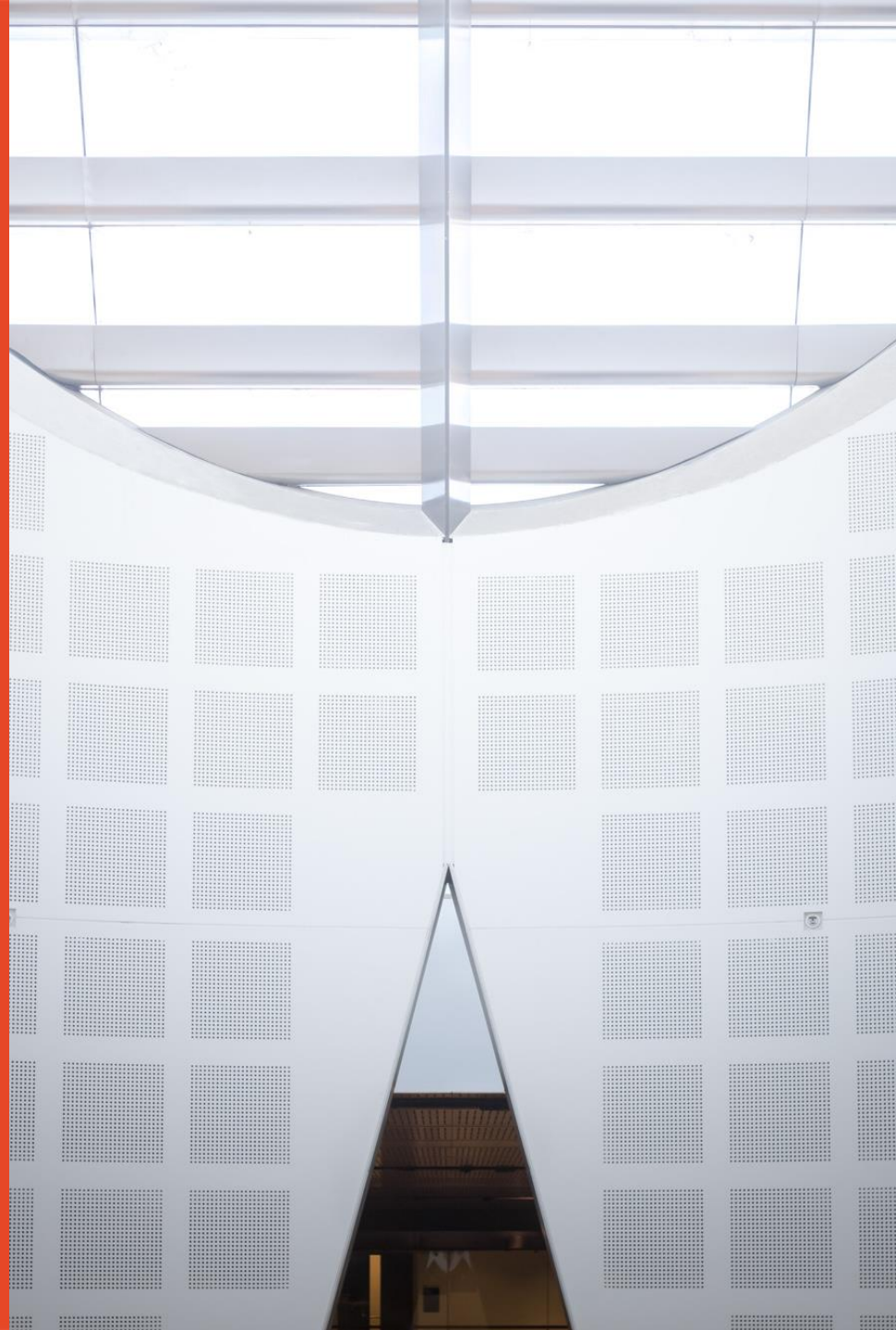


Run-away Robodebt Train Derailed

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Outline

I. INTRODUCTION

II. WHAT WAS ILLEGAL ABOUT ROBO-DEBT?

III. HAS GOVERNMENT PROVIDED FULL REDRESS?

IV. WHAT OF THE 'ONE-TOUCH' FUTURE?

V. CONCLUSION

Further:

Carney, T., 'Robo-debt in the aftermath of government backdowns?' (2020) 6, ii, *Social Security Rights Review*

<https://ejaustralia.org.au/social-security-rights-review/robodebt-in-the-aftermath-of-government-backdowns/>

Carney, T., 'Run-away Robo-debt Train Derailed: Pity about inadequate damage clean-up? (2020) 6, i, *Social Security Rights Review*

I. INTRODUCTION

- On 19 November 2019, the morning after conceding its inability to defend the Federal Court test case challenge to robo-debt in *Amato*, government abandoned the scheme and set about working out how to repay unlawful debts.
 - *Deanna Amato v The Commonwealth of Australia* VID/2019/611-0
- At the end of May 2020 government announced repayments estimated to total \$721 million for around 373,000 people and 470,000 debts
 - Terry Carney, 'Government to repay 470,000 unlawful robodebts in what might be Australia's biggest-ever financial backdown' on *The Conversation* (29 May 2020) <<https://theconversation.com/government-to-repay-470-000-unlawful-robodebts-in-what-might-be-australias-biggest-ever-financial-backdown-139668>
- Outstanding class action from September 2019 additionally seeks interest on monies unlawfully collected and damages for harms inflicted (currently set down for hearing 20 November)
 - *Katherine Prygodicz & Ors v Commonwealth of Australia* VID1252/2019 at <https://gordonlegal.com.au/media/1136/191119-ptygodicz-ors-v-commonwealth-of-australia-statement-of-claim.pdf>.
 - Terry Carney, 'Robo-debt class action could deliver justice for tens of thousands of Australians instead of mere hundreds' on *The Conversation* (18 September) <http://theconversation.com/robo-debt-class-action-could-deliver-justice-for-tens-of-thousands-of-australians-instead-of-mere-hundreds-123691>

II. “WHAT” WAS UNLAWFUL?

- Centrelink is always responsible for ‘establishing’ the existence and size of any supposed social security debt.
- A debt arises *only* if another section creates a debt (s 1222A(a)), eg s 1223 difference between entitled and paid
- For working age payments, entitlement rate is fortnightly: eg Benefit Rate Calculator B (NSA)
- *McDonald* [1984] FCA 59; 1 FCR 354 ‘practical onus’ is borne by Centrelink
- *Briginshaw principle* (*Briginshaw v Briginshaw* [1938] HCA 34; (1938) 60 CLR 336) heightens this onus

ANALYSIS VINDICATED BY AMATO

- Carney, T., ‘The New Digital Future for Welfare: Debts without legal proofs or moral authority? [2018] (March) *University of New South Wales Law Journal Forum* 1-16
<http://www.unswlawjournal.unsw.edu.au/the-forum/>

III. FULL REDRESS YET PROVIDED?

Outstanding issues in class action are for another time:

- Interest on monies withheld straightforward?
- Liability for damages harder to establish?

Government repayment scheme leaves open:

- Whether covers ≈70,000 non-responders to robo-debt letters
- Form of repayment if on income management
- Lack of or incorrect electronic banking details or addresses
- Access to ARO/AAT review
 - Carney, T., 'Robo-debt in the aftermath of government backdowns?' (2020) 6, ii, *Social Security Rights Review* <https://ejaustralia.org.au/social-security-rights-review/robodebt-in-the-aftermath-of-government-backdowns/>

IV. A ONE-TOUCH FUTURE?

Social Services and Other Legislation Amendment (Simplifying Income Reporting and Other Measures) Act 2020

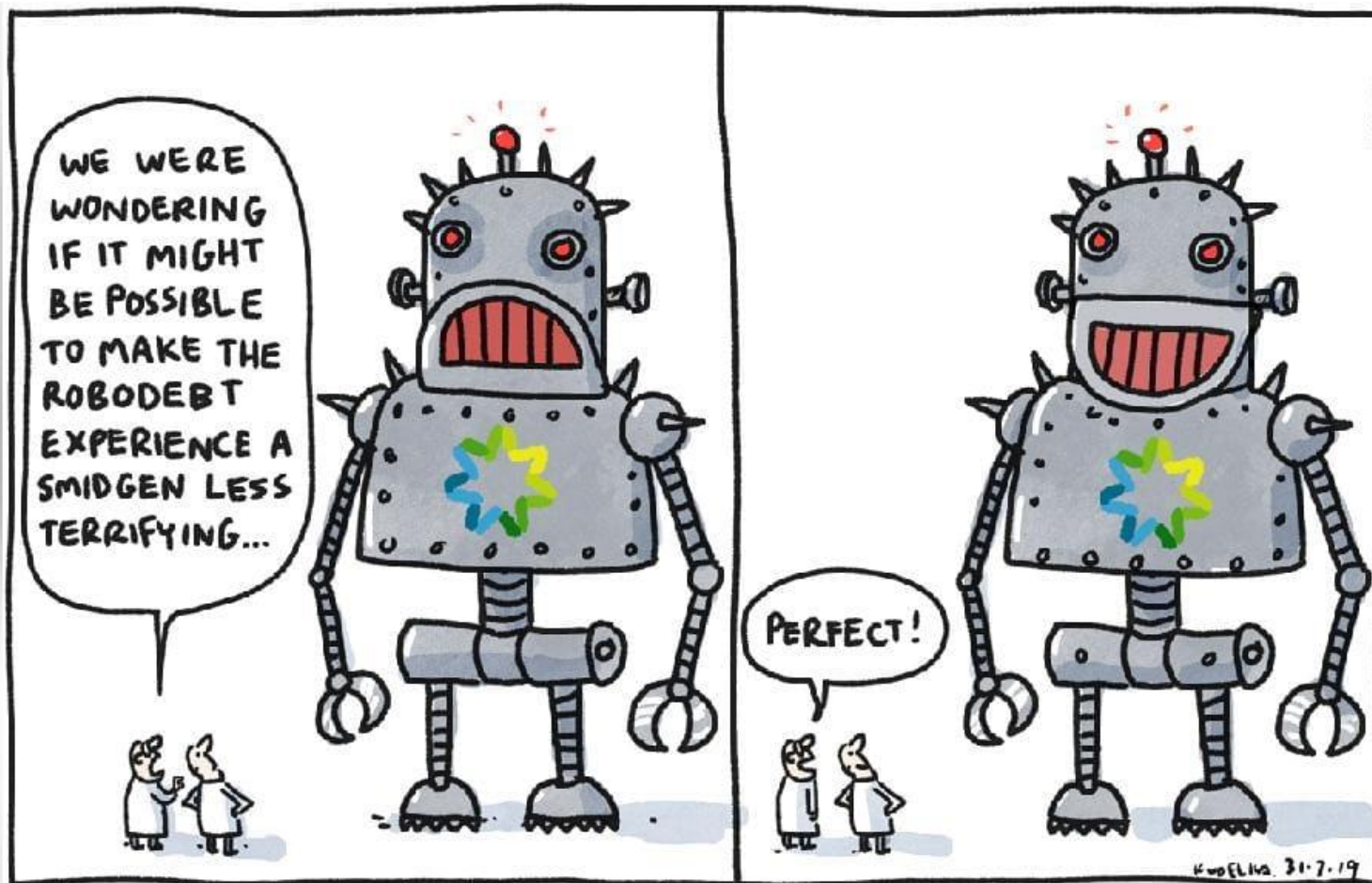
- Almost contemporaneous matching of like with like: ATO one-touch (employer 'pays') with Centrelink reported income (now 'actual receipt')
- Required "employment income" carve-out from traditional 'earned/derived/received' definition of all income; now just receipt
- Applies not only to working age payments but also pensions, so tries to avoid causing too many conniptions for pensioners topping up with part time work 'stability' measure
- But this is probably not going to avoid creation of overpayments for those with 'fluctuating' or casual employment income (thus reprising this aspect of robodebt)?

V. CONCLUSION

- Robo-debt tarnished the AI brand due to poor design and implementation
- Despite delay obtaining redress, ultimately will deliver at least repayments with interest to all
- Major reforms needed to way AI designed for social security
- Major reforms needed to ensure rule of law protections work more quickly in any future episode
 - Carney, T., 'AI, the Rule of Law & the Digital Welfare State' AdminLawBlog 1 September 2020 <https://adminlawblog.org/2020/09/01/terry-carney-ai-the-rule-of-law-and-the-digital-welfare-state/>
 - Carney, T., 'Robo-debt illegality: The seven veils of failed guarantees of the rule of law?' (2019) 44(1) *Alternative Law Journal* 4-10 [pre-print DOI <https://doi.org/10.1177/1037969X18815913>

Selected references

- Terry Carney, 'The New Digital Future for Welfare: Debts without legal proofs or moral authority?' (2018) (March) *UNSW Law Journal Forum* 1
<http://www.unswlawjournal.unsw.edu.au/the-forum/>
- Terry Carney, 'Robo-debt illegality: The seven veils of failed guarantees of the rule of law?' (2019) 47(1) *Alternative Law Journal* pre-print DOI
<https://doi.org/10.1177/1037969X18815913>
- Terry Carney, 'Robo-debt: Challenges and Opportunities for Administration and Accountability' (2019) 5(1) *Social Security Rights Review*
<http://www.nssrn.org.au/social-security-rights-review/robo-debt-challenges-and-opportunities-for-administration-and-accountability>
- Terry Carney, 'AI, the Rule of Law & the Digital Welfare State' AdminLawBlog 1 September 2020 <https://adminlawblog.org/2020/09/01/terry-carney-ai-the-rule-of-law-and-the-digital-welfare-state/>
- Peter Hanks, 'Administrative Law and Welfare Rights: The 40-year story from Green v Daniels to "robot debt recovery"' (2017) 89 *AIAL Forum* 1.



Australian: 31 July 2019

HOPEFULLY IS THIS IS **NOT** HOW REVIEW OF PAST DEBTS IS OPERATING?