

Carney Public Lecture 2025

Australian Social Services Scandals: Towards Dystopia? Or Equity and Justice for the Vulnerable?

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Abstract

This Lecture explores the harm and injustices experienced by vulnerable Australians due to social services program failures such as robodebt, employment services income support sanctioning, and the apportionment scandals. I also deal with concerns about proposed changes to the way National Disability Insurance Scheme ('NDIS') budgets are determined. I argue that while legal protections and remedies have been well renovated to accommodate individual social security grievances (restoring fidelity to liberal values), law reform has failed adequately to address either the systemic harms and mass grievances (a failure to guarantee socio-economic values such as distributional justice), or to develop preventive counters to structural forces that give rise to such failures. I suggest that avenues of redress for social services (such as the NDIS) provide even less by way of individual or systemic justice. I conclude that the mainly extra-legal successes of other governance measures may offer a better response to systemic injustices in social services.

Please cite this article as:

Terry Carney, 'Carney Public Lecture 2025: Australian Social Services Scandals: Towards Dystopia? Or Equity and Justice for the Vulnerable?' (2026) 48 *Sydney Law Review* 22190: 1–20 <<https://doi.org/10.30722/slr.22190>>.

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This is a revised version of the Inaugural Carney Public Lecture for the University of Sydney Law School's Sydney Health Law research centre.

The Lecture was delivered at the University of Sydney on Thursday 11 December 2025.

A Fellow of the Australian Academy of Law and a past President (2005–07) of the International Academy of Law and Mental Health, Professor Carney has chaired Commonwealth bodies such as the National Advisory Council on Social Welfare and the Institute of Family Studies, along with various state inquiries on child welfare, adult guardianship and health law. He is currently a chief investigator on a Medical Research Future Fund project 'Building Capacity for Supported Decision-Making for People Living with Dementia and Acquired Disability (BUDDY)' and an Associate Investigator at the Australian Research Council ('ARC') Centre of Excellence for Automated Decision-Making and Society (ADM+S Centre), writing on issues of automation in social security law, welfare services and the National Disability Insurance Scheme ('NDIS'). A former part-time member for nearly forty years of the federal administrative tribunal reviewing social security decisions, he was instrumental in ruling 'robodebt' to be unlawful.

I Introduction

This Lecture tackles issues presented by what are popularly known as ‘welfare scandals’ that have arisen in the income security and welfare services — part of a much broader human services system that includes health services.

Health services and social welfare have much in common. Both use direct transfers of money (Medicare benefits and social security payments) along with programs of residential and community-based services, whether in-patient and out-patient medical care, or the National Disability Insurance Scheme (‘NDIS’), aged care and social services. Both fields have been unduly dominated by liberal-individualist paradigms:

- in health, by the concentration on issues in clinical medicine at the expense of the population-wide systemic interest of public health; and
- in social welfare, in undue public attention on supposed individual ‘fault’ for conditions such as unemployment (‘dole bludger’ ideology), to the neglect of systemic drivers of the employment market or system-wide design failures of welfare administration (the targeted compliance framework (‘TCF’) scandal).

In both domains, law appears to struggle more than in other fields to preserve values of due process, respect for the rule of law, and accountability and redress for harm. Both the right to health and the right to social security are protected in international law.¹ However, neither right is sufficiently concrete to serve to hold governments accountable for underfunding or inequitable access to health and social welfare and, as a consequence, distributional inequality persists in many areas, including mental health care.²

For Australians of working age and workforce capacity, welfare (whether as income support and/or welfare services) has been transformed in four main ways:

- (1) engagement with welfare increasingly is more virtual (digitised smart-phone interfaces) than human-centred citizen/state interaction;³
- (2) welfare increasingly is outsourced to private sector providers contracted by government, rather than delivered by government ‘in-house’;⁴

¹ Russell Solomon, *Australia’s Engagement with Economic and Social Rights: A Case of Institutional Avoidance* (Palgrave Macmillan, 2021) 47–112 (health), 225–74 (social security) <<https://doi.org/10.1007/978-981-16-0033-3>>.

² Terry Carney, ‘Socio-Economic Inclusion and Mental Health Law’ in Brendan D Kelly and Mary Donnelly (eds), *The Routledge Handbook of Mental Health Law* (Routledge, 2023) 371 <<https://doi.org/10.4324/9781003226413-26>>.

³ Jennifer Raso, ‘Implementing Digitalisation in an Administrative Justice Context’ in Marc Hertogh, Richard Kirkham, Robert Thomas and Joe Tomlinson (eds), *Oxford Handbook of Administrative Justice* (Oxford University Press, 2022) 521 <<https://doi.org/10.1093/oxfordhb/9780190903084.013.27>>; Sarah Ball, Michael McGann, Phuc Nguyen and Mark Considine, ‘Emerging Modes of Digitalisation in the Delivery of Welfare-to-Work: Implications for Street-Level Discretion’ (2023) 57(7) *Social Policy & Administration* 1166 <<https://doi.org/10.1111/spol.12939>>.

⁴ Mark Considine, ‘Markets, Networks and the New Welfare State: Employment Assistance Reforms in Australia’ (1999) 28(2) *Journal of Social Policy* 183 <<https://doi.org/10.1017/S0047279499005607>>.

- (3) welfare administration is increasingly shifted from government onto citizens (self-managed ‘responsibilisation’⁵); and
- (4) welfare ‘decisions’ now happen at warp speed and massive scale.⁶

The focus of this Lecture, however, is just a narrow sliver of these issues; the issues posed historically by robodebt and partially reprised in the yet-to-be-resolved TCF or the rather different, but still concerning, ‘apportionment’ episode; and on the issues posed historically by aborted changes to the way the participants’ individual NDIS budgets were to be determined, as partially revisited in changes foreshadowed to begin to roll out from the middle of 2026.

Vulnerability is the conceptual lens often applied by researchers as best suited to understanding these issues,⁷ but it also has strong popular appeal in community debate. For example, vulnerability was central to the framing adopted by the Royal Commission into the Robodebt Scheme (‘Robodebt Royal Commission’) in its analysis of how over half a million victims incurred over three-quarters of a million illegal, false and unethical debts at a cost to government of around \$2.3 billion.⁸ The vulnerability of people reliant on below-poverty-line working-age social security payments to loss of essentials (such as shelter, food, and psychological wellbeing) was also central to the Commonwealth Ombudsman’s framing of the harms from wrongful suspension of payments due to TCF failings (even where those payments were later repaid in full).⁹

Like other framings, vulnerability is a contested concept.¹⁰ But for present purposes, we can distinguish three sub-types: ‘inherent vulnerability’ (intrinsic to

⁵ For discussion of the neoliberal governance shift from state to individual or community responsibility, see BJ Brown and Sally Baker, *Responsible Citizens: Individuals, Health and Policy under Neoliberalism* (Anthem Press, 2012); Kirsi Juhila, Suvi Raitakari and Christopher Hall (eds), *Responsibilisation at the Margins of Welfare Services* (Routledge, 2017), see esp ch 2: Kirsi Juhila, Suvi Raitakari and Cecilia Hansen Löfstrand, ‘Responsibilization in Governmentality Literature’ <<https://doi.org/10.4324/9781315681757>>. The cashless welfare card, initially introduced for indigenous clients, was an egregious Australian example: Shelley Bielefeld, ‘Indigenous Peoples, Neoliberalism and the State: A Retreat from Rights to “Responsibilisation” via the Cashless Welfare Card’ in Deirdre Howard-Wagner, Maria Bargh and Isabel Altamirano-Jiménez (eds), *The Neoliberal State, Recognition and Indigenous Rights* (ANU Press, 2018) 147 <<https://doi.org/10.22459/CAEPR.40.07.2018>>.

⁶ Terry Carney, ‘Automation and Conditionality: Towards “Virtual” Social Security?’ (2024) 31(1) *Journal of Social Security Law* 32. For the British experience, see Peter Dwyer, Lisa Scullion, Katy Jones, Jenny McNeill and Alasdair BR Stewart, *The Impacts of Welfare Conditionality: Sanctions Support and Behaviour Change* (Policy Press, 2023).

⁷ Luke D Graham, ‘The Gatekeeping Function of Vulnerability in Public Law and Human Rights’ [2024] (April) *Public Law* 228; Gráinne McKeever, ‘Vulnerability in the Social Security System’ [2024] (April) *Public Law* 194.

⁸ Royal Commission into the Robodebt Scheme, *Report* (Final Report, 2023) ch 11 <<https://robodebt.royalcommission.gov.au/publications/report>> (‘Robodebt Royal Commission Report’).

⁹ Commonwealth Ombudsman, *Automation in the Targeted Compliance Framework: When the Law is Changed but the System Isn’t* (August 2025) 3, 8, 14, 24 (‘August 2025 Ombudsman Report’) <https://www.ombudsman.gov.au/_data/assets/pdf_file/0017/320750/Automation-in-the-Targeted-Compliance-Framework.pdf>.

¹⁰ Monika Mayrhofer, ‘The Concept of Vulnerability and its relation to the Concepts of Inequality and Discrimination – A Review Article’ (2025) 29(9) *The International Journal of Human Rights* 1589 <<https://doi.org/10.1080/13642987.2025.2488938>>; Kate Brown, Kathryn Ecclestone and Nick Emmel, ‘Review Article: The Many Faces of Vulnerability’ (2017) 16(3) *Social Policy and Society* 497 <<https://doi.org/10.1017/S1474746416000610>>.

the human condition), ‘situational vulnerability’ (a product of the context) and ‘pathogenic vulnerability’ (created by society and/or government).¹¹ Robodebt, the first of the four case studies I discuss, epitomises predominantly pathogenic vulnerability, while the TCF is a classic example of situational vulnerability due to its exacerbation of pre-existing risks for people living ‘at the margins’. The other two case studies I will discuss are more mixed, engaging forms of inherent vulnerability along with situational vulnerability.

Welfare ‘scandals’ such as the Robodebt scandal here in Australia (hereafter ‘Robodebt’), and its many overseas equivalents, have acquired notoriety. This is not only because of the gravity of the harms inflicted on the vulnerable (including some suicides in the case of Robodebt), but also because of the sheer speed and scale of harms inflicted in such comparatively short periods of time. Fuelled by use of automation in welfare administration — both artificial intelligence (‘AI’) and automated decision-making (‘ADM’) — these harms reached such previously unprecedented levels of magnitude as to have both the UN Rapporteur on Poverty and a leading European academic write of the emergence of a dystopian welfare state.¹²

The outstanding question tackled in the next part of this Lecture is why law and justice machinery was so exposed by those scandals and what kinds of renovations are necessary to protect against the emergence of such a dystopian welfare state.

II Renovation ‘Opportunities’: The Local Experience

A *Robodebt’s Undoing of Australia’s ‘Pioneering’ Administrative Law*

Robodebt was Australia’s contribution to the litany of international welfare scandals.¹³ As found by the Robodebt Royal Commission, it was a massive failure of public administration and of political leadership.¹⁴ Most concerning from a legal standpoint, was the almost total breakdown of the institutional checks and balances provided by tribunals, Ombuds offices and other accountability machinery.¹⁵

¹¹ See further Catriona Mackenzie, Wendy Rogers and Susan Dodds, ‘Introduction: What Is Vulnerability, and Why Does It Matter for Moral Theory?’ in Catriona Mackenzie, Wendy Rogers and Susan Dodds (eds), *Vulnerability: New Essays in Ethics and Feminist Philosophy* (Oxford University Press, 2014) 1, 7–9 <<https://doi.org/10.1093/acprof:oso/9780199316649.003.0001>>.

¹² Gijsbert Vonk, ‘Welfare State Dystopia as a Challenge to the Fundamental Right of Social Security’ (2025) 27(2) *European Journal of Social Security* 82 <<https://doi.org/10.1177/13882627251321174>>; Philip Alston, *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, 74th sess, Agenda Item 70(b), UN Doc A/74/493 (11 October 2019) <<https://digitallibrary.un.org/record/3834146?v=pdf>>.

¹³ Maarten Bouwmeester, ‘Checks and Balances under Pressure in the Welfare State: Disentangling the Rule of Law Risks of Automation and Welfare Conditionality’ (2025) 27(2) *European Journal of Social Security* 98 <<https://doi.org/10.1177/13882627251330438>>.

¹⁴ See, eg, *Robodebt Royal Commission Report* (n 8) 25, 317.

¹⁵ Terry Carney, ‘Robo-Debt Illegality: The Seven Veils of Failed Guarantees of the Rule of Law?’ (2019) 44(1) *Alternative Law Journal* 4 <<https://doi.org/10.1177/1037969X18815913>>.

Robodebt raised 794,000 legally unfounded false debts against 526,000 citizens, with \$1.751 billion initially required to be repaid or written off,¹⁶ rising to \$2.4 billion following a further 2025 settlement costing \$548.5 million.¹⁷ The illegality entailed using average fortnightly income in place of actual fortnight-by-fofortnight income, reversal of the onus of proof, and failure to apply the correct standard of proof.¹⁸ The mathematical absurdity was believing an average could represent its constituent parts. The factual absurdity was thinking that social security clients have continuous/stable fortnightly incomes when data from the Department of Human Services (as it then was; hereafter ‘the Department’) showed this to be true for fewer than one in ten clients.¹⁹

But the most critical feature of the Robodebt scheme, for my purposes here, was captured in one of its (several) names: the Online Compliance Initiative. It was deliberately designed to force alleged debtors into dealing with an online interface, rather than engage with a public servant at a Centrelink office or even by telephone.²⁰ Along with the failure, over such a lengthy period, of so many accountability avenues (the gaming of then Administrative Appeals Tribunal of Australia (‘AAT’) decisions and early Federal Court test cases, manipulation of Ombud and Office of Legal Services processes etc²¹) — these are the features that made the Robodebt scheme such an exemplar of the legal and administrative deficiencies in need of reform.

B *The Targeted Compliance Framework*

For over two decades up to 2018, loss of payment or payment reduction sanctions imposed on social security recipients for failure to meet ‘activation’ conditions of workforce age payments were notorious for their harshness and over-reach.²² These outcomes were compounded by design features baked into the fully privatised (outsourced) employment services network that a colleague and I, and other researchers, identified decades ago.²³ In 2018, an independent expert review concluded that most employment activation penalties were unwarranted and that the

¹⁶ *Robodebt Royal Commission Report* (n 8) 402, 410; Rick Morton, *Mean Streak: A Moral Vacuum, A Dodgy Debt Generator and A Multi-Billion-Dollar Government Shake Down* (Fourth Estate/HarperCollins, 2024).

¹⁷ Samantha Dick, ‘Robodebt Victims to Get Further \$475 Million Compensation after Class Action Settled’, *ABC News* (online, 4 September 2025) <<https://www.abc.net.au/news/2025-09-04/robodebt-victims-get-compensation-from-class-action/105734030>>.

¹⁸ Terry Carney, ‘The New Digital Future for Welfare: Debts without Legal Proofs or Moral Authority?’ [2018] (March) *UNSW Law Journal Forum* 1.

¹⁹ Peter Whiteford, ‘Debt by Design: The Anatomy of a Social Policy Fiasco – Or Was It Something Worse?’ (2021) 80(2) *Australian Journal of Public Administration* 340 <<https://doi.org/10.1111/1467-8500.12479>>.

²⁰ Notices of debts at one stage went to the lengths of intentionally leaving off any phone number or email contact details: Andrew Whelan, ‘“Ask for More Time”: Big Data Chronopolitics in the Australian Welfare Bureaucracy’ (2020) 46(6) *Critical Sociology* 867, 872–8.

²¹ Terry Carney, ‘Artificial Intelligence in Welfare: Striking the Vulnerability Balance?’ (2020) 46(2) *Monash University Law Review* 23.

²² Carney, ‘Automation and Conditionality: Towards “Virtual” Social Security?’ (n 6).

²³ Terry Carney and Gaby Ramia, *From Rights to Management: Contract, New Public Management and Employment Services* (Kluwer Law International, 2002); Mark Considine, *Enterprising States: The Public Management of Welfare-to-Work* (Cambridge University Press, 2001).

compliance system instead should concentrate on the very small minority wilfully doing the wrong thing.²⁴

Based on the expert report, in mid-2019 (suspended for a time during the COVID-19 pandemic), a new targeted compliance framework was introduced. Under the TCF, the initial response to a breach notification is suspension of payments (with reinstatement and back-payment on compliance). Only persistent breaches (or serious breaches, such as not accepting suitable job offers) lead to payment reductions until achieving compliance (50% reduction, then 100%), while fixed duration non-payment periods are intended to be a rarity. The policy intent of the TCF was sensible, but its administrative translation proved to be incompetent, not least due to technological overreach. A policy objective of providing advance warning of risk of compliance sanctions was implemented through a new smart phone app for uploading compliance actions and its associated display dashboard of ‘traffic light’ (green, orange and red) colour zones to show whether a jobseeker is in full compliance or has accrued non-compliance ‘demerit points’ towards the threshold beyond which compliance sanctions apply.²⁵ Most clients qualify for the purely self-service stream (called ‘Digital First’), where everything is managed through the technology interface, with no human case manager.²⁶ Clients in the other two streams are serviced by case managers and receive assistance from contracted private sector employment providers. There are two levels of resourcing of these two streams, reflecting the degree of difficulty of regaining employment. Consistent with the policy of responsabilisation, clients allocated to these two streams also must use the smart phone app to report their compliance actions to government agencies and employment services providers as part of their self-activation obligations.²⁷

The technological overreach was found to have several components, but fundamentally involved inadequate investment to build the sophisticated information technology system called for by the new policy and legislative framework. In August 2025, a report by the Ombudsman (*‘August 2025 Ombudsman Report’*) found that the TCF was being administered contrary to law.²⁸ Illegalities included: failing to program the legislative change converting mandatory sanctioning into a discretionary decision based on a final inquiry into all the circumstances of the individual;²⁹ and failing, for three years, to introduce the legally mandated ‘Digital Protections Framework’.³⁰ A separate external report commissioned from Deloitte (*‘Deloitte Report’*) to express ‘assurance’ or otherwise

²⁴ Employment Services Expert Advisory Panel, *I Want To Work: Employment Services 2020 Report* (Department of Jobs and Small Business (Cth), 2018) 67 [2.6] <<https://apo.org.au/node/210776>>.

²⁵ Simone Jane Casey, ‘Towards Digital Dole Parole: A Review of Digital Self-Service Initiatives in Australian Employment Services’ (2022) 57(1) *Australian Journal of Social Issues* 111, 115–18 <<https://doi.org/10.1002/ajs4.156>>.

²⁶ Sarah Ball, Michael McGann, Jenny M Lewis, Mark Considine, ‘Digital-First Employment Services in Australia: Challenges and Opportunities’ in Sarah Giest and Ian Roberge (eds), *The Routledge International Handbook of Public Administration and Digital Governance* (Routledge, 2024) 272 <<https://doi.org/10.4324/9781003458081-22>>.

²⁷ Simone Casey, ‘Robo-Compliance in Australian Employment Services’ (2025) 60(2) *Australian Journal of Social Issues* 428 <<https://doi.org/10.1002/ajs4.368>>.

²⁸ *August 2025 Ombudsman Report* (n 9) 5.

²⁹ *Ibid* 14–17 (Finding 1).

³⁰ *Ibid* 17–19 (Finding 2).

with TCF administration, was even more damning.³¹ Deloitte was unable to provide assurance about legal compliance of *any* aspect of the system, finding, among other things, that

the legal and evidentiary basis for compliance actions against participants, particularly where such actions are initiated or administered by the IT [information technology] system, cannot be consistently documented, verified, or reconciled with legislative provisions or policy intent.³²

The number of individuals suffering *permanent* loss of income support as a consequence of this misalignment of administration with legal and policy obligations was small (only around 50 such decisions are made every quarter). But over that same quarterly period, Deloitte found that there were 641,135 people subject to activation requirements, of whom 192,915 (30.1%) received demerits, with 194,670 (30.4%) issued with a *payment suspension*.³³ As the *August 2025 Ombudsman Report* had graphically observed, for vulnerable people reliant on a below poverty line payment, even a short suspension and later back payment of income support can be ‘catastrophic’ to a person’s ability to meet basic needs for food, shelter and clothing.³⁴ Among multiple other bases of illegality or unfairness, it was estimated that approximately 310,000 people were placed in jeopardy of cancellation due to not being given their required 28 days to reconnect with their employment services provider, because the system counted days from the connection failure rather than the legally required first notification of that failure,³⁵ a concern mentioned by, but not able to be investigated in, the second report of the Ombudsman on the TCF in December 2025.³⁶

C *The Apportionment Oversight*

The apportionment mistake was a longstanding (but both unintentional and undetected) misalignment between the means testing law and its administration, one spanning from 2004 to 2020.

The misalignment, which could result in small fortnightly underpayments *or* overpayments, was due to the way Centrelink administration determined how to allocate daily earnings from a pay fortnight when those earnings spanned two social security payment periods (the rate of entitlement for each payment period being required to be separately calculated). The law during these years stipulated the daily

³¹ Deloitte, *Targeted Compliance Framework* (Final Report, Department of Employment and Workplace Relations (Cth), updated 3 February 2026) <<https://www.dewr.gov.au/assuring-integrity-targeted-compliance-framework/resources/targeted-compliance-framework-assurance-review-final-report>> (*‘Deloitte Report’*).

³² *Ibid* 8, see also 53–65.

³³ *Ibid* 42.

³⁴ *August 2025 Ombudsman Report* (n 9) 8.

³⁵ Economic Justice Australia (*‘EJA’*), *Analysis of Payment Cancellations under 42AM of the Social Security Administration Act 1999* (EJA Briefing Paper, 2025) <<https://www.ejaustralia.org.au/wp-content/uploads/EJA-Analysis-of-payment-cancellations-under-42AM-of-the-Social-Security-Administration-Act-1999.pdf>>.

³⁶ Commonwealth Ombudsman, *Fairness in the Targeted Compliance Framework: When Decisions Are Made Beyond Your Control* (December 2025) 5 (*‘December 2025 Ombudsman Report’*) <https://www.ombudsman.gov.au/__data/assets/pdf_file/0015/323205/Fairness-in-the-Targeted-Compliance-Framework.pdf>.

earnings should be allocated to the payment period in which those monies were ‘first earned, derived, or received’.³⁷ Because payslips commonly did not disclose the day or days to which earnings related (and the Department chose not to routinely use its powers to require employers to provide that detail), Centrelink allocated income on the basis of when it was assumed to have been first earned, even where it lacked evidence of the actual earning dates and when, in truth, those monies were earned on different dates. That was found by the then AAT to be contrary to law under a ruling that would have applied through to 2024.³⁸ On appeal to the Full Court of the Federal Court of Australia, the illegality was confirmed on different reasoning (including that a 2020 legislative amendment had fortuitously validated the practice from that date forward); though a High Court appeal remains on foot at the time of writing.³⁹

Following the Full Federal Court ruling, the Government opted to legislate a ‘reparations’ solution at an overall cost of \$286 million, rather than try to unscramble the egg, as I discuss in Part III(C) below.

D National Disability Insurance Scheme Budget-Setting

Consistent with international principles of active citizenship,⁴⁰ the NDIS at birth was designed to tailor disability supports precisely to the individual needs of each participant and, to the maximum extent feasible, give participants control over expenditure of their personal budget, either directly administering funds or indirectly represented by a plan nominee or NDIS plan coordinator.⁴¹

One of the challenges of operationalising this personalised budget model was the extent to which it imposed an administrative burden on participants to assemble the medical and other information on which to base assessments. This inequitably advantaged those with access to the monetary resources and/or social capital of

³⁷ The fortnightly rate of a working age payment, such as youth allowance payments the subject of the Administrative Appeals Tribunal of Australia (‘AAT’) and Federal Court litigation, is determined by a ‘Method statement’ that sets out step-by-step calculations: *Social Security Act 1991* (Cth) s 1067G (the individual statutory steps are cited as ‘Points’). At the relevant time, Step 1 in Point H1 of s 1067G involved ‘[w]ork[ing] out the amount of the person’s ordinary income on a fortnightly basis (where appropriate, taking into account the matters provided for in points 1067G - H2 to 1067G - H25)’. Point H23 required ordinary income ‘be taken into account in the fortnight in which it is first earned, derived or received’.

³⁸ *Secretary, Department of Social Services and FTXB* [2024] AATA 3021 (28 August 2024).

³⁹ *Chaplin v Secretary, Department of Social Services* (2025) 311 FCR 44. Leave to appeal to the High Court of Australia has been granted: *Chaplin v Secretary, Department of Social Services* [2025] HCADisp 262 (6 November 2025).

⁴⁰ Andrew Power, Janet Lord and Allison DeFranco, *Active Citizenship and Disability: Implementing the Personalisation of Support* (Cambridge University Press, 2013) <<https://doi.org/10.1017/CBO9781139342711>>.

⁴¹ Gemma Carey, Eleanor Malbon, Sue Olney and Daniel Reeders, ‘The Personalisation Agenda: The Case of the Australian National Disability Insurance Scheme’ (2018) 28(1) *International Review of Sociology* 20 <<https://doi.org/10.1080/03906701.2018.1425084>>; Michele Foster, Paul Henman, Jennifer Fleming, Cheryl Tilse and Rosamund Harrington, ‘The Politics of Entitlement and Personalisation: Perspectives on a Proposed National Disability Long-Term Care and Support Scheme in Australia’ (2012) 11(3) *Social Policy and Society* 331 <<https://doi.org/10.1017/S147474641200005X>>.

contacts and knowledge about how systems work.⁴² Administration at scale, a paucity of qualified case planners, and unanticipated growth in demand for, and cost of, the NDIS soon brought personalisation and bureaucratic standardisation (known as ‘Taylorism’) into tension. That led to early interest in algorithms as a way of reducing the rate of growth of NDIS costs,⁴³ including the abortive proposal by the former Coalition Government to use ill-suited assessment tools, administered by independent assessors. This risked creating what has been termed ‘grey holes’: decision-making spaces effectively beyond external review and accountability.⁴⁴

Those policy tensions have not disappeared. In September 2025, the National Disability Insurance Agency accepted a tender for a purpose-designed Instrument for the Classification and Assessment of Support Needs (‘I-CAN’) version 6, built by Melbourne University.⁴⁵ The tool is intended to form part of interviews by accredited professionals to determine the disability needs budget both for new participants and for all existing NDIS participants as and when they are transitioned into the new scheme.⁴⁶ The new assessments will begin to be trialed from mid-2026 before being adopted at scale. In contrast to the present system, budget-setting will not rely on specialist medical or disability reports able to be supplied by those participants with the financial or social capital resources to obtain them.⁴⁷ Unsurprisingly perhaps, the Agency has already trialed using Microsoft Copilot machine learning to prepare ‘draft’ NDIS budgets for later consideration by planners.⁴⁸ Both initiatives have provoked concerns.⁴⁹

⁴² Gemma Carey, Eleanor Malbon and James Blackwell, ‘Administering Inequality? The National Disability Insurance Scheme and Administrative Burdens on Individuals’ (2021) 80(4) *Australian Journal of Public Administration* 854 <<https://doi.org/10.1111/1467-8500.12508>>.

⁴³ Terry Carney, Shih-Ning Then, Christine Bigby, Ilan Wiesel and Jacinta Douglas, ‘National Disability Insurance Scheme Plan Decision-Making: Or When Tailor-Made Case Planning Met Taylorism and the Algorithms?’ (2019) 42(3) *Melbourne University Law Review* 780.

⁴⁴ Georgia van Toorn and Terry Carney, ‘Decoding the Algorithmic Operations of Australia’s National Disability Insurance Scheme’ (2025) 60(1) *Australian Journal of Social Issues* 21 <<https://doi.org/10.1002%2Fajs4.342>>. See also Georgia van Toorn and Jackie Leach Scully, ‘Unveiling Algorithmic Power: Exploring the Impact of Automated Systems on Disabled People’s Engagement with Social Services’ (2024) 39(11) *Disability & Society* 3004 <<https://doi.org/10.1080/09687599.2023.2233684>>.

⁴⁵ ‘Developing a New Support Needs Assessment’, *NDIS* (Web Page, 25 September 2025) <<https://www.ndis.gov.au/news/10926-developing-new-support-needs-assessment>>.

⁴⁶ Rick Morton, ‘Algorithm to be Used for NDIS Plans’, *The Saturday Paper* (online, 4 October 2025) <<https://www.thesaturdaypaper.com.au/news/health/2025/10/04/algorithm-be-used-ndis-plans>>.

⁴⁷ Georgia van Toorn and Helen Dickinson, ‘How People are Assessed for the NDIS is Changing. Here’s What You Need to Know’, *The Conversation* (1 October 2025) <<https://theconversation.com/how-people-are-assessed-for-the-ndis-is-changing-heres-what-you-need-to-know-266255>>.

⁴⁸ Josh Taylor and Kate Lyons, ‘Government Using Machine Learning To Help Create Draft Plans for NDIS Participants, Documents Reveal’, *The Guardian (Australia)* (online, 13 November 2025) <<https://www.theguardian.com/australia-news/2025/nov/12/government-using-machine-learning-to-help-create-draft-plans-for-ndis-participants-documents-reveal>>; Kate Lyons, ‘NDIS Plans Will Be Computer-Generated, with Human Involvement Dramatically Cut under Sweeping Overhaul’, *The Guardian (Australia)* (3 December 2025) <<https://www.theguardian.com/australia-news/2025/dec/03/ndis-plans-computer-generated>>.

⁴⁹ van Toorn and Dickinson (n 47).

III The State of the Renovations?

The short point about the state of the renovations in light of the defects exposed by Robodebt, the TCF, or the apportionment and NDIS issues, is that individual grievance pathways have been rebuilt to a high standard, but systemic issues continue to lack adequate remedies.

A *Systemic Harms Are Inadequately Addressed by Post-Robodebt Reforms*

Legal reforms enacted on the recommendation of the Robodebt Royal Commission ensure that adverse rulings by the first of two tiers of merits review before the newly constituted Administrative Review Tribunal ('ART') can no longer be hidden from public view; and a new Guidance and Appeals Panel can issue more authoritative rulings. That stops ART merits review being 'gamed' as was done for AAT first tier decisions invalidating robodebts, when the Department deliberately avoided appealing them to the level where hearings and decisions would have become public. The reforms now also give the senior leadership of the ART the job of formally referring any identified systemic issues to departmental heads, Ministers, or the Administrative Review Council for their consideration and action, with referrals and responses then publicised in annual reports.⁵⁰ And public servants must actively assist the enquiries of the Commonwealth Ombudsman (and the Inspector-General of Taxation and the Tax Ombudsman) who now have expanded powers to insist on access to agency records,⁵¹ the withholding of which was found to have impaired Ombud accountability during Robodebt.⁵² The 2026 finalisation by the Administrative Review Council of a Statement of Position regarding implementation by agencies of administrative review decisions of courts and tribunals,⁵³ will also help to overcome the weak normative impact of such rulings on primary decision-making.

Yet systemic issues — especially the warp speed, high-volume ones generated by automated decision-making — only come to notice if enough reviews are lodged with the ART. Robodebt automation of debt raising turned a human decision-making volume of 20,000 debts annually into 20,000 debts a week at its peak. However, during the life of the program, only one in every 2,000 robodebts (0.05%) ever reached the AAT.⁵⁴ There are multiple contributors to this depressing

⁵⁰ Justice Kyrou, 'Mechanisms in the ART Bill to Thwart Robodebt-Type Maladministration' (Speech, Australian Academy of Law Conference, Melbourne, 18 March 2024) <<https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-kyrou/kyrou-j-20240318>>; Terry Carney and Christine Bigby, 'Social Security and Welfare Rights: What Role for Social Work?' in Simon Rice, Andrew Day, Linda Briskman and Sacha Kendall Jamieson (eds), *Social Work in the Shadow of the Law* (Federation Press, 6th ed, 2026) 450.

⁵¹ *Oversight Legislation Amendment (Robodebt Royal Commission Response and Other Measures) Act 2025* (Cth). See, eg, s 13, inserting *Ombudsman Act 1976* (Cth) s 32 duty to assist the Ombudsman.

⁵² *Robodebt Royal Commission Report* (n 8) 576–82 (Recommendations 21.1–21.2).

⁵³ Administrative Review Council (Cth), 'Statement of Position – Terms of Reference', (8 August 2025) <<https://www.ag.gov.au/legal-system/publications/arc-statement-position-terms-reference>>.

⁵⁴ The proportion is calculated from the baseline of all errors (a total of 794,000) determined by the class action settlement (*Prygodicz v Commonwealth (No 2)* (2021) 173 ALD 277) and subsequent settlements, divided by the number of AAT appeals as painstakingly ascertained by staff of the Royal Commission (such cases not otherwise being 'tagged' as robodebts): Royal Commission into the

statistic, including the insistence on completion of the mandatory internal review conducted by an authorised review officer before external ART review is allowed; the inability to review other than completed or mature decisions;⁵⁵ and lack of full knowledge about what decisions or parts of decisions are automated.

Irrespective of the cause, what is crystal clear is that sole reliance on ART individual grievance avenues as a way of addressing systemic error is doomed to failure. To do so is like trying to deal with a grasshopper plague by knocking off individual locusts with a child's pop gun. What is required is a systemic remedy for a systemic problem. Yet it is now over a year since the release of the Commonwealth Attorney-General's Department ('AGD') consultation paper ('*AGD Consultation Paper*') on two outstanding recommendations of the Robodebt Royal Commission for dealing with systemic concerns.⁵⁶

Recommendation 17.1 of the Royal Commission called for legislative reform to provide a clear framework for use of automation in government, including:

- 'a clear path for those affected by decisions to seek review';⁵⁷
- plain language explanation on departmental websites about where automation is used and how it works;⁵⁸ and
- that business rules and algorithms 'be made available, to enable independent expert scrutiny'.⁵⁹

No legislative framework has yet been proposed, automation that contributes to but does not constitute a mature decision remains unreviewable, and the algorithm that determines whether an unemployed person allocated to purely online management or one of two levels of intensity of employment services provision (under 'Workforce Australia'), namely the Jobseeker Classification Instrument,⁶⁰ remains secret.

The only action so far is on transparency in the use of automation, with the Services Australia website first posting in February 2025 a 'transparency' statement

Robodebt Scheme, 'Review of AAT Decisions - (Carney) (without Applicant names)', Exhibit 203-3493A, ref no TCA.9999.0001.0062_0203 <https://robodebt.royalcommission.gov.au/system/files/2023-02/Exhibit%203-3493A%20-%20TCA.9999.0001.0062_R%20-%202022030120%20Review%20of%20AAT%20decisions%20-%20%28Carney%29%20%28without%20Applicant%20names%29.pdf>.

⁵⁵ As recognised in the 2024 government consultation paper: Attorney-General's Department (Cth), *Use of Automated Decision-Making by Government* (November 2024) 8 (citing *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, 337), see also 14–15 ('*AGD Consultation Paper*') <https://consultations.ag.gov.au/integrity/adm/user_uploads/consultation-paper-use-of-automated-decision-making-by-government.pdf>.

⁵⁶ *Ibid.*

⁵⁷ *Robodebt Royal Commission Report* (n 8) 488 (Recommendation 17.1).

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*, see also at 488 (Recommendation 17.2). Implementation of both recommendations was endorsed in a Senate Select Committee report: Senate Select Committee on Adopting Artificial Intelligence (AI), Parliament of Australia, *Select Committee on Adopting Artificial Intelligence* (Final Report, November 2024) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Adopting_Artificial_Intelligence_AI/AdoptingAI/Report> xvi [5.130] (Recommendation 12).

⁶⁰ For a recent critical review of the operation of the Jobseeker Classification Instrument, see Angelika Papadopoulou, 'Integrity Versus Ideology in Automated Assessment: The Jobseeker Snapshot' (2025) 60(2) *Australian Journal of Social Issues* 418 <<https://doi.org/10.1002/ajs4.70007>>.

on automation and AI use in the welfare portfolio,⁶¹ and the May 2025 release of its 21-page *Automation and Artificial Intelligence Strategy 2025–27*.⁶² The Robodebt Royal Commission’s Recommendation 17.2 for establishing/renovating a body ‘with the power to monitor and audit automated decision-making processes with regard to their technical aspects and their impact in respect of fairness, the avoiding of bias, and client usability’,⁶³ fared much worse. Regulatory oversight and enforcement was overlooked entirely by the *AGD Consultation Paper*.⁶⁴ At best, it might form part of the brief for the yet to be established ‘AI Safety Institute’, flagged for creation under the *National AI Plan* released on 2 December 2025.⁶⁵ The abandonment in the *National AI Plan* of the legislative frameworks touted by the Albanese Government in its first term — including freestanding legislation and regulatory ‘guardrails’ for AI — throws into doubt any further action based on the AGD consultation, already reputed to be bogged down in interdepartmental committees and differing views about monitoring and enforcement.

Perhaps the most optimistic prediction is that while ‘light touch’ regulation will also apply to government use of automation, it will — pardon the oxymoron — be a somewhat ‘medium-light touch’. I say this because the version 2.0 update of the *Policy for the Responsible Use of AI in Government* injects:

requirements for agencies to develop a strategic approach to adopting AI, establish an approach to operationalise the responsible use of AI, ensure designated accountability for AI use cases, and undertake risk-based use case-level actions.⁶⁶

It is certainly true that the policy document is replete with ‘mandatory’ language about the obligations of agencies, including ‘risk-based’ assessments of its use,⁶⁷ akin to ideas floated in the *AGD Consultation Paper*. But monitoring and enforcement of the policy is murky, to say the least.

⁶¹ ‘Automation and Artificial Intelligence Transparency Statement’, *Services Australia* (Web Page, 10 October 2025) <<https://www.servicesaustralia.gov.au/automation-and-artificial-intelligence-transparency-statement?context=22>>. The statement, to be updated annually, commits Services Australia to nine principles for safe and responsible use, including offline trialling of automation and AI in controlled environments (dot point #1), only using such technologies outside that environment ‘when we have identified and implemented controls to protect against any potential negative impacts’ (#2), ‘continuing to monitor and evaluate, and immediately pausing any systems if they stop meeting assurance and governance requirements’ (#4), and of having a ‘human “in the loop”’ to check system outputs ‘where appropriate’ (#5).

⁶² Services Australia, *Automation and Artificial Intelligence Strategy 2025–27* (2025) <<https://www.servicesaustralia.gov.au/sites/default/files/2025-05/automation-and-ai-strategy-2025-27.pdf>>.

⁶³ *Robodebt Royal Commission Report* (n 8) 488 (Recommendation 17.2).

⁶⁴ Jose-Miguel Bello y Villarino, Terry Carney, Kimberlee Weatherall, Rita Matulionyte, Julian Thomas, Paul Henman and Veronica Lenard, *Submission to the Attorney-General Department Consultation Paper on ADM Reform* (ARC Centre of Excellence for Automated Decision-Making and Society and University of Sydney, 15 January 2025) 5, 7, 13–15 <<https://doi.org/10.60836/v2r1-1g50>>.

⁶⁵ Department of Industry, Science and Resources (Cth), *National AI Plan* (2025) 31 <<https://www.industry.gov.au/sites/default/files/2025-12/national-ai-plan.pdf>>. See also Tim Ayres (Minister for Industry and Innovation and Minister for Science), ‘National AI Plan: Empowering All Australians’ (Media Release, 2 December 2025) <<https://www.minister.industry.gov.au/ministers/timayres/media-releases/national-ai-plan-empowering-all-australians>>.

⁶⁶ Digital Transformation Agency (Cth), *Policy for the Responsible Use of AI in Government* (Version 2.0, effective 15 December 2025) 4 (emphasis added) <<https://www.digital.gov.au/ai/ai-in-government-policy>>.

⁶⁷ *Ibid* 14–16.

So, if a child's popgun is an inadequate way of dealing with a grasshopper plague, the medium-light touch 'regulatory feather dusters' just described are unlikely to be any substitute for the stronger regulatory agency and bedrock expectations recommended by the Royal Commission and others.

B 'Wicked' Renovation Challenges: The Targeted Compliance Framework Example

The TCF is the compliance arm of the fully privatised government employment service (all providers driven by commercial/market logics). It is governed by a web of long-term government contracts with outsourced, but mainly mega-scale, employment service providers (with all the associated sovereign and fiscal risk issues). Therefore, the TCF is incapable of simply being turned off without intolerable costs to the Federal Budget and loss of business confidence in government contracts (so-called 'sovereign risk'). And that is without factoring in the vexed issue of how government would weigh the political cost/benefit equation of being seen to reverse the welfare activation agenda that has retained bipartisan support for three decades (despite a mountain of academic and evidence-based research findings).⁶⁸

That is the nub of the so-called 'wicked' policy problem posed in remedying the undoubtedly severe legal, operational and IT failings of current TCF operations. Namely, that the renovation is one that necessitates a staged transformation of an operative system over a period of perhaps two years or more. But the renovation is also one where not all the deficiencies are fully appreciated, as now explained.

The Ombudsman's second report — *Fairness in the Targeted Compliance Framework: When Decisions Are Made Beyond Your Control* — was issued in December 2025 ('*December 2025 Ombudsman Report*').⁶⁹ It confirmed the unfitness of the TCF system to deliver fair, operationally sound decisions,⁷⁰ finding that those impacted lacked adequate knowledge of the basis of decisions and how to query or seek review of matters more generally,⁷¹ or otherwise control their fate. Regarding the status of the suspensions and accumulation of 'demerit points': where the *Deloitte Report* had found current departmental IT systems not to be in full compliance with legislative and other requirements, the *December 2025 Ombudsman Report* stressed that although not mature or reviewable decisions, 'provider decisions play a pivotal role in determining whether job seekers move from the Green and into the Warning or Penalty Zone'.⁷²

⁶⁸ See, eg, Dwyer et al (n 6) 68–93. For discussion of international experience of the robustness of activation in the face of critiques, see Niklas A Andersen and Flemming Larsen, 'Activation Policy: Bruised and Battered but Still Standing' (2024) 43(2) *Policy and Society* 127 <<https://doi.org/10.1093/polsoc/puae013>>. Recent Australian critiques include Angelika Papadopoulos and Patrick O'Keeffe, 'Automating Activation in Australia: A Critical Policy Discourse Analysis of the New Employment Services Model' (2023) 18(1) *Critical Policy Studies* 131 <<https://doi.org/10.1080/19460171.2023.2207618>>; Rose Stambe and Greg Marston, 'Checking Activation at the Door: Rethinking the Welfare–Work Nexus in light of Australia's COVID-19 Response' (2023) 22(1) *Social Policy and Society* 106 <<https://doi.org/10.1017/S1474746421000944>>.

⁶⁹ *December 2025 Ombudsman Report* (n 36).

⁷⁰ *Ibid* 22–31.

⁷¹ *Ibid* 25–6 (Finding 3, Recommendation 3); 27–32 (Finding 4, Recommendation 4).

⁷² *Ibid* 21 (emphasis in original).

The *December 2025 Ombudsman Report* was especially damning of the quality of all aspects of the various roles played by employment providers in the operation of the TCF, including finding that '[p]roviders give insufficient information to Services Australia to conduct capability assessments and mutual obligation failure investigations of job seekers', with a 'high rate' of provider decisions (such as suspensions) 'later overturned',⁷³ with provider documentation 'minimal and generic' and lacking context,⁷⁴ resulting in 61% of overturned mutual obligation decisions being due to 'newly disclosed information'.⁷⁵

The Report puts its faith in restoration of government 'oversight' of providers 'to ensure providers are properly delivering the appropriate services and are held accountable for their decisions and actions'.⁷⁶ Services Australia, in their response to the Ombudsman's recommendations, showed some appreciation of the body of work required to restore fidelity of operation across the Department-provider divide of the neoliberal service delivery model. The Department of Employment and Workplace Relations by contrast, refused to concede that any serious reforms were needed, going no further than reciting mantras about 'understand[ing] the importance of robust decision-making processes' and working with providers to 'ensure that decisions ... are accurate, appropriate and lawful'.⁷⁷

From an evidence-based (that is, research-based) perspective, however, it is fair to say that neither the Ombudsman nor the two Departments (Services Australia and the Department of Employment and Workplace Relations) have any *deep operational* appreciation of the challenge posed by the current formal and de facto delegations of TCF decision-making to entrepreneurial employees of for-profit employment providers. A TCF system that *so extensively* outsources services and decision-making to agencies and individuals governed by market logics is fundamentally incompatible with achieving adequate levels of administrative accountability. None of this augurs well for the prospects of undertaking the profound policy reorientation from the current sanctions-based compliance rationale to the new preventive/nudge-induced compliance model envisioned by both a parliamentary inquiry and the *Deloitte Report*;⁷⁸ an approach already undertaken with great success in transforming the response to social security 'fraud'.⁷⁹

⁷³ Ibid 6.

⁷⁴ Ibid 23.

⁷⁵ Ibid 24.

⁷⁶ Ibid 32, see also pt 3 generally.

⁷⁷ Ibid 66 (Department of Employment and Workplace Relations response to draft recommendation 5). For other examples, including misleading the Ombudsman about having an app to 'provide "alerts on known risk areas"', including providers booking dodgy appointments that can penalise jobseekers', which was unable to be provided when requested because it had yet to be fully built, see Rick Morton, "'Particularly Strange": Ombudsman Damns Welfare Compliance', *The Saturday Paper* (online, 13 December 2025) <<https://www.thesaturdaypaper.com.au/news/politics/2025/12/13/particularly-strange-ombudsman-damns-welfare-compliance>>.

⁷⁸ House of Representatives Select Committee on Workforce Australia Employment Services, Parliament of Australia, *Rebuilding Employment Services: Final Report on Workforce Australia Employment Services* (November 2023) <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportrep/RB000017/toc_pdf/RebuildingEmploymentServices.pdf>; *Deloitte Report* (n 31).

⁷⁹ Scarlet Wilcock, 'Governing Social Security Fraud and Non-Compliance in Australia' (PhD thesis, University of New South Wales, 2017) <<https://doi.org/10.26190/unsworks/3464>>; Scarlet Wilcock, *Policing Welfare Fraud: The Government of Welfare Fraud and Non-Compliance* (Routledge, 2024).

This messy equivalent of renovating a decrepit property while still living in the intolerable structure is understandably anathema to the welfare sector and academic commentators alike. However, I contend that it is both the only *realistic* reform option and one that is far superior to the only politically attractive ‘default’ option: namely, the British example of deciding that the system is ‘too big to fail/too costly to fix’ even for the future, as was determined for the apportionment problem in its Universal Credit scheme.⁸⁰

C *Some Mistakes Cannot be Reversed: The Apportionment Example*

As foreshadowed, the Federal Government’s response to Australia’s longstanding overpayments and underpayments resulting from misapplication of the law about apportioning earnings that spanned two social security instalment fortnights was to provide arbitrary reparations as a salve for retrospective legislation curing the invalidity.

The *Social Security and Other Legislation Amendment (Technical Changes No. 2) Act 2025* did both things. This legislation established an Income Apportionment Resolution Scheme, making provision for payment of an arbitrary amount of compensation of up to \$600 for those affected,⁸¹ while retrospectively validating the 2004–2020 practice of allocating earnings on the basis of receipt (taking care to expressly exempt Robodebt victims).⁸² As a separate gesture of good faith to other legitimate concerns of the welfare sector, the legislation also introduced a higher threshold of \$250 for waiver of small debts, including undetermined debts, and it broadened the grounds for such waivers so that for the first time waiver is possible for debts due to the ‘fault’ of the client.⁸³

What the Government concluded could not be done in this instance was unscramble the egg to provide precise *individualised* justice to all affected individuals on the merits of their case. The main reason this was not possible was because most employer payslips simply disclosed *aggregate* earnings for the fortnightly or other earnings period, rather than day-by-day patterns of accrual. So social security beneficiaries were not in a position to provide the more granular information required for Services Australia (Centrelink) correctly to apply the law about allocating to the ‘first’ date in which monies were ‘earned, derived or received’.⁸⁴ For reasons such as cost, maintenance of cordial relations with employers and perhaps also to minimise opportunities for clients to game the system when reporting their income,⁸⁵ Centrelink opted not to use its powers to contact

⁸⁰ Rita Griffiths, ‘Universal Credit and Automated Decision Making: A Case of the Digital Tail Wagging the Policy Dog?’ (2024) 23(1) *Social Policy and Society* 1, 8, 10.

⁸¹ *Social Security and Other Legislation Amendment (Technical Changes No. 2) Act 2025* (Cth) sch 3.

⁸² *Ibid* sch 1, inserting *Social Security Act 1991* (Cth) (n 37) pt 3.11, ss 1112–1117F.

⁸³ *Social Security and Other Legislation Amendment (Technical Changes No. 2) Act 2025* (Cth) (n 81) sch 2 pts 2–3. The less high-minded officially mentioned justification for raising the threshold was that the amount recouped under the old threshold was greater than the cost of collection.

⁸⁴ See above n 37.

⁸⁵ Christopher Rudge, Submission No 9 to Senate Standing Committee on Community Affairs, Legislation Committee, Parliament of Australia, *Social Security and Other Legislation Amendment*

employers and require them to provide that granular information. Without such granular data, Centrelink was not in a position to utilise the power for the Secretary to decide to revisit earlier decisions and remake them.⁸⁶

Because the consequent underpayments and overpayments concerned the correctness of the ‘rate’ of social security applicable in relevant entitlement fortnights, client-initiated applications for authorised review officer/ART review would also run into social security law ‘date of effect’ provisions. Under those provisions, favourable decisions about queries made longer than 13 weeks after being advised of the rate of payment for a social security fortnight are only prospective in nature, rendering purely symbolic any reflections on past decisions.⁸⁷ The alternative of bulk waiver of all such debts was rejected for supposedly creating ‘inequity’ with *other* debtors,⁸⁸ a ground that the Commonwealth Ombudsman rightly characterised as very weak, given that these overpayments were entirely the fault of government.⁸⁹

D *Some Equity-Justice Issues Verge on Unjusticiable: NDIS Budget-Setting*

NDIS budget-setting is arguably the most interesting and unsettled of the cases canvassed so far. On the one hand there is the tension between tailor-made individualism and respecting distributive equity goals of ensuring that like cases are treated alike, by not favouring participants with greater social capital over those less advantaged.⁹⁰ On the other hand, there are valid concerns about the adoption of Taylorist measures that shrink or traduce traditional merits review protections of fairness and justice for NDIS participants through application of ill-chosen assessment tools as part of, or the basis for setting budgets, creating grey holes effectively beyond external review and accountability.⁹¹

Yet none of these debates are new to welfare services and the accountability challenge may be intrinsic to their character. A recent scholarly review of current

(Technical Changes No. 2) Bill 2025 (25 September 2025) 5, 8–9 <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/TechnicalChangesNo2/Submissions>.

⁸⁶ *Social Security (Administration) Act 1999* (Cth) s 126.

⁸⁷ *Ibid* ss 109(1)–(2).

⁸⁸ The evaluation of various avenues for possible resolution of the issue examined by the Department is set out in Department of Social Services (Cth), *Resolution Approach to Income Apportionment: Impact Analysis* (September 2025) <<https://oia.pmc.gov.au/sites/default/files/posts/20250/09/Impact%20Analysis.pdf>>. For consideration and approval of the analysis by the Office of Impact Assessment (‘OIA’), see Department of the Prime Minister and Cabinet (Cth), ‘Resolution Approach for Income Apportionment’, *OIA* (5 September 2025) <<https://oia.pmc.gov.au/published-impact-analyses-and-reports/resolution-approach-income-apportionment>>.

⁸⁹ Commonwealth Ombudsman, Submission No 1 to Senate Standing Committee on Community Affairs Legislation Committee, Parliament of Australia, Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025 (September 2025) 5 <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/TechnicalChangesNo2/Submissions>.

⁹⁰ Alyssa Venning, Eloise Hummell, Michele Foster, Kylie Burns and Susan Harris Rimmer, ‘Adjudicating Reasonable and Necessary Funded Supports in the National Disability Insurance Scheme: A Critical Review of the Values and Priorities Indicated in the Decisions of the Administrative Appeals Tribunal’ (2021) 80(1) *Australian Journal of Public Administration* 97 <<https://doi.org/10.1111/1467-8500.12438>>; Carney et al (n 43).

⁹¹ van Toorn and Carney (n 44). See also van Toorn and Scully (n 44).

NDIS case planning accountability found a ‘subtle but potent pathology of executive power’,⁹² not as illegal defiance of legal rulings (Robodebt) but by skirting those rulings ‘through the powerful, and entirely lawful, tool of legislative reform’.⁹³ Access to administrative merits review of decisions about allocation of welfare services, such as disability services, has rarely been provided. Even experiments with a diluted form such as the recommendatory powers of Victoria’s Intellectual Disability Review Panel ultimately proved short-lived.⁹⁴

Likewise, opposition in the 1990s proved fruitless to resist the partial or total displacement of casework type decision-making for disability pension qualification (85% ‘incapacity for work’) by requirements to obtain a minimum points score under an assessment instrument (impairment tables); and slightly later also for carer payment and carer allowance.⁹⁵ In each instance, the driver for the revised rationale was the same as for the NDIS: fiscal costs of the program rising more rapidly than demographic or other reasons for escalating numbers of new grants (and in the case of the disability pension, the failure of all previous alternative measures to cap growth). And, in each instance, access to merits review has been preserved, but essentially only to ‘re-run’ the scoring under the relevant assessment tools, as will be true under the I-CAN suite when it begins to roll out from mid-2026.⁹⁶

Low-wattage review such as this can still make a significant contribution to provision of justice and accountability in the NDIS. Nevertheless, its lowish power ranking compared to possible alternative (extra-legal) avenues for securing equity and justice gives pause for thought. This is an added reason for doubting that we have yet assembled the full suite of reform measures required adequately to address individual and systemic error consequent on scandals like Robodebt or the array of other ways that inequity and injustice might present itself in welfare services.

IV Conclusion

In this Lecture, I have reviewed reforms in light of recent welfare miscarriages — Robodebt, TCF sanctioning, earnings apportionment and NDIS budget-setting — to assess how well they protect vulnerable citizens from future harm.

The contributory features and genesis of those miscarriages have varied. Many implicated misuse of technology, particularly automated decision-making, but as the October 2025 ‘over-recovery of debts’ blunder demonstrated, large scale

⁹² Julie Falck, ‘The NDIS Transformation from Discretion to Rules: Legislative Rebuttal and Administrative Justice’ (2025) 53(2) *University of Western Australia Law Review* 304, 304.

⁹³ *Ibid* 330.

⁹⁴ Intellectual Disability Review Panel (Vic) (‘IDRP’), *A Right to Be Heard: 20 Years of the Intellectual Disability Review Panel, 1987–2007* (IDRP, 2007); Terry Carney and Keith Akers, ‘A Coffee Table Chat or a Formal Hearing? The Relative Merits of Conciliation Conferences and Full Adjudicative Hearings at the Victorian Intellectual Disability Review Panel’ (1991) 2(3) *Australasian Dispute Resolution Journal* 141; Terry Carney, ‘Re-Mixing “Access”, “Advocacy”, “Empowerment” and “Protection”? A Case for a Specialised Division of Labour in Guardianship, Mental Health and Disability Services Adjudication?’ (2001–03) 5(2) *Newcastle Law Review* 43.

⁹⁵ Terry Carney, ‘Disability and Social Security: Compatible or Not?’ (2003) 9(2) *Australian Journal of Human Rights* 139, 147; Terry Carney, *Social Security Law and Policy* (Federation Press, 2006) 147, see also 152–64.

⁹⁶ Lyons (n 48).

harms could also result solely from human or process failures.⁹⁷ Overzealous pursuit of budget savings,⁹⁸ hollowing out of public service expertise and staffing levels, under-investment in information technology and ongoing oversight of those systems,⁹⁹ politicisation¹⁰⁰ and general degradation of public service culture,¹⁰¹ and excessive ‘dispersal’ of administration across too many government and private sector players¹⁰² — are just some of the contributing factors.

I have argued so far that while legal protections and remedies have been well renovated to accommodate individual social security grievances (restoring fidelity to liberal justice values), reforms to date have failed adequately to address either the *systemic* harms and mass grievances (failing to guarantee socio-economic values such as distributional justice), or to develop *preventive* counterweights to the forces that give rise to such failures.¹⁰³ Some of the risks of harm lie in areas of policy and administrative complexity, such as the TCF, giving rise to wicked problems.¹⁰⁴ I suggest that neither law, nor regulatory machinery alone, can protect against or swiftly remedy systemic malfunction of welfare programs, though more is needed on that front.

Just as public health responses to pandemic or other risks are more about cultivating the right community values and culture than unthinking application of science and public health governance machinery,¹⁰⁵ so too, perhaps, for welfare scandals and miscarriages. Jacob Priergaard contrasts the ‘remorse and determination that there must be wholesale reform to resolve the issues’ raised by the Netherlands’ child benefit scandal, with Australia’s underwhelming response to the Robodebt Royal Commission recommendations for fixing the drivers of poor

⁹⁷ Cait Kelly, ‘Revealed: Some Australians Have Overpaid Their Centrelink Debt by More Than \$20,000’, *The Guardian (Australia)* (online, 25 October 2025) <<https://www.theguardian.com/australia-news/2025/oct/24/revealed-some-australians-have-overpaid-their-centrelink-debt-by-more-than-20000>>.

⁹⁸ Jacob Priergaard, ‘Not My Debt: The Institutional Origins of Robodebt’ (2025) 84(1) *Australian Journal of Public Administration* 142 <<https://doi.org/10.1111/1467-8500.12658>>.

⁹⁹ *Deloitte Report* (n 31).

¹⁰⁰ Whiteford (n 19).

¹⁰¹ Adam Graycar and Adam B Masters, ‘Bureaucratic Bastardy: Robodebt/Debt Recovery, AI and the Stigmatisation of Citizens by Machines and Systems’ (2022) 16(5–6) *International Journal of Public Policy* 333 <<https://doi.org/10.1504/IJPP.2022.127432>>; Paul WF Henman, ‘Robodebt Cultures and Useful Idiots: Why Robodebt Was Not a techno-failure’ (2025) 60(1) *Australian Journal of Social Issues* 4 <<https://doi.org/10.1002/ajs4.383>>; Andrew Podger and Donald F Kettl, ‘How Much Damage Can a Politicized Public Service Do? Lessons from Australia’ (2024) 84(1) *Public Administration Review* 160 <<https://doi.org/10.1111/puar.13789>>.

¹⁰² Cait Kelly, ‘Sometimes Defective, Maybe Unlawful: What Can Be Done about Australia’s Crisis-Ridden Welfare System?’, *The Guardian (Australia)* (online, 25 October 2025) <<https://www.theguardian.com/australia-news/2025/oct/25/sometimes-defective-maybe-unlawful-what-can-be-done-about-australias-crisis-ridden-welfare-system>>.

¹⁰³ See also Maarten Bouwmeester, ‘Curbing Dystopia, or Papering Over the Cracks?: The Ongoing Need for Structural Social Security Reform in Post-Robodebt Australia’ (2025 unpublished, on file with this author).

¹⁰⁴ Brian W Head and John Alford, ‘Wicked Problems: Implications for Public Policy and Management’ (2015) 47(6) *Administration & Society* 711 <<https://doi.org/10.1177/0095399713481601>>.

¹⁰⁵ Terry Carney and Belinda Bennett, ‘Framing Pandemic Management: New Governance, Science or Culture?’ (2014) 23(2) *Health Sociology Review* 136 <<https://doi.org/10.1080/14461242.2014.11081968>>.

departmental culture and organisation.¹⁰⁶ One key difference pointed to by way of explanation was that the Dutch child benefit scandal touched *everyone*, impacting families across *all* walks of life, while Robodebt's victims were mainly the unemployed.¹⁰⁷ As the Robodebt Royal Commission was at pains to emphasise, the opprobrium of being tarred as 'dole bludger' is an especially rampant cultural disease that permeates all levels of Australian society, its polity and the bureaucracy.¹⁰⁸ Regrettably, the evidence is that post-Robodebt the popular and media culture denigrating the unemployed has hardly improved at all.¹⁰⁹

Network governance is one lens that might be brought to bear on resolution of some of these wicked governance issues, including complications from the contracting-out of welfare,¹¹⁰ though the concept is a trifle woolly.¹¹¹ One attraction of network governance is its resonance not only with ideas for *systemic remedies*, such as those sketched in the recent book by Yee-Fui Ng¹¹² but also its resonance with Martha Fineman's capacious notion of vulnerability as a *universal* feature of the human condition.¹¹³ Writing about the implication of this theory of vulnerability for legal institutions, Pilliar suggests:

The legal system offers an opportunity to not only respond to particular vulnerabilities, but to attempt to restructure the very 'web of economic and institutional relationships' in which we find ourselves. In so doing, legal tools can respond to vulnerabilities at both the particular and systemic levels. This is a rare institutional capacity, and one that should be more explicitly recognized.¹¹⁴

This Lecture set out to evaluate the case for crafting a set of legal and extra-legal tools able to restructure the 'web of economic and institutional relationships' behind Australia's Robodebt scandal and other more contemporary examples of harm inflicted on welfare recipients. Those welfare failures covered the spectrum from the dystopian (Robodebt and perhaps also the TCF) to the harms incurred by

¹⁰⁶ Jacob Prieraard, 'Reform after Robodebt: Lessons from the Netherlands' (2025) 60(2) *Australian Journal of Political Science* 192, 197 <<https://doi.org/10.1080/10361146.2025.2549868>>.

¹⁰⁷ *Ibid* 201, 204.

¹⁰⁸ *Robodebt Royal Commission Report* (n 8) ch 10, see especially 330–1 (2.2 Stigma), 342 (Recommendation 10.1).

¹⁰⁹ Rebecca Coleman-Hicks and Georgia van Toorn, 'Beyond Robodebt: Media Representations of Welfare and Fraud Before and After the Robodebt Royal Commission' (2025) *Australian Journal of Social Issues* (advance) <<https://doi.org/10.1002/ajs4.70069>>.

¹¹⁰ Jo Barraket, Joanne McNeill, Perri Campbell and Gemma Carey, 'Navigating Network Governance: The Role of Social Enterprise in Local Employment Services' (2023) 25(6) *Public Management Review* 1082 <<https://doi.org/10.1080/14719037.2021.2005327>>.

¹¹¹ Chengyan Pu and Yonghua Zou, 'Understanding New Advances in Network Governance: A Systematic Literature Review' (2025) 48(1) *Public Performance & Management Review* 129 <<https://doi.org/10.1080/15309576.2024.2434237>>.

¹¹² Yee-Fui Ng, *Combatting the Code: Regulating Automated Government Decision-Making in Comparative Context* (Cambridge University Press, 2025) <<https://doi.org/10.1017/9781009599207>>.

¹¹³ Martha Albertson Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20(1) *Yale Journal of Law and Feminism* 1; Martha Albertson Fineman, 'The Vulnerable Subject and the Responsive State' (2010) 60(2) *Emory Law Journal* 251.

¹¹⁴ Andrew Pilliar, 'Vulnerability Theory and Access to Justice: Elaborating Possibilities for Legal System Design' in Martha Albertson Fineman and Laura Spitz (eds), *Law, Vulnerability and the Responsive State: Beyond Equality and Liberty* (Routledge, 2023) 36, 48 (citations omitted) <<https://doi.org/10.4324/9781003323242-4>>.

vulnerable citizens from more common ‘apportionment’ or even NDIS budget-setting examples.

Settling on the design for legal tools able to remedy, or better still prevent systemic harm, and winning public and political support for their adoption, has been shown in this Lecture to remain very much a ‘work in progress’. Yet until that toolbox is available, we surely cannot claim that vulnerable welfare recipients can hope for either justice or equity in the face of ongoing risks of potentially dystopian welfare scandals.