

# Services Australia's COVID-19 Measures and Enterprise Risk Management

Submission to the Australian National Audit Office

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## Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.<sup>1</sup>

The ALA office is located on the land of the Gadigal of the Eora Nation.

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<sup>1</sup> [www.lawyersalliance.com.au](http://www.lawyersalliance.com.au).

## Introduction

1. The ALA welcomes the opportunity to have input into the Australian National Audit Office (ANAO) audit of Services Australia's COVID-19 Measures and Enterprise Risk Management.
2. We note the stated objective of this audit, namely:

*...to assess whether Services Australia has effectively managed risks related to the rapid preparation for and delivery of COVID-19 economic response measures.<sup>2</sup>*
3. We write to notify you of an issue which you may wish to add to your questions when auditing whether Services Australia demonstrated effective preparation for delivery of the COVID-19 response measures undertaken.
4. Our concern centres around Services Australia's capacity to maintain critical 'business as usual' functions, whilst coping with significant increases in demand in unrelated parts of their service provision.
5. In short, the system for ensuring that Australians who have sustained injury receive their much needed payments from statutory compensation schemes is entirely reliant on Services Australia providing Clearance Certificates, before any settlement funds can be made available to the client. This system is explained in more detail below. Clearance Certificates also set out and give effect to any recovery by Services Australia/Centrelink.
6. From early in the crisis, it became apparent that Services Australia staff were being redirected from attending to ongoing matters such as the issuance of Clearance Certificates, to dealing with the influx of people applying to access JobSeeker and other benefits.
7. The result is that, what should usually be a relatively quick administrative process is now causing injured Australians to wait for months before receiving their agreed settlement benefits.
8. Our concern is twofold:
  - a. Services Australia should have been able to predict that the influx was about to occur, and provide adequate capacity to ensure that current service provision was not impacted,

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<sup>2</sup> <https://www.anao.gov.au/work/performance-audit/services-australia-covid-19-measures-and-enterprise-risk-management>

- b. Once the initial extreme demand abated, the “usual business” services ought to have been adequately staffed; and
- c. Despite passionate advocacy from a number of sources since March – both to the Minister and directly to Services Australia - this situation has neither changed nor improved.

## Background

9. When a determination has been made by a court or a statutory scheme that a consumer is entitled to compensation, the insurer releases a request for Clearance Certificates.
10. Disbursement of the settlement funds cannot occur until it has been determined that none of the funds are required for the reimbursement of various government authorities, such as the NDIS, Centrelink or Medicare. The government authority must raise a Clearance Certificate, indicating whether they are due a refund, before disbursement can take place. It is unlawful for an insurer to release any of the settlement/judgment sums until that notification is received.
11. Each of these services has a legislated requirement that refunds are determined prior to disbursement of funds to the recipient:
  - NDIS – s.109 and s.111 of the *National Disability Insurance Scheme Act 2013*
  - Centrelink – Part 3.14 of the *Social Security Act 1991*
  - Medicare – s.23 of the *Health and Other Services (Compensation) Act 1995*

## The Issue

12. During this time of heightened workload, Services Australia staff have been unable to give adequate priority to the processing of claims for charges against the settlement/judgment sums, and the provision of the commensurate documentation, as core business.
13. The terms of most settlements allow a period of 28 days for payment of settlement monies to a claimant. Insurers will not release settlement funds without the clearance from Services Australia. According to reports from our members, under normal circumstances, plaintiff law firms would expect to receive the clearance from Services Australia well within that 28 day timeframe

14. Since mid-March, our members have seen a marked increase in the number of delays in the issuance of clearance certificates by Services Australia.

15. For example, for Centrelink clearances in Queensland alone, the offices of one ALA member have reported more than 63 cases of extraordinary delay since March. Sixteen remain outstanding. Of those that have received the clearance:

- 3 clients had to wait between 30 and 39 days
- 13 clients had to wait between 40 and 49 days
- 14 clients had to wait between 50 and 59 days
- 15 clients had to wait between 60 and 69 days
- 1 client had to wait 71 days
- 1 client had to wait 83 days

16. Of the 16 that are currently outstanding:

- 3 clients have been waiting between 30 and 39 days
- 4 clients have been waiting between 40 and 49 days
- 2 clients have been waiting between 50 and 59 days
- 3 clients have been waiting between 60 and 69 days
- 3 clients have been waiting between 70 and 79 days
- 1 client has been waiting for 81 days so far.

17. The situation in other States is no better. In the Victorian cases of a member, the average wait time across 16 delayed cases has been 56 days. They have experienced similar results in New South Wales. One firm in WA advises delays are often between 42 and 70 days and in some cases between 69 and 130 days. The experience of that firm is that the delays are shorter in settlements with the statutory motor vehicle insurer in WA. A South Australian firm has experienced delays of more than four weeks in almost all cases.

18. ALA members have found that they cannot, at present, rely on Services Australia delivering the Clearance Notice within the 28 days.
19. It has become part of our members' regular workflow to make contact with Services Australia when the 28 days deadline is imminent to obtain a status update, so they can keep the client informed of likely time frames for payment to be received. The responses they receive when they contact Services Australia are inconsistent. Sometimes they receive an immediate positive response but it is also common to be told that the matter is 'in the queue'. That some insurers seem able to get decisions issued more quickly than others suggests that lines of communication or policy decisions are made to give priority to those settlements in that State.

## **The Consequences of the Issue**

20. One ALA member conservatively estimates that between \$5mil and \$10mil in agreed payments are currently being held up by Services Australia delay – and that's just in the caseload of one plaintiff law firm. The industry-wide impact could be ten times that amount.
21. These funds should have been circulating in the economy months earlier, rather than being locked away in an insurer's trust fund while injured Australians await Services Australia paperwork.
22. The ALA and other legal industry groups have been in communication with the Minister's office, since March, to make him aware of the issues associated with delays, the impacts on injured Australians, and offering some options for action. There has been no change in how these matters are processed.
23. ALA members have also been directly in touch with a number of Services Australia authorities, discussing a number of other issues which are contributing to delays in the flow of compensation monies during the COVID-19 crisis. These include:
  - The use of electronic signatures
  - The increased use of email, rather than faxed or hard copy documents
24. At present, a number of Services Australia forms which need to be passed between the agency, the plaintiff and his/her lawyer are printed and completed in hard copy, then mailed or faxed between parties.
25. This lack of electronic sophistication has been shown to be particularly troublesome during the COVID-19 crisis. It has proven extremely difficult for law firms and their clients to keep the flow of



paperwork happening whilst adhering to lock-down laws. Access to printers, scanners and faxes is always difficult for clients and has proven just as difficult for lawyers and administrative staff under remote working conditions.

26. The ALA submits that it would be useful for the ANAO to assess whether greater efficiency could have been maintained during the COVID crisis if Services Australia could accept and deliver documents via email rather than relying on fax or the post.
27. The ALA appreciates that there are potential concerns with the security of email exchanges of information. However, the stresses and strains placed on Services Australia (both resourcing and IT capability) during the COVID-19 crisis have highlighted the strategic need for investment in secure electronic communications to eliminate these concerns.

## **Matters for ANAO Consideration**

28. The ALA respectfully suggests that the examples provided above could be indicative of the success or otherwise with which Services Australia demonstrated effective preparation for delivery of the COVID-19 response measures undertaken.
29. We believe the following are worthy of investigation:
  - i. What areas of Services Australia 'business as usual' activity have experienced delays or neglect, while staff have been redirected to more client-facing tasks?
  - ii. What capacity did Services Australia Management have to raise issues of staffing levels, and timely service delivery with decision makers?
  - iii. Have Services Australia's on-line systems proven adequate to cope with future need and future crises?
30. The ALA is in no way critical of Services Australia front line staff.
31. Relying on existing public service processes and resourcing during this time of great anxiety and need means that funds which should be assisting families in need remains locked in insurers' trust accounts. At the same time, overwhelmed public servants are trying to adhere to legislative requirements which are not designed to cater for extraordinary periods of demand.

## Conclusion

32. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input in relation to the ANAO's upcoming audit of Services Australia's COVID-19 Measures and Enterprise Risk Management. The ALA is available to provide more information to the ANAO regarding the issues raised in this submission should that be of assistance.



**Graham Droppert**

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**Australian Lawyers Alliance**