 2014. A 10% penalty was also applied [2]. An ARO varied the debt, waiving part of the debt amount and removing the 10% penalty [3].
- The Tribunal noted the Applicant had three casual jobs in the first debt period and another two in the second debt period, including periods of no income or erratic hours [27]-[28]. The Tribunal stated Centrelink’s income free areas also changed in the debt period [30].
- The Tribunal noted that the NSA debt was not a Robodebt but the original debt raised had been a Robodebt calculated in the absence of other pay information provided by the Applicant [21].
- The Tribunal also stated the revised calculation was incorrect, noting:

  Even allowing for the apportionment of income over a Centrelink fortnight, which could create some disparity between actual earnings and apportioned earnings, there should not be a large disparity between the actual earnings as disclosed by a data match and the total earnings used in the debt calculations [25].

- The Tribunal gave specific directions for recalculation of the debt, including that income be averaged over entire financial years [33].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
Key Findings

Outcome

- The decision under review was set aside and substituted with the decision that the debt be waived.

Key Findings

- Following a data match with the ATO, Centrelink raised a YA debt of $2,765.32 on the basis that the Applicant incorrectly declared income for the period 25 July 2011 and 24 February 2014 [1], Centrelink reassessed and recalculated the debt to $3,011.64 [2]. Centrelink reassessed and reduced the debt to $2,489.37, imposing a 10% penalty fee [3]. An ARO affirmed the debt but removed the 10% penalty [4].

- The Applicant regularly over reported his income to Centrelink whilst in receipt of YA [7]. The Tribunal stated in regards to Centrelink’s calculation of the debt:

  Moreover, with many of these items – in fact more often than not – the amount reported by [the Applicant] is actually higher than the amount said by the Department to be properly attributable to the relevant cycle. It is in large part by redistributing the overdeclared income to other fortnights that the Department has generated underdeclared income in those fortnights and so created debts where none were before [8].

- The Tribunal commented in relation to Centrelink’s distribution of income in calculating debt:

  This Tribunal is not equipped to determine whether the adjusted cycle adopted by the Department is the correct way to distribute [the Applicant’s] income, but assuming that it is technically correct, there emerges an obvious problem in the Department making these adjustments years down the track, because insignificant discrepancies accumulate over time and can, as here, produce a significant and unfair burden on the debtor when demand is not made for the accumulated debt until after eight years have passed [10].

- The Tribunal found special circumstances existed to justify the waiver of the debt, where the Tribunal was satisfied in this case that the debt was not proved and would cause the Act to operate contrary to its intent or otherwise unfairly including towards the Applicant [14], [16]-[17].

How it was decided and key facts

Outcome

- The decision in relation to the start-up scholarship was affirmed.

- The decision in relation to the youth allowance, NSA and austudy scholarships were set aside and remitted to Centrelink.

- Centrelink was directed to obtain pay records from each employer listed and recalculate the debts based on the Applicant’s fortnightly income. Where pay records could not be obtained, Centrelink was directed to calculate the debt firstly based on the Applicant’s reported income for that fortnight, and where the Applicant failed to report his income, the ATO data matched income minus any income reported by the Applicant. The balance was to be apportioned over the relevant financial year and applied to the relevant fortnight.

- Centrelink was directed to exclude income from two employers in its calculations.

- Centrelink was directed to apply the 10% penalty to any debt calculated, including the student start-up scholarship debt.

- The recalculated debts were recoverable.

Key Findings

- Centrelink raised the debt following a data match with the ATO [7].

- The Tribunal was satisfied that the Applicant’s income had been apportioned from employers where there was limited information as to the fortnightly period in which the income was earned [23].

- Ultimately the Tribunal found:

  It is evident that [the Applicant] earnt income throughout the relevant periods as evidenced from the ATO income matched data. It also seems that at times this income was higher than the amounts [the Applicant] reported to Centrelink. However, the tribunal is not satisfied that all of the income apportioned on the basis of ATO income...
matching was earned in the fortights that this income has been apportioned to. As income reported by the ATO is more than income reported by [the Applicant] it is highly probable that [the Applicant] has debts due to income that was not included when calculating his rates of youth allowance, newstart allowance and austudy [33].

- The Tribunal found that the debt in relation to the student start-up scholarship was valid as the Applicant withdrew from full-time study and no longer met the pre-conditions for the scholarship [43].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
- The Tribunal was ‘...satisfied that the debts arose wholly or partly because [the Applicant] either refused or failed to provide information in relation to his income from personal exertion...’ and did not accept this as a reasonable excuse to not properly declare his income or provide further information when requested. Accordingly, it concluded that the 10% penalty was to be applied to any recalculated debt [62].

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**How it was decided and key facts**

**Outcome**
- The decision under review was affirmed.

**Key Findings**
- The decision was made on the basis that certain income earned by the Applicant during the period and identified from the records of the ATO, as part of Centrelink’s data matching, had not been properly taken into account in calculating the amount of disability support pension paid to him [9].
- An issue of confusion identified by the Tribunal in the original cancellation and subsequent restart of the Applicant’s receipt of entitlement to DSP involved a separation certificate from one Employer to clarify the Applicant’s earnings and cessation of employment [4]-[7].
- The Tribunal stated it was ‘not in dispute that Centrelink erred in disregarding the notation’ in a separate instance by reinstating payments where the Applicant clearly communicated he ‘no longer wanted the DSP’ [21].
- The Tribunal found that during the relevant the Applicant received the disability support pension payments as recorded by Centrelink and was overpaid disability support pension at [39]-[40].
- The Tribunal stated: ‘[a]bsent evidence of earnings from [the Applicant], Centrelink was entitled to rely on the evidence it obtained from the ATO [42].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**
- The decision under review was set aside and remitted to Centrelink for recalculation of the debt.
- Centrelink was directed to obtain bank statements or payroll information for the Applicant and recalculate the debt ‘by correctly apportioning the applicant’s income in each instalment period according to law’.
- Any debt was to be recovered.

**Key Findings**
- The Tribunal noted that income averaging was used by Centrelink to determine the Applicant’s earnings for fortights where bank statements were not available. ‘Grossed-up income determined from the bank statement evidence and the income averaged amounts were applied to assess the rate of austudy and newstart allowance for [the Applicant] during the relevant periods’ [7].
- The Tribunal noted that according to the Applicant’s evidence, her income varied significantly from week to week [8]. It found that:
  The application of averaged income does not accurately reflect [the Applicant’s] actual fortnightly income in the
circumstances. It is not correct to apply averaged fortnightly income in the calculation of austudy or newstart allowance payments for the periods [the Applicant] was employed. The effect of using averaging is that income will be incorrectly attributed, which means [the Applicant’s] actual income is not apportioned as required by section 1073B of the Act [9].

- The Tribunal found that while debts would exist, their amount was unclear and could not ‘be ascertained prior to a complete reassessment of entitlement using either payroll or grossed-up earnings information for the periods where averaging [had] been applied’ [15].
- The Tribunal found that there was no sole administrative error or special circumstances warranting the recalculated debt to be written off or waived.

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**How it was decided and key facts**

**Outcome**

- The debt decision 2019/S136925 under review was set aside and substituted with the decision that there was no NSA debt to repay.
- The debt decision 2019/S136708 under review was affirmed.

**Key Findings**

- The Tribunal noted that the ATO had provided Centrelink with initial information about the Applicant’s annual income in the relevant years [23].
- The Tribunal noted that the Applicant stated that he provided information to Centrelink to challenge the original debt amounts which had been calculated from ATO information, but does not have that information now [20].
- The Tribunal stated it considered the debt calculations and found they were not reliable for the following reasons:
  o The payslips provided to Centrelink were not in the Centrelink papers and the Tribunal did not have access to them;
  o The Multical Debt Calculation Entitlement Schedule page 12 has one of the relevant fortights missing thus reducing transparency and scrutiny;
  o The income listed on page 14 does not match the amounts listed in the Multical schedule; and
  o The impact of any Working Credits is not explained by the ARO [25].
- In relation to debt decision 2019/S13692, the Tribunal was not satisfied the debt amount was correct [26].
- In relation to debt decision 2019/S136708, the Tribunal decided that overall the debt calculations appear to be correct [28].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and the matter remitted to the Chief Executive Centrelink with the direction that the outstanding debt as at the date of the hearing was waived.

**Key Findings**

- Centrelink raised the debt following a data match with the ATO.
- It used payslips where the Applicant was able to provide them but apportioned her gross income where payslips were unavailable. The Tribunal, however, found that the calculations were incorrect and if apportioned correctly, the quantum of the youth allowance debt would increase [11].
- The Tribunal found that the Applicant had incurred a NSA debt as she failed to fully declare her income [13].
- The Tribunal noted, in relation to Centrelink’s conduct:
[the Applicant’s] submissions and testimony at hearing centred on the difficulties that she has experienced with the Department, not limited to the fact that the quantum of the debt has changed on numerous occasions without adequate explanation given to her in addition to the failure of the Department to forward her requests for review to an authorised review officer. When this review finally occurred, the authorised review officer’s decision was overturned in a matter of days [23].

- The Tribunal found that special circumstances existed to justify the waiver of the debt [24].

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink to be recalculated with the direction that any recalculated debt owing was waived.

**Key Findings**

- The debt was raised following a data match with the ATO.
- The debt was increased once calculated and the Tribunal noted that this was apparently due to the identification of further amounts not taken into account when the original debt was calculated [11].
- The Tribunal found that the apportioned income in relation to one employer were not accurate and should have been calculated using payslip information [18]. The Tribunal was unable to gauge the accuracy of the calculations in relation to the second employer due to the poor quality of the payslips [18].
- The Tribunal found that that allowances were to be deducted from the calculation of the Applicant’s gross income in relation to the first employer, and the debt recalculated accordingly [18].
- The Tribunal further stated:

> The tribunal is satisfied that any overpayment or underpayment has resulted from trying to work out income for casual work that is sporadic and fluctuating and that any variations in actual income earned and income reported occurred in [the Applicant’s] case for two reasons. Firstly, she was working casually for three employers and [the Applicant] was reporting income for work that she had to “fit” into the Centrelink benefit fortnight. Secondly, for some of her work she had to estimate her income for a period for which she may have been paid for a number of weeks after she actually worked [28].

- The Tribunal was not satisfied that the debt arose due to an error by Centrelink and therefore did not waive the debt on this basis [22].
- The Tribunal found that special circumstances existed to justify a waiver of the debt [32]-[33].

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**How it was decided and key facts**

**Outcome**

- The decision under review was affirmed.

**Key findings**

- The Tribunal noted that unfortunately none of the payslips in the documents before the Tribunal match the above dates and so the Tribunal could not verify the accuracy of the amounts reported by the Applicant on those occasions against any original records [15].
- The Tribunal found it was `left with Centrelink’s debt calculations ... based on data received from the Australian Taxation Office’ [16].
- The Tribunal was satisfied that the Applicant `was paid more parenting payment than she was entitled to receive’ [18].
- The Tribunal found it did ‘not have any evidence before it to contradict that calculation’ [17].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
### How it was decided and key facts

#### Outcome
- The decision under review was set aside and remitted to Centrelink for recalculation of the debt using payslip information (to be obtained by Centrelink).
- Any resulting debt was to be waived or reimbursed to the Applicant.

#### Key findings
- The debt amount was partially varied by an ARO on internal review.
- The Applicant did not report his income accurately and a debt was raised. Centrelink used ATO data instead of payslip data to raise the debt, so it was not based on the Applicant’s actual fortnightly earnings.
- The Tribunal commented:

  The tribunal is not satisfied that an overpayment of a social security debt can be accurately calculated using ATO data and that while such data may be useful for identifying cases that warrant closer investigation, the data alone should not be relied upon unless more specific evidence (such as payslips) is unable to be obtained [10].

In the event that there are no payslips available, as noted by the tribunal previously, it is not always possible to obtain evidence of a person’s weekly or fortnightly income and in such instances the approach has been to average the income amounts across all fortnights in the period covered by the amount. In Halls and Secretary, Department of Education, Employment and Workplace Relations [2012] AATA 802 the tribunal considered that it was appropriate for Centrelink (the relevant department’s delivery agency) to use an averaging method to calculate fortnightly income because in the circumstances it was the best available information that could be provided by the employer and the applicant. In Provan and Secretary, Department of Families, Community Services and Indigenous Affairs [2006] AATA 831 the issue of averaging fortnightly income was considered appropriate however this was in circumstances where the employer had shut down and Mr Provan did not have any pay advice or other information that would assist in working out his periodic income [13].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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### How it was decided and key facts

#### Outcome
- The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the basis of employer payslips and summaries, with the recalculated debt to be recoverable.

#### Key Findings
- The Tribunal noted Centrelink had initially obtained, via a data match with the ATO, the Applicant’s gross income from 5 different employers during the 2015/2016 financial year [6].
- Centrelink raised an NSA debt of $821.31 for the period of 20 June 2015 to 21 June 2016 on the basis of over payment. An ARO affirmed the debt but increased the debt to $1,039.87 [1].
- The Tribunal found it was not satisfied the bank statements provided by the Applicant were sufficient evidence to determine the amount of debt because it was not clear from the statements what fortnight the Applicant earnt the income from Employment [17]. The Tribunal stated:

  For example, it seems to the tribunal that [the Applicant] was paid fortnightly but it is unclear the period of the fortnight. This is important as it allows for an accurate apportionment of income from a particular pay period for one employer to be worked out in accordance with the Centrelink benefit fortnights. A debt amount cannot be entirely accurate without this information [17].

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The Tribunal accepted that the Applicant may have a debt, but any debt needs to be recalculated on the basis of payslip or payment summary information from all employers throughout the debt period which are to be obtained by Centrelink [21].

The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was affirmed.

**Key findings**

- The Tribunal noted that the final income details that Centrelink used to calculate the Applicant’s entitlements included a combination of:
  - ATO total FY data;
  - Payslip information where available;
  - Grossed up net payment details extracted from relevant bank statements;
  - Calculation of missing fortnightly income based on year to date details from available payslips; and
  - A small amount of apportionment of residual income not covered in payslips or bank statements but included in ATO total FY data from employers [27].
- The Tribunal was satisfied Centrelink’s calculations were correct [29].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the basis of obtaining employer payslips, with the recalculated debt to be recoverable.

**Key Findings**

- Centrelink raised a NSA debt of $5,695.25 for the period 1 August 2017 to 24 November 2018 on the basis of overpayment. An ARO affirmed the debt [1].
- The Tribunal noted matched income data from the ATO was not provided to the tribunal but accepted it showed gross income for the 2017/2018 FY [12].
- The Tribunal noted the debt was calculated on the basis of some payslips provided by the Applicant but stated ‘part of the debt was apportioned according to information contained in the Centrelink documents in the absence of payslip information’ [13].
- The Tribunal states in regards to apportionment:
  - The tribunal does not accept the apportionment of income in the absence of payslips or payment summary information is an accurate way to calculate a debt and therefore the tribunal is not satisfied that the debt amount is correct [16].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
The Tribunal commented:

**Outcome**

- The decision under review was set aside and remitted to the Chief Executive Centrelink.
- Centrelink was directed to request the Applicant’s employers for information to verify the Applicant’s income in the period between 13 July 2014 to 21 May 2016 and recalculate his entitlement to newstart allowance on this basis.
- Centrelink was directed not to apply a 10% penalty fee.
- Any debt was to be recovered in full.

**Key Findings**

- The Tribunal noted that Centrelink apportioned the Applicant’s fortnightly income figures for each employer across the employment periods advised by the ATO [4].
- The Tribunal found:

Having closely examined the Centrelink overpayment calculations, the tribunal shares [the Applicant’s] concerns about their accuracy... Given that [the Applicant] reported significant income in certain fortnights and much less in others, the tribunal accepts that Centrelink’s averaging is likely to create overpayments in fortnights where no overpayment in fact occurred [7].

- The Tribunal noted that Centrelink has information-gathering powers and these are not limited in the legislation as they are by internal policy. It accordingly found that Centrelink should request the Applicant’s earnings information from his various employers [8].
- The Tribunal found that there was no evidence suggesting ‘culpable or reckless under-declaration’ of income by the Applicant and therefore that the 10% penalty should not have been applied [13].
- As the Applicant stated he had no issue in repaying a legitimate debt, the Tribunal found that the Applicant should repay any recalculated debt amount [14].

### How it was decided and key facts

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**Outcome**

- The decision under review was set aside and substituted with the decision that 50% of the debt be waived.

**Key Findings**

- Following a data match with the ATO [9], Centrelink raised a raised a DSP debt of $4,529.32 for the period from 6 July 2016 to 19 June 2018 [2]. An ARO affirmed the decision [3].
- The data match showed the Applicant was employed by four separate employers during the period [9].
- The Tribunal found the Applicant incurred a debt but the debt was to be calculated using payslip data and directed Centrelink to obtain this information from the Applicant’s employers in order to recalculate the debt [11].
- The Tribunal commented:

In the event that there are no payslips available, as noted by the tribunal previously, it is not always possible to obtain evidence of a person’s weekly or fortnightly income and in such instances the approach has been to average the income amounts across all fortnights in the period covered by the amount. In Halls and Secretary, Department of Education, Employment and Workplace Relations [2012] AATA 802 the tribunal considered that it was appropriate for Centrelink to use an averaging method to calculate fortnightly income because in the circumstances it was the best available information that could be provided by the employer and the applicant. In Provan and Secretary, Department of Families, Community Services and Indigenous Affairs [2006] AATA 831 the issue of averaging fortnightly income was considered appropriate; however this was in circumstances where the employer had shut down and Mr Provan did not have any pay advice or other information that would assist in working out his periodic income [12].

- The Tribunal stated that once any resulting debt was calculated, for Centrelink to communicate this to the Applicant and to include an explanation of how, if in the event, her income was apportioned in that recalculation [13].
- The Tribunal found that special circumstances existed to justify 50% waiver of the debt.
Outcome

- The decision under review was set aside and the Tribunal remitted the decision back to Centrelink to recalculate the debt using payslip information (to be obtained by Centrelink).

Key Findings

- The Tribunal commented:
  Having examined the Centrelink calculations, the Tribunal notes that the current overpayment figure of $18,315.33 has been arrived at by averaging [the Applicant’s] annual income from her two employers across every fortnight that she received newstart allowance. Centrelink has used this approach as it did not have access to a fortnightly breakdown of [the Applicant’s] income. While the Tribunal appreciates the practicalities behind this method, the matters raised by [the Applicant] at the hearing suggest that the arbitrary averaging of her income across fortnights does not accurately reflect how her income was actually earned. In particular, the averaging process used by Centrelink is likely to have attributed [the Applicant] with income for some fortnights when she earned no income at all [7].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

Outcome

The decisions under review were affirmed.

Key Findings

- Centrelink raised two debts in relation to parenting payment and NSA for the periods 24 June 2010 to 2 January 2013 and 28 March 2013 to 8 April 2015 [3]. An ARO affirmed the debts [4].
- The Tribunal notes in regards to the calculation undertaken by Centrelink: For the one financial year for which it does not have a data match from the ATO, Centrelink has used the earnings actually reported by [the Applicant] in the calculations of the debt amounts [16].
- The Tribunal noted the Applicant disputed the accuracy of averaging in Centrelink’s calculation of the debt as her earnings would vary each fortnight or some where she would not be paid at all [17].
- The Tribunal noted that the Applicant was given the opportunity to provide payslips as evidence of her actual pattern of earnings but declined to do so [18].
- The Tribunal found it was satisfied that the averaging method used by Centrelink was not unreasonable, stating:
  In the absence of [the Applicant] being willing to provide further evidence to prove the inaccuracy of Centrelink’s calculations, I was satisfied that the method used by Centrelink to calculate the amount of the excess payments, by averaging [the Applicant] earnings from [Employer] over the particular financial year to which they relate, is not unreasonable. I examined those calculations and did not identify any errors. [22].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
Outcome

The Tribunal stated:

Key Findings

- The Tribunal noted that Centrelink asserted the Applicant did not declare all of his earnings from two separate employers whilst in receipt of YA. It came to Centrelink's attention when notified at a later date by the ATO [12].
- The Applicant advised the Tribunal that he was not arguing against averaging in relation to the debt under review but had done so in respect of the previous debt [15].
- The Tribunal found that, having regard to Centrelink's contemporaneous records and the records of the Applicant’s income from the ATO, it was satisfied that the Applicant did not declare all of his earnings from employment as he was required to do [16].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

Outcome

- The decision under review was affirmed.

Key Findings

- Following a data-match with the ATO in May 2019, Centrelink requested further pay information from the Applicant for the 2013/2014 FY for his time in receipt of YA as a casual employee at [Employer] [3].
- Centrelink raised a YA debt of $11,078.17 on the basis the Applicant under declared his income for the period 13 July 2013 and 26 June 2015 [5]. An ARO varied the debt to $11,296.77 [6].
- The Tribunal examined the Apportioned Actual Income column of the ADEX Debt Schedule Report and found: is not satisfied that the calculations are made on the basis of actual fortnightly income earned by [the Applicant] during the period under review. The debt is therefore not proved [14]-[15].

Outcome

- The decision under review was set aside and substituted that no debt was proved.

Key Findings

- The Tribunal noted the Applicant disagreed with Centrelink’s calculations but was unable to provide Centrelink with payslips or bank information as he was no longer able to access either material [12]-[13].
- The Tribunal examined the Apportioned Actual Income column of the ADEX Debt Schedule Report and found: is not satisfied that the calculations are made on the basis of actual fortnightly income earned by [the Applicant] during the period under review. The debt is therefore not proved [14]-[15].

Outcome

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt.
- Centrelink was directed that the Applicant had a youth allowance debt in the amount of $1,046.02 for the period between 3 April 2013 to 25 June 2013 but that Centrelink was to use its information-gathering powers to obtain payroll information for the Applicant for the period from 1 July 2014 to 30 June 2016 and recalculate the debt for this period having regard to the payroll information.
Key Findings

- The debt was raised following a data match with the ATO.
- The Tribunal was satisfied in relation to Centrelink’s calculations where payslip information was used to determine the debt amount [11]-[12].
- The Applicant was unable to provide payslips for all employers, however, the Tribunal stated:
  
  Given the irregular nature of [the Applicant’s] income, the tribunal decided that the debt calculation was likely to be flawed and the correct pay information should be obtained from [the Applicant’s] employers … by Centrelink [15].
- The Tribunal found that there was no sole administrative error or special circumstances warranting the recalculated debt to be written off or waived [20]-[22].

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How it was decided and key facts

Outcome

- The decision under review was affirmed.

Key findings

- The decision under review involved determining whether the Applicant was overpaid Newstart Allowance and Disability Allowance after four separate debts were raised by Centrelink following a data match with the ATO [1]-[3].
- The Tribunal stated that the Applicant provided Centrelink with pay information including ‘a Separation certificate, payslip, a WorkCover payment report and a time and attendance report’ [13].
- The Tribunal found:
  
  Had [the Applicant] attended the hearing the Tribunal would have invited him to provide his bank statements so that his earnings could be accurately apportioned to Centrelink pay fortnights and the debts recalculated [15].
  
  [the Applicant] has the option, if he so wishes, to provide his bank statements as evidence in a level two appeal to the Tribunal [16].

  Without additional evidence the Tribunal has no basis for requiring a recalculation of the overpayments and accepts that they have been correctly calculated on the basis of the information currently available to Centrelink [17].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink to recalculate the correct amount of overpayment in relation to the Applicant’s actual earnings as corroborated by the bank account statements.

Key Findings

- The Applicant was engaged in part-time or casual employment with a number of employers over the relevant period.
- Two debts were raised against the Applicant for overpayment of youth allowance based on a data match from the ATO [4].
- An ARO reviewed the decision on 30 June 2017. The first debt was reduced, and the second debt was increased.
- The Applicant provided bank account statements to Centrelink in July 2019 [20].
- The Tribunal deferred making a decision to obtain further financial information from the Commonwealth Bank of Australia [11].
- The Applicant advised that the income reported may not have aligned with her pay periods and Centrelink instalment periods. The Applicant advised she did not receive payslips in a timely manner from her employers [12].
The Applicant submitted the debt was raised over a period of time in which she worked casually and received inconsistent payments of income that have been apportioned across the debt period. The Applicant submitted that she went for periods unemployed not earning any income during the periods of the debts and that the apportionment of the income determined from the ATO is not sufficiently accurate [12].

The Tribunal asked the Applicant why she had not obtained bank account statements for the period prior to May 2012. The Applicant advised she was told by CBA she would have to pay a fee for statements dating back more than 7 years [21].

The Tribunal stated:

The Tribunal notes that in calculating the current debts under the amended decision, Centrelink has relied mostly on the ATO data match information which has not been verified [29].

The issue of what amounts have been earned by [the Applicant] and for what period assumes greater significance in light of the evidence that her income varied significantly throughout the debt periods and that she was unemployed for certain periods. Because of that, it is likely that the apportioning of the income does not accurately reflect [the Applicant’s] actual earnings in the relevant period [30].

...Absent evidence from [the Applicant], Centrelink was entitled to rely on the evidence it obtained from the ATO. However, as [the Applicant] rightly expects any overpayment of youth allowance ought to be calculated as accurately and fairly as possible, the Tribunal considers that better financial information for all of the relevant period is now at hand and that it is desirable that the amount of [the Applicant’s] debts be recalculated as verified by the CBA account statements [31].

The Tribunal did not make a finding in relation to sole administrative error or special circumstances. The Tribunal provided direction back to Centrelink to consider this at the time of reassessing any overpayment during the relevant period. The Tribunal indicated that Centrelink ought to consider the Statement of Financial Circumstances and written submissions to the Tribunal [40].

### AAT Review Number DOC ID Member Date

| 2019/M139187 | CTH.3761.0001.0835 Supporting Docs: CTH.3761.0001.0846 | H Moreland | 23 September 2019 |

### How it was decided and key facts

#### Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt using payslip information (to be obtained by Centrelink).

#### Key findings

- The Tribunal instructed Centrelink to request payslips for the relevant period. If no evidence of the Applicant’s income was available, income averaging could be used as a last resort, if it was the best available information in the circumstances.
- The Tribunal did not find that any special circumstances existed to justify a waiver or the writing off of the debt. The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
• An ARO affirmed the debt amount on internal review.
• The Tribunal found:

  [the Applicant] said no one had explained to him how to report his income for newstart reporting purposes and he could not remember how he worked out his income for Centrelink reporting purposes [12].

  From the EANS screen the tribunal notes that generally income has been apportioned in accordance with matched income information from the ATO [14].

  The tribunal accepts that there may have been periods in which [the Applicant] reported his income and other periods, in which he may have worked and did not report any income. However, based on the evidence before it the tribunal cannot be certain this has occurred. The tribunal does not accept that the apportionment calculations for various employers have resulted in the correct debt amounts being raised [17].

• The Tribunal directs Centrelink to obtain payslip summary information or bank account statements.
• Debt was written off for a period of two years.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and remitted to the Chief Executive Centrelink.
• Centrelink was directed that there was a debt of $417.77 which could be recovered.

**Key Findings**

• The Applicant’s overpayment of youth allowance was calculated on the basis of ATO information [2].
• The Tribunal noted that the Applicant supplied payslips from one employer for part of the relevant period which were used to calculate the overpayment of $417.77 for that period [8]. It found, however, that Centrelink had apportioned the Applicants earnings based on year-to-date amounts from the payslips for the rest of the financial year despite it being extremely unlikely that the Applicant earned the same amount each fortnight [9].
• Importantly, the Tribunal stated:

  This is a so-called “robodebt”. This occurs when Centrelink averages the income declared to the ATO over the financial year so that the income is the same in each fortnight. This is clearly not the case for [the Applicant]. Due to the income free area the pattern of earnings can make a significant difference to a debt amount, as can periods when a person was not in receipt of Centrelink benefits [10].

  In cases such as this, the onus is on Centrelink to establish that a person has been overpaid, and also the amount of the overpayment. Centrelink has only made a very rudimentary attempt at determining the correct amount of this overpayment and a calculation based on a steady amount of income each fortnight cannot possibly be right when considered against what can be deduced about [the Applicant’s] pattern of earnings. Other than for the period between 7 April 2014 and 11 May 2014 the tribunal cannot find that the overpayment has been correctly calculated, or that the amount of the overpayment is correct [11].

• The Tribunal found that Centrelink would need to obtain details of the Applicant’s actual income if it wished to raised a debt for the period between 20 July 2013 and 20 June 2014 [13].
• It also found that that no 10% penalty could be applied as it could not be established that one instance of an incorrect declaration was reckless or misleading [14].
• Ultimately, the Tribunal found:

  As noted above, the tribunal has no confidence in the debt amount as determined by Centrelink, but there is still a smaller debt. The tribunal does not have any evidence that [the Applicant’s] circumstances are sufficiently unusual or uncommon that the special circumstances discretions contained in section 1237AAD of the Act should be exercised in this case to waive recovery of the debt. The debt as varied may be recovered from [the Applicant] [25].
The Tribunal accepted the overpayments as calculated by Centrelink.

**Outcome**
- The decision under review was set aside and remitted to Centrelink with the direction that it establish the ‘actual amounts’ the Applicant earned during each fortnight of the debt period, with any debt resulting from the recalculation to be recovered.

**Key findings**
- The Applicant confirmed that, during the debt period, she received income from 3-6 employers and advised the Tribunal she lodged her payslips with Centrelink in a timely fashion [8].
- The Tribunal noted that in the file was a bank statement which the Applicant provided to Centrelink since the payslip was not available for that period. The Tribunal stated that payments made into her bank account were her nett pay while Centrelink was required to calculate her rate of payments using gross pay.
- The Tribunal found that ‘[g]iven the uncertainty, the Tribunal thinks the fairest thing to do is to refer the matter back to Centrelink to ensure that the fortnightly income figures used by them to calculate the debt, are accurate’ [13].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

**How it was decided and key facts**

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**How it was decided and key facts**

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- The Part of the debt was affirmed.
- The Tribunal recalculated the other remainder of the debt and it was subsequently waived.

**Key findings**
- The Applicant did not report her income accurately and a debt was raised following a data matching exercise with the ATO.
- The Tribunal recalculated part of the debt based on actual earnings.
- The resulting debt was waived as it was less than $200.

**How it was decided and key facts**

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- The decision under review was set aside and substituted with the decision that there were two debts, one of which was affirmed.
- The second debt was waived as it was less than $200.

**Key Findings**
- The Applicant did not report her income accurately, and so she received benefits that she was not entitled to. Centrelink raised a debt following a data matching exercise with the ATO and the Applicant’s tax refund was garnished.
- The Tribunal accepted the overpayments as calculated by Centrelink.
- The Tribunal found that the 10% penalty was properly applied.
- The Tribunal concluded that Centrelink had correctly garnisheed the Applicant’s tax return.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt.
How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink to ascertain the Applicant’s actual income to recalculate whether the Applicant was overpaid newstart allowance.

Key Findings

- On 24 April 2019, Centrelink raised three newstart allowance debts [1].
- On 28 June 2019, an ARO affirmed the debts [2].
- The Tribunal noted:

  The Tribunal considered the data matching information provided by Centrelink and their use of this information (pages 70-103) and was not satisfied that the apportioning of the income amounts provided through the ATO produced an accurate comparison of income earned during the periods for which debts were raised and the income declared by [the Applicant] to Centrelink. On the evidence presented the Tribunal was not satisfied as to the extent, if any, [the Applicant] was overpaid newstart allowance for the periods 20 August 2012 to 1 February 2013, 1 December 2014 to 20 February 2015 and 16 December 2015 to 9 February 2016. In [the Applicant’s] case where there were various employers, providing varying income over varying periods, the apportioning of income over periods of employment, unemployment and under-employment produces an inaccurate assessment of overpayments. Actual earnings for the periods were needed to accurately assess the extent of any overpayments [11].

- If a debt was determined based on actual income, the Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt [15 and 19].

How it was decided and key facts

Outcome

- The decision under review was set aside and substituted with the decision that there was a debt but that 50% of the debt was waived.

Key findings

- The decision under review for the Tribunal involved determining whether the Applicant was overpaid Newstart Allowance at [1]. The debts were raised following information received by the ATO and apportioned by Centrelink [9], [11]. The Tribunal found that the Applicant was overpaid [11].
- The Tribunal stated the Applicant reported mobile reporting issues to Centrelink as well as in person ‘accepting that administrative error contributed to the debt in this case, in that the Centrelink app was not working and Centrelink were aware it was not working and were unable to resolve the issue during the debt period’ [16].
- The Tribunal found the special circumstances existed to justify a waiver of 50% of the debt.

How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for reconsideration with directions to obtain further information from the Applicant’s employers.
- The Tribunal also recommended that Centrelink consider then waiving any resultant debt.
Key Findings

- The Tribunal found:
  ... averaging the PAYG income amounts over the period set out under the PAYG Payment Summaries would not in the current circumstances produce an accurate assessment of [the Applicant’s] entitlement to newstart allowance and later to disability support pension for each of thefortnights [13].

- The Tribunal stated it was open to Centrelink to seek further documentation from the Applicant’s three employers to identify how much she was paid each fortnight [13].

- On the evidence presented, the Tribunal was not satisfied that the amounts calculated by Centrelink were correct [13].

- The Tribunal noted it did not need to consider the write off and waiver provisions, but did note there was sufficient evidence to conclude there were special circumstances that made it desirable to waive any debt amount [14].

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<td>J D'Arcy</td>
<td>23 October 2019</td>
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How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with the direction that the NSA debt be recalculated after consideration of the new material supplied by the Applicant and recovery of the balance of any debt owing (after recalculation) to be waived due to the existence of special circumstances.

Key Findings

- The Tribunal noted that a data match between Centrelink and the ATO triggered a review of the Applicant’s NSA and Centrelink subsequently raised a debt on the basis of this information [3]-[4].

- The Applicant provided PAYG payment summaries for 2012, 2013 and 2014 from each of his employers and also provided a detailed payroll report from one of his employers [16].

- The Tribunal noted that given the additional evidence that had been provided the Tribunal anticipated that the Applicant’s debt would reduce [29].

- The Tribunal directed that if, after recalculation of the overpayment by Centrelink, a debt balance exists, it must be waived due to the existence of special circumstances [32].

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How it was decided and key facts

Outcome

- The decision in relation to austudy was affirmed.

- The decision in relation to newstart allowance was set aside and remitted to Centrelink with directions that the Secretary obtain earnings and payroll information from the Applicant’s employers, and that part of the debt to be recalculated by apportioning the applicant’s income with reference to his actual income.

Key Findings

- A data match occurred with the ATO [1].

- On 20 December 2016, DHS raised a debt for newstart allowance [2].

- On 4 June 2019, DHS reassessed and reduced the newstart debt using bank statement information provided by the Applicant [2].

- On 14 February 2019, DHS decided to recover a debt for austudy due to employment income [3].

- On 7 June 2019, the austudy debt was reassessed using bank statement records [3].

- An ARO affirmed both debt decisions in the reassessed amounts, and the decision about a recovery penalty was set aside to remove that penalty [3].

- The Tribunal noted:
  
  The effect of section 1073B of the Act is that the recipient of a social security payment is taken to have earned one-fourteenth of the total amount they receive from employment income during a fortnightly instalment period on each
day of that period. This is referred to as the daily apportionment of earnings and allows the rate of ausstudy to be calculated based on a daily earnings amount [7].

- The Tribunal noted:

  It is not accepted that averaging income throughout the period from 5 November 2010 to 5 August 2011 would accurately reflect periodic income in circumstances where his earnings regularly changed. The effect of using averaging is that income was very likely attributed incorrectly during that period. As a result, the income was not apportioned as required by section 1073B of the Act [12].

- The Tribunal found that the Department needed to obtain payroll records for 5 November 2010 to 5 August 2011, or if that information is not available, the grossed-up amounts assessed from bank statement records may be used [14].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt [18-19].

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**How it was decided and key facts**

**Outcome**
- The decision under review was set aside and the matter is remitted to Centrelink for recalculation.

**Key Findings**
- An ARO affirmed the debt on internal review.
- Centrelink had incorrectly classified the Applicant’s payment type as newstart allowance, when it should have been youth allowance.
- The Tribunal stated at [5]:

  Centrelink recalculated [the Applicant’s] entitlements to youth allowance and newstart allowance on an assumption that she earned her annual incomes at constant daily rates. Centrelink’s assumption was not based on any evidence; indeed, it was contrary to all the available evidence.

- The Tribunal was critical of Centrelink’s failure to use its information gathering powers to obtain relevant documentation [7].
- The Tribunal stated at [12]:

  Throughout 2010-11, [the Applicant] declared fluctuating earnings, and I am satisfied that, broadly speaking, her earnings fluctuated in the manner that she reported. In light of Centrelink’s election to not take reasonable steps to ascertain [the Applicant’s] actual fortnightly earnings...

- The 10% penalty was applied by Centrelink but ultimately set aside by the Tribunal.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**
- The decision under review was set aside and the matter is remitted to Centrelink for recalculation on the basis of actual fortnightly income.

**Key Findings**
- An ARO affirmed the debt on internal review.
- Centrelink used income averaging to determine the Applicant’s fortnightly income and subsequently raise a debt.
- The Tribunal was not satisfied this calculation was correct, as the Applicant’s income substantially increased over the period in question.
- The Tribunal remitted the decision to Centrelink for recalculation on the basis of the payslip information provided.
How it was decided and key facts

**Outcome**

- The decision under review was set aside and remitted to Centrelink for recalculation of the period of entitlement on the basis of income data from the Applicant’s employer Centrelink was to obtain.
- Centrelink was directed to apply a 10% penalty to the resultant debt.

**Key Findings**

- Following a data match with ATO, Centrelink determined the applicant had under reported employment income in the relevant period and that as a consequence she was overpaid NSA [9]
- The Tribunal stated that it was:
  
  ...concerned that the applicant’s overpayment/debt amount had been determined on the basis of averaged Australian Taxation Office data about the applicant’s employment income in the relevant period. That is, the tribunal is of the view the applicant’s debt can be calculated accurately only if accurate fortnightly employment income is used for the calculation of the overpayment and debt. The tribunal decided it is necessary for Centrelink to use its statutory powers to obtain employment income data from the applicant’s former employer, so actual fortnightly employment income is used rather than income averaged over the period [18].

- The Tribunal found the applicant did not offer an excuse for failing to declare employment income in the relevant period’ [31] and ‘the 10% penalty should be applied [32].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

How it was decided and key facts

**Outcome**

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the basis of fortnightly information contained in the Applicant’s payslips Centrelink was directed to obtain using its statutory powers.
- The decision under review to garnishee the Applicant’s tax refund was affirmed.

**Key findings**

- The Tribunal noted that following a data match with the ATO, Centrelink identified discrepancies between the Applicant’s employment income and declared earnings [10].
- The Applicant explained that after she received the letters from Centrelink she contacted her previous employers to obtain pay data but was unable to obtain all the data [13].
- The Tribunal stated that ‘an overpayment and consequently a debt cannot be accurately calculated by averaging ATO data’ and concluded that the Centrelink must obtain accurate fortnightly information about the Applicant’s employment from past employers [15].
- The Tribunal included the following extract of the Ombudsman’s report ‘into the way Centrelink raised debts following data matches with the ATO’:

We are also satisfied that if the customer can collect their employment income information and enter it properly into the system, or provide it to DHS to enter, the OCI can accurately calculate the debt. After examination of the business rules underpinning the system, we are satisfied the debts raised by the OCI are accurate, based on the information which is available to DHS at the time the decision is made.

However, if the information available to DHS is incomplete, the debt amount may be affected. It is important for the system design for customers to respond to information requests from DHS so decisions are made on all available
information. We have therefore concentrated on the accessibility, usability, and transparency of the system, including quality of service delivery and procedural fairness in this report [16].

- The Tribunal was satisfied the Applicant has YA and Austudy debts but until the debt calculation is conducted ‘using verified fortnightly income the tribunal is not satisfied the debt amount is accurately calculated’ [19].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
- The Tribunal was satisfied the action to garnishee the Applicant’s tax refund complied with legal requirements [50].

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**Outcome**

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt on the basis of verified fortnightly income information Centrelink was to obtain from the Applicant’s past employers or via bank statements.
- Centrelink was directed to waive recovery of the debt for a period of two months.
- Centrelink was directed not to apply a 10% penalty.

**Key Findings**

- Centrelink raised the debt following a data match with the ATO [7].
- While the Applicant accepted she may not have accurately reported her income for a period due to illness, she was concerned about the accuracy of the debt amount as ‘[the] Applicant’s representative was well informed about the problems associated with overpayment/debt calculations based on averaged ATO data’ [10].
- In relation to income averaging and its potential impacts in the Applicant’s case, the Tribunal stated:

> We are also satisfied that if the customer can collect their employment income information and enter it properly into the system, or provide it to DHS to enter, the OCI can accurately calculate the debt. After examination of the business rules underpinning the system, we are satisfied the debts raised by the OCI are accurate, based on the information which is available to DHS at the time the decision is made.

> However, if the information available to DHS is incomplete, the debt amount may be affected. It is important for the system design for customers to respond to information requests from DHS so decisions are made on all available information [11].

The tribunal concluded the applicant’s debt needed to be recalculated based on the applicant’s fortnightly gross income over the relevant period. Centrelink has the statutory authority to obtain employment income data from the applicant’s past employers or by obtaining relevant bank statements [12].
- The Tribunal found that the debt should be written off for a period of two months to allow the Applicant to provide Centrelink with a Statement of Financial Circumstances to allow it to calculate an appropriate rate of recovery [16].
- The Tribunal was satisfied that, in this case, if a debt arose, it was because the Applicant did not report or under-reported her income and this was not Centrelink’s fault [19].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**Outcome**

- The decision under review was set aside and remitted back to Centrelink for recalculation of a portion of the debt. The balance of the debt is correctly calculated.
Key Findings

- An ARO affirmed the debt on internal review.
- The Applicant’s income fluctuated in his two casual jobs.
- The initial debt used apportioned income data. It was subsequently recalculated using a combination of payslip and bank account statements.
- The Applicant did not correctly report his income, and sometimes failed to report at all.
- The Tribunal appeared to use payslips and ATO income averaging to calculate the correct amount. The Tribunal was not satisfied that the portion of the debt for the casual income was correct [34]. The decision was remitted for recalculation, and the Tribunal determined the income per fortnight for the period in question.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

- The decision under review as set aside and remitted to the Chief Executive Centrelink for recalculation of the debt in accordance with various directions.
- The debts were recoverable.

Key Findings

- The Tribunal found, based on verified earnings data for Employer 1, that the Applicant was paid NSA at an incorrect rate during the periods identified for Debts A, C and D. The Tribunal reviewed the ARO’s calculations and the evidence on which they were based and was satisfied with the ARO’s calculations [13].
- In relation to Debt B, the Tribunal noted that the Applicant did not provide evidence of his hospital admission and interaction with his workers compensation insurer in relation to compensation payments paid to Employer 2. In this circumstance, the Tribunal preferred ATO information and accepted that Centrelink did not take the Applicant’s earnings from Employer 2 into account in the calculation of his rate of NSA [12]. The Tribunal found that the debt would need to be recalculated on the basis that the income from Employer 2 would need to be apportioned over a different period [14].
- The Tribunal also noted that the Applicant did not dispute that his reporting may have been inaccurate as he ‘did not consider it necessary to report what he considered to be a low level of earnings from Employer 2 [15].
- The Tribunal found that no sole administrative error or special circumstances existed to justify a write off or waiver of the recalculated debt.

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How it was decided and key facts

Outcome

- The decision under review was set aside and the matter is remitted to Centrelink for recalculation on the basis of actual fortnightly income.

Key Findings

- An ARO varied the debt on internal review.
- The Applicant’s submissions at [12] were:

  [The Applicant] says that he thinks that the Department has taken annual income amounts based on Australian Taxation Office (ATO) information and applied this figure across a financial year without making allowance for the fact that there were periods that he was not in receipt of youth allowance or other periods when he was not working. This has led to an incorrect debt amount being raised. He says in effect that his uncertainty is exacerbated by the Department providing different debt amounts at different times which is confusing and does not generate confidence in their process and that the Department has not been able to provide him with a comprehensible explanation of the debt amounts.
• Centrelink used income averaging to determine the amount of the debt. The Tribunal was not satisfied that these calculations were correct.

• The Tribunal commented at [23]:

The question of what is the required standard of proof to determine whether a debt is owing was considered by the Administrative Appeals Tribunal in Re: SDFHCSSIA and George. Relevant authorities were reviewed in that decision:

Careful regard must be paid to the totality of the evidence and material before the Tribunal before determining the question as to what finding should properly be made out or what inference should be reasonably drawn in the circumstances of the particular case. The case for a party out is not made out by a party if the decision maker is left in a substantial state of doubt as to whether a matter or conclusion has been proven or where a finding advanced is a matter of speculation or guesswork see McDonald v Director-General of Social Security (1984) 6ALD 6 at 11...

• The Tribunal also commented at [24]:

The tribunal has found the evidence relied upon by the Department to explain their calculation of the debt amounts problematic and confusing. As a starting point the Department has sought to reconstruct [the Applicant’s] actual income based upon net amounts deposited into his bank account then applying a formula to arrive at the gross amount. Whilst in some instances this may be an acceptable approach, in this particular case the tribunal was not provided with the primary documents which the Department has relied upon and instead the tribunal relied upon documents provided by [the Applicant].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and remitted to Centrelink for recalculation of the debt using of the Applicant’s actual fortnightly income on the basis of payslip information.

**Key findings**

• The decision under review for the Tribunal involved determining whether the Applicant was overpaid NSA when working as a casual employee at [1] and [15].

• The Tribunal noted Centrelink originally raised four separate NSA debts for the period of entitlement under review [2], however, upon reassessment the Tribunal expressed concern three separate debts were raised with one debt in review being a combination of the original second and third debts [3].

• The Tribunal stated the evidence used to raise and calculate the debt bar the employer payroll data was ‘inadequate’ and included ATO data match information and ATO PAYG summaries at [11]-[12].

• The Tribunal found:

‘that the only way it can be satisfied that a debt is calculated correctly is based on payroll data because averaging of income does not provide sufficient accuracy because it, by definition, cannot show the fortnights where someone worked much more than others’ [17].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and substituted with the decision that the Applicant had an NSA debt in an amount that she was required to pay, and the FTB entitlement owed to the Applicant is not to be offset against that debt and is to be paid to the Applicant.
Key findings

- The Tribunal noted the Applicant reported fortnightly but did not always report correct income from three part-time jobs [14].
- The Tribunal was satisfied that the ARO correctly recalculated the debt [15].
- The Tribunal found it was ‘inappropriate that the discretion provided for in section 8A of the FA Act should be exercised to offset the Applicant’s FTB entitlement against the newstart allowance debt’ [37].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

- The decisions under review were set aside and remitted to Centrelink for recalculation of the debt.
- Centrelink was directed that the recalculated debt was recoverable and any moneys paid by the Applicant in excess of the recalculated debt were to be refunded to him.

Key Findings

- The Tribunal noted that the Applicant’s income had been apportioned according to payslip information provided by him [9].
- The Tribunal specifically distinguished this case to averaged income using ATO data and stated:

  To apportion income according to payslips Centrelink calculated this by dividing the gross income amount earnt by the days in the pay period. They then work out how many days aligned in the Centrelink benefit fortnight and then multiply the daily income rate by the number of days in a particular Centrelink fortnight. This is different to averaging income from Australian Tax Office matched data which takes income for a period and divides this equally over the Centrelink benefit fortights (this has commonly been referred to as a “robo debt”). Apportioning income is not averaging income and involves manual input of gross income earnt in order to work out how this income aligns with the Centrelink benefit fortights [13].

- The Tribunal, however, was not satisfied that Centrelink’s calculations were correct because the payslips from two employers showed the days he actually worked and therefore Centrelink should not have apportioned his income across the period [14]-[17].

- The Tribunal found that there was no sole administrative error or special circumstances warranting the recalculated debt to be written off or waived [20].
- The Tribunal found that it was highly likely that the debt amount would be reduced upon recalculation [21].

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How it was decided and key facts

Outcome

- The decision under review was set aside and the matter is remitted to Centrelink for recalculation on the basis of actual fortnightly income.

Key Findings

- An ARO affirmed the debt on internal review.
- In attempting to calculate the debt, Centrelink only obtained some evidence of the Applicant’s actual fortnightly income. In lieu of this, Centrelink apportioned the Applicant’s income over the period.
- The Tribunal remitted the decision back to Centrelink for recalculation.
How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the basis of the Applicant’s actual fortnightly income Centrelink was directed to obtain.

Key Findings

- The decision under review for the Tribunal involved determining whether the Applicant was overpaid Disability Support Pension (DSP) following a data match with information obtained from ATO [1]-[2].
- The Tribunal found:
  It was not in the position to accurately determine what [the Applicant]’s fortnightly earnings were in the debt period and therefore if the debt calculations are correct. His income had been averaged over part of the relevant period and there is no indication of when shift or other allowances were paid or for how long he was off work when he suffered his back injury and if he was paid during that time [22].

  Further information is needed before an accurate recalculation of the debt can be undertaken [23].
- The Tribunal stated:
  Further investigations such as accessing employer records may provide appropriate information. The use of the Secretary’s legislative powers will hopefully yield further relevant evidence [32]
- The Tribunal did not think it appropriate to waive any or all of the debt while the level of debt is unclear [31].

How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt following a further investigation of his fortnightly income.

Key Findings

- The debt was raised following a data match with the ATO.
- The Tribunal stated that it was not in a position to accurately determine the Applicant’s fortnightly earnings but noted that averaging had been used even where there was evidence of variability of income [19]-[20]. It stated, however, that:
  The Tribunal is satisfied that [the Applicant] has not deliberately under-declared his income. The Tribunal notes, however, that the imposition of a debt where a person’s earnings are variable have not been fully reported is not unusual [27].

  At this stage, while the level of debt is unclear, the Tribunal does not believe it is appropriate to waive any or all of the debts [28].
- Accordingly, further information was needed before an accurate recalculation of the debt could be undertaken [20].
- The Tribunal found that the debt could not be written off [21].
- The Tribunal found that there was no sole administrative error or special circumstances warranting the recalculated debt to be written off or waived [22]-[29].
How it was decided and key facts

**Outcome**
- The decision under review was set aside and remitted to Centrelink with the direction that it recalculate the debt based on earnings information provided by the Applicant.

**Key Findings**
- Centrelink raised the debt following a data match with ATO.
- The Applicant worked for various employers during the relevant period.
- The Tribunal noted that, save for one job, Centrelink had apportioned the total ATO income over the employment period [12].
- The Tribunal noted that the Applicant could provide payslips and bank statements which Centrelink should use to recalculate the debt [13], [15].
- The Tribunal found that no administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

**Outcome**
- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt using payslip information which Centrelink was directed to obtain.
- The recalculated debts were recoverable.
- No interest was to be applied to the debts.

**Key Findings**
- The Tribunal stated: ‘[having] reviewed the Centrelink papers, the tribunal is not satisfied that all of the debts have been calculated using payslip or equivalent information’ [11].
- The Tribunal was not satisfied with the calculations based on averaging of ATO information obtained via a data match and also stated that ‘payment information derived from bank statements cannot provide sufficient accuracy as it is not always clear what non-assessable items...are included...’ [14]-[15], [19].
- The Tribunal also stated:
  The tribunal finds that the only way it can be satisfied that a debt is calculated correctly is based on payroll data because, in addition to the aforementioned reasons, the averaging of income does not provide sufficient accuracy because it cannot show the fortnights where someone worked much more than others [22].
- The Tribunal was accordingly directed to obtain payslips from the Applicant’s employers and recalculate the debt [23].
- The Tribunal found that no sole administrative error or special circumstances existed to justify a write off or waiver of the debt.
- The Tribunal also found that it was inappropriate to for interest charges to be applied given the Applicant was awaiting the outcome of the AAT review [39].
How it was decided and key facts

**Outcome**
- The decision under review was set aside and substituted with the decision that there was no debt.

**Key Findings**
- Centrelink raised the debt and imposed a 10% penalty following a data match with the ATO [3].
- The Tribunal found it difficult to establish whether there was a basis for concluding that the Applicant had been overpaid as the only data available as to the debt amounts for each fortnight was the ATO information and without pay records or bank statements, the ‘debt calculations relied on by Centrelink [could] only be regarded as no more than “guestimates”’ [15].
- In particular, the Tribunal found:
  - The apparent approach in apportioning income over financial years is not consistent with the rate calculation process provided for by the Act for newstart allowance. The purported placement of an onus on a former recipient of social security to disprove the existence of a debt runs contrary to general administrative law principles and the existence of specific information gathering powers within Centrelink. The assumption that income reported to the ATO for a financial year was received at a constant rate over a financial year can rarely be sustained as a matter of fact in the context of a recipient of a social security benefit [16].
  - The Tribunal was ultimately not convinced that the Applicant owed a debt as suggested by Centrelink but noted that it remained open to Centrelink to use its information-gathering powers to investigate whether the Applicant owed a debt based on ‘probative evidence and social security law’ [17]-[18].
  - The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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### AAT Review Number | DOC ID | Member | Date
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2019/A142421 | CTH.3761.0002.7281 | J Bakas | 3 December 2019

### How it was decided and key facts

**Outcome**
- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with directions that:
  - Centrelink obtain payslips from the Applicant’s employer;
  - Centrelink recalculate the relevant period of entitlement on the basis of payslips provided;
  - Any recalculated debt was to be offset by the underpayment of youth allowance, in determining what, if any, debt is owed to the Commonwealth; and
  - Any amounts already recovered in respect of the debt to be refunded to the Applicant.

**Key findings**
- The Tribunal noted an ‘apportionment methodology [in which the total amount earned by [the Applicant] in the financial year was assumed to have been earned in equal fortnights] was used to calculate the Applicant’s income for the majority of the relevant period [24].
- The Tribunal found there was ‘no evidence before the tribunal to support the assumption that [the Applicant] earned the same fortnightly income amounts in every fortnight of the relevant period. Indeed the evidence before the tribunal regarding [the Applicant’s] reported earnings indicates that he did not’ [24].
- The Tribunal was satisfied that, apart from the first three weeks of the relevant period for which payslips were available, there was insufficient information about the Applicant’s actual income to support the reliability and accuracy of the debt calculation [25].
- The Tribunal found that any amounts previously recovered by Centrelink from the garnisheeing of the Applicant’s tax return and application of an additional interest charge is to be refunded, with Centrelink to renegotiate repayment arrangements if, and when, any revised debt is recalculated [31].
- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.
How it was decided and key facts

Outcome

• The decision under review was set aside and substituted with the decision that the debt under review has not been proved.

Key findings

• The Tribunal noted that, after obtaining data-match information from the ATO, the Department decided to raise a debt against the Applicant on account of overpaid YA [1].
• The Applicant was casually employed by a school to coordinate a netball program and was paid a lump sum of $3,311. The Department decided to attribute the lump sum payment evenly to each of the days preceding the payment in the same FY [5].
• The Tribunal noted that s 1067G of the Social Security Act requires that YA be calculated by reference to income actually earned in each fortnight and "[d]oes not authorise the averaging of income, even where, due to the passage of time and the consequence loss of records and memory, precise evidence of actual earnings no longer exists" [5].
• The Tribunal stated that the calculations performed by the Department were ‘erroneous’ [7].
• The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

How it was decided and key facts

Outcome

• The decision under review was set aside and the matter is remitted to Centrelink for recalculation on the basis of actual fortnightly income.

Key Findings

• An ARO varied the debt on internal review.
• The Applicant received a parenting payment.
• The Tribunal commented at [13]:

The approach in apportioning income over a financial year is not consistent with the rate calculation process provided for by the Act for parenting payment. The purported placement of an onus on a former recipient of social security to disprove the existence of a debt runs contrary to general administrative law principles and the existence of specific information gathering powers within Centrelink. The assumption that income reported to the ATO for a financial year was received at a constant rate over a financial year can rarely be sustained as a matter of fact in the context of a recipient of a social security benefit. As such I find that this apportioned income cannot be included in the debt calculations.
• The Tribunal was not satisfied that Centrelink’s calculations were correct and remitted the decision for recalculation on the basis of actual income.

How it was decided and key facts

Outcome

• The decision under review was set aside and remitted to Centrelink for recalculation of the debt using payslips (to be obtained by Centrelink).
The Tribunal decided that only 50% of the resulting debt was recoverable from the Applicant on the basis of special circumstances.

No 10% penalty was to be applied.

**Key findings**

The Tribunal commented:

The Tribunal concludes that much of the evidence used by Centrelink to calculate [the Applicant’s] rate of parenting payment during the relevant period is inadequate because there is insufficient specificity for her rate of payment to be calculated accurately [9].

The Tribunal further commented:

The Tribunal finds that the only way it can be satisfied that a debt is calculated correctly is based on payroll data because averaging of income does not provide sufficient accuracy because it, by definition, cannot show the fortnights where someone worked much more than in other fortnights. Similarly, the Tribunal finds that payment information derived from bank statements generally cannot provide sufficient accuracy as it is not always clear what non-assessable items (such as uniform, meal and travel allowances) are included [11].

Centrelink were instructed to contact the Applicant’s employers to obtain payslips so that the debt could be calculated on the basis of the Applicant’s actual earnings.

The Tribunal also directed that no penalty fee was to be applied.

50% of the debt was waived by the Tribunal.

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**How it was decided and key facts**

**Outcome**

The decision under review was varied and the Tribunal substitutes new debt amounts.

**Key Findings**

The ATO provided information to Centrelink in relation to the Applicant’s income [2]. The Applicant provided copies of her bank statements to Centrelink [3]. An ARO affirmed one debt and varied the other debt on internal review.

The Tribunal stated:

In short, the Act does not authorise the calculation of youth allowance or newstart allowance by reference to averaging of income in this case. Clearly, with regard to employees on fluctuating wages, the averaging of income can produce distortions in the calculation of social security entitlements so as to give rise to phantom debt balances, when no overpayment has actually been made. [12]

The Applicant was unable to provide payslips to verify her actual earnings.

The Tribunal was not satisfied that the calculations were made on the basis of actual fortnightly income earned during the period under review [15], and substituted its own decisions and debt amounts.

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**How it was decided and key facts**

**Outcome**

The decision under review was set aside and the matter was remitted to Centrelink for recalculation on the basis that Centrelink obtain evidence of actual fortnightly income.

**Key Findings**

An ARO affirmed the debt on internal review.

Centrelink apportioned the earnings over the entire periods in question, “which is only reasonable if [the Applicant] is working each day during the period” [21].
• The Tribunal stated that the apportionment of income over the period was “inappropriate” [21].
• The Tribunal was not satisfied that Centrelink’s calculations were correct and remitted the decision for recalculation on the basis of actual income.

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### How it was decided and key facts

#### Outcome
• The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the basis of the Applicant’s actual fortnightly income Centrelink was directed to obtain via further investigations.

#### Key findings
• The Tribunal noted that, following a reconciliation of records of earnings held by the ATO with Centrelink records, Centrelink determined that the Applicant had been overpaid social security benefits [2].
• Following the notification of the overpayment and debt, the Applicant was able to provide bank statements from the Bank of Queensland for some of the periods, but was unable to obtain bank records for an earlier period when she was banking with Westpac [3].
• The Tribunal found:
  ...[it was] not in the position to accurately determine what [the Applicant’s] fortnightly earnings were in the debt period and therefore if the debt calculations are correct. Some of the calculations appear to have involved averaging out income rather than taking account of variable income [19].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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### How it was decided and key facts

#### Outcome
• The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the basis of payroll records Centrelink was directed to obtain from the Applicant’s employers.
• The recalculated debt was recoverable.

#### Key findings
• The Tribunal noted that the Applicant stated that she did provide Centrelink with a lot of payslips; however, the Centrelink debt calculations are based on averaging the gross income over the debt period [13].
• The Tribunal found ‘the debt calculation was likely to be flawed and the correct pay information should be obtained from the Applicant’s employers by Centrelink’ [14].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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### How it was decided and key facts

#### Outcome
The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the basis of the Applicant’s actual fortnightly income.
Key Findings

- Centrelink raised the debt following a data match with the ATO. The Tribunal noted: ‘[the] calculations had been partly based on payslips but partly on averaging income for periods in which no payslips or bank records were available’ [3].
- The Applicant gave evidence that she was unable to obtain payslips and bank records for the missing periods. The Tribunal noted that the Applicant requested time to obtain payslips, however, made no contact with the Tribunal subsequent to the request [13]-[14].
- The Tribunal stated: ‘…the Tribunal is not in the position to accurately determine what [the Applicant’s] fortnightly earnings were in the debt period and therefore if the debt calculations are correct. Part of the calculations involved averaging out income rather than taking account of variable income’ [17].
- The Tribunal found that no sole administrative error or special circumstances existed to justify a write off or waiver of the recalculated debt and considered the preferable course of action was to remit the matter to Centrelink to conduct further investigations about the Applicant’s actual income using its information-gathering powers [27].

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How it was decided and key facts

Outcome

- The decision under review was set aside.

Key Findings

- An ARO affirmed the debt on internal review.
- Centrelink also imposed a 10% recovery fee, which was subsequently removed.
- The Tribunal commented:
  In calculating this overpayment, Centrelink has simply averaged [the Applicant’s] income over the relevant financial year periods, with no regard to the variations in her income from fortnight to fortnight, or the information it had before it in the form of [the Applicant’s] estimates for family tax benefit, which clearly showed that she had advised Centrelink that her income was no longer $924.67 per month [10].
- The Tribunal was satisfied this was a Robodebt [13], and that no debt existed.

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How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt based on the Applicant’s actual income on a fortnightly basis.

Key Findings

- ATO information was used to calculate the Applicant’s debt, however, the Tribunal found it was not in a position to accurately determine what the Applicant’s fortnightly earnings were in the debt periods and accordingly whether the debt calculations were correct [20].
- The Tribunal found that there was no sole administrative error or special circumstances warranting the recalculated debt to be written off or waived.
AAT Review Number | DOC ID | Member | Date                  
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2019/B142304 | CTH.3761.0002.8302 | Senior Member D Benk | 11 December 2019  

How it was decided and key facts

Outcome
- The decision under review was set aside and the matter was remitted to Centrelink with a direction to obtain payroll records and/or payslips from relevant employers.
- The Tribunal directed that Centrelink reassess the Applicant’s entitlements on the receipt of this information.

Key findings
- The Tribunal noted that in determining the overpayment (debt) Centrelink had, in the absence of payroll records and or payslips, applied an apportionment method to cross-reference reported earnings and entitlement generated as a result of many years after the event, relying in the main on figures provided by the ATO and stated: [4].
- The Tribunal stated: ‘Ordinarily the tribunal has no issues with applying the apportionment method where income is steady however this is not the case here’ [4].
- Despite the vast number of documents before it, the Tribunal was of the view there was a paucity of evidence to provide a breakdown of earnings from each employer for each relevant Centrelink fortnightly instalment of NSA. The Tribunal noted this situation could have been corrected by the provision of payroll records and/or payslips and stated: [6].
- The Tribunal stated also that ‘[a]s a last resort bank records may be satisfactory provided there was a reassurance by [the Applicant] that no deductions were made apart from taxation’ [6].
- The Tribunal further stated they understood that: ...since the robodebt controversy, most recently in November 2019, Centrelink has instigated various and more robust processes for the gathering of additional information including obtaining via its powers, employment records, bank records, payroll records etc. This action is mandatory in this case as the evidence discloses [the Applicant] worked variable periods for various employers at variable hours and the averaging of income over two financial years does not produce an accurate statement of the income earned during the various fortnightly reporting periods concerned for the payment of newstart benefits. The ATO information therefore is unreliable when it comes to cross referencing declared income, particularly when [the Applicant] was not in regular receipt of benefits throughout this period of time [7].
- The Tribunal did not consider whether special circumstances existed to justify the write off or waiver of the debt.

AAT Review Number | DOC ID | Member | Date                  
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2019/M142463 | CTH.3761.0005.6612 | D Benk | 11 December 2019  

How it was decided and key facts

Outcome
- The decision under review was set aside and remitted to Centrelink for recalculation of the Applicant’s entitlements on the basis payroll records and/or payslips Centrelink was directed to obtain from the Applicant’s relevant employers.

Key findings
- The Tribunal noted:
  - In determining the overpayment (debt) Centrelink, in the absence of payroll records and or payslips, applied an apportionment method to cross reference reported earnings and entitlement generated - many years after the event, relying in the main on figures provided by the Australian Taxation Office. This process has been labelled by the media as a ‘robodebt’. Ordinarily the tribunal has no issues with applying the apportionment method where income is steady however this is not the case here [3].
  - The Tribunal found it could not ‘be satisfied that the debt has been correctly calculated or if one even exists’ [6].
  - The Tribunal noted the situation could be corrected by the provision of payroll records and/or payslips and ‘[a]s a last resort, bank records may be satisfactory provided there was a reassurance by [the Applicant] that no deductions were made apart from taxation’ [6].
• The Tribunal stated:

...since the robodebt controversy, most recently in November 2019, Centrelink has instigated various and more robust processes for the gathering of additional information including obtaining via its powers, employment records, bank records, payroll records etc. This action is mandatory in this case, as the evidence discloses [the Applicant] worked variable hours for five separate employers during the debt period stemming over two years and the averaging of income over the financial year does not produce an accurate reflection of the income earned during the various fortnightly reporting periods concerned for the payment of newstart benefits. The ATO information therefore is unreliable when it comes to cross referencing declared income, particularly when [the Applicant] was not in regular receipt of benefits throughout this period of time.

• The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the basis of payroll records and/or payslips Centrelink was directed to obtain.

**Key findings**

• The issue before the Tribunal was whether the Applicant was overpaid NSA and the application of a 10% penalty by Centrelink following a data match with information obtained from the ATO [1].

• The Tribunal noted:

In determining the overpayment (debt) Centrelink in the absence of payroll records and or payslips applied an apportionment method to cross reference reported earnings and entitlement generated as a result; - many years after the event, relying in the main on figures provided by the Australian Taxation Office. This process has been labelled by the Media as a robodebt. Ordinarily the tribunal has no issues with applying the apportionment method where income is steady however this is not the case here.

• The Tribunal noted that the apportionment method did not work in the Applicant’s circumstances [4].

• The Tribunal found, with reference to Centrelink’s powers to obtain pay information from employers, that:

The tribunal understands that since the robodebt controversy, most recently in November 2019, Centrelink has instigated various and more robust processes for the gathering of additional information including obtaining via its powers, employment records, bank records, payroll records etc. This action is mandatory in this case, as the evidence discloses [the Applicant] worked variable periods for various employers at variable hours and the averaging of income over three financial years does not produce an accurate statement of the income earned during the various fortnightly reporting periods concerned for the payment of newstart benefits. The ATO information therefore is unreliable when it comes to cross referencing declared income [7].

• The Tribunal remitted the matter to Centrelink for recalculation [8].

• The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and the matter is remitted to Centrelink for recalculation on the basis that Centrelink obtain evidence of actual fortnightly income.

**Key Findings**

• An ARO affirmed the debt on internal review but waived the recovery fee.
• The Tribunal commented:

In determining the overpayment (debt) Centrelink, in the absence of payroll records and or payslips, applied an apportionment method to cross reference reported earnings and entitlement generated as a result; - many years after the event, relying in the main on figures provided by the Australian Taxation Office.

This process has been labelled by the media as a ‘robodebt.’ Ordinarily the tribunal has no issued with applying the apportionment method where income is steady however this is not the case here [4].

• The Tribunal was not satisfied that Centrelink’s calculations were correct and remitted the decision for recalculation on the basis of actual income. Centrelink was to obtain the records from the Applicant’s employer.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside remitted to Centrelink for recalculation of the debt using payslip information (to be obtained by Centrelink).

**Key findings**

• The Tribunal commented:

  In November 2019, Centrelink publically (sic) announced that it would no longer raise debts based only on averaging of data from the ATO and have now instigated various and more robust processes for the gathering of additional information including obtaining via its powers, employment records, bank records, payroll records etc. This action is critical in this case, as the evidence disclose [sic] the Applicant worked variable periods and for variable hours and therefore averaging of income over two financial years does not produce an accurate statement of the income earned during the individual fortnightly reporting periods that applied to the Applicant’s newstart benefits. The ATO information therefore is unreliable when it comes to calculating the Applicant’s true entitlement to newstart allowance and whether or not there has been an overpayment [6].

• The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and remitted to Centrelink to further investigate the Applicant’s actual income and recalculate the debt on that basis.

**Key Findings**

• Centrelink raised the debt following a data match with the ATO and recalculated the debt using additional evidence of income from various sources. It determined that the debt amount and period were incorrect and increased the debt for a shortened period [3]-[4].

• The Applicant submitted that his income during the relevant period was variable, however, he was unable to provide records of this

• The Tribunal found that, on the balance of probabilities, the Applicant was overpaid because there were likely to be inadvertent mistakes in reporting given the circumstances [18]. It noted, however, that it could not determine what the Applicant’s earnings were in the debt period and that a further recalculation of the debt after an attempt to obtain actual pay records was necessary [20].

• The Tribunal found that there was no sole administrative error or special circumstances warranting the debt to be written off or waived but considered that remitting the matter to Centrelink for recalculation of the debt following further investigations was the preferable course of action.
## Key Findings

### Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation of the Applicant’s entitlement on the basis of payroll records and/or payslips Centrelink was directed to obtain.

### Key Findings

- The Tribunal noted Centrelink apportioned ATO data to raise a debt against the Applicant [4].
- The Tribunal found:
  
  ...the apportionment method did not work in the Applicant’s circumstances. In the assessment of the matter, Centrelink primarily relied on the apportionment method, which is not appropriate given the casual nature of her work [5].

- The Tribunal found it could not be satisfied that the debt raised by Centrelink was correct and noted the situation could be remedied by the provision of payroll records and/or payslips. Bank records may be satisfactory as a last resort ‘provided there was a reassurance by [the Applicant] that no deductions were made apart from taxation and some confirmation as to the timing between earning the amounts and the amounts being paid into her bank account’ [6].

- The Tribunal stated that Centrelink had announced ‘that it would no longer raise debts based only on averaging of data from the ATO’ and would use powers to obtain employment and payroll records which the Tribunal stated would be ‘critical’ in the Applicant’s case as she worked ‘for variable periods and for variable hours’ [7].

- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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## How it was decided and key facts

### Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the basis of payslip information.
- Any resultant debt was recoverable.

### Key Findings

- The tribunal was satisfied that the gross amounts from the ATO data matching exercise provided enough evidence for Centrelink to question whether the Applicant had accurately reported her income during the relevant period [9]. However, the exact amount needed to be calculated using payslips [11].

- The Tribunal found:
  
  Centrelink will need to use gathering powers under section 192 of the Administration Act to contact [the Applicant’s] employers from the relevant period to obtain payslips in order to make those calculations [12].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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## How it was decided and key facts

### Outcome

- The decision under review was set aside and the Tribunal decided the Applicant did not owe a debt.
Key Findings

- An ARO affirmed the debt on internal review.
- The Tribunal commented:

  In the tribunal’s view the approach taken by the Department in its calculation of any possible overpayment in this matter was not an acceptable method. Their approach fails to take into account the reality of [the Applicant’s] casual employment and the actual earnings for each fortnight period. As such it fails to provide a precise or acceptable calculation of any alleged overpayment. The Department has powers by which it could have required [the Applicant’s] former employer to provide relevant income information which would have provided the Department a proper evidentiary basis upon which to calculate any possible overpayment. Instead it placed the onus on [the Applicant] which as noted after considerable time and effort on her part has resulted in her providing a selection of payslips at hearing [12].

- Despite the Applicant providing some payslips, the quantum of the debt was unclear. The Tribunal could not be satisfied of the existence of the debt, and so concluded that no debt was owed.

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How it was decided and key facts

Outcome

- The decision under review was set aside and the matter was remitted to Centrelink for recalculation on the basis that Centrelink obtain evidence of actual fortnightly income.

Key Findings

- An ARO affirmed the debt on internal review.
- The Tribunal commented:

  In determining the overpayment (debt) Centrelink, in the absence of payroll records and or payslips, applied an apportionment method to cross reference reported earnings and entitlement generated as a result; - many years after the event, relying in the main on figures provided by the Australian Taxation Office. This process has been labelled by the media as a ‘robodebt.’ Ordinarily the tribunal has no issued with applying the apportionment method where income is steady however this is not the case here [3].

- The Tribunal was not satisfied that Centrelink’s calculations were correct and remitted the decision for recalculation on the basis of actual income. Centrelink was to obtain the records from the Applicant’s employer.

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<td>CTH.3761.0005.6639</td>
<td>AJ Halstead</td>
<td>8 January 2020</td>
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How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with directions that:
  
  - obtain detailed earnings and payroll information for the Applicant from their employer and bank statement records in the event payroll information is unavailable;
  - the debt be recalculated by apportioning the Applicant’s income in each instalment period according to law with reference to his actual income; and
  - the recalculated debt, if any, is to be recovered.

Key Findings

- The Tribunal found Centrelink originally used ATO data to assess the Applicant’s entitlement to NSA and determine the debt, and then reassessment of the debts later occurred after the Applicant supplied bank statement records relevant to part of one of the periods he was paid NSA [9].
- The Tribunal was satisfied that where available bank statement records were used to obtain a ‘grossed-up’ amount it was accurate; however, for periods where bank statement records were not available and averaging was applied, the
Tribunal stated:

...the Tribunal cannot be satisfied the use of averaged income accurately reflects the income received by [the Applicant] from employment on a fortnightly basis. It is not accepted that averaging income for the period he received newstart allowance, for which bank statement records are not available, has been correctly apportioned as required by section 1073B of the Act [12].

- The Tribunal found that Centrelink’s calculations inaccurate and not calculated in accordance with legislative requirements. It stated:

...the evidence does not establish that the Applicant’s income was the same from one period to the next and so an averaging does not reflect actual income for each social security payment period. In such circumstances the debt for those periods needs to be recalculated with reference to actual periodic income’ [13].

- The Tribunal found that should the Department issue the required notice in accordance with s 1229 of the Act and the debt remains unpaid, an interest charge would arise [18].

- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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### How it was decided and key facts

**Outcome**

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt on the basis of payroll records Centrelink was directed to obtain.

**Key Findings**

- The Tribunal found that the Applicant’s income was determined using an apportionment method despite fluctuating income/hours worked per week. Debts raised through this process have been labelled by the media as “robo-debts”. The Tribunal stated that while the apportionment method could provide an accurate calculation where income is steady, this is not the case here.[3].

- The Tribunal could not be satisfied that the debt raised by Centrelink was correct [5].

- The Tribunal stated:

In November 2019, Centrelink publicly announced that it would no longer raise debts based only on averaging of data from the ATO and has now instigated various and more robust processes for the gathering of additional information including obtaining it via its powers, employment records, bank records, payroll records etc. This action is critical in this case, as the evidence discloses [the Applicant’s] worked variable periods at variable hours and therefore averaging of income over the above period does not produce an accurate statement of the income earned during the individual fortnightly reporting periods that applied to [the Applicant’s] parenting payment. The existing information therefore is largely unreliable when it comes to calculating [the Applicant’s] true entitlement to parenting payment and whether or not there has been an overpayment [6].

- The Tribunal remitted the matter back to Centrelink with a direction to obtain the payroll records and/or payslips from the relevant employer [7].

- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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### How it was decided and key facts

**Outcome**

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the basis of payroll records/payslip information Centrelink was directed to obtain.

**Key Findings**

- The Tribunal noted that, in determining the overpayment many years after the event and in the absence of payroll
records and/or payslips, Centrelink applied an apportionment method to cross-reference amounts averaged from annual figures provided by the ATO with the earnings the Applicant originally reported [3].

- The Tribunal stated that Centrelink gathering additional information via its powers, including employment records, bank records, payroll records, etc., was ‘critical’ in this case as income averaging does not produce an accurate statement of earnings reflecting the Applicant’s circumstances [6].
- Waiver and write off were not considered because the Tribunal was not satisfied that a debt existed.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink with directions that it obtain payroll records and/or payslips from relevant employers.

**Key Findings**

- The Tribunal summarised Centrelink’s method:

  In determining the overpayment (debt) many years after the event and in the absence of payroll records and/or payslips, Centrelink applied an apportionment method to cross reference amounts averaged from annual figures provided by the Australian Taxation Office with the earnings [the Applicant] had originally reported. Debts raised through this process have been labelled by the media as “robo-debts”. While the apportionment method can provide an accurate calculation where income is steady, this is not the case here [3].

- The Tribunal noted that Centrelink’s apportionment method was not correct in circumstances where the Applicant worked as a casual employee with varying income [4].
- The Tribunal remitted the matter back to Centrelink on the basis that:

  In November 2019, Centrelink publically [sic] announced that it would no longer raise debts based only on averaging of data from the ATO and has now instigated various and more robust processes for the gathering of additional information including obtaining it via its powers, employment records, bank records, payroll records etc. This action is critical in this case, as the evidence discloses [the Applicant] worked variable periods at variable hours and therefore averaging of income over the above period does not produce an accurate statement of the income earned during the individual fortnightly reporting periods that applied to [the Applicant’s] newstart allowance. The existing information therefore is unreliable when it comes to calculating [the Applicant’s] true entitlement to newstart allowance and whether or not there has been an overpayment.
- The Tribunal did not consider whether administrative error or special circumstances existed to justify the write off or waiver of the debt [5].

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and the debt is waived in full.

**Key Findings**

- An ARO affirmed the debt on internal review, but waived the interest charge.
- The Tribunal commented:

  In determining the overpayment (debt) Centrelink, in the absence of payroll records and or payslips, applied an apportionment method to cross reference reported earnings and entitlement generated as a result; - many years after the event, relying in the main on figures provided by the Australian Taxation Office. This process has been labelled by the media as a ‘robodebts’. Ordinarily the tribunal has no issues with applying the apportionment method where income is steady however this is not the case here as employment is at best casual.[3]
The Tribunal stated:

Centrelink primarily relied on the apportionment method but in this case, there were also some reporting of earnings without verification via payslips. This makes it difficult for the tribunal to assess whether the debt has been correctly calculated. For this reason, the tribunal cannot be satisfied that the debt as raised by Centrelink is correct. In any event, this coupled by the advice of Centrelink that [the Applicant] was no longer required to report along with his mental health issues results in a finding that special circumstances exist sufficient to waive the debt. [5]

### Outcome

The decision under review was set aside and substituted with the decision that there was no debt as calculated by Centrelink.

### Key Findings

- The Tribunal found that debt was raised by relying on the apportionment of income.
- Despite its broad information gathering powers, Centrelink did not try to obtain information from applicant’s employers about his earnings [14].
- The Tribunal was not satisfied that debt calculated by Centrelink is accurate.

As I understand it, the term “robodebt” (which has been used regularly in recent media publications), refers to a Centrelink procedure whereby earnings information provided to Centrelink by the Australian Taxation Office (ATO) is apportioned over the period to which the earnings information is stated to relate. Essentially an assumption is made that the specified earnings were earned at a constant rate over the specified period. That apportioned earnings information is then used to determine whether a person has been overpaid any social security payments. In cases where Centrelink concludes a debt has arisen, customers are invited to provide information to show that Centrelink’s conclusion is incorrect [9].

- In my view, the assumption inherent in the “robodebt” process will often not be sustainable [10].

From information in the Centrelink papers, it is apparent that Centrelink raised [the Applicant’s] debt relying, at least in part, on the apportionment of income amounts as advised by the ATO [11].

- The Tribunal referred to Justice Davies’ judgment in the Amato proceeding.
- The Tribunal was not satisfied that the Applicant had the debt as calculated by Centrelink, and accordingly set the decision aside and found there is no foundation for the decision that a penalty amount should be added.

The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

### Outcome

In relation to both the Newstart and Austudy payment, the decision under review was set aside and the matter was remitted to Centrelink for recalculation.

### Key Findings

- An ARO affirmed the debt on internal review.
- Centrelink apportioned the Applicant’s income over the period in question. After receiving the Applicant’s bank account statements it based its calculations on those actual figures.

The Tribunal commented:

In cases such as this, the onus is on Centrelink to establish that a person has been overpaid, and also the amount of the overpayment. It is not the case that a person owes a debt to Centrelink unless it is proved otherwise (McDonald v
Director-General of Social Security [1984] FCA 59). On the evidence before it the Tribunal cannot find that Centrelink has established that [the Applicant] has a debt of newstart allowance from 1 July 2015 to 16 December 2015 [17].

- The Tribunal commented:
  The Tribunal also noted the consent orders in the case of Amato v Commonwealth (FCA, 27 November 2019) and the notes to those orders, in which it was stated that in that case Centrelink had “no probative evidence” to support an assumption that Ms Amato had earned a set amount of fortnightly income during the period, and that there was material before the decision maker, being the applicant’s reported earnings, which indicated that the applicant had not earned a steady amount of income during the relevant fortnights. The same applies here [18].

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### How it was decided and key facts

**Outcome**
- The decision under review was set aside and substituted with the decision that the debt be waived due to the special circumstances of the case.

**Key Findings**
- The Tribunal noted that Centrelink reviewed the Applicant’s entitlements for the 2012/13 FY after a data match with the ATO [2].
- The Tribunal found that, to estimate the Applicant’s debt, ‘Centrelink apportioned the income not accounted for by the Applicant’s payslips ... over 140 days’ [11].
- The Tribunal found apportioning annual income across the relevant period
  ...only provides an accurate estimate of a person’s income if they have worked regular hours and received regular earnings throughout the relevant period. Where a person’s earnings are irregular or sporadic, it can erroneously indicate that a person has been overpaid and consequently owes a debt [13].
- The Applicant advised the Tribunal that when notified of his alleged debt he sought payroll records from his former employer but they had already been discarded. The Tribunal took the view that remitting the matter to Centrelink was unlikely to achieve anything given the difficulty in obtaining records [17].
- The Tribunal found that special circumstances existed to justify waiving the Applicant’s debt [24].

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### How it was decided and key facts

**Outcome**
- Part of the decision under review was affirmed. The other part of the debt was set aside and remitted to Centrelink for recalculation.

**Key Findings**
- An ARO varied the debt amount on internal review.
- In relation to one of the debts, the Tribunal commented:
  Centrelink therefore apportioned [the Applicant’s] pay period income to the Centrelink period by working at a daily rate from his actual pay periods and apportioning this actual daily rate to the Centrelink fortnightly pay periods [16].
- In relation to another of the debts, there is some evidence that the Applicant did not correctly report their income [41].
- The Tribunal was not satisfied that some of the debt was correctly calculated, and remitted the decision to Centrelink for recalculation based on actual fortnightly income.
Outcome

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt after obtaining payslips from the Applicant’s relevant employers.

Key Findings

- Centrelink raised five debts following a data match with the ATO [3].
- The Tribunal found:

  In determining the overpayment (debt) many years after the event and in the absence of payroll records and/or payslips, Centrelink applied an apportionment method to cross-reference amounts averaged from annual figures provided by the Australian Taxation Office with the earnings [the Applicant] had originally reported. Debts raised through this process have been labelled by the media as “robodebts”. While the apportionment method can provide an accurate calculation where income is steady, this is not the case here [3].

  [The Applicant] testified that she was a casual employee during the above period. There were fortnights where she earned significant amounts and other fortnights where the income was negligible. Hence, the apportionment method does not work in her circumstances. In the assessment of the matter, Centrelink primarily relied on the apportionment method, which is not correct for these circumstances [4].

  In November 2019, Centrelink publically announced that it would no longer raise debts based only on averaging of data from the ATO and have now instigated various and more robust processes for the gathering of additional information including obtaining via its powers, employment records, bank records, payroll records etc. This action is critical in this case, as the evidence discloses [the Applicant] worked variable periods at variable hours and therefore averaging of income over the above period does not produce an accurate statement of the income earned during the individual fortnightly reporting periods that applied to [the Applicant’s] newstart allowance. The existing information therefore is unreliable when it comes to calculating [the Applicant’s] true entitlement to newstart allowance and whether or not there has been an overpayment [6].

- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt as it could not be satisfied that the debt amount was accurate [5].

How it was decided and key facts

Outcome

- The decision under review was set aside and the matter remitted to Centrelink for recalculation.

Key Findings

- An ARO varied the debt on internal review.
- The Tribunal commented:

  This calculation methodology has attracted continuing criticism by the Tribunal. The calculation will only be accurate if an employee’s actual work and earning pattern reflects this assumed regularity of employment and earnings. It will not be accurate if there is variation in actual hours or days worked, if not the rate of remuneration, in any particular fortnight [13].

- The Tribunal was not satisfied the calculations were correct and remitted the decision back to Centrelink for recalculation.
### Key Findings

- The Tribunal noted that the Centrelink materials suggested that the Applicant’s case was originally a robodebt [3].
- The Tribunal noted that the source of the employer information appeared to have been the Applicant’s online disclosure via an app. The Applicant subsequently provided their payslips, but it did not appear that Centrelink had taken any action on the payslips [3].
- The Tribunal noted that there appeared to be discrepancies between the information disclosed via the app, and the payslip information. On this basis, the Tribunal concluded that it could not be satisfied of the debt calculation before it was correct [3].
- The Tribunal directed Centrelink to recalculate the debt based on the Applicant’s payslips, and to consider with regard to the inaccuracies in averaging the Applicant’s pay information and their disclosures, whether the evidence reliably supports a conclusion that a debt exists [5].
- The Tribunal noted:

  - As a general observation, the Tribunal empathises with the difficulties faced by many recipients of casual income in meeting Centrelink’s disclosure obligations. The Tribunal also observes that a Centrelink calculation based on fortnightly payslips is still not accurate and relies on averaging over the particular fortnight. The only way for an accurate calculation to be made would be to obtain [the Applicant]’s pay information for every single day she worked; rarely will this information be available from employers. The Tribunal observes that a comparison of the sums disclosed by [the Applicant], and her pay information, reveal what the Tribunal considers genuine attempts by [the Applicant] to properly disclose her earnings [4].
  - The Tribunal did not consider issues of sole administrative error or special circumstances.

### How it was decided and key facts

#### Outcome

- The decision under review was set aside and the matter was remitted to Centrelink for reconsideration in accordance with the direction that Centrelink recalculate the subject debt in light of the payslips supplied to it.

#### Key Findings

- The Tribunal noted that Centrelink:

  - applied an apportionment method to cross-reference amounts averaged from annual figures provided by the Australian Taxation Office with the earnings [the Applicant] had originally reported. Debts raised through this process have been labelled by the media as “robodebts”. While the apportionment method can provide an accurate calculation where income is steady, this is not the case here [3].
  - The Tribunal noted Centrelink’s public announcement in November 2019, that it would no longer raise debts based on averaging, and had implemented ‘more robust processes for the gathering of additional information including obtaining via its powers, employment records, bank records, payroll records etc’ [5].
  - The Tribunal noted that this action was critical in the Applicant’s case, who worked variable periods at variable hours, as the use of averaging ‘over the debt period does not produce an accurate statement of the income earned during the individual fortnightly reporting periods that applied to [the Applicant]’s carer payment’ [5].
  - The Tribunal concluded that, on this basis, the existing information was unreliable for calculating the Applicant’s ‘true entitlement to carer payment and whether or not there has been an overpayment’ [5].
The Tribunal noted that it could not consider issues of sole administrative error or special circumstances because it could not be ‘satisfied that the debt has been correctly calculated or if one exists’ [4].

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and the matter was remitted to Centrelink for reconsideration in accordance with the direction that it obtains payroll information relating to the Applicant’s earnings during the period between 10 September 2017 to 20 June 2018.
- Having regarding to this payroll information, the Tribunal also directed Centrelink to recalculate the amount of the Applicant’s DSP for the period 10 September 2017 to 20 June 2018, and to ensure there is ‘no double counting of overpayments with the second debt raised from 14 May 2018’.
- The Tribunal confirmed that the resultant debt is recoverable from the Applicant, with the exception of the portion of debt incurred after 17 November 2017, which is to be waived.

**Key Findings**

- On February 26 2019, the Applicant notified Centrelink that they were working. Centrelink reviewed the Applicant’s prior payments and on 26 March 2019 ‘an officer from Centrelink decided to raise and recover a disability support pension debt of $13,246.40 for the period 10 September 2017 to 20 June 2018’ [3].
- The Tribunal noted evidence that Centrelink had contacted the Applicant on 17 November 2017, who confirmed that they were employed from around 31 August 2017. A review was not finalised, but Centrelink noted that the Applicant was aware of their requirement to report income within 14 days [11].
- The Tribunal concluded from the evidence that the Applicant was working from sometime in September 2017 and had not reported their earnings [15].
- The Tribunal noted that Centrelink had provided:
  Debt calculations showing that the debt was calculated from 10 September 2017 to 20 June 2018 and the amount overpaid was $654.59 per fortnight – the income included was $1,477.18 per fortnight and appears to be based on the ATO information above [11].
- The Tribunal noted that the ‘debt calculation appears to have been assessed on earnings of around $738 per week based on prorating the gross income advised by the ATO’ [15].
- The Tribunal noted their concern ‘that the debt is calculated to 20 June 2018 but there appears to be another debt commencing from 14 May 2018’ [16].
- The Tribunal decided that the debt needed to be recalculated, taking into account the Applicant’s actual earnings from the relevant employer, and the debt raised from 14 May 2018 to ensure no double counting occurred [18].
- The Tribunal found that no sole administrative error existed to waive the debt [21]-[24]
- However, the Tribunal found that special circumstances existed, and that the debt accrued from 17 November 2017 to 20 June 2018 be waived [31].

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside, and the Tribunal substituted its own decision that there was no debt as calculated by Centrelink.

**Key Findings**

- The Tribunal noted that it was apparent that Centrelink had used information from the ATO and the Applicant’s bank statements to raise the Applicant’s debt [12].
• The Tribunal stated that:

As I understand it, the term "robo been used with some regularity in recent media publications), refers to a Centrelink procedure whereby earnings information provided to Centrelink by the ATO is apportioned over the period to which the earnings information is stated to relate. Essentially an assumption is made that the specified earnings were earned at a constant rate over the specified period. That apportioned earnings information is then used to determine whether a person has been overpaid any social security payments. In cases where Centrelink concludes a debt has arisen, customers are invited to provide information to show that Centrelink’s conclusion is incorrect [13]. In my view, the assumption inherent in the “robodebt” process will often not be sustainable [14].

• The Tribunal reviewed a copy of Centrelink’s Casual Earnings Apportionment table, and was not able to reconcile certain information with information in other documents [15].

• The Tribunal identified the relevance of Federal Court proceedings where Justice Davies ‘issued Consent Orders declaring that the demand for payment of the alleged debt was not validly made’ to the Applicant [17]-[18].

• Regarding an excerpt from Centrelink’s Interaction Log Details printout:

it is recorded on 18 June 2019 that the earnings amount advised by the ATO exceeded the “grossed up” bank deposits by $809.71. After the comment “not sure why we have the discrepancy”, it is recorded that Centrelink apportioned it [that is, $809.71] where it will not impact on her rate”. In my view, that approach does not support a conclusion that the relevant decision maker had a proper basis to form the view that [the Applicant] has a debt in the amount determined by Centrelink [19].

• The Tribunal was not satisfied that the Applicant had the debt as calculated by Centrelink, and set aside the decision [21].

• The Tribunal noted that it remains open to Centrelink to use its information gathering powers, undertake further investigations and make decisions using probative evidence and social security law [22].

• The Tribunal did not consider issues of sole administrative error or special circumstances.

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How it was decided and key facts

Outcome

• The decision under review was set aside and the matter was remitted to Centrelink for reconsideration in accordance with the direction to obtain the payroll records and/or payslips from the Applicant’s employers. On receipt of that documentation, the Tribunal directed that entitlements be reassessed and the Applicant be notified of the outcome [6].

Key Findings

• Centrelink, in the absence of payroll records and/or payslips, ‘applied an apportionment method to cross reference amounts averaged from annual figures provided by the Australian Taxation Office (ATO) with the earnings [the Applicant] had originally reported’, labelled as ‘robodebts’ [3].

• The Tribunal noted that because the Applicant’s income was not steady, the apportionment method could not provide an accurate calculation [3].

• The Tribunal noted Centrelink’s public announcement in November 2019, that it would no longer raise debts based on averaging, and had implemented ‘more robust processes for the gathering of additional information including obtaining via its powers, employment records, bank records, payroll records etc’ [5].

• The Tribunal noted that this action was critical in the Applicant’s case, who worked variable periods at variable hours, as the use of averaging ‘over the debt period does not produce an accurate statement of the income earned during the individual fortnightly reporting periods that applied to [the Applicant’s] youth allowance’ [5].

• The Tribunal concluded that, on this basis, the existing information was unreliable for calculating the Applicant’s ‘true entitlement to youth allowance and whether or not there has been an overpayment’ [5].

• The Tribunal noted that it could not consider issues of sole administrative error or special circumstances because it could not be ‘satisfied that the debt has been correctly calculated or if one exists’ [4].
How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt using payslip information (to be obtained by Centrelink).
- The debt calculations were to be documented in a way that is capable of being checked by a reasonably informed lay person and the Applicant was to be provided with a copy of that documentation.

Key Findings

- The initial debt calculation apportioned income over the debt period using ATO data.
- The Applicant queried Centrelink’s calculation of the debt. In order to satisfy the Tribunal that he did not owe a debt, the Applicant endeavoured to source payslips from his various employers and also provided bank statements for the Tribunal’s benefit.
- The Tribunal made comments about Centrelink’s methods of calculation, and the use of the available income information and found:

  The calculation has then been undertaken through reliance on a combination of verified earnings and unverified earnings using bank statements. Certain bank statements were missing and so could not be made available to the tribunal. The multiple calculations are confusing and the potential for duplication or omission significant. The tribunal also notes that a significant portion of the alleged overpayment relies on unverified employment earnings or earnings only verified through bank statements [14].

  The actual calculations set out there are beyond reproach so far as their accuracy is concerned, provided the additional income amounts have been correctly included for the relevant fortnights. For the reasons identified above, the tribunal was not satisfied that the correct income has been included [15].

  In light of the tribunal's findings, the existing calculations will need to be recalculated and should be undertaken on the basis of earnings information sourced from each employer by Centrelink [16].

- Given the Tribunal was not satisfied that the debt had been raised on the basis of actual fortnightly earnings, the decision under review was remitted back to Centrelink for recalculation.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

How it was decided and key facts

Outcome

- The decision under review was set aside and the Tribunal remitted the decision back to Centrelink to recalculate the debt using payslip information (to be obtained by Centrelink).

Key Findings

- The Tribunal directed that Centrelink ought to obtain payslips from the Applicant’s employers for the relevant periods.
- The Tribunal was not able to make a decision about waiving the debt, in the absence of proof that a debt actually existed. The Tribunal remitted the decision to Centrelink for recalculation.
- The Tribunal also commented in respect of the Robodebt Scheme:

  In November 2019, Centrelink publically announced that it would no longer raise debts based only on averaging of data from the ATO and have now instigated various and more robust processes for the gathering of additional information including obtaining via its powers, employment records, bank records, payroll records etc. This action is critical in this case, as the evidence discloses [the Applicant] worked variable periods at variable hours and therefore averaging of income over the above period does not produce an accurate statement of the income earned during the individual fortnightly reporting periods that applied to [the Applicant’s] newstart allowance. The existing information therefore
is unreliable when it comes to calculating [the Applicant’s] true entitlement to newstart allowance and whether or not there has been an overpayment [6].

- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt on the basis of payroll records/payslips Centrelink was directed to obtain.

**Key Findings**

- Centrelink determined that the applicant was overpaid NSA totalling $7,782.49. AN ARO affirmed this decision.
- In relation to Centrelink’s calculations, the Tribunal found:
  - In determining the overpayment (debt) many years after the event and in the absence of payroll records and/or payslips, Centrelink applied an apportionment method to cross reference amounts averaged from annual figures provided by the Australian Taxation Office with the earnings [the Applicant] had originally reported. Debts raised through this process have been labelled by the media as “robodebts”. While the apportionment method can provide an accurate calculation where income is steady, this is not the case here [3].
  - The Tribunal found that Centrelink applied an apportionment method to cross-reference amounts averaged from annual figures provided by the ATO with earnings originally reported and Tribunal noted that debts such as these have been labelled “robodebts” [3].
  - The Tribunal noted that the matter becomes complicated as Applicant said he has never worked at that workplace, despite income being assigned to that source on his ATO record [3].
  - The Applicant testified that he was a casual employee during the debt period. His income fluctuated and the apportionment method is not accurate in his circumstances [4].

In November 2019, Centrelink publicly announced that it would no longer raise debts based only on averaging of data from the ATO and have now instigated various and more robust processes for the gathering of additional information including obtaining via its powers, employment records, bank records, payroll records etc. This action is critical in this case, as the evidence discloses [the Applicant] worked variable periods at variable hours and therefore averaging of income over the above period does not produce an accurate statement of the income earned during the individual fortnightly reporting periods that applied to his newstart allowance. The existing information therefore is unreliable when it comes to calculating [the Applicant’s] true entitlement to newstart allowance and whether or not there has been an overpayment [6].

- The Tribunal was not satisfied that Centrelink’s calculation was correct and the matter was remitted to Centrelink to recalculate the debt.
- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the on the basis of payroll information/payslips Centrelink was directed to obtain.

**Key Findings**

- The Tribunal found the averaging of income in the Applicant’s case had not ‘produced an accurate statement’ of income earned during the relevant reporting period and the information was therefore ‘unreliable’ at the time of ‘calculating true entitlement’ [6].
- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.
The Tribunal compared the employer's pay records with the Applicant's declared income and concluded the likelihood that the Applicant had under-declared income in some fortnights, and on other occasions over-declared income [8].

The Tribunal noted that the employer’s pay records showed that the Applicant did not earn any income between 30 December 2015 and 28 January 2016, but that part of the debt had been attributed to this period [9].

The Tribunal was not satisfied that the Applicant was paid more than their entitlement during the relevant period, and found that the Applicant had not been overpaid [10].

The Tribunal did not consider issues of sole administrative error or special circumstances.
How it was decided and key facts

Outcome

- The decision under review was set aside and the Tribunal remitted the decision back to Centrelink to recalculate the debt using payslip information (to be obtained by Centrelink).

Key Findings

- The Applicant’s debt was not calculated on the basis of his actual fortnightly income, and so there had been discrepancies in the calculation. The Tribunal was not satisfied that the calculations were correct and remitted the decision back to Centrelink.
- Centrelink were required to obtain actual earnings information from the Applicant’s employers.
- In its decision, the Tribunal commented that:
  In determining the overpayment (debt) many years after the event and in the absence of payroll records and/or payslips, Centrelink applied an apportionment method to cross reference amounts averaged from annual figures provided by the Australian Taxation Office with the earnings [the Applicant] had originally reported. Debts raised through this process have been labelled by the media as “robodebts”. While the apportionment method can provide an accurate calculation where income is steady, this is not the case here [4].
- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the on the basis of payroll information/payslips Centrelink was directed to obtain.
- Centrelink was directed to refund amounts already recovered under the garnishee notice and any other amounts.

Key Findings

- The Tribunal stated that ‘Centrelink is only entitled to raise a debt under subsection 1223(1) of the Act if there is a proper basis for forming the view that a debt in the amount sought is owed’ [20].
- The Tribunal found:
  ...there [was] insufficient information about the Applicant’s actual income during the relevant period to support the reliability and accuracy of Centrelink’s debt calculation. Given this, the tribunal [was] unable to conclude that a debt of the amount calculated by Centrelink has arisen [23]-[24].
- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with the direction that Centrelink exercises its powers to obtain information from the Applicant’s employer.
- The Tribunal also directed that any overpayment be recalculated on this basis and is a debt, that 50% of the recalculated debt be waived due to special circumstances, and that any amount that had been recovered from the Applicant in excess of the recalculated and waived amount be remitted to the Applicant.
Key Findings

- The Tribunal deferred making a decision and requested information from the Applicant’s employer [6].
- Following a data match between the ATO and Centrelink, Centrelink determined that some of the Applicant’s earned income was not taken into account when their rate of DSP was calculated [14].
- ‘The tribunal was satisfied that payments received by [the Applicant] from her employment … did not include excluded amounts’ [19].
- The Tribunal noted that it appeared that different methodologies had been used in the debt calculation, and highlighted a reference where a particular period had ‘apportioned on the basis of ATO provided figures’ [22].
- The Tribunal noted an ADEX schedule report:

  which appears to show that the Department has simply taken the ATO advised amount and apportioned this equally over the debt period to arrive at a debt amount of $3,893.69. Clearly this is not an acceptable method to calculate an alleged debt. This approach taken by the Department fails to take into account the actual earnings for each fortnightly period and as such does not provide a precise or acceptable calculation of any alleged overpayment [22].

- The Tribunal also referred to ‘other notes on the file refer to the Department taking net income amounts from the bank statements that [the Applicant] had provided but noting that pay dates had been modified’ [23].
- The Tribunal viewed the approach used by the department as one which did ‘not provide an acceptable or precise basis upon which to calculate any alleged overpayment’ [24].
- The Tribunal determined that the matter be remitted and directed the department to obtain payslips to calculated any overpayment. If the department then determined an overpayment had occurred, the Tribunal ‘is satisfied that any recalculated amount as based on verified payslip evidence will be a debt owed to the Commonwealth’ [29].
- The Tribunal found that no sole administrative error existed to waive the debt [33]. However, the Tribunal found overall that special circumstances existed for 50% of the recalculated debt to be waived [27].

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How it was decided and key facts

Outcome

- The decision under review was set aside and the matter was remitted to Centrelink for reconsideration in accordance with the direction that the Applicant’s entitlement to YA within the listed period be recalculated, having regard to the Applicant’s payslips. If the payslips do not exist, the use of grossed up employment income as indicated by net wages deposited into the Applicant’s bank account is to be used as the basis for recalculation.
- If a YA debt exists, it is to be recovered.

Key Findings

- The Applicant provided payslips from their employers, and bank statements showing deposits of YA and wages after being ‘notified of a data match with the Australian Taxation Office which suggested she had not declared all of her earned income’ [7]. However, not all payslips for the relevant period were supplied [11], [13].
- The Applicant noted they did not realise they were required to declare income earned and not received [8].
- The Tribunal was, despite this, not satisfied that the overpayment calculation was correct [9].
- In relation to overpayments identified in certain periods, the Tribunal stated the information to be relied upon for recalculation of overpayments. The Tribunal noted that in one instance this should occur, rather than apportioning an amount over a particular period identified [14].
- The Tribunal compared the apportioned income used in the debt calculation against the Applicant’s weekly payslips and bank statements for an employer, and detected three calculation errors [15].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt.
The Tribunal noted that:

**Outcome**

- The decision under review was varied in accordance with the listed debt amounts for the periods in question.

**Key Findings**

- The Applicant was contacted after a data match between the ATO and Centrelink showed discrepancies between reported, and received earnings during the relevant periods. Debts for two periods were raised in this basis [3].
- Following a review, further calculations were undertaken with the use of the Applicant’s bank statements. The first debt was varied and the second debt was affirmed. Both debt amounts were then affirmed by an ARO [5].
- In relation to the first debt, the Applicant confirmed that they had provided their bank statements for part of the relevant period. The Applicant did not agree with Centrelink averaging their income from ATO information, for the portion of the period in which they had not supplied bank statements [13].
- The Tribunal noted that in the absence of payslips, Centrelink used an average of ATO reported income for a portion of the relevant period [14].
- The Tribunal noted that:
  
  Although there is a slight shortfall in what was declared by [the Applicant] and what [the Employer] reported as his income to the ATO, I am not satisfied that averaging the income from the ATO is an accurate way to determine the debt amount as he did not work the same shifts and hours each fortnight. For these reasons I am not satisfied that [the Applicant] was overpaid in the Centrelink entitlement periods covering 9 July 2011 to 9 December 2011 [14].

- The Tribunal noted that the use of bank statements was ‘a generous interpretation of the social security law’, and decided to ‘apply the legislation beneficially in this matter’, by allowing the net income from the Applicant’s bank statements to be used as documentation for earned income, for the remainder of the relevant period. The Tribunal ‘carefully checked the debt calculations’ for this period, and found an overpayment had occurred in the amount listed [15].
- In relation to the second debt, Centrelink relied fully on the Applicant’s bank statements [16].
- The Tribunal made the same comments as to the use of bank statements by Centrelink, but allowed their use as the source documentation for earned income [21].
- The Tribunal ‘carefully checked the debt calculations’, and found an overpayment had occurred in the amount listed [22].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt.

### How it was decided and key facts

#### Outcome

- The decision was set aside and remitted to Centrelink for recalculation of the debt with directions that the Applicant correctly reported her income from the first employer and Centrelink was to obtain payroll records from the other relevant employers.

#### Key Findings

- Centrelink raised a debt following a data match with the ATO. Centrelink submitted that the Applicant earned her income at a constant daily rate. The Tribunal found Centrelink’s submissions to be unsubstantiated and preferred the Applicant’s sworn evidence that she accurately declared her income [3]-[5].
- The Tribunal directed Centrelink to obtain payroll information from two past employers and recalculate the debt. It stated:
  
  It is clear that [the Applicant] received an overpayment. Centrelink will need to take reasonable steps to obtain the evidence necessary to accurately recalculate the overpayment [11].

The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with the direction that the debt be recalculated based on the Applicant’s income as determined by the Tribunal, and that the recalculated debt was recoverable.

Key Findings

- The material from Centrelink included information from the ATO regarding the Applicant’s employment and income, which revealed a discrepancy between earnings to Centrelink and ATO information of the Applicant’s gross earnings. Subsequently, Centrelink received payslips from two of the Applicant’s four employers [15].
In relation to these two employers, the Tribunal accepted that the Applicant’s income was as listed in their payslips, which did not accord with their declared earnings throughout the relevant period [20].

In relation to the third employer, the Tribunal found that the Applicant had over-declared their income [21].

In relation to the fourth employer, the Tribunal found that Centrelink averaged the Applicant’s income for the 2014/15 financial year, as advised by the ATO, at a certain rate ‘across the financial year and applied this fortnightly figure to its debt calculations’ [22].

The Tribunal noted that:

Incorrectly assigning income to a different fortnight can result in a skewing of the rate payable and as a consequence, any debt. The tribunal has previously noted that it is not always possible to obtain evidence of a person’s weekly or fortnightly income and in such instances the approach has been to average the income amounts across all fortnights in the period covered by the amount. In Halls and Secretary, Department of Education, Employment and Workplace Relations [2012] AATA 802 the tribunal considered that it was appropriate for Centrelink to use an averaging method to calculate fortnightly income because in the circumstances it was the best available information that could be provided by the employer and the applicant. In Provan and Secretary, Department of Families, Community Services and Indigenous Affairs [2006] AATA 831 the issue of averaging fortnightly income was considered appropriate; however this was in circumstances where the employer had shut down and Mr Provan did not have any pay advice or other information that would assist in working out his periodic income [23].

The Tribunal considered that the:

“averaging” method applied by Centrelink is potentially unreliable as the “average” fortnightly income of $29.46 applied by Centrelink evenly across each fortnight in the relevant period may not have reflected [the Applicant’s] actual earnings [24].

The Tribunal accepted that the Applicant’s income for this employer was the amount listed in the reasons, and noted that ‘Centrelink incorrectly applied an average of his annual income in its debt calculations’ [25].

The Tribunal noted that it did not accept that Centrelink’s averaging method was appropriate for the Applicant’s income from one of their employers, and that:

applying an average has the potential to incorrectly assign income to a different fortnight and can result in a skewing of the rate payable and as a consequence the tribunal cannot be satisfied that any calculated debt using this method is accurate or reliable [26].

The Tribunal determined that the debt will need to be recalculated on the basis that the Applicant’s income for the employer in question was as listed in the reasons. The Tribunal accepted that Centrelink had applied the Applicant’s income correctly for the remainder of their employers in its debt calculations [28].

The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with the direction to obtain the payroll records and/or payslips from the Applicant’s employer for the specific period listed. On receipt of that documentation, the Tribunal directed that entitlements be reassessed and the Applicant be notified of the outcome [7].

**Key Findings**

- The Tribunal stated that:

  in determining the overpayment (debt) many years after the event and in the absence of payroll records and/or payslips, Centrelink applied an apportionment method to cross reference amounts averaged from annual figures provided by the Australian Taxation Office with the earnings [the Applicant] had originally reported for the period 20 September 2010 to 26 December 2010 (folio 12 of the papers refers). Debts raised through this process have been labelled by the media as “robodebts”. While the apportionment method can provide an accurate calculation where income is steady, this is not the case here [3].
• The Tribunal stated that the apportionment method did not work in the Applicant’s circumstances, and Centrelink’s reliance on this method was incorrect for these circumstances [4].
• The Tribunal noted Centrelink’s public announcement in November 2019, that it would no longer raise debts based on averaging [6].
• The Tribunal noted that this action was critical in the Applicant’s case, who worked variable periods at variable hours, as the use of averaging ‘over the debt period does not produce an accurate statement of the income earned during the individual fortnightly reporting periods that applied to [the Applicant’s] newstart allowance’ [6].
• The Tribunal concluded that, on this basis, the existing information was unreliable for calculating the Applicant’s ‘true entitlement to newstart allowance and whether or not there has been an overpayment’ [6].
• The Tribunal noted that it could not consider issues of sole administrative error or special circumstances because it could not be ‘satisfied that the debt has been correctly calculated or if one exists’ [5].

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How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with the direction that it takes all reasonable steps to obtain income details from the Applicant’s employer for the relevant periods [37].
- Once this information is obtained, the Tribunal directs Centrelink to consider the actual earnings for each period against each notification of earnings provided by the Applicant, to recalculated the running balance of working credits for the relevant periods, and if these actions produce an overpayment, consider if it is recoverable at law [37].

Key Findings

- A data match between Centrelink and the ATO revealed a discrepancy between the Applicant’s earnings reported to Centrelink and their gross earnings, and a debt was raised on the basis of a NSA overpayment [4]-[5].
- After the debt was raised, the Applicant provided ‘financial information including bank account statements’ to Centrelink [19].
- The Tribunal noted that:

  [The Applicant’s] earnings, in part, have been verified by bank account statements and Centrelink has updated the corresponding information. For the balance of the period Centrelink has relied on the ATO’s records and apportioned the income [24].

- The Tribunal considered that the issue of the Applicant’s actual earnings and over which period was significant, as there was evidence that their income was variable through the debt periods. The Tribunal noted that:

  it is possible that the apportioning of the income based on the ATO’s information does not accurately reflect [The Applicant’s] actual earnings in the relevant periods [27].

- The Tribunal considered that the most appropriate action was to remit the matter to Centrelink with the direction to obtain financial information directly from the Applicant’s employer, and to recalculate any overpayment of NSA [29].
- The Tribunal did not consider issues of sole administrative error or special circumstances.

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How it was decided and key facts

Outcome

- The decision under review was set aside and substituted with the decision that there were debts but that the debts were waived.

Key Findings

- The decision under review for the Tribunal involved determining whether the Applicant was overpaid Carer Payment at [1].

ccxcviii Royal Commission into the Robodebt Scheme
• The Applicant submitted his employment was ‘sporadic’ and that when the Applicant did work, he was not always given a payslip [10].
• The Tribunal found that according to the debt calculations provided by Centrelink, the Applicant’s income had been apportioned over each fortnightly period of receiving carer payment. The Tribunal was not satisfied that the debt, if any, had been correctly calculated [11].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
• The Tribunal:

was not satisfied that in this matter the debt amount for the debt period has been properly or accurately calculated. In the tribunal’s view averaging income rather than utilising the verified income amounts does not provide an acceptable or accurate calculation of a debt [18].

• The Tribunal determined the most appropriate action was to remit the matter to Centrelink, and direct it to recalculate the overpayment using payslips for the entire debt period. The Tribunal was satisfied that any overpayment recalculated on this basis was a debt owed to the Commonwealth [19]-[20].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and substituted with the decision that the Applicant did not have debts for the specified periods.

**Key Findings**

• The debts were raised after information from the ATO indicated that not all of the Applicant’s income from employment had been taken into account in determining their payment rates [2].

• The Tribunal noted that the Applicant declared earnings from all of their employers, but that income had not been verified by pay advices from the Applicant’s employers. While there were a small number of pay advices supplied for one employer, Centrelink obtained information from the ATO and the Applicant’s bank accounts, and used that information to calculate the overpayment [11].

• The Tribunal noted their view that:

  neither the information from the ATO nor the information from bank deposits is sufficient to determine what [the Applicant’s] gross income from employment was from each relevant instalment fortnight. The authorised review officer’s notes indicate that the amount of income per fortnight has been calculated using some of the ATO information and some of the bank deposit information, grossed up [13].

• The Tribunal was not satisfied that Centrelink had accurately established the Applicant’s gross income for the relevant periods, and had failed to establish an overpayment of NSA or austudy for the periods under review [13]. On this basis, the Tribunal did not find any debts arising [14].

• The Tribunal did not consider issues of sole administrative error or special circumstances.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and remitted to Centrelink with the direction that actual employment income in the Applicant’s payslip is used for recalculation of the debt.

**Key Findings**

• The Tribunal noted that part of the debt was calculated by averaging income as there were no payslips [14].

• The Tribunal found that there had likely been an overpayment as the Applicant underreported or did not report at all [16] – [17].

• The Tribunal cited with approval Re SDFHCSIA and George [2011] AATA 91 which considered the requisite standard of proof to determine whether a debt is owing [17]. Applying this case, the Tribunal concluded it was ‘left in a state of doubt as to the correct calculation of the debt’ [17].
The Tribunal criticised Centrelink’s use of income averaging:

In the tribunal’s view averaging income rather than utilising the verified income amounts does not provide an acceptable or accurate calculation of a debt. In this regard the tribunal also noted the following comment made by the ARO7 “…The SME doc is messy with regards the debt calculation but, after piecing it together appears correct.” [18].

The Tribunal found that no administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

### Outcome

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt based on the Applicant’s payroll records to be obtained by Centrelink from the Applicant’s employers.

### Key Findings

- The Tribunal stated:

  In determining the overpayment (debt) many years after the event and in the absence of payroll records and/or payslips, Centrelink applied an apportionment method to cross reference amounts averaged from annual figures provided by the Australian Taxation Office (ATO) with the earnings [the Applicant] had originally reported. Debts raised through this process have been labelled by the media as “robodebts”. While the apportionment method can provide an accurate calculation where income is steady, this is not the case here [3].

  Centrelink were successful in obtaining some employment information from a few of [the Applicant’s] employers but not all of them. Applying that information resulted in a significant reduction in the debt. However, Centrelink did not obtain employment income from the employers’ direction (approximately five in total) and relied on averaging using the ATO taxable income for each financial year [4].

  [The Applicant’ said that he was a fruit picker. He would travel around Australia picking fruit. When the work was on he did not claim benefits. When there was no work, he did so. He said that it was wrong therefore to apply the apportionment method to overall entitlements received as large portions of income were earned when he was not receiving benefits. Hence, the apportionment method does not work in his circumstances. In the assessment of the matter, Centrelink primarily relied on the apportionment method, which is not correct for these circumstances globally [5].

- The Tribunal found there was a paucity of evidence to provide a breakdown of earnings from each employer for each relevant period. The Tribunal was not satisfied on the evidence before it that a debt existed and found that the situation could only be remedied by Centrelink obtaining the relevant payroll records for the Applicant [6].

- The Tribunal further stated:

  In November 2019, Centrelink publically announced that it would no longer raise debts based only on averaging of data from the ATO and have now instigated various and more robust processes for the gathering of additional information including obtaining via its powers, employment records, bank records, payroll records, etc. This action is critical in this case, as the evidence discloses [the Applicant] worked variable periods at variable hours and therefore averaging of income over the above period does not produce an accurate statement of the income earned during the individual fortnightly reporting periods that applied to [the Applicant’s] benefits. The existing information therefore is unreliable when it comes to calculating [the Applicant’s] true entitlement to newstart/sickness allowance and whether or not there has been an overpayment [7].

- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.
The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt based on payslip information Centrelink which was directed to obtain. The recalculated debt was recoverable.

Key Findings

- Centrelink raised the debt following a data match with the ATO and initially calculated the debt on the basis of that information. Centrelink subsequently recalculated the debt on the basis of verbal information provided by the Applicant in relation to his earnings [7]. The Applicant subsequently denied giving the relevant figures to Centrelink [9].
- Centrelink garnisheed §656.55 of the Applicant’s tax return towards repayment of the debt [8].
- The Tribunal found:
  
  The tribunal is not satisfied that [the Applicant’s] entitlement to newstart during the relevant period has been calculated with sufficient specificity to determine any resulting debt. The only way the tribunal can be satisfied that a debt is calculated correctly is based on payroll data because the averaging of income does not provide sufficient accuracy because it cannot show the fortnights where someone worked much more than others. The tribunal also finds that payment information derived from bank statements cannot provide sufficient accuracy as it is not always clear what non-assessable items are included, nor can the tribunal be otherwise satisfied that the calculation from net to gross is correct [10].

To eliminate any doubt and to determine the exact amount of any debts owing, Centrelink will need to use its information gathering powers under section 192 of the Administration Act to contact [the Applicant’s] employer...from the relevant period to obtain payslips in order to make those calculations [11].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

The decision under review that the Applicant owed a recoverable parenting payment debt was affirmed.

Key Findings

- Based on the payslips produced for the relevant period, the Tribunal found that there was a parenting payment debt [11].
- The Tribunal was not satisfied with the accuracy of the NSA debt calculations, noting the only source of data for the Applicant’s actual fortnightly income was that which was obtained via an ATO data match [12]. The Tribunal accordingly directed Centrelink to check its calculations and recalculate the debt for the relevant period if necessary.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
The Tribunal commented that:

**Outcome**

- The decision under review relating to youth allowance from one period in question was affirmed.
- The decision under review relating to the remaining period was set aside and remitted to Centrelink for recalculation of the debt using payslip information (to be obtained by Centrelink).
- Centrelink was directed to use the correct apportionment method.

**Key Findings**

- The Tribunal set aside part of the decision, on the basis that income averaging was used to raise the debt. Centrelink had not taken into account the Applicant’s actual fortnightly earnings.
- The Tribunal commented that:
  [the Applicant] said her income from employment varied significantly from one week to the next during the second period because she worked on a casual basis. Averaging income does not accurately reflect her periodic income in the circumstances. It is not correct to apply averaged fortnightly income in the calculation of youth allowance payments for the period [the Applicant] was employed. The effect of using averaging is that income was incorrectly attributed throughout the relevant period. As a result, the income was not apportioned as required by section 1073B of the Act [15].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

### Table: How it was decided and key facts

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### How it was decided and key facts

**Outcome**

- The decision under review was set aside and the matter was remitted to Centrelink for recalculation of the debt on the basis that Centrelink was to obtain payroll information.

**Key Findings**

- The Tribunal found there were no payslips or payroll information to corroborate the amounts used by Centrelink to verify the Applicant’s earnings from the relevant employer for the relevant periods.
- The Tribunal stated that: ‘This suggests that Centrelink has used “income averaging” to assess the overpayment for this period – an approach that is no longer considered appropriate’ [13].
- The Tribunal directed that Centrelink was to exercise its information gathering powers and request payslips, or payroll information, from the Applicant’s employer which disclosed not only the Applicant’s gross earnings, but also the allowances that were paid [14].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
## Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt using the Applicant’s payslips and correctly apportioning his income to the relevant fortnights.

## Key Findings

- The Tribunal noted that Centrelink originally raised and calculated the debt following a data match with the ATO. Centrelink subsequently recalculated the debt for the period between 21 June 2010 to 17 June 2012 based on payslips provided by the Applicant [22].
- The Applicant’s payslips, however, indicated that he received four payments during the relevant period identified as ‘back payments’ [24]. In relation to Centrelink’s calculations of these payments, the Tribunal noted that Centrelink incorrectly treated these payments as lump sums and apportioned them over 52 weeks [25]-[26]. The Tribunal found that this should instead have been treated as income earned, derived or received and accordingly be attributed to their relevant fortnights [28].
- The Tribunal accordingly disagreed with Centrelink’s calculations and directed Centrelink to recalculate the Applicant’s debt by treating the back payments as income and attributing them to the fortnights in which they were received [30].
- The Tribunal did not find that the debt, as currently calculated, existed and therefore any amounts already recovered would need to be refunded. However, it was possible that a recalculation as directed could still produce a debt [31].
- The Tribunal advised the Applicant that he could pursue compensation from Centrelink via the Compensation for Detriment caused by Defective Administration scheme after he raised concerns about the advice he received from Centrelink regarding his reporting requirements and their dealings after the debt was raised [36]-[38].

## How it was decided and key facts

### Outcome

- The decision under review was set aside and remitted the Chief Executive Centrelink for recalculation of the debts using payslip information.
- Only 50% of the debt was recoverable due to special circumstances.

### Key Findings

- The Tribunal noted that:
  - The income information in relation to the first employer was based on payslips and Centrelink’s calculations were correct [7].
  - In relation to the income from the second employer, the Tribunal stated:
    - The income in relation to [Employer 2] (also referred to as 39+ on payslips) is based on payslip advice,2 with the exception of the payslips for the pay periods 9 October 2017 to 15 October 2017 and 16 October 2017 and 18 October 2017. According to the Centrelink papers, these were determined by Centrelink using its ‘Check and Update Past Information’ (CUPI) online system and averaging. The tribunal finds that Centrelink will need to use its powers under section 192 of the Administration Act to contact [Employer 2] (39+) to obtain payslips for those two pay periods [7].
  - The income in relation to the third employer was based on payslip information [7].
  - In relation to income from the fourth employer, the Tribunal stated:
    - The income in relation to [Employer 4] is based on information matched with the Australian Taxation Office (ATO). The tribunal finds that Centrelink will need to use its powers under section 192 of the Administration Act to contact [Employer 4] to obtain payslips for the relevant pay periods [7].
- The Tribunal ultimately concluded:
While the tribunal finds that it is likely that [the Applicant] has incurred a debt due to overpayment of newstart allowance during the relevant periods, the tribunal is not satisfied that [the Applicant’s] entitlement to newstart allowance during the relevant periods has been calculated with sufficient specificity to determine any resulting debt. The only way the tribunal can be satisfied that a debt is calculated correctly is based on payroll data provided in documentary form from the relevant employer because the averaging of income does not provide sufficient accuracy because it cannot show the fortnights where someone worked much more than others; and requiring payment recipients to provide verbal payslip information poses a risk of data entry error with no documents for calculations to be properly checked. The tribunal also finds that payment information derived from bank statements cannot provide sufficient accuracy as it is not always clear what non-assessable items are included, nor can the tribunal be otherwise satisfied that the calculation from net to gross is correct [8].

- The Tribunal found that special circumstances existed to justify a waiver of 50% of the debts.

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**Outcome**

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt using payslip information.
- The recalculated debt was recoverable.

**Key Findings**

- The Tribunal stated:

  This debt originated as a “robodebt”, that is a data match with the Australian Taxation Office (ATO) showed that [the Applicant] earned more in the 2013/14, 2014/15 and 2015/16 financial years than Centrelink had recorded as her earned income.1 [the Applicant] provided her payslips which were then used to calculate her entitlement during the relevant period, along with her self-reported earnings from [Employer]. It is apparent to the tribunal that [the Applicant’s] earned income was underreported to Centrelink during the relevant period [9].

  ...

  The only way the tribunal can be satisfied that a debt is calculated correctly is based on payroll data provided in documentary form from the relevant employer because the averaging of income does not provide sufficient accuracy because it cannot show the fortnights where someone worked much more than others; and requiring payment recipients to provide verbal payslip information poses a risk of data entry error with no documents for calculations to be properly checked. The tribunal also finds that payment information derived from bank statements cannot provide sufficient accuracy as it is not always clear what non-assessable items are included, nor can the tribunal be otherwise satisfied that the calculation from net to gross is correct [11].

- The Tribunal accordingly directed Centrelink to use its information gathering powers to obtain the relevant payroll information [12].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**Outcome**

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt based on the Applicant’s payroll records Centrelink which was directed to obtain or her bank statements.
Key Findings

- Centrelink raised the debt following a data match with the ATO [6].
- The Tribunal found:

  In this case Centrelink has apportioned income over periods which do not relate to the instalment periods during which income was earned and has likely attributed income during instalment periods when no income was earned, derived or received [10].

  [The Applicant] worked variable periods at variable hours therefore averaging of income over a long period does not produce an accurate statement of the income earned during the individual fortnightly reporting periods that applied to her youth allowance [11].

- The Tribunal was accordingly not satisfied that there was a legally recoverable debt based on Centrelink’s calculations and directed Centrelink to obtain all payroll records from the Applicant’s employers or, failing that, the Applicant’s bank statements to recalculate the debt [12].
- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

- The decision under review in relation to the parenting payment debt and interest charge were affirmed.
- The decision in relation to sickness allowance/NSA were set aside and remitted to Centrelink for recalculation of the debt on the basis of the Applicant’s actual periodic earnings Centrelink was directed to obtain.
- Centrelink was directed not to apply a 10% penalty to any recalculated sickness allowance/NSA debt.

Key Findings

- The decision under review for the Tribunal involved determining whether the Applicant was overpaid Sickness Allowance/NSA and a parenting payment including the validity of the 10% penalty at [1].
- Centrelink undertook calculations following an ATO data match [15]-[16].
- The Tribunal was unable to determine the correct amounts of overpayment and noted that it appeared that the Applicant’s earnings varied each week [17].
- The Tribunal directed Centrelink to obtain payroll information from the Applicant’s employer.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt on the basis of the payroll information/payrolls Centrelink was to obtain from the relevant employers.

Key Findings

- The Tribunal found that, in the absence of payslips, Centrelink apportioned the Applicant’s annual gross income as provided by the ATO. The Tribunal stated: ‘Debts raised through this process have been labelled by the media as “robodebts”. While the apportionment method can provide an accurate calculation where income is steady, this is not the case here’ [3].
- The Tribunal found the apportionment method was incorrect as the Applicant’s income varied [4].
- The Tribunal accordingly remitted the matter to Centrelink with directions to obtain payslips/payroll information for the Applicant from her employers and to recalculate the debt on the basis of that information [7].
The Tribunal stated:
Centrelink was directed to waive any recalculated debt.

**Outcome**
- The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the basis of payroll information Centrelink was directed to obtain.
- Centrelink was directed to waive any recalculated debt.
- Centrelink was directed that the 10% penalty was not to be applied.

**Key Findings**
- The Tribunal found that Centrelink initially applied a fortnightly average of the Applicant’s income, using figures provided by the ATO [24].
- The Applicant then provided payslips for part of the debt period and Centrelink applied ‘actual fortnightly income’ as per the payslips for part of the period. Where payslips were not provided, Centrelink applied an average of the Applicant’s ATO advised income for part of the period, resulting in a further amended debt calculation [24].
- The Tribunal accepted that ‘[the Applicant’s] income varied considerably from fortnight to fortnight and an “average” of her financial year income does not accurately reflect her fortnightly income’ [28].
- The Tribunal found the 10% penalty fee did not apply and should be removed from the debt [49].
- The Tribunal found that no sole administrative error existed to justify the write off or waiver of the debt, but found that special circumstances existed to warrant waiving recovery of the debt [90].

**Conclusion**

The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the basis of payroll information/payslips Centrelink was directed to obtain.

**Key Findings**
- The Tribunal found ‘Centrelink applied an apportionment method to cross-reference amounts averaged from annual figures provided by the Australian Taxation Office with the earnings [the Applicant] had originally reported’ [3].
- The Tribunal also found ‘the apportionment method does not work in her circumstances. In the assessment of the matter, Centrelink primarily relied on the apportionment method, which is not correct for these circumstances’ [4].
- The Tribunal found it could not be satisfied a debt was correctly calculated or even if a debt existed [5].
- The Tribunal stated:
  
  ...[the] situation could be remedied by the provision of payroll records and/or payslips. As a last resort bank records may be satisfactory provided there was a reassurance by [the Applicant] that no deductions were made apart from taxation and some confirmation as to the timing between earning the amounts and the amounts being paid into her bank account [5].
- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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**Appendix 9**

Royal Commission into the Robodebt Scheme cccvii
Key Findings

• Centrelink raised the debt following a data match of ATO [9].

• The Tribunal found:

  Centrelink did not have the majority of [the Applicant’s] payslips or any other means of determining [the Applicant] earned the income within those tax years. As a result Centrelink apportioned the income evenly across each of the relevant tax years [10].

In November 2019, Centrelink publically announced that it would no longer raise debts based only on averaging of data from the ATO and have now instigated various and more robust processes for the gathering of additional information including obtaining via its powers employment records, bank records, payroll records, etc. This action is critical in this case, as the evidence discloses [the Applicant] worked variable periods at variable hours and therefore averaging of income over the above period does not produce an accurate statement of the income earned during the individual fortnightly reporting periods that applied to [the Applicant’s] newstart allowance. The existing information therefore is unreliable when it comes to calculating [the Applicant’s] true entitlement to newstart allowance and whether or not there has been an overpayment [12].

• Given this, the Tribunal remits the matter back to Centrelink with a direction to obtain the payroll records and/or payslips from the relevant employers. On receipt of that documentation, the Tribunal directs that entitlements be reassessed and for the Applicant be notified of the outcome [13].

• The Tribunal did not consider whether circumstances existed to justify a write off or waiver of the debt.

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How it was decided and key facts

Outcome

• The decision to raise and recover the parenting payment debt was affirmed (Decision 1).

• The decision to raise and recover the NSA debt was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt based on the Applicant’s payslips (Decision 2).

Key Findings

• In relation to Centrelink’s calculations, the Tribunal stated:

  As a result of a data match with records of the Australian Taxation Office (ATO) Centrelink concluded that [the Applicant] had not declared the full amount of her income during the debt periods. Initially, Centrelink averaged the income reported by the ATO over each financial year and raised a debt based on those figures. The debt of parenting payment was varied to the amount now claimed after Centrelink obtained payslips. As no payslips were provided for the latter period that debt has been calculated based on averaging income over the period [6].

In [the Applicant’s] case Centrelink has used [the Applicant’s] pay records to calculate her entitlement during each fortnight during the 2010/2011 period and the tribunal is satisfied that the calculations for that period are correct. However, the tribunal cannot be satisfied that is the case for the second debt period as no payslips were available and income may have been apportioned over periods which do not relate to the instalment periods during which income was earned and may have been attributed to instalment periods when no income was earned, derived or received [10].

• As the Applicant had since provided her payslips, the Tribunal directed Centrelink to recalculate the debt on the basis of those payslips [11].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
**Outcome**

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt based on the Applicant’s payroll records which Centrelink was directed to obtain.

**Key Findings**

- The Tribunal found:

  In determining the overpayment (debt) many years after the event and in the absence of payroll records and/or payslips, Centrelink applied an apportionment method to cross reference amounts averaged from annual figures provided by the Australian Taxation Office with the earnings [the Applicant] had originally reported. Debts raised through this process have been labelled by the media as “robodebts”. While the apportionment method can provide an accurate calculation where income is steady, this is not the case here [3].

  [The Applicant] testified that he was a casual employee during the above period. There were fortnights where he earned significant amounts and other fortnights where the income was negligible. Hence, the apportionment method does not work in his circumstances. In the assessment of the matter, Centrelink primarily relied on the apportionment method, which is not correct for these circumstances [4].

  ... Despite the vast number of documents before it, the tribunal was of the view there is a paucity of evidence to provide a break down as Centrelink publicly announced that it would no longer raise debts based on averaging of data from the ATO and have now instigated various and more robust processes for the gathering of additional information, including obtaining via its powers employment records, bank records, payroll records, etc. This action is critical in this case, as the evidence discloses [the Applicant] worked variable periods at variable hours and therefore averaging of income over the above period does not produce an accurate statement of the income earned during the individual fortnightly reporting periods that applied to [the Applicant’s] youth allowance. The existing information therefore is unreliable when it comes to calculating [the Applicant’s] true entitlement to youth allowance and whether or not there has been an overpayment [6].

- The Tribunal did not consider whether circumstances existed to justify a write off or waiver of the debt.

**How it was decided and key facts**

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**Outcome**

- The decision under review was set aside and remitted to Centrelink with directions that:
  - Centrelink recalculate the debt based on ‘apportionment of [the Applicant’s] income according to when it was earned’; and
  - the recalculation, particularly any variations from the apportionment calculated by the Tribunal, will need to be explained to the Applicant in a plain English format; and
  - the resulting debt was recoverable.

**Key Findings**

- The Tribunal noted that Centrelink used payslip information provided by the Applicant to calculate the current debt amount for the relevant period [12].
- The Tribunal found ‘that the only way it can be satisfied that a debt is calculated correctly is based on payroll data because averaging of income does not provide sufficient accuracy because it, by definition, cannot show the fortnights where someone worked much more than others’ [13].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
Outcome

• The decision under review was set aside and substituted with the decision that no overpayments had been proved.

Key Findings

• The Tribunal noted that Centrelink received a data match from the ATO in relation to the Applicant’s income for the 2011/12, 2012/13, 2013/14, and 2014/15 financial years. The Applicant subsequently provided to Centrelink copies of her bank statements and some payslips [3]-[4].
• Centrelink recalculated the debt and advised the Applicant that the debts were based on the payslips she provided and the ATO data matches being apportioned over the financial years [5].
• The Tribunal found ‘the Act does not authorise the calculation of parenting payment or NSA by reference to averaging of income’ [14].
• The Tribunal also found ‘Centrelink had not obtained details of actual earnings from employers during the periods in question to verify her actual earnings during these periods’ and concluded that the debts were not proved [16]-[18].
• The Tribunal did not consider whether circumstances existed to justify a write off or waiver of the debt.

How it was decided and key facts

Outcome

• The decision under review was set aside and remitted to Centrelink to recalculate the debt using payslip information (to be obtained by Centrelink).

Key Findings

• The Applicant’s fortnightly income varied significantly in the period in which she received benefits. There were some fortnights where payslip data was not available, and her income amounts are subsequently unknown.
• In lieu of this information, Centrelink apportioned the Applicant’s income over fortnightly periods. The Tribunal was not satisfied that the debt had been calculated correctly.
• Centrelink was directed to obtain the missing payslip data from the Applicant’s employers so that the debt could be appropriately recalculated.
• The Tribunal found:

  Averaging income does not accurately reflect [the Applicant’s] periodic income in circumstances where her wages regularly varied. It is not correct to apply averaged fortnightly income in the calculation of youth allowance payments for the period [the Applicant] was employed and specific information about her earnings is not currently known. The effect of using averaging is that income was incorrectly attributed throughout the relevant period. As a result, the income was not apportioned as required by section 1073B of the Act [10].
• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

How it was decided and key facts

Outcome

• The decision under review was set aside and substituted with the decision that there were YA debts, but the debts were to be recalculated in accordance with the directions as set out at paragraphs [19] and [24] of the decision, with any recalculated debts to be recoverable.
Key Findings

- The Tribunal noted that Centrelink documents initially identified that the Applicant had income higher than the amount she reported to Centrelink based on a data match with the ATO [9].
- Due to these differences, Centrelink wrote to the Applicant requesting further information about her employment income from these employers and the Applicant provided some payslips for some employers throughout the relevant period [10]-[11].
- The Tribunal noted it explained to the Applicant that:
  ...income averaging was different to income apportionment and that income averaging is permitted in accordance with subsection 1073B(2) of the Act. Income apportionment is when income is evenly apportioned over a period of time in the absence of other supporting information other than the matched income data from the ATO; this is known as a ‘robo debt’.
- In relation to the debt arising from the period of 20 July 2013 to 19 June 2015, the Tribunal stated it checked the debt calculations and was satisfied that the debt calculation is based on the evidence contained in the documents before it and ‘no portion of the debt was apportioned’ [19].
- The Tribunal was not satisfied that the second debt amount was correct and directed ‘that the debt be recalculated based on the payslip information before the tribunal’ [24].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

- The Tribunal set aside the decision under review and, in substitution, decided that no overpayment of youth allowance of $7,515.38 to the Applicant for the period 5 July 2014 to 20 November 2015 had been proved.

Key Findings

- On 25 September 2018 Centrelink made a decision that the Applicant had been overpaid youth allowance of $7,515.38 during the period 16 August 2014 to 20 November 2015. The ATO provided information to Centrelink about the Applicant’s income [3]. The Applicant provided payslips to Centrelink as well as bank statements and paid invoices [4]-[6].
- The Applicant stated that during the relevant period she was working as a model and had to give a 20% commission to her agent. This was included as income. The Applicant also stated that her pay fortnights did not match the Centrelink fortnights.
- The Tribunal was not satisfied that Centrelink’s debt calculations were made based on the actual fortnightly amount of youth allowance that she received during the debt period and her actual fortnightly income during the period under review and that there were inconsistencies in the debt calculations [21].
- The Applicant’s income was determined using an apportionment method averaged despite fluctuating income/hours worked per week. The Tribunal stated:
  The ADEX Debt Schedule Report included in the tribunal papers states [the Applicant] had apportioned actual income each fortnight during the debt period and the total amount of apportioned actual income for the debt period is recorded as $67,166.53. [21]
- The Tribunal found:
  In short, the Act does not authorise the calculation of youth allowance by reference to averaging of income in this case. Clearly, with regard to fluctuating income, the averaging of income can produce distortions in the calculation of social security entitlements so as to give rise to phantom debt balances, when no overpayment has actually been made [23].
- The Tribunal concluded that the debt was not proved [24].
### How it was decided and key facts

**Outcome**

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt based on the Applicant’s verified earnings Centrelink was directed to obtain.
- Centrelink was directed to document the debt calculations in a way that a lay person could understand.
- The recalculated debts were recoverable in full.

**Key findings**

- The Tribunal noted the Applicant’s ‘rate of parenting payment was impacted in the relevant periods by employment income of both her and her partner’ [10].
- The Tribunal stated:
  
  …was not satisfied that the income had been correctly apportioned. A significant amount of the employment income across the three calculations is unverified other than by reference to ATO data apportioned evenly across many fortinights. Further, the debt calculations include two calculations for periods which overlap (debts B and C). The tribunal agrees with [the Applicant] that there is a lack of transparency. It is confusing and fraught with potential error to endeavor to “stitch” two scenarios together for the same debt period [15].
- The Tribunal found ‘Centrelink [had] not exercised its powers to attain information from third parties in a rigorous and holistic manner’ [15].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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### How it was decided and key facts

**Outcome**

- The decision under review is varied so that, pursuant to section 1237AAD of the Social Security Act 1991, with effect from the day after the debt was raised, recovery of the sum of $439.16 (50% of the calculated debt) is waived.

**Key Findings**

- The Applicant’s debt was originally a “robodebt” for a much higher sum, but was reduced to $970.83 in January 2019. The debt arose due to the applicant failing to disclose his income from casual employment.
- The Applicant not convinced that the debt is correct as Centrelink have changed the debt amount multiple times. The Applicant had language barriers and requested that Centrelink arrange an interpreter, which they had not done.
- Centrelink averaged earnings over each fortnight. The Tribunal stated:
  
  Unlike the fundamentally flawed “robodebt” scheme which applied averages over an entire tax year, averaging over a fortnight is deemed an acceptable methodology given employers often cannot produce daily payroll information [6]
  
  The Tribunal found the applicant did his best in difficult circumstances to disclose his variable casual income. There was no knowing or deliberate failure on his part.
- The Tribunal has examined Centrelink’s calculations and applied the fortnightly earnings information for the debt period as it does in the ordinary course. The tribunal found there had been an overpayment but decided to waive 50% of the debt.
The Tribunal stated:

I am not satisfied that averaging the income from the ATO is the most accurate way to calculate the debt amount as [the Applicant] said her earnings changed constantly throughout the year. She said she usually worked a split shift of three days a week for five hours a day. She was uncertain but thought her hourly rate was the minimum wage of $23.00 per hour. On that basis, I calculated she would earn at least $345 per week. [The Applicant] estimated that she earned about $250.00 per week. She noted that her hours probably increased over Christmas time. She said her pay periods did not align with the Centrelink reporting fortnights. She acknowledged that there may have been some weeks where she had not reported her wages correctly because she had to estimate the amounts. It also was a difficult time personally for her due to family violence and she described herself in ‘survival mode’ at that time. She did not think that Centrelink’s apportioned amount of $859.64 per fortnight truly reflected her fortnightly gross earnings [13].

For these reasons, while I agree that [the Applicant] was overpaid in the relevant period due to not declaring the full amount of her earnings, I am not satisfied that the debt amount of $7,004.26 is the correct debt amount. [The Applicant] said she has her payslips for the relevant period. I requested that [the Applicant] submit her payslips for the 2017/2018 year to the Tribunal for reconsideration of the debt calculations. She provided these after the hearing [14].

- The Tribunal was not satisfied of the debt amount and the matter was remitted to Centrelink for recalculation using newly provided payslips to the Tribunal [15].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
• The Tribunal stated:

...debt calculations based on information provided by [the Applicant’s] employer would provide an accurate income’ and found that ‘Centrelink will need to recalculate the Applicant’s debt after having obtained specific information about [the Applicant’s] earnings during the debt period [21].

• The Tribunal stated it was not required to reach a decision with respect to waiver or write off by way of sole administrative error or special circumstances. The Tribunal however noted that ‘[t]here is no question that, in rejecting [the Applicant’s] claim for CA and instead granting her CP, the payments subsequently made were initially solely due to Centrelink error’ [23].

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and the matter was sent back to the Chief Executive Centrelink for reconsideration in accordance with paragraph 7 of its reasons.

**Key Findings**

• Centrelink determined that the Applicant was overpaid $10,289.69 in austudy between 14 July 2012 and 23 August 2013.

• The Tribunal noted:

> In determining the overpayment (debt) many years after the event and in the absence of payroll records and/or payslips, Centrelink applied an apportionment method to cross reference amounts averaged from annual figures provided by the Australian Taxation Office with the earnings [the Applicant] had originally reported. Debts raised through this process have been labelled by the media as “robodebts”. While the apportionment method can provide an accurate calculation where income is steady, this is not the case here [3].

> [The Applicant] testified that he was a casual employee during the above period. There were fortnights where he earned significant amounts and other fortnights where the income was negligible. Further he was unemployed for the large part of the financial year and it was only towards the end of the financial year that he started employment and worked his variable hours. Hence, the apportionment method does not work in his circumstances. In the assessment of the matter, Centrelink primarily relied on the apportionment method, which is not correct for these circumstances [4].

• The Tribunal stated:

> Despite the vast number of documents before it, the tribunal was of the view there is a paucity of evidence to provide a breakdown of earnings from each employer for each relevant Centrelink fortnightly instalment of austudy. For this reason, the tribunal cannot be satisfied that the debt as raised by Centrelink is correct. This situation could be remedied by the provision of payroll records and/or payslips [5].

> In November 2019, Centrelink publicly announced that it would no longer raise debts based only on averaging of data from the ATO and it has now instigated various and more robust processes for the gathering of additional information including obtaining via its powers, employment records, bank records, payroll records etc. This action is critical in this case, as the evidence discloses [the Applicant] worked variable periods during the financial year at variable hours and therefore averaging of income over the above period does not produce an accurate statement of the income earned during the individual fortnightly reporting periods that applied to [the Applicant’s] austudy. The existing information therefore is unreliable when it comes to calculating [the Applicant’s] true entitlement to austudy and whether or not there has been an overpayment [6].

> As an aside the Applicant entered into a payment arrangement due to some undue pressure by debt collectors. Given that the debt was to be reviewed with recalculation based on payslips it would not be unreasonable for Centrelink to pause recovery pending reassessment. The Tribunal however acknowledged that it has no powers to make such a direction [9].
The Tribunal stated:

Outcome
- The decision under review was affirmed.

Key Findings
- Centrelink commenced a review of the Applicant’s entitlement following a data match with the ATO and determined that the Applicant had not provided full details of his income [9].
- This was an historical debt and the Applicant stated he was unable to provide bank statements or payslips for a period dating back 10 years [11].
- The Tribunal found that the Applicant had failed to satisfy notification requirements by not informing Centrelink of his change of address in a timely manner. It found that had he done so, he would have been aware, via the correspondence sent to him (at the wrong address), that Centrelink undertakes data matching with and that '[i]t was clearly in [the Applicant’s] interests to retain or seek payslips from his previous employers and to retain his bank statements, given that Centrelink alerted him to its practice of reviewing entitlements’ [11].
- The Tribunal stated:

  The Tribunal finds that Centrelink was entitled to rely on the information provided to it by the ATO given [the Applicant’s] inability to provide bank statements and payslips for the entire debt period. The Tribunal does not accept [the Applicant’s] submission that as he worked for labour hire companies during part of the debt period, he was not given payslips [12].

  The information obtained by Centrelink from its ATO data match in 2016, showing the gross amounts earned by [the Applicant] from each of his employers in the debt period, is clearly set out at page 108 of the Centrelink documents. The Tribunal has perused debt calculations contained in the Centrelink documents and has no reason to doubt their accuracy [13].
- The Tribunal found that the interest charge was correctly applied as the Applicant had ‘...failed to engage with Centrelink in a timely manner... or enter into and maintain payments under an acceptable payment arrangement...’ [16].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt and noted that Centrelink had already taken some action by garnishing the Applicant’s a tax refund [37].

How it was decided and key facts

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Outcome
- The decision under review was set aside and remitted to Centrelink for recalculation of the debt on the on the basis of payroll information/payslips Centrelink was directed to obtain.

Key Findings
- The Tribunal found that, while a portion of the overpayment was calculated based on the Applicant’s fortnightly earnings, part of the debt was also calculated by averaging the ATO data [11].
- The Tribunal found the overpayment debt had not been accurately calculated and it was appropriate for Centrelink to use its powers to obtain payroll data from the Applicant’s former employers to accurately assess the Applicant’s entitlements [14].
- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.
### Outcome

- The decision under review was set aside and the matter remitted to Centrelink for reconsideration.

### Key Findings

- The Tribunal stated:

  In November 2019, Centrelink publicly announced that it would no longer raise debts based only on averaging of data from the ATO and it has now instigated various and more robust processes for the gathering of additional information including obtaining via its powers, employment records, bank records, payroll records etc. This action is critical in this case, as the evidence discloses [the Applicant] worked variable periods during the financial year at variable hours and therefore averaging of income over the above period does not produce an accurate statement of the income earned during the individual fortnightly reporting periods that applied to [the Applicant’s] parenting payment. The existing information, therefore, is unreliable when it comes to calculating [the Applicant’s] true entitlement to parenting payment and whether or not there has been an overpayment [6].

Given this, the tribunal remits the matter back to Centrelink with a direction to obtain the payroll records and/or payslips from the relevant employer [7].

- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

### How it was decided and key facts

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### Outcome

- The decision under review was set aside and the matter sent back to the Secretary for reconsideration.

### Key Findings

- Centrelink raised an NSA debt of $11,798.80 for the period 10 July 2013 to 31 July 2018 following a data match conducted with the ATO [12]. The original debt was based on averaging of income [13].
- The Tribunal noted that the Secretary confirmed that no further review of the alleged overpayment is being conducted and relies on the calculations undertaken on 16 September 2019 [16].
- The Applicant gave evidence that she worked casually for a number of employers and that her work periods and hours varied [17].
- The Tribunal stated:

  Having regard to the data match and the information subsequently used by the Secretary on further review of the debt, I am not satisfied the overpayment and consequential debt as calculated are correct. The calculations continue to rely significantly on data match information and various bank statements provided by [the Applicant] to the Secretary. Missing is the best evidence in the form of complete payroll information and/or payslips or complete bank statements [18].

  Centrelink has attracted widespread criticism, including from this Tribunal, for raising debts simply on the basis of data matches and averaging gross income from each employer over the employment period declared by the employer to the ATO. Such debt calculations, called “robodebts” will only be accurate if an employee’s actual work and earning
pattern reflects this assumed regularity of employment and earnings. It will not be accurate if there is variation in actual hours or days worked, if not the rate of remuneration, in any particular fortnight. The Secretary has recently announced (November 2019) that it would no longer raise debts based only on averaging of data from the ATO and has now instigated more robust processes for the gathering of additional information, including obtaining via its powers, employment records, bank records, payroll records etc. The Secretary further intends to reconsider debts previously raised only on the basis of broad averaging of income, or “robodebts,” on this basis [19].

The further review of [the Applicant’s] debt by the Secretary involved use of some payroll information from one employer and some bank statements provided by [the Applicant]. The information obtained was, however, incomplete and cannot support the calculation of an overpayment and debt across the whole debt period [20].

- The Tribunal set the debt aside and directed the Secretary to reconsider the matter by seeking to obtain payroll information from employers and bank statements, if there are gaps in the payroll information [21].

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**How it was decided and key facts**

**Outcome**

- The Tribunal set aside the decision under review and decided that the Applicant did not have an NSA debt of $11,044.20.

**Key Findings**

- Centrelink raised an NSA debt of $11,044.20 for the period 6 November 2011 to 30 September 2012. An ARO reviewed and affirmed this decision on 14 June 2016.

- Centrelink raised the debt on the basis of income averaging over the relevant period. Income averaging was used to raise a debt based on gross income reported to the ATO for particular financial years and comparing this income with annual income reported to Centrelink throughout the relevant period; this method of raising a debt has become known as the ‘robodebt’ scheme [8].

- The debt was raised solely on the basis of matched income data from the ATO for the periods stated (see paragraph 6). Raising a debt in this manner means that income earnt in a particular period is not verified and therefore the tribunal cannot be satisfied in which Centrelink benefit fortnight the income was earnt and if indeed income was earnt in any particular fortnightly instalment period [9].

- The Tribunal was not satisfied that a debt exists and decided that the Applicant did not have an NSA debt [22].

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**How it was decided and key facts**

**Outcome**

- The decision under review in relation to the NSA debt for the period between 26 August 2011 to 15 June 2012 (Decision 1) was set aside and substituted with the decision that there was no debt.

- The decision under review in relation to the NSA debt for the period between 28 June 2014 to 3 August 2015 (Decision 2) was affirmed.

**Key Findings**

- The Tribunal found that ‘[t]he information relied upon by Centrelink in this regard has predominantly been provided by way of a data match with the Australian Taxation Office (ATO), providing information about annual earnings from various employers as well as bank statements and a few payslips’ [2].

- The Tribunal found a number of issues with the issues with the data relied on by Centrelink and noted ‘…apart from the ATO data match there is also no evidence of earnings being verified by Centrelink with either the employer or through payslips or bank statements; if this evidence was obtained it is not evident in the papers’ [17].
In relation to Decision 2, the Tribunal found that the debt for this period was calculated using grossed up income amounts from bank statements provided by the Applicant [22].

The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

**Outcome**

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt based on the Applicant’s payroll records which Centrelink was directed to obtain.

**Key Findings**

- The Tribunal stated:

  In determining the overpayment (debt) many years after the event and in the absence of payroll records and/or payslips, Centrelink applied an apportionment method to cross reference amounts averaged from annual figures provided by the Australian Taxation Office with the earnings [the Applicant] had originally reported. Debts raised through this process have been labelled by the media as “robodebts”. While the apportionment method can provide an accurate calculation where income is steady, this is not the case here [3].

  ...The records show she was employed casually and there were fortnights where she earned significant amounts and other fortnights where the income was negligible. Hence, the apportionment method does not work in her circumstances. In the assessment of the matter, Centrelink primarily relied on the apportionment method, which is not correct for these circumstances [4].

  ...Despite the vast number of documents before it, the tribunal was of the view there is a paucity of evidence to provide a breakdown of earnings from each employer for each relevant Centrelink fortnightly instalment of newstart allowance. For this reason, the tribunal cannot be satisfied that the debt as raised by Centrelink is correct. This situation could be remedied by the provision of payroll records and/or payslips. Bank records are of little value as they do not accurately represent the employer pay periods. To waive or write off a debt, the tribunal must first be satisfied that a debt exists. Such a finding cannot be made in this case for the reasons discussed above [5].

  In November 2019, Centrelink publicly announced that it would no longer raise debts based only on averaging of data from the ATO and has now instigated various and more robust processes for the gathering of additional information (including obtaining via its legislative powers, employment records, bank records, payroll records etc). This action is critical in this case, as the evidence discloses [the Applicant] worked variable periods at variable hours and therefore averaging of income over the above period does not produce an accurate statement of the income earned during the individual fortnightly reporting periods that applied to [the Applicant’s] newstart allowance. The existing information therefore is unreliable when it comes to calculating [the Applicant’s] true entitlement to newstart allowance and whether or not there has been an overpayment [6].

  Accordingly, the Tribunal directed Centrelink to obtain payroll records from the Applicant’s employers and recalculate the debt on that basis.

- The Tribunal did not consider whether there were circumstances to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and substituted with the decision that the Applicant had no debt.
Key Findings

- The Tribunal stated:
  ...Centrelink discovered a discrepancy of $12,155.64 between the gross income and the information from the ATO. Centrelink made no attempt to discover why this discrepancy existed. Instead, they apportioned the amount of $12,155.64 over the remaining period of the financial year from 15 April 2014 to 26 June 2014 and raised the debt under review [7].

During the period of the debt, [the Applicant] was not working. She had no earnings in that period. It follows from this that the debt under review is both arbitrary and unlawful. It is arbitrary because it was imposed without any investigation of the discrepancy. It is unlawful because it is contrary to the provisions of section 1073B of the Act, which does not allow such apportionments [8].

- The Tribunal accordingly found that the Applicant did not owe a debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt using payslip information.
- The recalculated debt was recoverable.

**Key Findings**

- The Tribunal stated that the debt originated as a “robodebt” [8].
- The Tribunal found:
  While the tribunal finds that it is likely that [the Applicant] has incurred a debt due to overpayment of newstart allowance during the relevant period because she habitually and erroneously reported her net income rather than her gross income, the tribunal is not satisfied that [the Applicant’s] entitlement to newstart allowance during the relevant period has been calculated with sufficient specificity to determine any resulting debt [10].

  The only way the tribunal can be satisfied that a debt is calculated correctly is based on payroll data provided in documentary form from the relevant employer because the averaging of income does not provide sufficient accuracy because it cannot show the fortnights where someone worked more hours than others; and requiring payment recipients to provide verbal payslip information poses a risk of data entry error with no documents for calculations to be properly checked. The tribunal also finds that payment information derived from bank statements cannot provide sufficient accuracy as it is not always clear what non-assessable items are included, nor can the tribunal be otherwise satisfied that the calculation from net to gross is correct [11].

- Accordingly, the Tribunal directed Centrelink to use its information gathering powers to obtain payroll information from the Applicant from her employer [12].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt using payslip information.
- The recalculated debt was recoverable.

**Key Findings**
• The Tribunal noted that the Applicant’s NSA entitlement was calculated using payslip information for one employer, however, bank statement information was used to calculate his income from the other two employers [7].

• The Tribunal stated:

The tribunal is not satisfied that [the Applicant’s] entitlement to Newstart during the relevant period has been calculated with sufficient specificity to determine any resulting debt. The only way the tribunal can be satisfied that a debt is calculated correctly is based on payroll data because the averaging of income does not provide sufficient accuracy because it cannot show the fortnights where someone worked more hours than others. The tribunal also finds that payment information derived from bank statements cannot provide sufficient accuracy as it is not always clear what non-assessable items are included, nor can the tribunal be otherwise satisfied that the calculation from net to gross is correct [8].

To eliminate any doubt and to determine the exact amount of any debts owing, Centrelink will need to use its information gathering powers under section 192 of the Administration Act to contact [the Applicant’s] employers from the relevant period to obtain payslips in order to make those calculations [9].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt.

• The recalculated debt was recoverable.

**Key Findings**

• The Tribunal found that the original overpayment arose as Centrelink did not take the Applicant’s earnings from Employer 1 into account. Centrelink conceded its error in relation to this [7].

• The Tribunal found:

Regarding the period prior to 6 July 2018, Centrelink indicated it used [the Applicant’s] pay advice for the fortnight ending 18 June 2017. The pay advice contains the entry: “Total Adjustments From Previous Pay Periods (Gross) - (See Over) $537.57”. As there are no further details, Centrelink has used this as an annual figure for a period of 12 months from 28 June 2017. The statutory basis for this approach is section 1073A of the Act (although this provision only applies to lump sum earnings covering a period greater than a fortnight) [11].

Regarding the period from 6 July 2018 Centrelink has confirmed that it has incorrectly used a fortnightly figure of $933.15 instead of $933.15. Centrelink has also advised that no attempt was made to ascertain [the Applicant’s] actual earnings for this period, or, it appears, for any part of the overpayment period. Accordingly, as the debt has to be recalculated, it is appropriate for Centrelink to obtain actual earnings details from QH from 23 June 2017 to 8 November 2018. Full details relating to the pay fortnight ending 18 June 2017 should also be obtained [12].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision under review was set aside and the matter remitted to Centrelink for reconsideration.

**Key Findings**

• The Tribunal indicated that income averaging was used to raise the debt, as not all of the Applicant’s income data had been readily available at the time the debt was calculated.
The Applicant was not able to provide all of the relevant documents to the Tribunal in time for the review.

However, the apportionment method used by Centrelink to calculate that portion of the debt attributable to [the Applicant’s] employment with [Employer] involves in part, an approximation of his earnings each fortnight. The Tribunal notes that the apportionment method used by Centrelink to calculate this segment of the debt involves an approximation of his earnings each fortnight, as well as some reliance on bank statements and bank deposits not included in the Centrelink documents [19].

The Tribunal must be satisfied that the amount of the debt is accurate and reflects the income earned during the debt period. In circumstances such as [the Applicant’s], where he had an irregular work pattern at [Employer], and in the absence of more specific pay information, the Tribunal cannot be satisfied that the debt amount calculated by Centrelink on the basis of regular apportionment of income across a debt period is correct. In this case there is enough doubt in the Tribunal’s mind that, on balance, the debt amount cannot be confirmed [20].

In summary, in this case the Tribunal does not accept the apportionment of the total income earned over the debt period based on data matching from the ATO and is satisfied, on the basis of [the Applicant’s] evidence during the hearing and the information that he provided to Centrelink during the relevant period, that it does not accurately reflect the income that he earned at the time. In the absence of more detailed fortnightly income information in respect of the debt period, the Tribunal is not satisfied that the overpayment amount calculated by Centrelink is correct [22].

The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside because due to insufficient evidence.
- The Tribunal was not satisfied that the Applicant incurred a debt.

**Key Findings**

*The Tribunal indicated that Centrelink had used income averaging to raise the debt, and apportion the Applicant’s income over fortnightly periods.*

- The Tribunal found:
  
  As the NSA income test is based on income from employment undertaken in a particular fortnightly instalment period, the ATO information of itself is simply insufficient to determine the debt owed by the person each fortnight. The Department has more recently publically (sic) acknowledged that the averaging of income based on ATO data alone is not sufficient to constitute evidence of a debt having been incurred. This is particularly so when, as in this case, a person was in receipt of NSA payments during part of each financial year [25].

  The evidence provided by Centrelink is not sufficient to allow any decision maker to reach a comfortable level of satisfaction that [the Applicant] was overpaid, much less that the debt amount was correctly determined [26].

- In lieu of sufficient evidence of the debt, the decision was remitted back to Centrelink for recalculation.
- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review and remitted the Centrelink for recalculation of the debt.
Key Findings

- The Tribunal stated:
  The Centrelink files indicate that the information which Centrelink used to calculate the debt in this matter was the ATO data match and such of [the Applicant’s] pay records as he was able to supply. He could not locate all of the relevant payslips [22].

  That scenario immediately raises the strong probability that the debt may not be strictly correct [23].

- The Tribunal conducted its own calculations based on the ATO data and directed Centrelink to recalculate the debt using the same methodology [33]-[36].
- The Tribunal found that the debts arose as the Applicant under-declared his income [42].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remainder of the debt.

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</table>

How it was decided and key facts

Outcome

- The decision under review to raise an NSA debt of $23,429.34 for the period between 11 August 2010 to 23 was affirmed.
- The decision under review to raise an NSA debt of $6,489.75 for the period between 17 July 2013 to 10 February 2016 was set aside and substituted with the decision not to raise a further debt against the Applicant.

Key Findings

- In relation to the first debt, the Tribunal found that Centrelink obtained relevant payroll records from each of the Applicant’s employers to recalculate the final debt amount. The Tribunal accepted these calculations [4].

- In relation to the second debt, the Tribunal stated:
  ...The authorised review officer noted: “On 29 September 2017, as no further breakdown of your earnings from [your other employers] had been received, the department apportioned the verified income from the Australian Taxation Office over the relevant periods.” In other words, the Second Debt was a robodebt. Centrelink could have taken further action to obtain [the Applicant’s] payroll records, but it elected to not do so. On balance, I am not persuaded that Centrelink has established that [the Applicant] was overpaid in respect of any particular fortnightly instalment period during the longer period from 17 July 2013 to 10 February 2016 (apart from the overpayments that formed part of the overlapping First Debt). For those reasons, the decision to raise the Second Debt will be set aside’ [5].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the first debt [7]-[8].

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<td>CTH.3041.0037.0700</td>
<td>J Nalpantidis</td>
<td>5 June 2020</td>
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How it was decided and key facts

Outcome

- The decision under review was set aside and remitted to the Chief Executive Centrelink for recalculation of the debt as directed.
- The recalculated debt was recoverable.
- The decision under review to apply an interest charge was set aside and substituted with the decision that no interest charge was to be applied.

Key Findings

- The Tribunal noted that Centrelink initially calculated the debt using averaged ATO information and applied a 10% penalty [21]. The Tribunal stated:
The “averaging” method initially applied by Centrelink in [the Applicant’s] case was clearly unreliable as the “average” figure initially applied by Centrelink evenly across each fortnight in the relevant period did not reflect her actual earnings [23].

The tribunal accepts that [the Applicant’s] income varied considerably from fortnight to fortnight and an “average” of her financial year income, as initially applied by Centrelink does not accurately reflect her fortnightly income [24].

- Centrelink recalculated the debt using the Applicant’s bank statements, however, the Tribunal found that the gross income from the Applicant’s employers did not match the income applied by Centrelink [28]-[30].
- The Tribunal also could not be satisfied that Centrelink correctly calculated the Applicant’s business deductions as there was no consideration of allowable deductions [31].
- The Tribunal found:

  In this case the tribunal accepts that [the Applicant] did not work on a stable and consistent basis and her earnings varied from fortnight to fortnight; this is reflected in her net earnings as listed in her bank statements. In the absence of payslip information, the tribunal does not accept Centrelink’s averaging method, which was applied in the initial debt calculations, is appropriate to assess whether or not [the Applicant] incurred a debt and the amount of the debt. Using [the Applicant’s] financial year income and “averaging” this income to a fortnightly amount has the potential to incorrectly assign income to a different fortnight and can result in a skewing of the rate payable and as a consequence the tribunal cannot be satisfied that any calculated debt using this method is accurate or reliable [32].

...

In this case, there is no direct evidence from [the Applicant’s] employer, such as payslips, in the relevant period listing her fortnightly income. [the Applicant] provided bank statements which listed net income from [Employer], which Centrelink “grossed-up” to obtain a gross income figure, taking into account the tax that was paid on that net income [34].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the first debt.

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**Outcome**

- The decision under review was set aside as the Tribunal could not be satisfied that a debt existed.

**Key Findings**

- The Tribunal found:

  In determining the overpayment (debt), Centrelink in the absence of payroll records and or payslips, applied an apportionment method to cross reference reported earnings and entitlements generated as a result, many years after the event, relying in the main on figures provided by the Australian Taxation Office. This process has been labelled by the media as a robodebt. Ordinarily the tribunal has no issues with applying the apportionment method where income is steady however this is not the case here [4].

- The Tribunal noted its understanding that since the ‘robodebt controversy’, Centrelink had instigated ‘various and more robust processes for the gathering of additional information including obtaining via its powers, employment records, bank records, payroll records etc’ and found ‘[t]his had not been done’ in the present case [6]-[7].

- The Tribunal also noted:

  As the alleged overpayment has been calculated with reference to ATO data and applying the averaging method, the tribunal cannot be satisfied that there is a debt in the circumstances of this case, on the evidence before it and so sets aside the decision to raise and recover the debt [7].

- The Tribunal also directed in its reasons that ‘[i]f monies have been recovered to satisfy this debt, they should now be refunded to [the Applicant] until a debt is proven’ [7].

- The Tribunal did not consider waiver or write off by way of sole administrative error or special circumstances.
### Outcome

- The decision under review was set aside and substituted with the decision that the Applicant had no debts.

### Key Findings

- The Tribunal found:

  According to the Centrelink documents, the debts under review were calculated by using information provided by the Australian Taxation Office. This information was apportioned evenly across the relevant date periods. This method of calculation is contrary to the provisions of section 1073B of the Act. That section requires income from employment to be apportioned to the fortnight in which they were earned. That is to say, the method of calculating these debts was unlawful. It follows from this, that [the Applicant] does not have these debts. If [the Applicant] does not have the debts, no penalties can be imposed upon her. I set aside the decision under review. Any monies recovered from [the Applicant], must be repaid to her [8].

### How it was decided and key facts

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### Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation.

### Key Findings

- An ARO affirmed the debt on internal review.
- The Tribunal commented at [3]:

  In determining the overpayment (debt) many years after the event and in the absence of payroll records and or payslips Centrelink applied an apportionment method to cross reference amounts averaged from annual figures provided by the Australian Taxation Office (ATO) with the earnings [the Applicant] had originally reported. Debts raised through this process have been labelled by the media as “robodebts”. While the apportionment method can provide an accurate calculation where income is steady, this is not the case here.

- The Tribunal directed that Centrelink recalculate the debts based on actual fortnightly earnings and should obtain the relevant payslip or bank account information.

### How it was decided and key facts

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### Outcome

- The decision under review was set aside and the Tribunal remitted the decision back to Centrelink to recalculate the debt using payslip information (to be obtained by Centrelink).

### Key Findings

- Centrelink had used income averaging in lieu of other income information. The Tribunal was not satisfied that the calculation is correct and remitted the decision.
- The Tribunal found:

  The amount of the debts determined for [the Applicant] for the periods where averaged income has been applied has not been correctly calculated in accordance with section 1068 of the Act. This is because the evidence does not
establish that [the Applicant’s] income was the same from one period to the next and so an averaging does not reflect actual income for each social security payment period. In such circumstances the debt for those periods needs to be recalculated with reference to actual periodic income [9].

the Department is to obtain detailed payroll records from each of [the Applicant’s] employers for which averaged income has been applied... In the event that information is not available, grossed-up amounts assessed from bank statement records obtained from the relevant financial institution for [the Applicant’s] bank account may be used. The amount of income received for each period specified in section 1073B of the Act is to be applied according to that provision. [the Applicant’s] actual entitlement to newstart allowance is to be calculated thereafter according to section 1068 of the Act [10].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and substituted with the decision that the debt be recalculated on the basis of employer payroll information, with any resultant debt to be recoverable.

**Key Findings**

- The decision under review for the Tribunal involved determining whether the Applicant was overpaid Parenting Payment for the periods 2 July 2010 to 16 December 2010 and 13 July 2012 to 26 December 2013 [1]. The Applicant was a party to the Robodebt Class Action [3].
- The Tribunal stated:
  
  The Tribunal discussed the contents of the authorised review officer’s decision within the context of the robodebt being raised. It is apparent from page 11 of that decision that the debts were raised on the basis of a data match with the ATO and there doesn’t appear to have been any further investigation done by way of obtaining payslips or PAYG data in order to properly distribute [the Applicant’s] income into the appropriate fortnights required to determine her Centrelink rate. [The Applicant] was rightly concerned that a debt could have been originally raised for employment that she received from [Employer] when she had actually moved to the Gold Coast in May 2010 and Centrelink had kept her weekly income from [Employer] applicable to her parent payment between July and December 2010 [11].
- The Tribunal was critical of the ARO’s determination which was not based on the most accurate debt possible [15]-[16].
- The Tribunal noted there was no evidence of Centrelink making any enquiries with the Applicant’s employers to obtain payslip records, PAYG records or employment information that could provide a more accurate description of when she received the relevant amounts of income within the overall debt period. It not take significant points of enquiry for the ARO to discover that was a debt incorrectly raised [17].
- The Tribunal sent the matter back to Centrelink in order to seek particular employment data and if this information did not exist, then ‘Centrelink may be in a position whereby they distribute the difference between the income declared and the records held by the ATO but until further enquiries have been made, the robodebt process is not something which should have been undertaken’ [18].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink for recalculation of the debt.
Key Findings

- Centrelink issued a notice to recover $11,713.90 from the Applicant due to overpayment of parenting payment. The Applicant’s debt was originally raised due to income data-matching from the ATO.
- In the circumstances of this case the Tribunal decided it would be appropriate to send the matter back to Centrelink to consider if the Applicant has a debt due to overpayment of parenting payment [54].
- The Tribunal discussed robodebts at length and considered the Amato proceedings.
- The Tribunal stated:
  
  The Tribunal has not been provided with details from Centrelink about how the “robo-debts” will be treated and if [the Applicant’s] debt is an “eligible debt” for which recovery will not be sought by the Commonwealth [53].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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How it was decided and key facts

Outcome

- The decision under review was set aside and remitted back to Centrelink for further investigations as to the Applicant’s actual income.

Key Findings

- The Applicant received a debt arising from overpayment of newstart allowance.
- An ARO affirmed the debt on internal review.
- The Tribunal commented at [19]:

  However, the Tribunal is not in the position to accurately determine what [the Applicant’s] fortnightly earnings actually were in the debt periods and therefore if the debt calculations are correct. The calculations appear to have been averaged out over the period of the debt notwithstanding that [the Applicant]’s earnings varied.
- The Tribunal also commented at [27]:

  At this stage, while the level of debt is unclear, the Tribunal does not believe it is appropriate to waive any or all of the debt on the basis of special circumstances.

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How it was decided and key facts

Income averaging was not a key issue in this matter.

Outcome

- The decision under review was affirmed.

Key Findings

- An ARO varied the debt on internal review.
- The Applicant conceded she had made unintentional errors when declaring her earnings to Centrelink.
- Given the Applicant received multiple different calculations of her debt she ‘understandably has little confidence in Centrelink’s debt calculations’ [8].
- In regards to using apportioned income, the Tribunal commented at [11] and [14]:

  As [the Applicant]’s pay periods do not coincide with her newstart allowance payment fortinights, in the absence of more fine-tuned earnings details, Centrelink has, in accordance well established principles, apportioned the earnings across the payment fortinights.
The authorised review officer’s overpayment calculations use Centrelink’s ADEX program, which is the program used to calculate the ongoing entitlements of Centrelink recipients. Again, as [the Applicant]’s pay periods do not coincide with her carer payment fortnights, Centrelink has apportioned the earnings across the payment fortnights.

- The Tribunal considered income averaging was appropriate in the circumstances.
- The Tribunal was satisfied that the calculations were correct on this basis.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt. Part of the debt was already written off due to the financial impact of COVID-19.

### How it was decided and key facts

**Outcome**

- The decision under review was set aside and substituted with the decision that there was no lawfully recoverable debt due to overpayment of DSP in the relevant period.

**Key Findings**

- The Tribunal noted there was no evidence that the Applicant provided Centrelink with her payslips or bank statements for Centrelink to calculate the overpayment and found that Centrelink had:
  
  ... apportioned what it considers are the non-declared amounts over the fortnights [the Applicant] was working.

In the absence of [the Applicant’s] pay records the Tribunal could not be satisfied that the overpayment and debt have been correctly calculated [26].

In this matter the Tribunal is reviewing an overpayment and debt that was raised due to income data-matching from the ATO [27].

- The Tribunal referenced the orders made by Justice Davies in Deanna Amato v The Commonwealth of Australia No VID611/2019 (Amato) and stated:

  The Tribunal notes that the Australian Government conceded in the Amato matter that there was no lawful basis for raising debts on averaging matched data. Nor was there a lawful basis for adding a 10% penalty fee to such debts. Nor was there a lawful basis to recover such debts by garnishee of an income tax refund [31].

- The Tribunal was satisfied that the debt was raised partially using income averaging of ATO data [33].
- The Tribunal was also satisfied that the ‘calculation of the overpayment to [the Applicant] was not validly made because the information before the original decision-maker was not capable of satisfying the decision-maker’ that the debt was owed within the scope of ss 1222A(a) and 1223(1) of the Social Security Act 1991 (Cth) [34].
- The Tribunal did not consider whether circumstances existed to justify the write off or waiver of the debt.

### How it was decided and key facts

**Outcome**

- The decision under review was set aside, and the Tribunal directs the matter be sent back to Centrelink for recalculation, that the 10% recovery fee be set aside, and that the debt recovery by garnishee notice was correct.

**Key Findings**

- An ARO varied the debt on internal review.
- The Tribunal commented at [7]: [8]:

  [The Applicant] gave evidence that she had received notice that her debt was as a result of the Robo Debt process initiated by Centrelink and now subject to a class action. She was a party to that class action by the nature of how her debt had been raised against her initially through the annual averaging of income rather than payslips.
She acknowledged that this was no longer the case because she had been forced by Centrelink to find payslips to support her employment payments during the time in which she worked and her debt had been recalculated; however she did not believe that the full extent of payslips from her employers had been obtained. She had been unable to retrieve them in their entirety and she was uncertain whether she had in fact worked throughout all the time periods in which the debt had been raised and distributed. [The Applicant] indicated that within her own material her end dates of employment were in contrast to when Centrelink had her concluding employment upon their records.

- The Tribunal was of the view that the final debt amount did not appear to be calculated as per the averaging of income [10].
- Given the number of times the debt has been recalculated, the Tribunal remitted the decision back to Centrelink, so that they can formally seek payslips for the relevant periods to ensure the final debt calculation is correct [10].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and the decision was remitted to Centrelink for recalculation on the basis of payslip information.

**Key Findings**

- An ARO affirmed the debt on internal review.
- The decision concerned a parenting payment.
- The Applicant submitted further payslip information to the Tribunal which provided new information about income amounts and pay periods.
- The Tribunal directed that the debt be recalculated based on actual income information as provided by the Applicant.
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- Part of the decision under review was varied and the debt written off. The other part of the debt was remitted to Centrelink for recalculation.

**Key Findings**

- An ARO affirmed the debt on internal review.
- The Applicant did not correctly declare all of her income, and the Tribunal was satisfied the first three of the five debts had been correctly calculated as Centrelink had received information about her actual income from her various employers.
- In regards to the other two debts, the Applicant had not declared any income. In lieu of pay slip information Centrelink used averaged fortnightly income amounts to determine the debt [8].
- The Tribunal commented at [9]-[10]:

  In his written submissions to the tribunal, [the Applicant] contended that the recent Federal Court decision in the matter of Deanna Amato v The Commonwealth of Australia (VID611/2019) established that the use of income averaging was not a lawful basis for raising a debt against an individual....

It is a matter of public record that Centrelink announced in November 2019 that it would no longer raise debts on the basis of averaged income and that it intended to revisit previous debts where this had occurred. This change in Centrelink procedure followed the court decision cited by [the Applicant] and months of adverse media publicity.
concerning what have become widely known as “robodebts”... Given the matters raised by [the Applicant], the tribunal agrees that the averaged income figures used by Centrelink in calculating the debts of $25,427.92 and $6,444.98 are unlikely to correspond with [the Applicant]’s actual income for the fortnights in question. In the absence of any reliable evidence about [the Applicant]’s actual income in particular fortnights, the tribunal is not satisfied that debts can currently be quantified ...

- The Tribunal was not satisfied that these remaining debts had been correctly calculated, and remitted the decision back to Centrelink for recalculation. Centrelink was to obtain actual pay slip information in order to accurately calculate the debt.
- One of the debts was waived. The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the remaining debts.

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**How it was decided and key facts**

**Outcome**
- The decision under review was set aside as the Tribunal could not be satisfied that the debts as calculated existed.

**Key Findings**
- The Tribunal commented at [4]:
  
  In determining the overpayment (debt), Centrelink in the absence of payroll records and/or payslips, applied an apportionment method to cross reference reported earnings and entitlements generated as a result, many years after the event, relying in the main on figures provided by the Australian Taxation Office (ATO). This process has been labelled by the media as a robodebt. Ordinarily the tribunal has no issues with applying the apportionment method where income is steady however this is not the case here.

- The Tribunal commented at [6] and [7]:
  
  The tribunal understands that since the robodebt controversy, most recently in November 2019 and again in May 2020, Centrelink has instigated various and more robust processes for the gathering of additional information including obtaining via its powers, employment records and payroll records etc.

- This has not been done here. As the alleged overpayment has been calculated with reference to ATO data and applying the averaging method, the tribunal cannot be satisfied that there is a debt in the circumstances of this case on the evidence before it and so sets aside the decision to raise and recover the debt.

- The Tribunal was not satisfied that the debt calculations were correct, and remitted the decision back to Centrelink for recalculation based on actual income information.

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**How it was decided and key facts**

**Outcome**
- The decision under review was set aside and substituted with the decision that there was no debt with any repayment to be refunded.

**Key Findings**
- A YA debt was raised on the basis of a data-match with the ATO for the 2015/2016 and 2016/2017 years [7].
- The Tribunal noted the ATO data indicated the Applicant earnt a higher income than the income she declared to Centrelink [8]. An ARO affirmed the decision [2].
- The Tribunal stated in regards to the basis of the debt calculation:
  
  Additionally, the ADEX debt schedule before the tribunal with the debt amount relevant to this review shows that the income has been apportioned (averaged) without reference to the bank statements provided by [the Applicant] to the tribunal [14].
• The Tribunal stated:

In conclusion the tribunal finds that this debt in the current form is a robodebt and the alleged overpayment has been calculated with reference to ATO matched data by applying the averaging method. The tribunal cannot be satisfied that there is a debt in the circumstances of this case and sets aside the decision to raise and recover the debt [19].

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**How it was decided and key facts**

**Outcome**

• The decision was set aside and remitted to Centrelink for recalculation on the basis of obtaining employer payslips, with the recalculated debt to be recoverable.

**Key Findings**

• Centrelink raised a NSA debt following an ATO data match. Centrelink reassessed and reduced the debt. An ARO affirmed the decision, further revising and reducing the debt amount [2].

• The Tribunal stated:

According to the Centrelink papers, [the Applicant’s] entitlement to newstart allowance during the relevant period has been calculated using a combination of bank statement and payslip information from [Employer 1] and [Employer 2]. The tribunal also notes that this debt originated using ATO data match and therefore began as what is commonly referred to as a ‘Robodebt’ [7].

• The Tribunal found in relation to the averaging of income:

The only way the tribunal can be satisfied that a debt is calculated correctly is based on payroll data provided in documentary form from the relevant employers because the averaging of income does not provide sufficient accuracy as it cannot show the fortnights where someone worked more hours than others; and requiring payment recipients to provide verbal payslip information poses a risk of data entry error with no documents for calculations to be properly checked. The tribunal also finds that payment information derived from bank statements cannot provide sufficient accuracy as it is not always clear what non-assessable items are included, nor can the tribunal be otherwise satisfied that the calculation from net to gross is correct [9].

• The Tribunal stated that Centrelink would need to use its information gathering powers to contact the relevant employers and determine the exact amount of the debt owing [10].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

• The decision was set aside and remitted to Centrelink for recalculation on the basis of payslips, and if a debt was found, the information was to be documented so that it was understandable and capable of being checked by a layperson.

**Key Findings**

• Following a data-match with the ATO, Centrelink raised a YA debt for the 2017/2018 FY which was reassessed and increased on the basis of payslips provided by the Applicant [2]-[3]. An ARO affirmed the decision and increased the debt amount [4].

• The Tribunal found it was not satisfied the ARO’s findings could be relied on [16]. In regards to Centrelink’s calculations of the debt:

the verified earnings and apportioned earnings as set out in the Centrelink documents do not correspond with the information in the pay slips provided in the Centrelink documents; and no pay slips have been provided showing [the Applicant’s] income during the debt period [14].
• The Tribunal stated:

While [the Applicant] may have been overpaid during the debt period, the quantum of any overpayment is not able to be verified on the basis of the documentation and calculations provided. Alternatively, [the Applicant] may have been overpaid during the period actually covered by the available pay slips (i.e. prior to the current debt period), but no calculations have been provided to demonstrate this. The concerns and discrepancies outlined in paragraph 14 of these Reasons explain why the tribunal is not satisfied that the ARO’s findings can be relied on [16].

• The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

### AAT Review Number DOC ID Member Date

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<td>CTH.3025.0007.3766</td>
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<td>22 October 2020</td>
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### How it was decided and key facts

#### Outcome

The decision under review was set aside and substituted with the decision that no debt has been proved, and any debt arising from overpayment must be waived.

#### Key Findings

- Centrelink raised a YA debt on the basis of being overpaid YA [1]. An ARO varied the decision increasing the debt amount [2].
- The Tribunal noted Centrelink calculated the initial debt by averaging income. A reassessment was undertaken on the basis of payslips provided by the Applicant [6].
- The Tribunal stated:

  The fact that four attempts have been conducted raises some doubt in that regard. Moreover, the calculation schedule (Tribunal Papers, page 51) shows, for the period in question total earnings (in the pay cycle) of $2,507 and total declared earnings for the reporting cycle of $2,460 – a discrepancy of $47. Aside from the waste of human and financial resources brought to bear in this relatively trivial exercise, what that means is that the Tribunal cannot be satisfied that the debt has been proved on the balance of probabilities. The Tribunal therefore finds that the debt has not been validly raised [7].

- The Tribunal found sole administrative error existed to justify the waiver of the debt. The Tribunal stated:

  After the Agency had received [the Applicant’s] payslips, it had all the information necessary for it to accurately calculate her entitlement. Given that [the Applicant] has received her entitlements in good faith, having honestly and diligently attempted to report accurately, that means that, after 15 August 2018, any overpayment became solely attributable to the administrative failure of the Agency to raise the debt, so the first two conditions were satisfied. The Agency thus had six weeks from 15 August 2018, to raise a valid debt. It did not do so until April 2019. The third condition was thus satisfied. So, if there is a valid debt, it must be waived in any event [9]-[10].

### AAT Review Number DOC ID Member Date

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### How it was decided and key facts

#### Outcome

The decision under review was varied and remitted to Centrelink for recalculation of the Applicant’s proper entitlement to NSA and Austudy, with any resultant debt to be reduced and waived without 10% penalty.

#### Key Findings

- Centrelink raised two debts in respect of the 2015/2016 and 2016/2017 FY for overpayment of NSA and Austudy [1]. Internal review on the basis of payslips provided by the Applicant raised a third debt for the 2017/2018 FY [2]. The debts were varied on internal review again and reduced [3].
- The Applicant accepted that he did not accurately report his income [7].
- The Tribunal made a number of statements in regards to Centrelink’s calculation of the debts. The Tribunal noted:
Ultimately when presented with the original debt in the order of $11,000, itself grossly inflated because of the so-called ‘Robodebt’ techniques of averaging, [the Applicant] found himself so overwhelmed by the fear of incurring further debt that he voluntarily withdrew from social security benefits [8].

- The Tribunal found administrative error existed to justify the waiver of the debts, stating the following:

  On the other hand, if he has done so out of despair or misapprehension provoked by an alarmingly large and unlawful demand made by the Agency, it would be unfair to allow the Agency to recoup any properly owed debt without bringing to account the amount of benefits which [the Applicant] might otherwise have claimed, but has felt obliged to forgo. That would produce a windfall to the Agency at [the Applicant’s] expense. It would also allow the Agency to profit from its own wrong. It would also have the counter-productive effect of punishing [the Applicant] for his determination to be self-reliant. In the Tribunal’s opinion, these effects would cause the Act to operate unfairly and contrary to the legislative intent, so that the discretion should be exercised favourably to reduce the amount of the debt by the amounts which [the Applicant] would have been entitled to, but did not claim, in the 2018/19 and 2019/20 financial years, had he not withdrawn from his newstart allowance/austudy entitlements when he did [10]-[11].

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How it was decided and key facts

**Outcome**

- The decision under review was set aside and substituted that there was no debt for PP, the FTB debt calculation was correct and the debts be waived.

**Key Findings**

- Centrelink raised three debts in relation to PP and FTB [1]. The Tribunal stated:

  A debt arose for overpayment of PP from income estimates from the Australian Taxation Office (ATO) compared to her wage disclosures to Centrelink via the “robodebt” scheme in an amount of $2,270.23. This then directly affected her FTB payments [10].

- An ARO varied the PP debt and affirmed the FTB debts [2].

- The Tribunal stated the Applicant gave evidence of the following:

  [The Applicant] gave evidence that she had been made a party to the class action against Centrelink for the improper use of the robodebt system in the calculation of her PP debt. She said that since the decision of the authorised review officer, Centrelink had zeroed the debt to nil. This letter was not in the Centrelink hearing papers. Following the hearing [the Applicant] provide the relevant correspondence dated 31 July 2020. It stated the following: Dear [Applicant] Your income compliance debt has been changed to $0.00. Centrelink has changed how we use employment income information from the Australian Taxation Officer in income compliance reviews. You previously had debts raised using averaging of ATO information. We no longer do this. The debts below have been changed to $0.00: P5349955 parenting payment - $0.00 [9].

- The Tribunal found circumstances existed to justify the waiver of the debts. The Tribunal found the following:

  [The Applicant] was the aggrieved party to a scheme whereby her debt was calculated via the robodebt mechanism which has now been overhauled by the Commonwealth government. She had had a number of years suffering significant stress as a result and her PP debt waived following the class action against Centrelink [24].

In these circumstances the Tribunal finds there are special circumstances pursuant to section 101 of the A New Tax System (Family Assistance) (Administration) Act 1999 facilitating the FTB overpayments to be waived. Accordingly these amounts do not need to be repaid [25].
The decision under review to raise and recover an austudy debt was varied to the extent that the overpaid amount was

debts.

Key Findings

- Centrelink raised two PP debts and four family assistance debts which were affirmed by an ARO [1].
- The Tribunal stated in regards to the calculation of the debts:

  When Centrelink obtained information from the Australian Taxation Office (ATO), [the Applicant] supplied her pay slips from the [Employer 1]. To the extent that any part of the parenting payment debts arises from [the Applicant’s] employment with the [Employer 1], it was calculated lawfully [13].

  At the hearing, [the Applicant] told me that she was unable to provide payslips from the [Employer 2] before Centrelink finalised the parenting payment debts. As far as I can tell, so much of the parenting payment debts as arises from that employment was calculated by relying solely on annual information from the ATO. I conclude, therefore, that the resulting part of the parenting payment debts constitutes an unlawful robodebt. I set aside that part of the parenting payment debts. I assume that [the Applicant’s] parenting payment was calculated using her declaration of income from the [Employer 2]. That is the lawful calculation [14].

- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the resultant debt.

### How it was decided and key facts

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<td>26 November 2020</td>
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#### Outcome

- The decisions under review were set aside and remitted to Centrelink for recalculation with the directions that:
  - The income declared by the Applicant as received from one of her employers are accepted as the earnings;
  - There was no debt arising from one employer; and
  - Any resultant debt was recoverable.

### How it was decided and key facts

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#### Outcome

- The decision under review to raise and recover a NSA debt was affirmed.
- The decision under review to raise and recover a YA debt was set aside and remitted to Centrelink for reconsideration in accordance with the direction to obtain income details from the Applicant’s employer and apply same to the rate calculator.
- The decision under review to raise and recover an austudy debt was varied to the extent that the overpaid amount was recalculated to rectify the error and recalculate the overpaid amount.

### Key Findings

- The Tribunal noted the Applicant raised concerns that Centrelink had averaged the Applicant’s income in calculating the debts, rather than applying the income to the relevant instalment fortnight in which it had been earned [8].
- The Tribunal stated that, in making the final debt calculations, Centrelink had for the most part relied upon pay advices provided by the Applicant. The Tribunal was satisfied the Applicant had been overpaid as it was evident that not all of the income the Applicant earned from employment was taken into account when income support payments were calculated and paid to him [9].
- The Tribunal found the NSA payment had been correctly calculated [10].
- The Tribunal found the YA overpayment had not been correctly calculated – the Tribunal noted that the Applicant was unable to supply pay advices for three fortnights and Centrelink had subsequently used year-to-date figures from other pay advices to work out the gross amounts earned by the Applicant in that 6-week period and averaged the amount over the period [10].
- The Tribunal stated re the YA overpayment:

  that calculation method used is not correct as gross fortnightly income is to be applied to the instalment period relevant to when it was earned. Centrelink’s work in establishing the overpayment is not yet complete as it needs to gather the
information necessary to correctly calculate the overpaid amount. As [the Applicant] does not have the information Centrelink will need to gather it from his employer [10].

- In relation to the Austudy overpayment, the Tribunal found the Applicant’s gross income had been incorrectly recorded in the casual earnings apportionment sheet as having been apportioned across 76 days, instead of being apportioned across 14 days [10].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and substituted with the decision that the Applicant does not have a DSP debt arising from the relevant period and the debt is to be recalculated on the basis of the Tribunal’s findings as outlined in para 14 of these reasons, with any recalculated debt to be recovered from the Applicant.

**Key Findings**

- The Tribunal was satisfied that not all of the Applicant’s income was included when calculating his rate of DSP paid to him throughout the period, but noted there were no payslips before the Tribunal for a particular employer after 3 November 2013 and income had been included in the debt calculations to 13 December 2014 [12].
- The Tribunal stated it was unable to determine if the remainder of income calculations from 4 November 2014 had been determined ‘in the absence of payslip or payment summary information before the tribunal from this employer’ and there was also ‘some evidence in the EANS screen that some portions of the income from IAG have been annualised’ [12].
- The Tribunal directed that the debt be recalculated using payslip or payment summary information contained in the hearing papers and no portion of the debt is to be averaged [13].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.

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**How it was decided and key facts**

**Outcome**

- The decision under review was set aside and remitted to Centrelink for reconsideration in accordance with directions that Centrelink verify the Applicant’s actual income from the Applicant’s employer for the relevant period and apply her actual income to the relevant Centrelink fortnights, with the recalculated debt to be recoverable.

**Key Findings**

- The Tribunal noted that the Centrelink material included information from the ATO which indicated a discrepancy between the Applicant’s 2014/15 FY taxable income from her employer and her Centrelink reported income [16]. The Centrelink material also included payslips provided by the Applicant as part of the ‘online review of her income’ [17].
- The Tribunal examined Centrelink’s debt calculations and identified discrepancies between the information contained in the earnings screen, the ARO summary, and the apportioned earnings table upon which the debt calculations were based. The Tribunal noted as an example that earnings from payslips had been incorrectly apportioned for the duration of the debt period and was not satisfied on the balance of probabilities that the debt had been correctly calculated by Centrelink [27].
- The Tribunal noted there was no direct evidence from the Applicant’s employers, such as actual payslips or other records verifying her pay and when she earned that pay, such as for example timesheets [29].
- The Tribunal concluded it was likely that the Applicant was overpaid NSA in the relevant period, but could not be satisfied that Centrelink had correctly calculated the debt [30].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
The Tribunal stated:

The Tribunal noted:

Key Findings

Outcome

- The decision under review was set aside and substituted with the decision that the debt is to be waived.

Key Findings

- Centrelink raised the debt following a data match with ATO. The Tribunal noted that the debt was initially a robodebt [23].
- The Tribunal found that Centrelink’s calculations were not accurate due to incorrect apportioning of his earnings to instalment periods [18].
- The Tribunal found that the Applicant had underreported his income [19].
- The Tribunal found that special circumstances existed to justify the waiver of the debt. The Tribunal noted that the special circumstances of the case included that the debt was initially a robodebt, which caused the Applicant stress and indignation. The Tribunal stated:

  By alleging a debt in this way, Centrelink unfairly put an onus on [the Applicant] to disprove it. Furthermore, because this debt was raised more than four years after the alleged overpayments, the records [the Applicant] needed to prove his case were not readily available [23].

How it was decided and key facts

AAT Review Number | DOC ID | Member | Date
---|---|---|---
2021/B160988 | CTH.3041.0169.8220 | D Benk | 20 July 2021

Outcome

- The decision under review was set aside and remitted to Centrelink for recalculation on the basis of obtaining payslips from the Applicant’s employer.

Key Findings

- Centrelink raised a DSP debt and NSA debt for the periods from 8 January 2015 and 15 March 2016, and 7 March 2016 to 23 June 2017 [1].
- The Tribunal stated:

  Centrelink applied an apportionment method to cross reference amounts averaged from annual figures provided by the Australian Taxation Office with the earnings [the Applicant] had originally reported for several different employers [3].

  The Tribunal noted:

  Debts raised through this process have been labelled by the media as “robodebts”. While the apportionment method can provide an accurate calculation where income is steady, this is not the case here. [The Applicant] then provided some bank statements to Centrelink but the sequence of statements was incomplete, that is, a few months were missing. Centrelink then reconciled the earnings by applying the net to gross method from the data obtained in the bank statements which resulted in a small reduction of the debt [4].

  The Applicant was a casual employee during the debt periods [5].

  The Tribunal stated:

  In short, the reliance on the incomplete series of bank statements and the inability to identify when the income was earned, results in the tribunal having concerns that the debt as claimed has been incorrectly calculated. As indicated above, preliminary review of the debt calculations reveal both overpayments and underpayments, but the true extent remains unknown as the bank deposits do not show the periods in which the monies were earned.

  The Tribunal found it could not consider write-off or waiver of the debts as it could not be satisfied that the debt had been correctly calculated or if a debt even existed [6]-[7].
Outcome

- The decision under review was set aside and in substitution $512 of the debt was waived.

Key Findings

- Centrelink raised a YA debt and 10% penalty following information received from the ATO which suggested the Applicant had not declared all earnings [8]-[9].
- The Tribunal stated:
  
  Centrelink then raised the debt by apportioning the amounts in the ATO information equally over the youth allowance pay periods. This action was unlawful, and the original debt raised by Centrelink came into the category of a robodebt [8].
- Centrelink recalculated the debt based on bank statements provided by the Applicant [9]. The interest charge was removed [9].
- The Applicant gave evidence that the money she earned included commissions on sales. The Tribunal noted that the income test treats commissions differently from wages which means it cannot be satisfied that the debt has been calculated properly [11].
- The Tribunal noted the Applicant did not dispute a debt but disputed the amount noting she was not confident the grossed-up amounts were properly assigned to the YA payment cycle [12]. The Tribunal found it was not satisfied of the debt amount [12] but that 50% of the debt should be waived [17].

Outcome

- The decision under review was set aside and remitted for recalculation on the basis of obtaining employer pay records, including the interim direction to halt debt recovery action.

Key Findings

- Centrelink raised a DSP debt on the basis of pay information from the ATO [1]-[2].
- The Tribunal noted as part of the documentation on appeal:
  
  In the letter from Centrelink, [the Applicant] was classified as falling into a Class 3b claimant defined as ‘this debt used average ATO income information. The amount repaid was less than what was owed after the debt was recalculated using verified income.’ (the issue here is that not all of the income from the three employers has been verified) [7].
- The Tribunal found it was not satisfied of Centrelink’s debt calculation overall in the absence of all payroll data from each employer and the inability to identify payment periods of grossed up income from bank statements [9].
- The Tribunal found that no sole administrative error or special circumstances existed to justify the write off or waiver of the debt.
# Royal Commission Staff List

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<tr>
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<tr>
<td>Rebecca Abbott</td>
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<tr>
<td>Samuel Burgess</td>
<td>Assistant Director Media</td>
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<tr>
<td>Andrew Carolan</td>
<td>Videographer and Content Creator</td>
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<tr>
<td>Elizabeth Clark</td>
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<td>Nicholas Davison</td>
<td>Director Submissions</td>
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<tr>
<td>Laura Dawson</td>
<td>Counsel</td>
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<td>Kristy Do</td>
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<tr>
<td>Karan Gaylard</td>
<td>Director Media, Communications and Publications</td>
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<td>Simran Goklaney</td>
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