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Prosecuting Social Security Fraud

What's changed and what now?

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Welcome and Introduction

SEMINAR OUTLINE

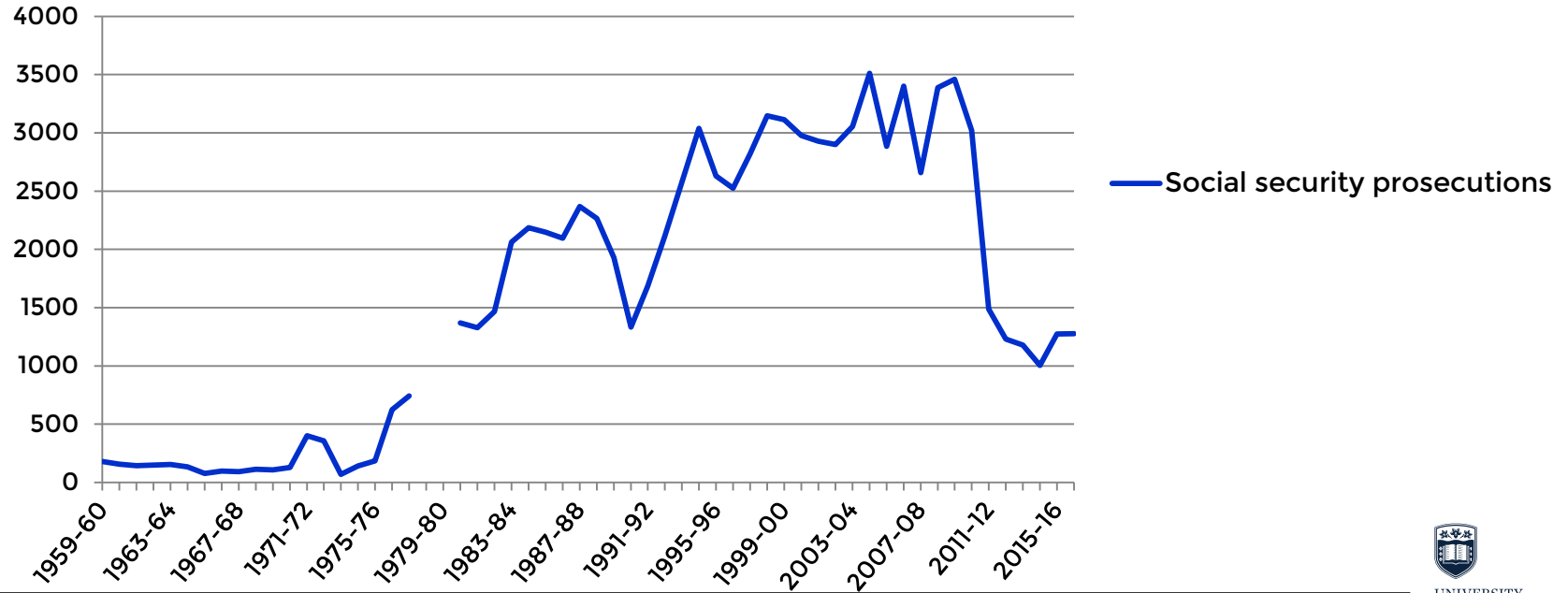
1. Overview
2. Centrelink fraud investigation in the 2000s
3. What's changed?
4. Women, gender and welfare fraud
5. Old problems, new challenges?
6. What next?



Social Security Prosecutions in Australia

LONGITUDINAL TRENDS

Social Security Prosecutions, 1959-60 to 2016-17



Social Security Prosecutions in Australia

KEY OFFENCES

Cth Criminal Code

Divs 134.1(1), 134.2(1), 135.1(5) and 135.2(1)

Div 135.2(1) Obtaining financial advantage

1. D intentionally engages in conduct (which includes an act or omission where there is a duty to act);
2. as a result of that conduct D obtains a financial advantage from another person 'being aware of the substantial risk that this will occur and, having regard to the circumstances that are known to him or her, it being unjustifiable to take the risk that this result will occur' ((*CDPP v Poniatowska* [2011] HCA 43 []); and
3. The other person is a Commonwealth entity (absolute liability).



Centrelink Fraud Investigation in the 2000s

DECENTRALISATION, QUANTITY, 'RESULTS'

- Decentralised structure comprising 11 Fraud Investigation Teams
- 'Automatic referrals' - debts >\$5,000 automatically investigated
- Quantitative KPIs for the DHS and team and tied to individuals

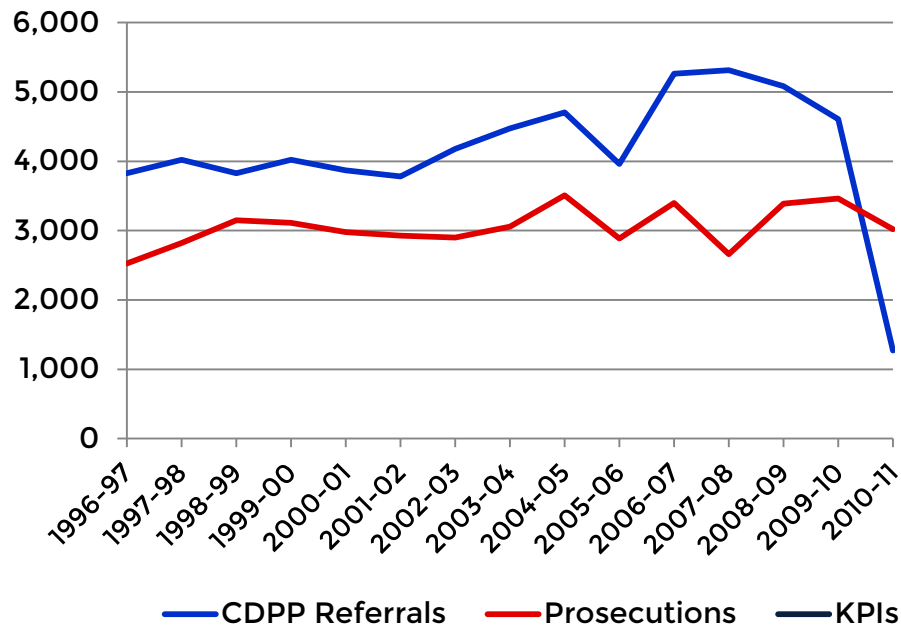
Policy departments - which were then the FaHCSIA and DEEWR - had responsibility for determining how we went about our compliance activity. **So essentially, we just delivered what they said**

(Oliver, Serious Non-Compliance)

Centrelink Fraud Investigation in the 2000s

THE CONSEQUENCES OF GOVERNING BY NUMBERS

- ↑ referrals to CDPF
- ↓ quality
- ↓ oversight
- Focus on 'low complexity' cases
- Disproportionately impacted the most vulnerable people

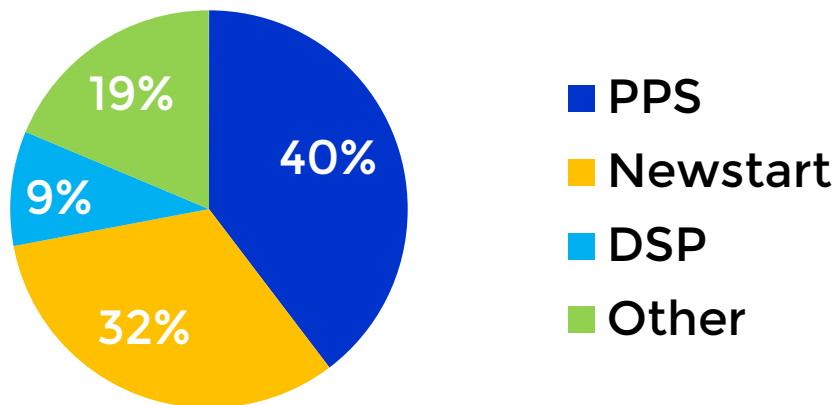


Centrelink Fraud Investigation in the 2000s

TARGETING VULNERBALE PEOPLE

- 2 in 3 cases involve women
- Single mothers overrepresented
- Most cases involve under- or misreporting of income; people at the 'employment-benefit nexus' (Hui et al 2011)
- Not a great deal to distinguish low level fraud and admin debt cases; both characterised by confusion, poverty and/or error (Marston and Walsh 2008)

Social Security Convictions by Payment Type (2008-09)



Source: Tim Prenzler, *Responding to Welfare Fraud: The Australian Experience* (AIC, 2012)

Women, gender and welfare fraud

PROSECUTING VULNERABLE WOMEN

1. **Poverty** in the context of welfare and labour market reform
2. **Precarious work** and the complexity of ‘welfare compliance’
3. **Providing for children**, the costs and imperatives of parenthood.

A Crime of Survival?

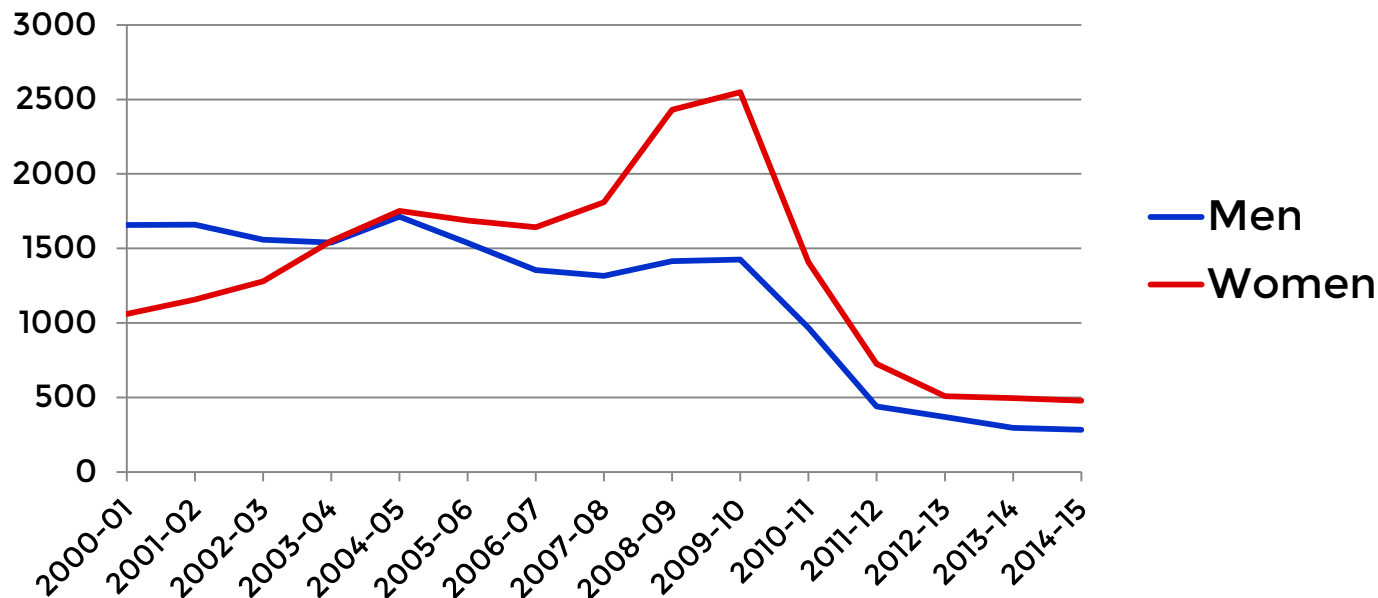
“I think it could be that survival instinct for women. Like you know, they’ve struggled for a number of years, whatever, they’ve got their kids to think about. A lot of the time it will be that: “I need to look after my kids”

(Janice, Fraud Investigator, DHS)

Women, gender and welfare fraud

PROSECUTING VULNERABLE WOMEN

Social Security Prosecutions by Gender, 2000-01 to 2014-15



Source: Commonwealth Director of Public Prosecutions, *Centrelink Matters Convicted by Financial Year and Gender from 1 July 2000 to 30 June 2015 (as at 01.02.2017)* (2017, Document on File with Author)



What changed?

PONIATOWSKA, KEATING AND 'OMISSION CASES'

1. HCA decision in *CDPP v Poniatowska*
2. s 66A inserted into SS(A) Act, which created an obligation to report a change of circs to Centrelink. This was made retrospective to 2000.
3. *Keating* successfully challenged the retrospectivity of s 66A.

As a result

Reduced the pool of possible cases that could be prosecuted in the short term

What's changed?

DPP FUNDING CUTS AND THE MOVE TO FULL BRIEFS OF EVIDENCE

According to Peter, a fraud investigator at the DHS:

In the past when we were doing large numbers of the referrals to the DPP they allowed us to do a short form brief, which wasn't much more than a statement of facts, and they would actually take the case on on that basis ... Ninety-nine percent of our cases were uncontested; people would plead guilty and that would be the end of it

What's changed?

THE ADOPTION OF AN INTELLIGENCE-LED POLICING MODEL

- ANAO Audit
- Scrapped quantitative prosecution KPIs
- ↑ threshold amount for automatic debt referral cases to \$10,000
- Introduced an 'intelligence-led' model of policing focused on 'advanced' data surveillance, including data mining to produce 'selections'
- Explicit focus on 'the most serious cases'
- Increased centralisation and oversight
- New case selection matrix



What's changed?

A NEW CULTURE IN SERIOUS-NON COMPLIANCE?

- The emergence of a less punitive culture?

[Prosecution benchmarks are] not what pushes us now. We look at the individual cases and we don't just— We consider what we're doing and we consider the impacts of what we're doing as well. If there's mitigating circumstances, we take them into account. For example, if someone has literacy issues or mental health issues we consider how this impacts on their ability to comply and what impacts our decisions have on them – SNC Fraud Investigator



Back to the future?

FAMILIAR PROBLEMS, EMERGING ISSUES

- Return to omission cases and other straightforward cases
- The personnel responsible for leading positive international reforms have left the DHS
- Poor quality briefs of evidence
- Centralisation has reduced discretion in individual cases
- Case selection matrix identifies a previous debt
- Continue to target vulnerable people



Back to the future?

CASE SELECTION AND 'SCORING' SERIOUSNESS

- Introduction of a new case selection matrix called the '**Activity Assessment Table**'
- According to a DHS Official:

The Activity Assessment Table looks at things like if [the case is]: affecting the reputation of the Department; how much the monetary value is; how long it's gone on for. I don't know, at least six or eight different factors, and there's a certain family of points for each of those, and there's a bar set which national managers now decide.

- This method of quantitative scoring does not sit well with individualised notions of justice

Taskforce Integrity

THE RETURN OF QUANTITATIVE PERFORMANCE INDICATORS?

Est.

2015 as part of 2015-16 Budget

Funding

\$19m over four years

Headed by

AFP Assistant Commissioner

Staff

100 full time equivalent staff



Strategies for sustained reform

PURSuing PROGRESSIVE REFORM IN A REGRESSIVE ERA

Legal practice

How debts are labelled matters

Contest in appropriate cases

Share strategies

Self-representation resources (too risky?)

Policy and law reform

Targeted internal pressure

Seek changes to the case selection matrix – for example, recognition of the impact of prosecution on children; past debt should not be an factor when considering investigation/referral

Challenging ‘objectivity’ of new technologies; highlighting discrimination

Questions and contributions?

Current and future research projects

Ongoing monitoring

Sentencing

Relationship between social security

compliance rules and domestic violence in

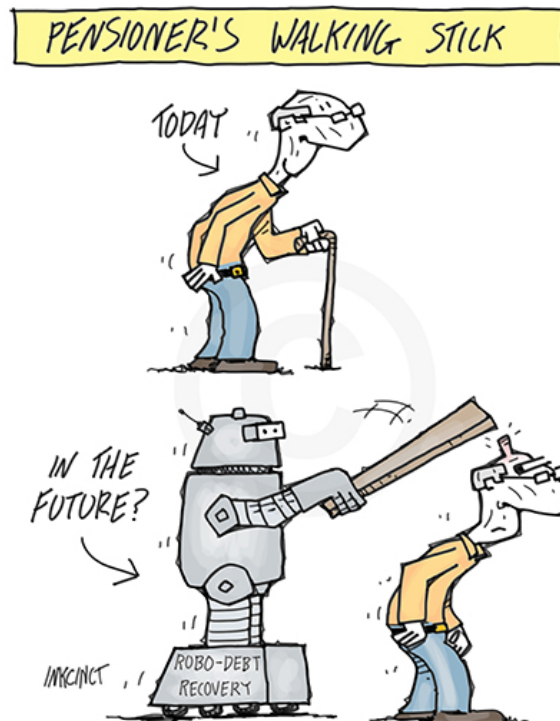
partnership with NSSRN

Identified needs? Ideas? Strategies?

Please let me know!

Contact

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