

# Investigation into the compliance audit program for COVID grants

A special report under section 31 of the Ombudsman Act 1974



Pursuing fairness for  
the people of NSW.

 **Ombudsman**  
New South Wales

## **Acknowledgement of Country**

We acknowledge the traditional custodians of the land on which we work and pay our respects to all Elders past and present, and to the children of today who are the Elders of the future.

ISBN: 978-1-922862-81-5

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SYDNEY NSW 2000

Dear Mr President and Mr Speaker

Pursuant to s 31 of the *Ombudsman Act 1974*, I am providing you with a report titled "*Investigation into the compliance audit program for COVID grants.*"

I draw your attention to section 31AA of the Act in relation to the tabling of this report and request that you make the report public forthwith.

Yours sincerely



Paul Miller  
**NSW Ombudsman**

28 April 2026



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## Executive Summary

We have investigated the conduct of Service NSW and Revenue NSW in relation to their administration of audits and debt recovery for 3 COVID-19 grants - the Business grant, JobSaver payment, and Micro-business grant. In 2021, the grants had collectively provided \$10.7 billion to nearly 300,000 businesses to mitigate the impacts of the public health orders during the COVID-19 pandemic.

Between 2022 and 2024 we received multiple complaints from affected businesses raising concerns about the fairness of the compliance audit processes and outcomes. While many of the complaints were resolved following our inquiries with Service NSW and Revenue NSW, we decided to conduct an investigation to examine the administration of the compliance program on a systemic level. To do this, we reviewed 123 complaint files, some of which are included in this report in the form of de-identified case studies. We also reviewed a sample of 60 randomly selected Micro-business grant audit files, and examined the agencies' policies and processes, and obtained other information from the agencies.

We did not investigate, and we make no adverse findings about, the way the grants themselves were administered. We acknowledge the unprecedented and rapidly evolving health and economic environment that the agencies were working in and responding to. However, it has been necessary to reflect on certain design features of the grant delivery process, because of their impact on the subsequent compliance program. In particular:

- despite the grants only being open for around 3 months, there were numerous and frequent revisions of the eligibility criteria and guidelines during the grant application period
- some applicants received incorrect advice from agency staff that encouraged them to apply for a grant for which they were not eligible
- many applications were approved by an automated process, without any substantive assessment of eligibility by agency staff, while the automated system itself was incapable of accurately and critically assessing eligibility
- applicants were not informed that their eligibility was not, in fact, being substantively assessed by the agencies, and that they were expected to fully 'self-assess' their own eligibility.

This led to a situation where some applicants had received grants to which they were not eligible, in circumstances where there had been no deliberate non-compliance, and in the absence of any dishonesty or fraud.

Against the background of those circumstances, the 'compliance' audits were implemented as essentially no more than an 'after-the-fact' eligibility assessment by the agencies. Where a business was assessed as having been ineligible, a refund was claimed, to be enforced as a state debt. The Business grant and JobSaver payment and from late 2022 in the case of the Micro-business grant. They continued between 18 months and over 3 years, respectively.

The errors made during the application period, including system errors and incorrect advice given by staff on eligibility criteria, were not consistently taken into account when decisions were made about whether to exclude a grant recipient from compliance activity or recover a debt. Some applicants were exempted from audits due to system errors, while others were not.

Policies on exemptions, hardship, and alternatives to enforcement were introduced iteratively and late in the compliance program. While basic procedures and work instructions existed, the lack of a

comprehensive audit framework from the outset of the audits led to inconsistent treatment of like cases and consequently inequitable outcomes.

Discretionary measures – such as allowing applicants an ‘offset’ if they were assessed to be ineligible for the grant they received, but would have been eligible had they applied for a different (lesser) grant – were also inconsistently applied. Auditees were sometimes faced with retrospective interpretations of guidelines, which had not been communicated at the time of application.

The imposition of the debts following the audits led to financial stress for many small businesses.

Early audit communications were also perceived as harsh and threatening. Over time, the tone of communication improved, but issues remained, including unreasonably short and inconsistent timeframes for responding to audits, and inadequate explanations for audit outcomes. Many auditees were not informed of their rights to request debt waivers or hardship exemptions, even after relevant frameworks were introduced. Although applicants had a right to elect to go to court, procedures to enable them to do so were not readily accessible.

Consequently, the Ombudsman has made findings of maladministration under s 26 of the *Ombudsman Act 1974*, with certain conduct of both Service NSW and Revenue NSW having been administratively wrong.

Recommendations have been made aimed at improving future compliance programs by increasing transparency about grant approval processes, establishing comprehensive audit methodologies at the outset, ensuring consistent application of policies, and providing clear communication about eligibility, audits, and hardship provisions.

We also recommended that the outcomes for some particular cohorts of COVID grant auditees should be reviewed with the view to rectifying inequitable outcomes.

# 1. Introduction

## 1.1 Context

### The COVID-19 pandemic

The COVID-19 pandemic presented an unprecedented public health, social and economic challenge. The response – including lock-downs and social isolation requirements – had the potential to threaten the livelihoods of workers and businesses, as well as to drive longer-term economic decline if businesses were forced to shed staff or wind up.

In those circumstances, the swift action of government in implementing economic supports and mitigation measures was imperative. Recent evaluations suggest that these efforts were, although imperfect, largely effective.<sup>1</sup>

In NSW in the middle of 2021 (the second year of the pandemic) new and extensive lock-downs were implemented in response to what became known as the ‘Delta wave’ – see Figure 1 below.<sup>2</sup> The Delta variant of COVID-19 prevalent during this wave was more transmissible than previous variants, and had arrived in NSW before vaccination levels were significant.

Figure 1: Weekly COVID-19 cases in NSW in 2021

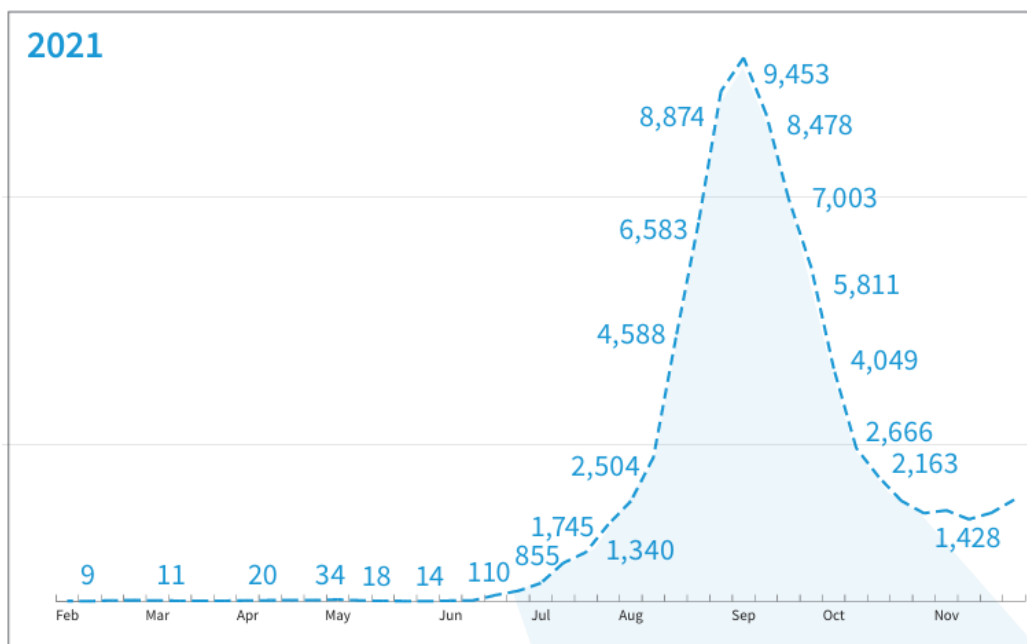


Image source: NSW Ombudsman, The COVID-19 pandemic: second report., 7 September 2022, pg 12.

<sup>1</sup> NSW Treasury (J Pierce), Independent evaluation of NSW 2021 COVID-19 business support programs, October 2025, available at <https://treasury.gov.au/sites/default/files/2023-10/p2023-455038.pdf>.

<sup>2</sup> Primarily as a result of the Public Health (Covid-19 Temporary Movement and Gathering Restrictions) Order 2021. For a detailed outline of all public health orders issued during 2020 and 2021 and their effect see: NSW Ombudsman, 2020 hindsight: the first 12 months of the COVID-19 pandemic, 22 March 2021, and NSW Ombudsman, The COVID-19 pandemic: second report available at [https://cmsassets.ombo.nsw.gov.au/assets/Reports/The\\_COVID-19\\_pandemic\\_second\\_report.pdf](https://cmsassets.ombo.nsw.gov.au/assets/Reports/The_COVID-19_pandemic_second_report.pdf) 7 September 2022.

## The NSW COVID-19 grant programs

Three grant programs (**the COVID Grants**) became central to the NSW government's response to the lock-down, aimed at assisting businesses to remain afloat and continue to employ staff.<sup>3</sup>

The **Business grant**, which was the first program announced, provided one-off cash support to businesses.<sup>4</sup> Payment amounts (or tiers) were determined based on an assessment of the percentage decline in turnover caused by the lock-down.

This was soon followed by:

- The **JobSaver payment**, which provided fortnightly cash support payments to businesses to help them maintain their NSW employee headcount. Eligibility was largely aligned to the Business grant program, with payments based on a percentage of weekly payroll.
- The **Micro-business grant**, which provided weekly cash support to very small businesses (typically sole-traders) with ordinary annual turnover of between \$30,000 and \$75,000.

Each program was open for applications between July and October 2021. Combined, the interventions provided \$10.7 billion<sup>5</sup> over 5 months to almost 300,000 businesses, comprising around 40% of all businesses in NSW.<sup>6</sup>

## 1.2 Our investigation

From 2022, we began receiving complaints from business owners who had received a demand, from either Service NSW (in the case of the Micro-business grant) or Revenue NSW (in the case of the Business grant and JobSaver payment), to repay some or all of the money they had received under those grant schemes.

These demands were made following compliance audits conducted by those agencies, and an assessment being made that either the business had not been eligible to receive the payments or had been over-paid.

The complaints we received were from complainants who maintained that they:

- had applied for the relevant grant in good faith
- had completed their application forms and provided any requested information and documentation honestly
- understood that the approval of their applications and receipt of the associated payments had meant that their eligibility had been officially assessed and confirmed.

Complainants also told us that they consequently relied on the payments and used them, as required by the terms and conditions of the grants, to keep afloat during 2021 and beyond.

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<sup>3</sup> During this time the Australian Government rejected calls by parties including the NSW Treasurer and the Labor party to reintroduce the Commonwealth's 2020 'JobKeeper' payments.

<sup>4</sup> These grants extended to not-for-profit businesses.

<sup>5</sup> Including a \$3.4 billion co-contribution from the Commonwealth Government for JobSaver.

<sup>6</sup> NSW Treasury (J Pierce), [Independent evaluation of NSW 2021 COVID-19 business support programs](https://www.nsw.gov.au/sites/default/files/noindex/2025-10/independent-evaluation-of-nsw-2021-covid-19-business-support-programs-report.pdf) available at <https://www.nsw.gov.au/sites/default/files/noindex/2025-10/independent-evaluation-of-nsw-2021-covid-19-business-support-programs-report.pdf> October 2025, pg 24.

A number of the complainants pointed to what they saw as the perversity of now being in a position of financial stress arising from the repayment demands, when the purpose of the payments had been to help them avoid financial distress, and to contribute to their own as well as broader economic recovery.

We resolved a number of individual cases through complaint-resolution efforts directly with Revenue NSW or Service NSW – a number of the case studies included in this report are drawn from these complaints.

In 2024, as complaints continued to be received, we decided to commence this investigation.

### **A note about the agencies under investigation**

Although both Revenue NSW and Service NSW are within the same government department (Customer Service) and headed by the same person (the Secretary of the Department of Customer Service (DCS)), they are technically distinct ‘public authorities’ for the purposes of the *Ombudsman Act 1974*.

Revenue NSW is a division of DCS. Staff of Revenue NSW (including the Deputy Secretary of Revenue NSW, who is also designated as Chief Commissioner of State Revenue<sup>7</sup> and Commissioner of Fines Administration<sup>8</sup>) are employed in DCS by the Secretary of DCS.

Service NSW is an executive agency *related* to DCS. It is not part of DCS, and its staff are not employees of DCS. However, the Secretary of DCS is the designated head of Service NSW<sup>9</sup> and the functions of Service NSW are conferred on the Secretary.<sup>10</sup>

Given Revenue NSW and Service NSW are formally 2 distinct public authorities, any findings from this investigation will expressly identify when the finding applies to one or other agency, or to both.

## **1.3 Conduct of investigation**

For the purposes of this investigation, we:

- reviewed:
  - 73 complaints made to the Ombudsman about the compliance audits conducted by Revenue NSW for the JobSaver payment and Business grant
  - 50 complaints received by the Ombudsman about the Micro-business grant audits
- required Service NSW and Revenue NSW to produce a range of information and documents pursuant to s 18 of the Ombudsman Act, including a sample of 60 files selected from a list of all Micro-business grant audits conducted by Service NSW
- interviewed a senior Service NSW staff member about Service NSW’s policies relating to hardship.

## **1.4 Submissions from the agencies**

Revenue NSW and Service NSW were each given an opportunity to make submissions regarding our provisional findings and recommendations, and the Acting Secretary of DCS made submissions on their

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<sup>7</sup> Section 60 Taxation Administration Act 1996.

<sup>8</sup> Section 113, Fines Act 1996. Note that various statutory functions are conferred on the Chief Commissioner of State Revenue or the Commissioner of Taxation directly.

<sup>9</sup> Schedule 1 Part 2, Government Sector Employment Act 2013.

<sup>10</sup> See e.g. Service NSW (One-stop Access to Government Services) Act 2013.

behalf. Those submissions were received on 30 October and 7 November 2025. On 13 April 2025, the Secretary of DCS made further submissions.

All submissions have been carefully considered and referred to as necessary in relevant sections of this report.

One additional point that DCS made in a number of its submissions is that, while ‘accept[ing] that some customers had poor experiences’, ‘the number of complaints [received by the Ombudsman] about the compliance program is relatively few by comparison to the overall size of the [audit] program’.

While that is the case (we received 123 complaints specifically about the audits, compared to over 50,000 audits conducted), it is unusual for the Ombudsman to receive so many complaints about a single program, and particularly where those complaints are raising the same or similar issues. The fact that other auditees did not complain to us cannot be taken as evidence that they were satisfied with the audit program. There are any number of reasons why people do not always bring a complaint to the Ombudsman.

Our review of the complaints we did receive, together with our (random) sampling of audit files, and other information and documents obtained from the agencies, ground our findings below.

## 1.5 Consultation with the responsible Ministers

Before finalising a report under s 26 of the Ombudsman Act, in accordance with s 25 (2), the Ombudsman must inform the responsible Minister that he or she intends to make a final report concerning the investigation. In this case there are two responsible Ministers:

- the Minister for Customer Service and Digital Government, the Hon Jihad Dib MP
- the Minister for Finance, the Hon Courtney Houssos MLC.

On 27 March 2026 a copy of the draft report was provided to the responsible Ministers. On 14 April 2025, Minister Houssos consulted with the Ombudsman. On 20 April 2026, Minister Dib consulted with the Ombudsman. No changes have been made to the report as a result of those consultations.

In accordance with s 26 (3) of the Act, a copy of the final investigation report was provided to:

- the responsible Ministers
- the Secretary of the Department of Customer Service
- the Chief Executive Officer of Service NSW
- the Deputy Secretary of Revenue NSW.

## 2. The grant application and approvals process

Our investigation is limited to the conduct of Service NSW and Revenue NSW (**the agencies**) in relation to the compliance audits and debt recovery actions associated with the COVID grants. However, it is necessary to provide context for those actions by outlining some of the circumstances and issues that arose in respect of the initial COVID grants application and approvals process. In doing this, we draw no adverse conclusions and make no adverse findings in relation to the roll-out of the COVID grants, acknowledging the unprecedented and rapidly evolving health and economic environment that the agencies were working in and responding to, the exceptional scale and nature of the emergency grants, and the fact these agencies were not themselves experienced in this kind of grants administration.

### 2.1 The role of each agency in the grants process

Service NSW was the program administrator for the delivery of the COVID grants. It was responsible for developing the online application system, providing advice to applicants and their accountants about their eligibility for the grants and related issues, and processing applications for the Business and Micro-business grants.

Revenue NSW processed applications for the JobSaver payment during the grant delivery period.

### 2.2 Changing eligibility criteria

**Appendix A** contains information on the standard eligibility criteria for each of the COVID grants.

During the roll-out of the grants, the grant guidelines were frequently revised as circumstances and rules about eligibility changed. Although the schemes were only open for applications over a period of 4 months:

- the JobSaver payment had 8 program changes and 7 different versions of the guidelines were published
- the Business grant had 10 program changes and 10 different versions of the guidelines were published
- the Micro-business grant had 15 program changes and 8 different versions of the guidelines were published.<sup>11</sup>

The frequent changes to the guidelines and the eligibility criteria caused confusion for applicants and accountants providing advice to applicants and introduced significant additional complexity. Some of the more significant changes included:

- expanding eligibility for the JobSaver payment for businesses with turnover from \$50 million to \$250 million and to businesses in 'highly impacted industries' with turnover of up to \$1 billion
- the introduction of alternative rules for the COVID grants known as the 'Attachment C rules' in August 2021. The introduction of Attachment C rules meant that some businesses that had not previously met the eligibility criteria for the grant were now eligible. For example, if a business could not demonstrate the required turnover for the relevant full year (2019/20) because they

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<sup>11</sup> Service NSW response to Ombudsman's own motion enquiries dated 21 March 2022, TAB A.

began operation after June 2019, a shorter period could be accepted provided it was representative of the “normal operating environment” of the business. The turnover for this shorter period was annualised to get an equivalent annual turnover figure for the business

- as the lock-down was extended, changes were to made the dates within which applicants needed to demonstrate that they had suffered a 30% decline in turnover and changes to the baseline period against which they needed to determine a decline in turnover.

Service NSW acknowledged to us that these changes may have caused confusion, and explained that it had developed communication materials with a view to ensuring that the program changes were communicated to affected businesses, including through media releases, website updates, peak bodies, the wider business community and applicants directly as well as social media announcements for major changes.<sup>12</sup>

Despite these efforts, we still received complaints from applicants who were subsequently audited, who told us that they had been unaware of changes or did not understand their implications.

## 2.3 Service NSW’s advice to applicants

Many applicants contacted Service NSW for advice before applying for a grant to check if they were eligible. This is unsurprising, particularly in view of the frequently changing eligibility guidelines and criteria. Advice from Service NSW staff provided an opportunity to reduce the risk of ineligible applicants lodging applications.

While we do not doubt that many individuals received correct advice from Service NSW, we saw many cases where an applicant was given incorrect or confusing advice, including advice that encouraged them to apply for a grant that, as they would later be told during the audit process, they were not eligible for.

Some examples from the complaints made to the Ombudsman (from approved applicants who subsequently received a demand for repayment following audit) include:

- a beauty therapist who lived in a region outside of Sydney was incorrectly advised that her business could use a period of lock-down that was relevant to her region, rather than the Greater Sydney lock-down period, to demonstrate a decline in turnover
- a hairdresser and a charter-boat operator were both advised that they were eligible for the JobSaver payment when they were only eligible for the Micro-business grant
- a creative copywriter, an owner of a transport business, a cinematographer and an occupational therapist were all incorrectly advised that they could use their financial year 2018/19 turnover figure as their ‘baseline’ turnover, rather than the financial year 2019/20 turnover figure as required
- other business owners told us they were advised to apply for the JobSaver payment and Business grant on the basis that their turnover had been over \$75,000 in financial year 2020/21, when the requirement was that their turnover had been over \$75,000 in financial year 2019/20.

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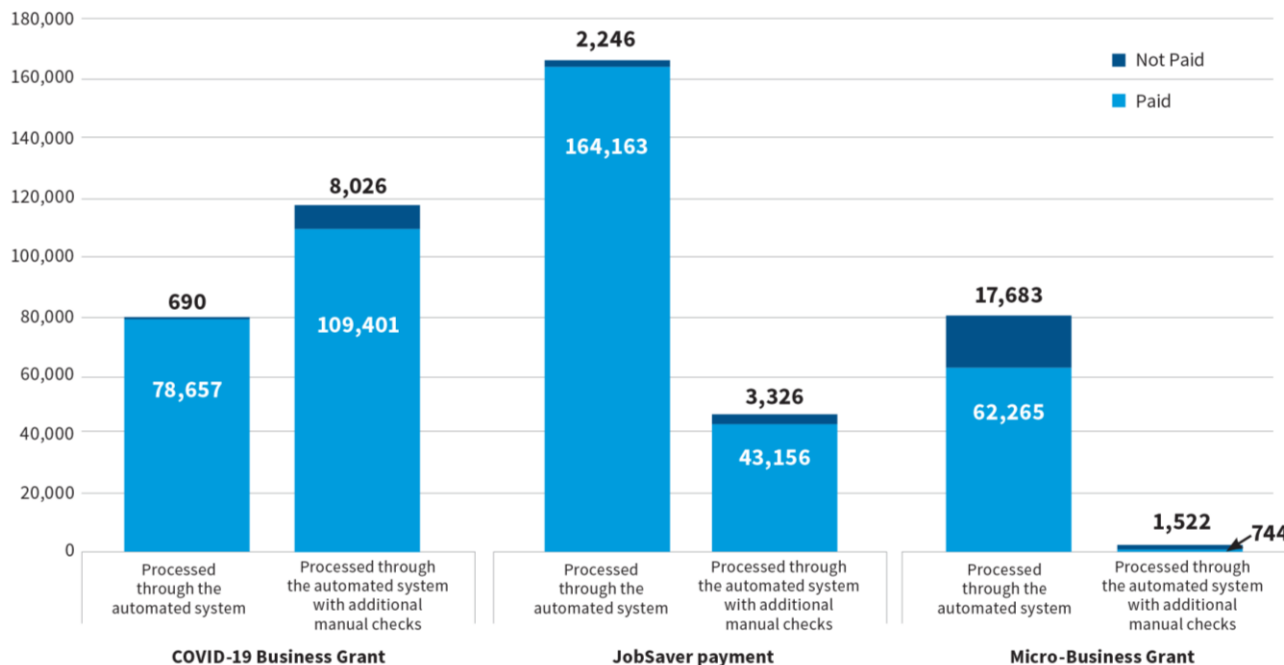
<sup>12</sup> Service NSW response to preliminary inquiries dated 21 March 2022, TAB B.

~491,900  
Applications processed



### Average payment per business

COVID-19 Business	JobSaver	Micro-business grant
\$12,500	\$35,500	\$12,500



\* Data provided by Service NSW.

## 2.4 An automated approvals process

### Online application process

Service NSW was given a relatively short time to stand up its systems and begin processing applications for the COVID grants. Speed was gained by using an online application process that automated the determination of some grant applications.

Grant applications were made via a web-based digital form. An application could be started through the Service NSW App, by phone or online. Regardless of the method an applicant used, all applications were entered into the digital form. The web form contained questions that were designed to correspond with the eligibility criteria for the relevant grant.<sup>13</sup>

### The processing of grant applications

Applications were initially processed using a simple structured decision-making tool, supported by data-matching capabilities.

The design intent of the system was that an applicant could not progress past a question if:

- their response was inconsistent with encoded eligibility criteria

<sup>13</sup> Service NSW response 19 May 2024, p 13.

- certain data did not match with data obtained from third parties (such as the business names register)
- supporting documents required by that question were not submitted when requested.<sup>14</sup>

Where answers to questions did not meet the above requirements, this was meant to trigger a 'hard stop', which served as both an eligibility control and fraud control. Any applications the system identified as possibly fraudulent were referred for a security check.

Once an application was completed, the system automatically sent the following acknowledgement to applicants:

We'll process your application against the grant guidelines. We process all applications as quickly as possible.

If your application is approved, we'll transfer funds up to 5 business days from the approval date. We'll contact you if we need more information. If this happens, we may need to carry out further assessment. We're receiving unprecedented demand and apologise if there are any delays in the assessment of your application.

### Automated approvals

The online application system was used to automate the approval of some grant applications.

In the case of the JobSaver payment and Business grant, applications were automatically approved where:

- a) the applicant's business was located in a designated 'LGA of concern'
- b) the business type was on a list of 'highly impacted industries'
- c) the application was fully completed and passed all automated controls.

All applications for the Micro-business grant were initially processed manually. However, from August 2021, the NSW Government made an explicit direction that every application for the Micro-business grant should be automatically approved.

Automatic approval followed once the application met the system's coded requirements, was assessed as 'complete' and passed certain other controls. Then an approval confirmation was sent to the applicant, and grant funds paid, without any human officer making a decision on the application.

In each case, an applicant would receive the acknowledgement email set out above when they first submitted their application. They would then receive a further email, some days later to inform them that their application had been approved. Neither of these emails informed the applicant that their application had been approved automatically and without a human decision-maker having assessed eligibility.

Ultimately, a significant proportion of approved applications for the JobSaver payment (78%) and Business grant (40%) were automatically approved, as were all Micro-business grants approved from 9 August 2021. **Appendix B** provides detail regarding the number of applications that were automatically or manually approved for each grant.

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<sup>14</sup> Ibid.

## Limitations of the automated approval process

The automated system was not capable of critically assessing applications against the grant guidelines, or reviewing the supporting documents provided by an applicant to determine whether they met all the eligibility criteria.

Through data matching, the system was only able to check the:

- validity of the ID credentials of the applicant (Driver licence and Medicare Card)
- currency of the ABN or ACN provided
- business address provided was in NSW and the business was registered prior to 1 June 2021
- last name of applicant matched that of the associate recorded on the Australian Business Register
- ANZSIC Code of the business recorded on the Australian Business Register matched those listed in the guidelines
- applicant had not made duplicate claims or was previously recorded as having engaged in fraudulent activity.<sup>15</sup>

Service NSW confirmed during the investigation that the automated system had no capacity to review the supporting documentation provided by applicants.<sup>16</sup> This meant that the system approved some grants where applicants had not provided correct supporting information or had not provided supporting documents at all.

## Errors in the automated approval process

A range of errors occurred as a result of the automated approval process.

In some cases, applicants who answered a question on the online application form indicating that they did not meet the turnover threshold for the specific grant they applied for, were cleared to proceed with their application and had their application approved regardless. This was despite the answer to the turnover threshold eligibility question being intended to be a 'hard stop' built into the system so that if an applicant answered 'no', the system should have terminated the progress of the application.

In other cases, some applicants who submitted an online application were contacted by staff of Service NSW or Revenue NSW<sup>17</sup> after lodging their applications and were told that they had not provided all or adequate supporting documentation, or there were early indications that they were not eligible. For example, some applicants were contacted by staff to inform them that they needed to provide evidence of their turnover. In some cases, these applications were then automatically approved before that further information was provided. In other cases, applications were approved even when the documents provided in response would have led to the application being refused if they had been reviewed by agency officers (for example, because they showed a turnover amount in the relevant period of less than the required threshold).

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<sup>15</sup> Service NSW response to preliminary inquiries dated 21 March 2022, Tab C.

<sup>16</sup> Service NSW response to s18 notice dated 19 May 2024, p.13.

<sup>17</sup> Revenue NSW manually processed JobSaver grant applications.

## 2.5 Advice to applicants about the nature of the approval process and future audits

In response to this investigation, Service NSW told us that any applications that were processed and automatically approved for payment were done so on the basis that applicants were being required to self-assess their own eligibility against the guidelines. Service NSW described this to us as a 'self-declaration process.'<sup>18</sup>

This was not clearly communicated to applicants, nor were they informed of the obligations and consequences that could arise from incorrect 'self-declaration'. The online application form did not alert applicants to the fact that their applications would not undergo any assessment by officers to determine eligibility, or the fact that approval would be given solely based on the application form and without any consideration of the supporting documents.

In response to complaints, Service NSW pointed us to emails that it said were sent to all applicants who had applied for the Micro-business grant before 9 August 2021, asking them to revisit their eligibility as follows:

Hello

Thank you for applying for the 2021 COVID-19 micro-business grant for ...

We are processing your application. Currently the assessment process is taking 10 to 15 days. You can check its progress by clicking on the 'applications' tab in your Service NSW My Business profile.

Approved applications will receive payment in their nominated bank account within 7 business days.

[Micro-business grant or COVID-19 Disaster Payment?](#)

If you don't have employees, you can't receive the micro-business grant and the COVID-19 Disaster Payment at the same time. If you haven't already applied for the COVID-19 Disaster Payment, you should decide which is best for you. If you have employees, you may still be eligible to receive the Micro-business grant if your employees are receiving the COVID-19 Disaster Payment.

[COVID-19 Disaster Payment increase](#)

The Disaster Payment has recently been increased to support workers who've either lost their job, or had their hours reduced. Payment amount depends on location and lockdown period: \$325–\$450 for a loss of 8 to 20 hours of work per week \$500–\$750 for a loss of more than 20 hours per week.

[Withdrawing your Micro-business grant application](#)

If you decide that you'd like to cancel your Micro-business grant application because you're applying for the COVID-19 Disaster Payment, simply email [info@service.nsw.gov.au](mailto:info@service.nsw.gov.au) to confirm your withdrawal.

Contrary to Service NSW's assertion that these emails notified applicants that Service NSW would be relying on their self-declaration (in lieu of the agency conducting an assessment of eligibility), the email did not mention self-declaration. Nor did it ask applicants to review their eligibility, or to confirm or re-confirm eligibility. The email instead asked applicants whether they wished to withdraw their Micro-business grant and apply for the Disaster Payment instead. There was a link in the email to information about the Disaster Payment, but no information linking to the Micro-business grant guidelines.

We cannot agree that this email (or any other communications at the time) put applicants on notice that they were attesting to, and in effect 'declaring' their own eligibility for the Micro-business grant. There is a material difference between being expected to complete, honestly and in good faith, an

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<sup>18</sup> Service NSW response to s18 notice dated 19 May 2024.

application that provides factually correct information (such as the amount of a business's sales revenue in a particular period) and self-assessing grant eligibility against guidelines and criteria.

Further, while warnings were given that audits may be undertaken in the future, there was no clear communication that this meant that an eligibility assessment would only be conducted by the agencies in the future. On the contrary, the communications at the time (including the automated emails cited above) would have led any reasonable applicant to believe that their application had actually been assessed for eligibility and subject to an approval process.

It would be reasonable for applicants to have assumed, on the basis of the communication they received, that the reference to future 'compliance' audits would be concerned with identifying willful non-compliance – that is, dishonesty or fraud – in the application process.

Applicants (who later complained to our office about audit outcomes) quite reasonably told us that when they had received confirmation of their grant and the funds were transferred, they had taken this to mean that their eligibility for the grant had been officially assessed and verified. They then relied on this, using the grants as intended. In circumstances where they had not engaged in any dishonest or fraudulent conduct, they had not considered the possibility that a decision about their eligibility might only be made sometime (months or perhaps years) in the future, together with a demand that they repay the funds long after they had been spent.

## 3. The audits: purpose, structure and planning

### 3.1 The audits were essentially ‘after-the-fact eligibility assessments’

Audits of grant programs are an important mechanism for safeguarding public funds against fraud and misuse. In the case of the 3 COVID Grant programs, compliance audits were conducted. However, these audits were not focused on identifying non-compliant behaviour by applicants, for example, the provision of fraudulent supporting documentation or false information or identifying if they had misused the grant funding.

Rather, the audits were focused primarily on assessing ‘eligibility’ – that is, whether the selected grant recipients were, in fact, eligible to receive the grant that they were given. While, in the case of the Business grant and JobSaver payment, auditees were selected for audit based on data obtained from the ATO and other third-party data,<sup>19</sup> the audits themselves generally involved considering the applicant’s original application and supporting documentation against the grant’s eligibility criteria as set out in the eligibility guidelines and grant terms and conditions at the relevant time of the application.

In other words, the audits were designed and conducted effectively as after-the-fact ‘eligibility’ assessments, rather than ‘compliance’ audits as such<sup>20</sup> – noting that, for many of the grant recipients, there had been no genuine *pre-approval* eligibility assessment undertaken by the agencies as their eligibility had been determined by the automated system.

Revenue NSW conducted the audits for the JobSaver payment and the Business grant, under an agreement with Service NSW. The Revenue NSW audits started in November 2021 and concluded on 30 April 2023. A residual team remained in place until 30 June 2023 to manage ongoing requests for reviews before responsibility for the remaining audits was transferred to Service NSW.<sup>21</sup>

Service NSW directly undertook the Micro-business grant audits itself. These audits were approved by the Minister in late August 2022.<sup>22</sup> The later commencement of these audits may have been due to the fact that Service NSW fraud and compliance investigators had identified anomalies in some applications made for the Micro-business grant as early as October 2021. In November 2021, Service NSW announced that it would suspend payments of the Micro-business grant and establish a taskforce with the NSW Police called Strike Force Sainsbery to investigate a substantial number of fraudulent applications for the grant.<sup>23</sup> That fraud investigation was separate from (and pre-dated) the general ‘eligibility’ audits by Service NSW that are the subject of this report.

In November 2022, Service NSW commenced a pilot audit program of 1,500 Micro-business grant recipients and in March 2023, it started auditing the remaining grant recipients.<sup>24</sup>

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<sup>19</sup> Under an agreement with the ATO, Revenue NSW used income tax data, Business Activity Statement (BAS) data and Single Touch Payroll (STP) data, to confirm that grant recipients met relevant eligibility criteria. Other data was also scrutinised including workers compensation data, the ABN register, ASIC data and Revenue NSW’s Payroll Tax data. Revenue NSW conducted compliance reviews only on applicants where the data indicated they failed to meet one or more of the eligibility criteria.

<sup>20</sup> This distinction was highlighted in legal advice (discussed in section 4.4) below where cases of ‘overpayment’ were identified in the audits but no ‘non-compliance’ by the auditee.

<sup>21</sup> Revenue NSW response to s18 Notice dated 2 May 2024, Schedule A.

<sup>22</sup> Service NSW response to s18 Notice dated 19 May 2024, Tab AX1.

<sup>23</sup> [Department of Customer Service media release 9 November 2021](https://www.nsw.gov.au/departments-and-agencies/customer-service/media-releases/service-nsw-and-nsw-police-announce-strike-force-sainsbery-to-investigate-grant-fraud) available at <https://www.nsw.gov.au/departments-and-agencies/customer-service/media-releases/service-nsw-and-nsw-police-announce-strike-force-sainsbery-to-investigate-grant-fraud>.

<sup>24</sup> Service NSW response to s18 Notice dated 19 May 2024, Tab AX1.

If, following audit, a recipient was found to have been ineligible, a debt invoice was created requiring that the auditee pay back the grant received, or depending on individual circumstances, the portion of the grant that they had been overpaid.

Revenue NSW's State Debt Recovery branch was then responsible for recovering any unpaid debts in accordance with the standard process relating to State debts set out in the *State Debt Recovery Act 2018 (SDR Act)*.<sup>25</sup> This includes the opportunity for the debtor to obtain an internal review by Revenue NSW of the decision to recover the debt,<sup>26</sup> elect to have the matter dealt with by a court,<sup>27</sup> or apply to Revenue NSW for hardship relief.

In November 2025, DCS told us that, subject to Ministerial approval, all debt recovery action in respect of the COVID grant programs has now been ceased, unless an auditee is already on a payment plan.

## 3.2 Failure to develop an audit framework prior to commencing the audit program

The audits were commenced without a clear and comprehensive audit framework in place.

Internal work instructions (not made publicly available) were developed and provided to agency staff involved in the audits, but these were generally concerned with explaining relevant internal roles, work flows and processes. Otherwise, auditors were directed to their task of assessing eligibility and, if the auditee was assessed as not eligible, raising a debt.

As acknowledged in the previous chapter, there was a situation of extreme urgency surrounding the development and roll out of the COVID grants programs. No doubt timeliness remained relevant in relation to the subsequent audit programs, but the same urgency imperative was not driving the commencement of the compliance audit programs.<sup>28</sup>

The absence of an appropriate audit framework from the outset is apparent from the different approaches taken by the 2 agencies, as well as the changing approaches taken by Service NSW itself over the course of the audit program for the Micro-business grant. Instead of operating under a clearly documented framework that would have supported staff to work with clarity and consistency from the beginning, changes and enhancements to the Service NSW compliance audits themselves were made incrementally over almost a 2-year period.

As detailed in the table below summarising the changes to the Micro-business grant, Service NSW iteratively came to incorporate many of the requirements now set out in its *Grants Compliance Framework*, which was not endorsed until December 2023, some 10 months after the Service NSW audits started and 8 months after Revenue NSW's audits had already concluded.<sup>29</sup> This meant that

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<sup>25</sup> The responsible authority (in this case Service NSW) for the referable debt may serve a debt notice for the referable debt to the debtor.

If the referable debt is not paid within 7 days of the due date specified in the debt notice, the responsible authority for the referable debt may refer the debt to the Chief Commissioner for the making of a debt recovery order under the SDR Act. The Chief Commissioner may make a debt recovery order against the debtor. If the referable debt is not paid within 7 days of the due date specified in the notice of debt recovery order, the Chief Commissioner is authorised to take debt recovery action.

<sup>26</sup> Part 3 State Debt Recovery Act.

<sup>27</sup> Part 5 State Debt Recovery Act.

<sup>28</sup> The audit programs continued for more than 3 years and, as already noted, the Micro-business grant audit program did not commence until August 2022 (following more urgent action in 2021 to respond to concerns about fraud).

<sup>29</sup> While not drafted to uniquely apply to the compliance audit program, Service NSW's Grants Compliance Framework was developed in late 2023 to provide guidance for designing a compliance approach for Service NSW programs (including grants). The Grants Compliance Framework includes information on elements such as workshopping the design of the compliance approach with partner agencies, documenting the agreed compliance approach, providing quality assurance, responding to fraud and responding to non-compliance where an applicant is found to have provided incorrect information or inadvertently breached the program rules. Further, a procedure for compliance audits set out in the framework outlines details such as how to review an application to determine if any documentation is missing, contacting the applicant to request further information (noting that applicants must be given 28 days to respond and must receive

Revenue NSW and Service NSW staff who were designing and executing the compliance audit program did not get full and adequate guidance from the start.

Table 2: Incremental changes to the Service NSW Micro-business grant compliance program

Date	Change to program
November 2022	Audits of the Micro-business grant commenced.
July 2023	Service NSW developed a process in which a grant recipient who was eligible for the JobSaver payment or COVID Business grant, who had mistakenly applied for the Micro-business grant, could have the debt from the Micro-business grant offset against their entitlement from the other grant.
	An internal review procedure known as the Dispute Management Framework was created.
August 2023	Service NSW paused its compliance audit activity to consider impacts on vulnerable grant recipients.
September 2023 <sup>30</sup>	<p>The following cohorts were removed from compliance activity:</p> <ul style="list-style-type: none"> <li>• grant recipients with an Aggregated Annual Turnover of under \$30,000 at the time of audit</li> <li>• grant recipients with Aggregated Annual Turnover in financial year 2020 and 2021 was less than \$30,000</li> <li>• grant recipients located in the 7 Northern Rivers Local Government Area</li> <li>• grant recipients with a cancelled ABN</li> <li>• inactive businesses</li> <li>• recipients in bankruptcy.</li> </ul>
October 2023	Cohort of 4,749 grant recipients who declared 'no' to a question about whether their turnover was between \$30,000 and \$75,000 but were automatically approved and paid due to system error were excluded from compliance activity <sup>31</sup>
November 2023	Compliance activity resumed in October 2023 but was then paused in November 2023 following a request from the Minister for Customer Service and Digital Government to conduct a further review of the compliance activity.
9 April 2024	Compliance program restarted after a pause under a new communication model approved by the Minister for Customer Service and Digital Government; which softened the language used in communicating with grant recipients about the audit and provided those being audited with 90 days to provide the requested documentation.
August 2024	Service NSW introduced its <i>Compliance Audit Exemption Framework</i> and an <i>Alternatives to Funds Recovery Framework</i>
7 November 2025	DCS advice to this office that the NSW Government and Service NSW intend to close the audit program (subject to Ministerial approval)

at least two phone calls before being deemed non-responsive) and assessing the response and documentation provided by the applicant. The framework also provides criteria for 'cohort exclusions', which should be considered during the design of the compliance approach.

<sup>30</sup> Service NSW attachment to response to s18 Notice received on 30 May 2024 TAB AW, Page 34.

<sup>31</sup> Ibid.

The incremental nature of the changes has meant varied and inequitable outcomes for auditees based solely on the timing of their audit.

Out of the 60 Micro-business audit files we reviewed, more than 50% (33) of the audits commenced prior to the changes detailed above. A further 18 were commenced before November 2023 and the remaining 9 were commenced in April 2024. Statistics provided to us by Service NSW in May 2024 showed that more than half of the Micro-business grant applications had been audited (33,774 applications) before that date.

The lack of early planning, failure to develop a framework from the start of the audit program to guide Service NSW and Revenue staff conducting and designing the audits, and the delays in rolling out the policies and making improvements, contributed to deficiencies we observed in relation to decision-making, and approach to procedural matters. These resulted in inconsistencies in the audit and debt-collection procedures which we discuss in more detail in Chapters 4 and 5.

### **3.2.1 The need for audit ‘pauses’ while refined processes were considered**

As highlighted above, there were several pauses in the compliance audit program for the Micro-business grant. These were needed to address process issues mid-way through the program.

Although ultimately these did lead to changes that benefited those grant recipients who were subsequently audited, for those already within the audit cycle, such as Zhara (below), the audit pauses created delays, confusion and added stress.

#### **Case Study 1 – Zhara**

Zhara owned a local hairdressing salon, which was forced to close during the 2021 COVID-19 lock-down. She lodged an application for the Micro-business grant, which was approved in August 2021.

In early May 2023, Service NSW wrote to Zhara informing her that based on the information she had provided, she was not eligible for the grant. The email also requested that she provide further evidence to support her application within 14 days. Zhara submitted her Income Tax Return for the financial year 2019/2020 as requested, which was acknowledged a few days later.

Zhara heard nothing more until late November 2023, when she received an email advising her that compliance activities had been temporarily paused to allow Service NSW to review the audit process.

Some 7 months later, in late June 2024, Zhara received a further email advising her that the grant compliance audit process would recommence soon. The email advised that businesses would be given up to 90 days to provide supporting documents and that within the next 30 to 60 days she would receive an email advising her of next steps.

However, 2 weeks later, Zhara received an email advising her that she was not eligible for the Micro-business grant and her application would be closed and referred to Revenue NSW for funds recovery.

Zhara promptly requested an internal review, which was completed in August 2024 with a finding that she remained ineligible for the grant. She then lodged a complaint with our office, stating:

I come to you in total disbelief and despair regarding the actions of Service NSW to claw back previously assessed and approved Covid-19 Micro Business grants. The current “threats of garnishee orders, asset seizure” etc and the harassment/intimidation tactics of Service NSW/Revenue NSW has left me constantly feeling anxious, my mental health has suffered as a result every time my phone rings or an email is received ...

In response to our enquiries about Zhara’s case, Service NSW advised that they had removed Zhara from compliance activity due to hardship factors she was experiencing.

While Zhara was ultimately successful in having her debt waived by Service NSW, it took 18 months from the date that she was initially advised of the audit and a complaint to the Ombudsman for this to occur.

### 3.3 Failure to adopt policies on exemptions, alternatives to enforcement and hardship from the start of the audits

Service NSW’s general *Grants Compliance Framework* now acknowledges that one of the general principles underlining a compliance approach should be consistency and fairness, and states that, ‘the selected compliance approach needs to produce fair and consistent outcomes that align with the Program Rules and policy intent.’<sup>32</sup>

*The Grants Compliance Framework* further notes that decisions about whether certain cohorts should be excluded from the compliance approach should be considered when designing the compliance approach.<sup>33</sup> Decisions about whether and in what circumstances grant recipients should have debts waived (during the audit process) because of hardship should also be decided at the start of the audit process.

#### 3.3.1 Service NSW’s Compliance Audit Exemption Framework and Alternatives to Funds Recovery Framework

A *Compliance Audit Exemption Framework* and an *Alternatives to Funds Recovery Framework* were introduced by Service NSW in August 2024. Both frameworks are expressed to have general application. However, they were developed almost 2 years after Service NSW’s Micro-business grant audits had started in November 2022 and well after Revenue NSW’s audits (of the Business grant and JobSaver payment programs) had concluded in April 2023.

The *Compliance Audit Exemption Framework* was designed to assist Service NSW staff when making decisions about whether a grant recipient or cohort of recipients should be exempt from a compliance audit. It provides for certain cohorts of recipients to be exempt, generally on the basis of certain hardship factors.

The *Alternatives to Funds Recovery Framework* sets out alternatives to recovering funds after a grant recipient has been found ineligible at audit. Of particular relevance to the Micro-business grant audits, the framework provides for the following alternatives to debt recovery:

- **Offsetting the debt** – the Customer Payments Assessment team will consider whether a grant recipient is eligible for another program prior to initiating debt-recovery action. If they are eligible for another program, they must agree to have their debt offset, which will lead to either a full or partial revocation of the debt.

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<sup>32</sup> Grants Compliance Framework, page 7.

<sup>33</sup> Grants Compliance Framework, page 10.

- **Not pursuing the debt** – Service NSW will consider not pursuing a debt where a grant recipient falls within a vulnerable category,<sup>34</sup> their circumstances are unlikely to improve, and they are not able to repay their debt without experiencing further hardship.

### 3.3.2 Revenue NSW’s Guidelines for customers experiencing difficulty making repayments

For the Business grant and JobSaver payment audits, Revenue NSW developed and adopted a document entitled *Guidelines for customers experiencing difficulty making repayments* in November 2022.

These guidelines provided that:

- auditors would assess an auditee’s ‘capacity to repay’ during the audit process and were given approval not to refer an overpayment where it could be determined an auditee was unable to pay the debt as this would cause them financial distress, including the winding up of the business
- auditors could consider auditees’ pre-2020 and post-2020 aggregated annual turnover where they did not meet the \$75,000 turnover threshold in 2020
- auditors were to allow the offset of the Micro-business grant against an auditee’s JobSaver payment and Business grant debts. This meant that the amount of the debt a grant recipient owed was reduced by the amount they would have been entitled to under the Micro-business grant program.<sup>35</sup>

The guidelines also provided for a specialist team to be set up to assess the ability of applicants to repay debts, if they were suffering financial hardship.

These guidelines were adopted 12 months after the audits had begun in November 2021.

### 3.3.3 General hardship review avenues within Revenue NSW

Once a State debt of any kind is with Revenue NSW for recovery action, there are general provisions relating to hardship.<sup>36</sup> In the case of the COVID grant audits, whenever a debt was referred to Revenue NSW’s State Debt Recovery branch for recovery action, auditees were given information about how they might request a payment plan or other hardship relief from Revenue NSW.

While this avenue for hardship review was always available, it is not a substitute for applying appropriate policies and frameworks at the audit stage, to guide the decisions being made about whether an auditee who was assessed as ineligible for the grant should be exempted from audit or have a debt waived (or not claimed) prior to the issuing of a debt invoice.

Revenue NSW’s State Debt Recovery branch hardship review approach is also not equivalent to the *Compliance Audit Exemption Framework* or *Alternatives to Funds Recovery Framework* later developed by Service NSW or Revenue’s *Guidelines for customers experiencing difficulty making repayments*. Revenue NSW’s hardship reviews are focused narrowly on the capacity of the person to pay (or to pay

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<sup>34</sup> Aligned with Revenue NSW’s Debt Recovery guidelines, this category includes people with mental illness, intellectual disability, cognitive impairment, homeless, acute economic hardship, addiction to drugs, alcohol or volatile substances.

<sup>35</sup> The guidelines themselves state that this offset is to be applied where it could be shown that the applicant had been given incorrect information at the time they applied for the grant. However, Revenue NSW told us that this offset was later extended to all relevant debts, regardless of whether incorrect information had been given: Revenue NSW response to s18 Notice dated 2 May 2024. However, it was unclear when this happened. The guidelines were never amended to refer to this approach, and auditees were not informed that this approach was being taken.

<sup>36</sup> As well as internal reviews – see section 3.4 below.

all at once) and apply generally to the broad range of debt collection Revenue NSW undertakes. They do not address the particular concerns of the COVID grant audits that were addressed in the above frameworks.<sup>37</sup>

### 3.3.4 Impact and subsequent inequity

Not having specific hardship guidelines at the commencement of the audits meant that an auditee's ability to access relief measures depended on when they happened to have been subject to audit, leading to inequitable outcomes for auditees.

DCS acknowledged this in its submission to this investigation, but stated that the issues which the Guidelines were intended to address 'were not immediately apparent until the audits had progressed to a stage where tangible feedback could be obtained and improved processes could be built on the basis of that feedback.'<sup>38</sup>

In our view, both agencies could and should have ensured that these policies and practices were developed prior to compliance audits occurring. The probability that some auditees might encounter difficulty repaying – particularly given the nature of the businesses and of the grants – was foreseeable.

When the policy intent behind the grants had been to support small- and medium-sized business through difficult times, it was all the more obvious, and important, that hardship and debt-waiver policies should have been in place from the outset.

Even after Revenue NSW's *Guidelines for customers experiencing difficulty making repayments* were adopted, there was no reference to them in the Revenue NSW auditors' work instructions, although DCS told us that face-to-face training about them was provided in team meetings. Further, as our review of complaints and the case studies set out at sections 4.1 and 4.2 below demonstrate, some aspects of the guidelines (such as the Micro-business grant offset provision) were inconsistently applied even after they had been adopted.

When we spoke to Service NSW staff in early February 2025, we were advised that work was still underway to make sure that Service NSW staff were aware of the frameworks and advising auditees about the *Compliance Audit Exemption Framework* and the *Alternatives to Funds Recovery Framework* within Service NSW's practices. On 28 February 2025, Service NSW advised us that education had now been conducted by the policy team for staff who needed to understand and implement the frameworks in their day-to-day work.

## 3.4 Failure to develop audit internal review policies and processes

A right to an internal review of decisions made at audit was not in place at the outset of the audits, and once introduced, the communication and application of such reviews was not consistent.

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<sup>37</sup> Service NSW's exemption framework was developed in part because it was acknowledged that grant recipients were not, in fact, accessing hardship provisions through Revenue NSW in these circumstances: Interview with Service NSW staff member, 11 Feb 2025, page 35-37.

<sup>38</sup> DCS submissions dated 25 October 2025, page 9.

### 3.4.1 Internal review right for micro-business grant audits, developed in July 2023

Service NSW's internal review process is set out in its *Dispute Management Framework* and requires staff to offer an internal review at the time the outcome of the audit is communicated to the auditee. The *Dispute Management Framework* only commenced in July 2023.

DCS advised us that prior to the commencement of this review process, an auditee who made a complaint or disputed the original outcome of a compliance audit was referred to the complaints handling team, which conducted a separate review of the case. However, we did not see evidence of such a review process, or auditees being advised of their ability to access it, in either the complaints we reviewed or in the sample review of 60 audit files.

Rather, in that sample, of the 13 audit files completed prior to July 2023, 8 were found ineligible for the Micro-business grant, and none were informed that they could seek an internal review. (Even after July 2023, not all auditees were informed they could seek an internal review – of the 30 auditees in our sample who were found ineligible after July 2023, 6 auditees were not informed they could seek a review.)

A number of auditees also complained to us about receiving an invoice to pay their debt while they were still at the internal review stage. This created a perception that the outcome of their review had already been determined and that the process was not fair or impartial, as in Chloe's case below.

#### Case Study 2 – Chloe

Chloe is a sole trader running a hair salon. Her business was forced to close for 14 weeks over the COVID lock-down period, and she applied for the Micro-business grant and received it.

In May 2023, Service NSW contacted her to inform her that it had determined she was ineligible for the grant and asking her to provide additional supporting documents within one week. In late November 2023, she was advised that the audit would be temporarily paused. In late June 2024 she received advice that the audit would recommence, with additional time given to provide documents.

However, 7 days later, Chloe received an email advising her that she was not eligible for the grant.

On 4 July 2024 she lodged a request for an internal review. Five days later, on 9 July 2024, she received an invoice stating that a decision had been made on 5 July 2024 and that 'fees have been charged for the MB Support Grant 21 – Application as the eligibility criteria were not met.'

On 5 August 2024, the internal review was completed, and Chloe was found not eligible for the grant on the basis that she had included income from the Job Keeper payment in the calculation of her turnover for the relevant financial year (ending June 2020).

Chloe complained to us, both about the decision about her eligibility and the internal review process. She said:

I have had a "so-called" internal review, and they have deemed my business unsuccessful (according to these scam-like emails & phone calls) This "so-called" audit has been done by independent people with no last name and we do not know who they are or even if they are qualified in financial tax law or not.

Before this review was over, I received a penalty notice stating I owed \$12,000. Like it was already in the system. I queried this and got the reply "it is an automated response system." So I am rejecting this "so-called" audit. And my reason is that it is based on a biased opinion of a non-legitimate person with no

last name or office address, and no merit for what they are saying. These people calling are writing emails, and calling, harassing me, and demanding payments of large amounts ... If Service NSW did its job correctly in the first place then this wouldn't be happening to me and all these other small micro-businesses.

In addition to complaining to this office, Chloe complained to the Minister for Finance, the Minister for Customer Service and Digital Government and her local member of Parliament.

In late September 2024, Chloe told us that her debt had been waived on the basis of hardship after she messaged the CEO of Service NSW.

### 3.4.2 No internal review right for Business grant and JobSaver payment audits

Internal reviews on decisions made at audit were not offered by Revenue NSW as a matter of course and no specific internal review policy was ever developed.

Revenue advised us that:

The customer was given a number of opportunities during the review to provide additional evidence where they disagreed with the preliminary findings. Once the audit outcome was finalised, and the customer still did not agree with the outcome they could ask for a review. In these instances, the compliance decision was reviewed by a different auditor that was not involved in the original decision.<sup>39</sup>

In practice, emails sent to auditees to advise them of the outcome of the audit did not advise them that it was possible to request a review of the decision, and many auditees were told that the decision was final and that there was no right of appeal. Other auditees were told that if they were dissatisfied with the outcome, they needed to complain to Service NSW, their local MP or our office. The following are examples of the advice auditees received in this regard:

Although Revenue does not have a formal objection process, you can contact Service NSW to lodge your complaint or dissatisfaction

'Unfortunately, there is no appeal process. However, you may call Service NSW ... and discuss if there are any other options.

We have made the assessment based on the evidence provided by you. Unless there is further evidence to change the outcome, the outcome will remain the same. Once the finalisation email is sent, the case will not be reassessed.

In some cases, auditees had to make several complaints to Service NSW and a complaint to our office before Revenue NSW agreed to undertake a 'review'.

When reviews were conducted, the reviewers often did not engage with the submissions made by the auditee. As in Georgina's case below, some reviews appear to have been conducted by the same officer who conducted the initial assessment of eligibility, bringing into question the impartiality of the review process.

In our view, it was unreasonable for Revenue NSW not to develop an internal review policy relating to the compliance audits and advise applicants of their rights of review and appeal as a matter of course.

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<sup>39</sup> Revenue NSW response to s18 Notice dated 2 May 2024, TAB F, page 4.

DCS acknowledged in its submissions to our statement of provisional findings and recommendations that Revenue NSW did not initially set up an internal review process, but as the audit program evolved it became evident that a process improvement was needed. DCS further advised that staff received additional direction at team meetings on review matters and setting up processes to ensure the independence of reviews.

### Case Study 3 – Georgina

Georgina owned a small horticultural business. Initially, it was something she ran part-time alongside her full-time job. In 2019, Georgina left her job and transitioned her business into a full-time endeavour. In 2020, the area where her business was located was affected by fires. Georgina applied for the JobSaver payment and Business grant as she believed she met the Attachment C rules<sup>40</sup> eligibility criteria regarding business restructures and natural disasters.

After completing the audit, Revenue NSW advised Georgina that the business was not eligible for the grants, and she was required to repay \$28,000. Georgina subsequently complained to our office.

We referred the complaint to Revenue NSW and asked it to review the matter and respond directly to Georgina. Revenue NSW wrote to Georgina and advised her that senior management had reviewed her case and concluded that her business did not meet the eligibility criteria. However, the email she received was from the same officer who had conducted the initial compliance audit.

Georgina contacted us again and raised concerns about the apparent lack of impartiality in the review and said:

Considering the response is from the same person I was dealing with in the department and their response is identical, I do not believe the matter underwent a review.

After we contacted Revenue NSW, Georgina received a response and an explanation from a supervisor. DCS also advised us that Georgina eventually received an offset of her debt against her entitlement for the Micro-business grant.

## 3.5 Barriers in electing to go to court

When a debt invoice isn't paid and debt recovery action is subsequently initiated by Revenue NSW's State Debt Recovery branch, the SDR Act provides that a debtor may seek an internal review of the decision to pursue recovery action by Revenue NSW.<sup>41</sup> The SDR Act also provides that a debtor may elect to go to court once they have been served with a debt recovery order by Revenue NSW and after an internal review.<sup>42</sup> Auditees against whom debts were referred to Revenue NSW were informed of the right to seek such an internal review.

When disputing penalty infringement notices, a court election form can generally be downloaded and filled out online. In the case of debts being pursued arising from the COVID grants, however, auditees were advised that they would need to contact Revenue NSW directly if they wished to court elect and 'an operator would arrange to send the form to you.'

<sup>40</sup> Alternative rules (known as Attachment C rules) applied to businesses that did not meet the standard eligibility criteria for the Covid-19 business grants. The rules applied to businesses that could not demonstrate the required aggregated annual turnover or decline in turnover as their business had not been operating fully for the financial year ending 30 June 2020.

<sup>41</sup> S 26 State Debt Recovery Act 2018.

<sup>42</sup> A court election can only be made after an internal review (of the decision to take debt recovery action) has been sought from Revenue NSW (s 46 State Debt Recovery Act).

We received complaints from people experiencing difficulties in electing to have their matters heard in court.

Revenue NSW advised us that, as at May 2024, it received 3,748 requests for internal review (of decisions to take debt recovery action) – roughly half of the auditees who had been found ineligible. Of those, 24 had elected to go to court to dispute debts arising from the JobSaver payment, 9 had elected to go to court for a debt arising from the Business grant and 2 for a debt arising from the Micro-business grant.

DCS advised us in submissions to this investigation that since 2024, a streamlined approach was implemented, enabling customers to more efficiently work with Revenue NSW to progress their matters through the court system.

## 3.6 Findings

In its submissions to this investigation DCS stated that:

whilst we acknowledge that the experience of auditees did likely vary depending on when they were audited, in our submission this was not unreasonable because of the overall benefits and improvements that these changes brought to the audit process going forward. Further, improving our processes based on lessons learnt should not be seen as a failing.<sup>43</sup>

The criticism we make of Service NSW in this chapter is not that improvements were made along the way. Rather, it is that there was inadequate architecture in place to comprehensively guide the audits from the outset. Many of the issues addressed by the ‘improvements’ were ones that could and should have been foreseen and considered at the outset.

If a properly scoped framework had been in place from the start of the audit program, to consistently guide both the Revenue NSW and Service NSW audit processes, the need for change to the parameters of the program and the subsequent inequities that resulted would have been minimised.

The independent evaluation of the NSW 2021 COVID-19 business support programs made similar observations:

There was no agreed debt-recovery position between Service NSW and Revenue NSW. The lack of internal processes and systems meant the post-payment processes operated without clear guidelines or criteria to aid decision-making, and without proper record keeping on decisions made in relation to waived debts.

It was not until February 2023 (at the first meeting of the Outward Customer Payments Steering Committee) that it was formally agreed to bring decision-making scenarios on funds recovery actions to the committee to endorse a standardised grant process while a Debt Waiver Framework was developed.

Even with the establishment of the Outward Customer Payment Steering Committee, there was no process to recognise that decision-making and actions in relation to funds recovery should distinguish between payments to ineligible businesses and overpayments arising from either government errors or applicant errors made in good faith. In some circumstances, this led to businesses being sent to fund recovery for payments made due to government errors.<sup>44</sup>

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<sup>43</sup> DCS submission dated 25 October 2025, page 12.

<sup>44</sup> Independent evaluation of NSW 2021 COVID-19 business support programs, October 2025, available at <https://www.nsw.gov.au/sites/default/files/noindex/2025-10/independent-evaluation-of-nsw-2021-covid-19-business-support-programs-report.pdf>, pages 137-138.

In its most recent submission to this investigation DCS again contended that a critical fact that needed to be emphasised was that this was the first time these agencies, or the Government of NSW, had established, operated and audited a grant program of this scale. DCS states:

The compliance audit program was the first of its kind implemented within [Revenue NSW and Service NSW]. It represented a significant shift for those agencies. Existing systems, policies and processes were simply not designed to be deployed on a grants program of this magnitude...

While we acknowledge this to be the case, we do not accept the subsequent argument put by DCS that this meant that:

some audit frameworks, review processes, exemption and hardship settings which were put in place urgently at the outset were, by necessity, developed and refined over time to address changes in grant eligibility criteria, emerging risks, concerns raised by customers, and to strengthen protections for public money, once the urgency to make payments had subsided.

This submission appears to conflate the situation of urgency that clearly did surround the grants themselves, with the situation that existed at the time of the audits – which commenced after the grant program had finished and which were not, unlike the grants themselves, required to be conducted under conditions of extreme emergency.

We do not suggest that, in this case, full audit frameworks needed to be designed and in place before the grant program itself was rolled out. Rather, what we are saying is that, when the grants program had closed, and the emergency that those grants were responding to had abated, it was wrong to start audits without first properly developing an audit program. If anything, doing that seems even more important in the circumstances described by DCS, where:

- the grants program to be audited had been rapidly deployed in an emergency situation
- the grants had been unprecedented in nature and scale
- the agencies had had no prior experience in administering such grants (or in auditing them).

**The following conduct was wrong within the meaning of s 26 (1) (g) of the Ombudsman Act:**

- **Service NSW's failure to develop a clear and comprehensive audit framework prior to the commencement of the audits to ensure consistency and equity in both audit processes and outcomes.**
- **Service NSW and Revenue NSW's failure to adopt policies on exemption, alternatives to enforcement and hardship from the start of the audits.**
- **Service NSW and Revenue NSW's failure to develop audit internal review policies and processes from the outset.**

## 4. The audits: decisions and discretion

### 4.1 Consideration given to errors made in the automated approvals process

As discussed above at section 2.4, errors made by the automated approval system or Service NSW staff meant that some ineligible applicants were approved for and received grant payments. When decisions were later being made during the audit program about whether to recover these payments, it was relevant to consider whether or not these errors had led to or contributed to payments being made to ineligible applicants.

The *Compliance Audit Exemption Framework* adopted in August 2024 notes at section 3.4 that if a customer cohort is disadvantaged during a compliance audit due to the way the application was approved, then the cohort may be exempted from the compliance audit process.<sup>45</sup>

#### 4.1.1 The 'hard stop' malfunction

Service NSW took appropriate action when, following a customer complaint, it identified a cohort of applicants who had been automatically approved for the Micro-business grant even though they had ticked 'no' to a question about their turnover that should have resulted in the application not proceeding.

Service NSW made the decision to exempt this cohort from compliance activity, recognising the administrative error made by the system which had resulted in them being approved for the grant.

The same 'hard stop' malfunction occurred with some JobSaver payment applications, but that cohort was not exempted by Revenue NSW from the audits it had conducted of those grants.

Minh's case below illustrates this issue.

#### Case Study 4 – Minh

Minh's application for the JobSaver payment was approved through the automated system. In December 2022, a compliance audit was conducted by Revenue NSW. Minh was advised that she was not eligible for the JobSaver payment because her turnover was not between \$75,000 and \$250 million for the financial year ended 30 June 2020. She was told by Revenue NSW that she needed to pay back the whole amount of the grant she received, which was \$15,536.

Minh requested an internal review on 4 August 2023, which confirmed the decision. Minh complained to us that she could not afford to pay back the debt, as she was an Aged Care pensioner with a low income. We made enquiries with Service NSW and were advised initially that the debt would stand because Minh had stated on the online application that she met the turnover threshold.

We requested a copy of the online application form Minh had completed from Service NSW, but what we were given did not include the application question relating to her turnover. We then specifically requested the part of the form that showed the turnover figure. Service NSW provided us with an extract from Salesforce that showed that Minh had in fact answered 'no' to the question about whether she satisfied the turnover requirements for the grant but was approved automatically regardless.

<sup>45</sup> Service NSW Compliance Audit Exemption Framework, page 12.

Following a formal written suggestion made by the Deputy Ombudsman, Service NSW agreed to waive Minh's debt.

As a result of this case, we wrote to Service NSW on 5 November 2024 and suggested that it undertake a review of the raw data of the JobSaver payment applications which had been automatically assessed and then referred for debt recovery, to determine how many applicants had answered 'no' to the turnover question but still received the JobSaver payment.

Service NSW advised us that it would work with Revenue NSW to identify these applicants and advise us of the outcome of this review. We received no further advice at the time. In response to our statement of provisional findings and recommendations, DCS advised us that it would accept a recommendation reiterating the need to undertake this work.

#### **4.1.2 Applications transitioning from manual to automated approval**

Prior to the decision by the NSW Government in August 2021 that all applications should be automatically approved to expedite the delivery of funds, applications for the Micro-business grant were manually assessed by Service NSW. When this change from manual to automated approval occurred, a number of applications were already in the system awaiting determination.

Some of these applications contained information that, if assessed properly against the grant guidelines, would have shown that the applicant was ineligible for the grant. Rather than proceeding with manual assessment as initially designated and rejecting this cohort of applications, they were all automatically approved.

However, unlike the hard stop error cohort, this cohort of grant recipients was not exempted from the compliance audit process. Where complaints were made, Service NSW demonstrated a willingness to waive debts in individual cases, such as in Jovon's case.

##### **Case Study 5 – Jovon**

Jovon owned a small business which started a 'soft opening' in September 2019 and full operation from January 2020. He called Service NSW for advice before applying for the Micro-business grant and was advised that he could apply based on the Attachment C rules and provide a financial year 2020/21 tax return to show his usual turnover. His application was automatically approved upon submission.

At audit, Jovon was found ineligible on the basis that his turnover for the financial year 2019/20 did not satisfy the turnover threshold and was substantially composed of passive income from an investment property.

Following our enquiries, Service NSW advised us that Jovon's debt would be waived because:

A review of audit discovered that while the outcome was correct, a system error approved the application automatically rather than referring it for manual assessment. As the application should not have been automatically approved in the first place, Service NSW has withdrawn the application from compliance activity and withdrawn our request for Revenue NSW to recover the funds.

In some cases, before the transition to automated approval occurred, Service NSW had already contacted the applicant because a view had been formed that their application contained insufficient

information, or there were early indicators that the applicant was ineligible. These applications warranted a manual assessment, however, they were all automatically approved following the NSW government decision to approve all existing applications for the Micro-business grant on 9 August 2021 without assessment.

For example, in Malia's case below, the system approved her application automatically rather than proceeding with manual assessment. However, in this case, Service NSW did not exempt Malia from compliance activity.

### **Case Study 6 – Malia**

Malia applied for the Micro-business grant at the end of July 2021 for her beauty therapy business. On 4 August 2021, Service NSW asked Malia to provide evidence of her turnover within 10 days. The application was designated for manual assessment pending receipt of information about Malia's turnover.

However, before the expiry of the 10-day period given, on 9 August 2021, Malia's grant was automatically approved, although she had not yet provided the requested information.

During the audit, Malia was found ineligible as her turnover did not meet the required threshold.

We suggested that Service NSW consider waiving Malia's debt because of the error made when her application was automatically approved. The application had been designated for manual assessment and would not have been approved had that manual assessment taken place.

On 14 April 2025, Service NSW advised us that it did not agree that an error was made in approving the grant. It advised:

The approval was based on declarations made by [Malia], which Service NSW accepted to be a true representation of [Malia's] eligibility for the grant and the further declarations made by [Malia] following a NSW Government decision, assessment of the grant converted from manual assessment to digital processing based on self-declaration of eligibility.

In its submission to this investigation, DCS rejected our view that administrative errors made in the delivery of the grants, including the approval of applications where the applicant was clearly not eligible or had not yet provided evidence of eligibility, were not considered in a consistent manner when making decisions about debt recovery. It said:

Central to the Ombudsman's reasoning is ... a conclusion that such payments were originally made in 'error', for which RNSW and/or SNSW were responsible. This conclusion fundamentally misconstrues the grants program and the way that it was stood up in a time of unprecedented crisis. There was in fact no error made by SNSW and/or RNSW for this cohort of payments. To the extent that there were errors which led to the incorrect payments, they were made by the applicants in self-declaring their eligibility in circumstances where they were not in fact eligible<sup>46</sup>.

As explained in Chapter 2, however, there was no communication to applicants, at the time of applying for grants and on approval, that the process was one in which they were solely responsible for determining their eligibility for the grant. Nor were they informed that, should they happen to be

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<sup>46</sup> DCS submissions dated 27 October 2025, page 4.

mistaken, they would be faced with a significant debt when the agencies did finally – in some cases years after the event – come to actually assess their eligibility.

As noted in section 3.1 above, there were certainly significant instances of fraudulent conduct by some applicants particularly in respect of the Micro-business grant program,<sup>47</sup> and where audits or investigations identify such criminal conduct it is appropriate that enforcement action be taken.

However, throughout the audit program and in the response to this investigation, the agencies have sought to sheet responsibility for all incorrect grant approval decisions back to applicants and have taken no responsibility themselves for designing and implementing a system that resulted in many good-faith applicants being approved for a grant for which they were not eligible.

Given the circumstances and the speed of the grant roll-out, we do not criticise the agencies for the errors that were made at application and approval stage. However, we do criticise the agencies' subsequent conduct during the audits of not fairly taking those errors into account when assessing eligibility (after the fact) and when deciding whether to pursue debt recovery. The attitude of the agencies here, which seems to involve characterising all ineligible applicants as solely at fault for any decisions made by the agencies and deserving of no consideration or compassion, despite the circumstances they now find themselves in, cannot be accepted.

## 4.2 Application of the Micro-business grant offsets

According to Revenue NSW's *Guidelines for customers experiencing difficulty making repayments*, (adopted in November 2022) auditors were to allow an offset of the Micro-business grant against an auditee's JobSaver payment and Business grant debts. This was to apply where an auditee had wrongly received the Business grant or JobSaver payment but would have been entitled to the Micro-business grant if they had applied for it. Typically, this situation arose where the turnover of the business was assessed (at audit) as having been too low for the JobSaver payment or Business grant.

The Guidelines state that this offset was to be applied where it could be shown that the applicant had been given incorrect information at the time they applied for the grant. For example, this would include situations where an applicant's declared turnover decline had been based on (incorrect) advice given to them about the period that they could use as the 'base' period, or the matters that could be included when calculating base turnover.

Revenue NSW told us that the offset was later extended to all relevant debts, regardless of whether the grant recipient was given incorrect information at the time of applying.<sup>48</sup>

Our review of 73 complaints showed that the offset was not consistently applied in this way. Many auditees in this group were advised that they were not eligible for the offset, even though they

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<sup>47</sup> Albeit made easier by the decision of government, from August 2021, to simply approve all completed applications without any proper assessment of eligibility. Service NSW recognised this in its response to our s18 Notice where it said that 'the rate of suspected fraud for the Micro-business grant was substantially higher than the 1.45% average suspected fraudulent payments made across all grants delivered by SNSW.'; Service NSW response to s18 Notice dated 19 May 2025, page 31. The Independent evaluation of NSW 2021 COVID-19 business support programs also noted that:

stronger fraud detection and control measures and better data and systems could have reduced the incidence of suspected paid fraud and payments made to ineligible businesses. This could have potentially saved \$123 million.

Independent evaluation of NSW 2021 COVID-19 business support programs, October 2025, available at <https://www.nsw.gov.au/sites/default/files/noindex/2025-10/independent-evaluation-of-nsw-2021-covid-19-business-support-programs-report.pdf>, page 13.

<sup>48</sup> Revenue NSW response to s18 Notice dated 2 May 2024.

qualified for it. In some cases, auditees were advised that this was because there had been no error on the part of Service NSW at the time they applied for the grant. These discrepancies in treatment occurred both before and after the guidelines were issued. Salma and Tara's cases below are illustrative. In both cases, incorrect information was provided to the applicant by Service NSW, but the Micro-business grant offset was not applied.

### **Case Study 7 – Salma**

Salma runs an events production business, which was heavily impacted by the COVID lock-downs in 2020 and 2021. She told us that before applying for the grants, her accountant contacted Service NSW and was advised that she could use her turnover figure from financial year 2018/19 rather than financial year 2019/20 to establish eligibility. On this basis, she applied successfully for both the JobSaver payment and Business grant.

In July 2022, Salma received an email from Revenue NSW advising her that, based on data received from the ATO, her turnover for 2020 was under the \$75,000 threshold. In August 2022, after a review by Revenue NSW, she was advised that although she had been found ineligible for the grants, the Micro-business grant would be offset against her debt. Shortly after receiving this email, Salma's accountant called Service NSW and was advised that Salma was not eligible for the offset.

In October 2022, Salma wrote to her local MP. Following this, a further review was undertaken that also found that she was ineligible. No mention was made in the email of the offset.

On 7 March 2023, Salma complained to our office, and we requested an explanation from Service NSW. Service NSW advised us that they could not find a record of the call made by Salma's accountant. They also advised us that although Salma would have been eligible for the Micro-business grant when she applied for the other grants, they would not consider her eligibility now as there was no evidence that Service NSW had made an error.

### **Case Study 8 – Tara**

Tara applied for the JobSaver payment and Business grant after calling Service NSW for advice. She was told that she could use a three-week comparison time from financial year 2020/21 rather than financial year 2019/20 as she was employed in another business until March 2020, after which she set up a new business providing rehabilitation services. She was advised to upload evidence showing her turnover and that she would be contacted if additional information was required. Tara provided us with recordings of her conversation with Service NSW, which she obtained under the GIPA Act.

Following an audit in July 2022, Tara was found ineligible for both grants. She then completed a late application to Service NSW in August 2022 for the Micro-business grant, which was declined. She lodged a complaint with Service NSW in December 2022, and a review was conducted in February 2023. However, the decision was not changed despite the misinformation provided by Service NSW, and Tara was found liable for the entire debt.

DCS advised us in submissions to our statement of provisional findings and recommendations that Tara eventually received an offset of her debt against her entitlement for the Micro-business grant.

In other cases, although errors were made in the manual assessment of the grant, the offset was not offered. In Gary's case, the offset was not applied until we made enquiries with Service NSW about his case.

## Case Study 9 – Gary

Gary applied for the Business Grant and JobSaver payment. Both applications were manually assessed and approved based on the documents he submitted (a notice of assessment from the ATO for the financial year 2019/20 and a letter from his accountant).

In late June 2022, Revenue NSW contacted Gary to advise his grant was being audited. He was asked to provide documents to demonstrate that his turnover was at the correct threshold, including an income tax return for financial year 2019/20, which he provided. Six days later, the Revenue NSW assessor emailed Gary and advised him that he was not eligible for either grant on the basis that his income tax return showed that his business income was below \$75,000, and that the rest of his income was passive income. He was advised that he would have to repay \$30,536.

Gary emailed Revenue NSW as follows:

Given the information and criterion you have outlined, my application should have been assessed and likely rejected as a consequence at the time of its submission in 2021 had the appropriate due diligence been undertaken at the time. My subsequent course of action would have been to apply for the Micro-Business Grant at the time should that information have been forthcoming.

He asked whether his eligibility for the Micro-business grant had been considered during the audit. Revenue NSW advised him to contact Service NSW, who told him that applications for the Micro-business grant were closed and would not be accepted regardless of the circumstances.

In a letter of complaint lodged with Service NSW, Gary said:

The payments provided to me under the Small Business Grant and JobSaver schemes in 2021 have been exhausted by me now as was their original purpose according to the NSW government.

I consider it ironic that a scheme supposedly designed to support small business owners such as myself during the government mandated Covid lockdown, with the intention of keeping business operating while unable to work, has now had the exact opposite result, acting as a financial weapon of mass destruction and resulting in my financial ruin.

I am now burdened, as a result of the decision to recover these payments, with a personal debt of \$30,536.51.

Service NSW has never entertained the possibility that the entire application process was flawed from the start in more ways than I can possibly outline here, poorly administered and lacked due diligence, let alone accepted any responsibility for what I can only describe as a fiasco from start to finish. What has also not been accepted is that I would have been entitled to either the Micro-business grant or Commonwealth Covid payments at the time if my application for the business grant had been correctly assessed and rejected.

Gary then complained to our office in mid-October 2022 that Service NSW had not responded to his complaints or conducted a review. Following our enquiries, Service NSW requested that Revenue NSW conduct an independent review, which was finalised on 31 January 2023. Revenue NSW identified that Gary was eligible for the Micro-business grant and offset his debt, leaving a debt of \$15,536 to pay.

## 4.3 Exercise of discretion

### 4.3.1 Consideration of alternative base-period for turnover

Revenue NSW's *Guidelines for customers experiencing difficulty making repayments* (adopted in November 2022) provided that compliance officers could consider an auditee's turnover for the year before or after the financial year 2019/20 in order to assess whether they were eligible for a grant, rather than only considering the 2019/20 financial year, as stated in the grant guidelines.

We had heard from some complainants who told us that when applying, they had put forward a different turnover 'base period' if, for example, there was some reason why the 2019/20 financial year had been atypical or otherwise inappropriate for that purpose. In some cases they did this after seeking specific advice from Service NSW staff who had told them this was permissible.

#### Case Study 10 – Mario

Mario applied for the Business grant and JobSaver payment after calling Service NSW for advice. He initially thought he was not eligible as he had been working in his business part-time and his turnover for the financial year ending 2020 was only \$25,000. He advised the Service NSW staff member that his turnover for the financial year ending June 2021 was \$92,000 and she said that he could use this period when applying for the grant on the basis that his turnover for the year ending 2020 was not a true reflection of his turnover. Following receiving this advice, Mario lodged an application for both grants and was approved.

In September 2022, following an audit, Mario was advised that he was not eligible for either grant and he would need to repay both grants. Mario applied for an internal review, which was completed by Revenue NSW in February 2023. He attached a copy of the recording of his conversation with the Service NSW staff member that he requested from Service NSW. Following the internal review, he was advised that he was still found ineligible and would have to repay the grants.

We made enquiries with Service NSW and were advised that the debt would stand. Mario was not eligible for the Micro-business grant offset as his turnover for the financial year ending 2020 was less than \$30,000.

We have only ever seen one complaint where an alternative turnover year was taken into consideration (and the debt waived as a result). This was after we wrote about the case to the Commissioner for State Revenue.

### 4.3.2 Discretion not to refer individual cases to debt-collection

Revenue NSW's *Guidelines for customers experiencing difficulty making repayments* explicitly note that compliance officers have the discretion not to refer a debt for collection if doing so would lead to financial hardship for the auditee and their business.

There were indicators of financial distress in many of the complaints we reviewed. While auditees were frequently advised they could seek a payment plan after debt recovery had commenced,<sup>49</sup> we could see no evidence of consideration being given to exercising the discretion (at audit stage) not to pursue a debt when auditees raised hardship concerns. There was only one complaint among the 73 where an

<sup>49</sup> See section 3.3.3 above.

auditee who had indicated they were suffering financial hardship had that debt waived on compassionate grounds and, again, this was only after our office intervened on their behalf.

DCS submitted in response to our provisional statement that our comments about failure to waive debts on the basis of hardship, were 'at odds with the operation of the Guidelines, which set out the relevant criteria for assessing hardship situations, and the information previously provided in RNSW's Notice Response regarding debt recovery.'<sup>50</sup> DCS advised that it had reviewed 44 cases where the Guidelines applied and that 30 of these cases were ultimately not referred to debt recovery. We note however, as mentioned above, that the Guidelines were only operational from November 2022, meaning a significant number of auditees were not able to access relief based on hardship prior to debt recovery.

It is not clear what DCS's review of 44 cases included, and how they were selected. It also is not clear why all cases where the Guidelines applied were not excluded from debt recovery. Our conclusions are based on our review of the complaints we received, where we could not see evidence that the Guidelines had been applied and debts had been waived in accordance with those Guidelines.

### Case Study 11 – Janini

Janini was a restaurant owner who applied for the JobSaver payment and Business grant in July 2021 to help with paying staff during the COVID lock-down.

In April 2022, Revenue NSW contacted her to advise that a compliance audit was underway. In May 2022, she was advised that she was eligible for only part of the JobSaver payment because she had overstated her weekly wages in the application form. She was required to pay back \$132,054. Janini disputed the debt on the basis that the question about weekly payroll on the original application was unclear. As a result, she had entered her quarterly payroll figure.

In June 2022, Janini wrote to Revenue requesting a copy of the application that she had filled out to clarify what the question required. She also stated:

So being asked now to return the money is not really acceptable. The money has been used for rent when we were down 90% and are still down significantly. Substantial legal fees that I had to pay to get my rent reduced, with mediation twice and create a takeaway area in the restaurant to try and stay afloat. So the money is all gone. As I invested it back into the business ....

In August 2022, in response to an email from Revenue requiring further documentation, Janini advised that, 'since the payment, we have had to back pay hundreds of thousands in rent. And we are now forced to close our business as we have no money'.

A few weeks later Janini received the final audit outcome from Revenue which again stated that she needed to pay \$132,064.

A review was conducted in December 2022, one month after the commencement of the *Guidelines for customers experiencing difficulty making repayments* confirming the original outcome. Revenue NSW stated:

We understand that the funds received from the grant were used for the business, however, the Grants Compliance Team does not have the discretion to amend the outcome that is calculated based on the Job Saver Guidelines.

<sup>50</sup> DCS submission dated 25 October 2025, page 10.

I can, however, inform the State Debt Recovery Team to contact you to discuss your circumstances and set up a repayment plan.

In July 2023, Janini emailed Service NSW. She stated that she had called and emailed on multiple occasions and had now been advised to approach our office. She said she was forced to get mental health counselling due to the size of the debt, that she had been evicted from the premises, and was unemployed.

We asked Service NSW whether there were any means by which Janini's debt could be alleviated on compassionate grounds. The response from Service NSW was:

Service NSW must ensure that monies delivered by the NSW government is done with fairness and to the highest ethical standards, ensuring equity for all NSW citizens. The respective guidelines and terms and conditions do not provide scope for compassionate appeal.

We do not know if Janini contacted Revenue NSW in relation to her financial circumstances following her complaint to us, however, she had raised her situation on at least three occasions with both Revenue NSW and Service NSW without any action being taken. In our view, Janini should have been advised of the financial hardship options available to her when she started raising concerns about her ability to repay the debt – especially as the *Guidelines for customers experiencing financial hardship* had been in place since November 2022.

The most recent advice we now have from DCS, because Janini's debt was not able to be recovered, is that the debt will not be recovered as the audit program is closing.

## 4.4 Interpretation of grant guideline terms

In some cases, assessment of eligibility against grant guidelines may require the assessor to take a particular interpretation or approach to applying particular terms and concepts – such as, in the case of the COVID grant guidelines, the meaning and calculation of 'turnover'.

Even in cases where eligibility is being assessed at the time a grant is approved, applicants should be made aware of any particular interpretation or approach that will be taken by decision-makers in this regard. If, for example, an interpretation is to be taken based on the meaning of a term more fully explained in another instrument or from another context, then this should be drawn clearly to the applicant's attention. This ensures that individuals can understand the requirements, take steps to address them in their application, and be assessed through a transparent and procedurally fair process.

Doing so is even more important when eligibility is not being assessed in advance, but is instead being assessed after the fact as part of an audit process – where the result of the decision-maker taking a particular interpretation or approach will not just be denial of a grant, but rather a debt being claimed. In this situation, if the guidelines were not themselves sufficiently clear at the time, which meant that there may be a range of reasonable interpretations or approaches open on their face, it would be unfair to penalise an auditee by retrospectively applying a particular interpretation or approach during the audit, that was not articulated to them at the time their grant was approved.

In some cases, however, the agencies took an interpretation or approach to applying the guideline terms that relied on information that was not previously drawn to the attention of applicants.

For example, in Arjun's case below, Revenue NSW referred to guidelines published by Treasury NSW to interpret when cash sales could be included in the calculation of turnover for the purposes of assessing

decline in turnover. However, that Treasury guideline was not mentioned in any way in the relevant COVID grant guidelines the applicants had relied on at the time of application.

Similarly, in Lily's case, the definition of 'leave' and how it impacted turnover calculations came from a guideline not referenced in the grant terms and conditions.

### **Case Study 12 – Arjun**

Arjun applied for the JobSaver payment based on advice from his accountant. In 2022, he was contacted by Revenue NSW and advised that after a compliance audit he was not eligible for the payment. The reason for this was that the decline in his business's turnover during the lock-down was 26% compared to the same period prior to the lock-down, but the eligibility criteria required a decline of 30%.

Arjun and his accountant submitted that cash sales should have been included in the calculation of turnover for the period prior to the lock-down. With the inclusion of cash sales, the decline in turnover was significantly more than 30%. Importantly, Arjun had declared these cash sales to the ATO and had provided his accountant's reconciliation working sheet, which showed all sales.

Revenue NSW told us that the auditor had sought to verify the amounts from bank statements rather than the accountant's reconciliation working sheet. Because one payment of \$415 was missing from the bank statements, Arjun was found ineligible. Service NSW advised us that the Revenue NSW auditors had relied on Treasury guidelines that stipulate that cash sales cannot be included in turnover if they were not banked. However, this detail was not disclosed in the JobSaver guidelines that applicants such as Arjun had relied on.

The guidelines simply provided that 'an entity satisfies the decline in turnover test for a fortnight if the entity's current GST turnover for the fortnight falls by at least 30% compared to the relevant comparison period.' Service NSW also advised us that it was not willing to change the decision regarding Arjun's eligibility, however, we received advice in the submissions that Arjun's debt would not be recovered as the audit program is being closed.

### **Case Study 13 – Lily**

Lily established her own legal practice as a sole practitioner. During the COVID-19 lock-down in 2020, she reduced her hours of work from 40 hours to 15 hours to care for her children as the schools were closed and the children were too young to look after themselves. She applied for the JobSaver payment and Business grant based on the alternative circumstances set out in the Attachment C rules, as a sole trader impacted by sickness, injury or leave. The Attachment C rules provided that sole traders who could not demonstrate the required turnover due to several circumstances, including that they had taken leave during the financial year 2019/20, were still eligible for the grants.

Her accountant's letter, submitted with her application, acknowledged that she did not have a turnover of \$75,000 for the year ended 30 June 2020 as she was only working 3 days a week due to her parental responsibilities. However, in the following financial year ending 30 June 2021, the business turnover was more than \$100,000. In the letter the accountant stated that Lily would have

met the turnover threshold, however, she fell short due to the leave that she was forced to take to care for her children.

An audit was conducted by Revenue NSW in October 2022, and Lily provided her accountant's letter again to demonstrate the basis upon which she felt that she was eligible for the grant. On 30 March 2023, she was advised that she was ineligible for both grants. The letter from Revenue NSW did not explain why she did not fall within the Attachment C rules. Lily wrote back to Revenue NSW objecting to the decision. She said:

It seems counterintuitive that the undefined 'leave' taken in associated with school closures due to Covid would not be covered by a small business grant issued to assist small business owners stay open during Covid.

Surely it was contemplated that business owners are also mothers, and there was awareness that schools were being closed when the grant was issued. How would a mother-owned business stay running if she is expected to attend to the added hours of homeschooling her children for no compensation or assistance? Is this not considered as worthy as parental leave? If not, where is the policy or guidance explaining this?

I will be filing a complaint as suggested as well as an objection with Revenue. Your inability to both:

1. point to a definition of 'leave' that makes it inapplicable in my circumstances, and
2. provide me with directions on the best way to file an objection will be included.

In March 2023, Revenue NSW reviewed Lily's compliance case again and she was found eligible to have her Business grant debt of \$15,000 offset against the 2021 COVID-19 Micro-business grant. However, this still left her with a debt of \$14,786.

In response to our enquiries on Lily's complaint, Service NSW provided us with correspondence between Lily and Revenue NSW in which the auditor stated:

We understand you were not able to work full time in FY 2020 since you were taking care of your youngest child who was going to pre-school. However, that circumstances do not qualify to apply under attachment C: (Alternative circumstances): Sole trader impacted by sickness, injury or leave.

We asked Service NSW how it defined 'leave' as this was not set out in the relevant guidelines. Service NSW advised:

'The term of 'leave' should have taken a common use meaning, as confirmed by Treasury NSW'... Revenue NSW have deemed this to not qualify as 'leave' under Attachment C of the guidelines. Service NSW BCR also raised [Lily's] concerns with the Service NSW Policy and Regulations (P&R) Team who confirmed the applied interpretation of 'leave' is correct.

In our view, neither Revenue NSW nor Service NSW adequately explained what they considered to be leave for the purposes of the Attachment C rules or why Lily's situation did not fall within the rules.

We also received a number of complaints, such as Alice in the below case study, from auditees who believed they met the turnover threshold for the Micro-business grant, only to be advised following the audit that they did not meet the threshold because they had included other government payments such as the Commonwealth JobKeeper payment when they calculated their turnover.

## Case Study 14 – Alice

We received a complaint from Alice in August 2024 after she was found ineligible for the Micro-business grant and told to pay back \$15,214. Alice argued that there was ambiguity in the guidelines regarding the definition of turnover because the guidelines did not explicitly state that Job Keeper payments should have been excluded from the calculation of turnover. She said:

In the absence of clear instructions, it was reasonable for applicants to interpret that all forms of income received during the specified period, including JobKeeper payments, constituted part of the aggregated annual turnover. This interpretation aligns with standard accounting practices where income received is typically included in turnover calculations unless specifically excluded.

Service NSW told us that the guidelines and terms and conditions for the Micro-business grant made it clear that such payments should not be included in the calculation of aggregated annual turnover. Our view is that Service NSW guidance on this matter was not adequate.

The terms and conditions of the Micro-business grant in place on 27 July 2021 (which is when Alice applied) defined turnover as:

Aggregated Annual Turnover means aggregated turnover as defined in section 328.115 of the Income Tax Assessment Act 1997.

Turnover means the GST turnover as defined in s. 188.10 of the A New Tax System (Goods and Services Act) 1999 (Cth).

The following definition was also provided:

Aggregated annual turnover – the Income Tax Assessment Act 1997 aggregated turnover definition will be applied when assessing whether an applicant had national aggregated annual turnover of more than \$30,000 and less than \$75,000.

The guidelines were later amended and the version that was published on 6 August 2021 provided a hyperlink to guidance provided by the ATO, which explicitly stated that JobKeeper payments should not be included in the calculation of turnover for the purposes of the *Income Tax Assessment Act 1997*.

However, prior to this amendment (and at the time applicants, such as Alice, applied in July 2021), Service NSW's guidance was not clear about the fact that the JobKeeper payment was to be excluded from the calculation of turnover.

It was unreasonable to expect applicants to review and fully understand the definition of aggregated annual turnover and any exclusions by referring to the definition in the Income Tax Assessment Act. In any event, section 328.115 of the Income Tax Assessment Act also does not state whether or not JobKeeper or other government grants should have been included.<sup>51</sup>

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<sup>51</sup> Meaning of aggregated turnover

- (1) Your *aggregated turnover* for an income year is the sum of the relevant annual turnovers (see subsection (2)) excluding any amounts covered by subsection (3).
- (2) The *relevant annual turnovers* are
  - (a) your annual turnover for the income year; and
  - (b) the annual turnover for the income year of any entity (a *relevant entity*) that is connected with you at any time during the income year; and
  - (c) the annual turnover for the income year of any entity (a *relevant entity*) that is an affiliate of yours at any time during the income year.
- (3) Your *aggregated turnover* for an income year does not include the following amounts:

Service NSW advised us that a toolkit for accounting and tax practitioners was released sometime later to explain the definition. It is not clear whether this toolkit was available to the public or only to professionals. The toolkit explicitly stated that aggregated annual turnover:

does not include amounts such as the GST you charge on transactions, amounts borrowed, proceeds from selling business capital assets, certain insurance proceeds and JobKeeper payments.

While Alice's complaint, along with several others that were made to us, was resolved by Service NSW by waiving the debts due to hardship, we do not know if other applicants in the same situation, who did not complain to the Ombudsman, were provided with the same treatment.

By treating external documents as determinative of eligibility at audit, Revenue NSW and Service NSW applied a standard that was not incorporated into the published eligibility guidelines.

DCS stated in its submissions to this investigation that the cases in question were not straightforward and that it was always likely that the audit team would have to resolve cases where there was disagreement about the interpretation of various terms.

This underlines our concern. If matters are not straightforward, such that reasonable people can disagree about the interpretation of particular eligibility terms, then it is unreasonable for an auditing agency, well after the event, to retrospectively decide that one particular interpretation is *the* correct one and penalise applicants who had reasonably assumed a different interpretation.

Complex cases do not justify retrospectively defining terms, particularly by relying on unreferenced external definitions. Unless applicants were informed of a clear, accessible and transparent interpretation from the outset, the reasonable approach in a subsequent 'compliance' audit is to give auditees the benefit of the doubt of any reasonably open interpretation.

## 4.5 Recovery of over-payments

In June 2022, Revenue NSW sought legal advice following a dispute by a company about a debt following a compliance audit.<sup>52</sup> The company had applied for the JobSaver payment, which assisted employing businesses to cover the cost of paying their weekly wages by providing a payment that initially equalled 40% of their weekly wages.

When it had lodged the grant application, the company was flagged for a manual assessment by Revenue NSW. When requested, the company provided a May 2021 Activity statement and a March 2021 BAS statement to assist with the calculation of its weekly wages. We do not know whether the application was manually or automatically assessed following the provision of the two statements, as the legal advice does not mention this. However, the grant was approved, and the quantum of the grant was based, in error, on the May 2021 Activity statement rather than the March 2021 BAS statement. This meant that the company was overpaid.

Following a later compliance audit, the company was required to repay \$19,952.

The company disputed the debt on the basis that:

- the initial calculation was correct

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(a) amounts \*derived in the income year by you or a relevant entity from dealings between you and the relevant entity while the relevant entity is connected with you or is your affiliate;  
(b) amounts derived in the income year by a relevant entity from dealings between the relevant entity and another relevant entity while each relevant entity is connected with you or is your affiliate;  
(c) amounts derived in the income year by a relevant entity while the relevant entity is not connected with you and is not your affiliate.

<sup>52</sup> Response to schedule A2 – Legal Advice – JobSaver overpayment.

- it had not breached the terms and conditions of the grant and therefore no monies could be recovered.<sup>53</sup>

Revenue's internal legal advice noted that in order to recover the money, the applicant must be found to have breached the terms and conditions of the grant (JobSaver payment in this case). For the JobSaver payment, the relevant conditions were set out in clause 4.1:

- the business meets the eligibility criteria (set out in clauses 3.5–3.9)
- the application for payment complies with the evidence requirements (set out in clauses 3.1, 3.10, 3.11, 3.13, 3.14 and 3.17).

That the company met the eligibility criteria was not in dispute. The legal advice concluded that the company had also complied with the evidence requirements, as it had provided all required evidence, including the March 2021 BAS. As none of the terms and conditions had been contravened, the advice concluded that the debt could not be recovered as a State debt.<sup>54</sup>

This advice was shared with Service NSW. DCS advised us in its submission to the provisional statement that Revenue NSW received the advice on 9 June 2022, which led to a review of the circumstances of the case and the invoice for recovery being withdrawn on 26 June 2022.

DCS told us that the advice was communicated to the compliance team, so that if other applicants were identified as being in a similar position as the company, no action would be taken to recover the overpayment.

However, we received complaints from grant recipients in comparable circumstances who had (when applying for the grant) unknowingly entered the incorrect figure for weekly wages (usually the W1 figure on their BAS statement, which is for a quarter) and been substantially overpaid. These grant recipients advised us that the online application form, as it was at the time, prompted them to enter the quarterly figure from their BAS statement (rather than the weekly amount), leading to an incorrect calculation of their entitlement to the grant. Like the company referred to in the legal advice, these grant recipients met the eligibility criteria and provided evidence (of the kind requested) to support their applications, therefore meeting the conditions in clause 4.1. We note that Revenue NSW and Service NSW pursued these amounts as debts, which seems contrary to the legal advice and the advice given by DCS above.

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<sup>53</sup> Section 5.7(3) of the GSF Act provides that if a term or condition of an act of grace payment is contravened by the recipient, the payment may be recovered from the recipient.

<sup>54</sup> The advice noted that it was legally possible for Service NSW (either itself or through an agent) to *request* repayment of the alleged overpaid amount (even though there would be no debt or legal duty to repay), provided it did not make any *demand*. However, the legal advice cautioned against doing this:

I think that Service NSW should be very cautious about using a third party to negotiate with a grant recipient who has been overpaid by Service NSW. The third party would have to make it clear that Service NSW does not consider the grant recipient to be liable for a debt.

The advice also suggested that another option available to Revenue NSW would be to inform the grant recipient that, if they applied for a future discretionary grant, then the amount of the alleged overpayment would be 'netted off' to reduce the amount of any new grant.

## 4.6 Findings

The following conduct was wrong within the meaning of s 26 (1) (g) of the Ombudsman Act:

- Service NSW and Revenue NSW's failure to apply relevant policies and guidelines consistently, and to exercise discretion reasonably across auditees and across time, resulting in some unreasonable and inequitable outcomes.

## 5. The audits: procedures and communication

### 5.1 Communication with auditees

#### 5.1.1 Manner and tone of communications

A recurring theme in the complaints we received from people who were audited earlier in the audit program for the Micro-business grant was that they perceived the communications from Service NSW to be unduly harsh and threatening.

For example, recipients of the Micro-business grant who were subject to audit in early 2023 received an initial email that asserted that they were not eligible for the Micro-business grant. This was sent even though an audit had not yet been completed. Many grant recipients in this cohort were in fact later found eligible. The initial email further advised that ‘any payment made as a result of an incorrect, misleading or fraudulent claim or as a result of error will be referred to Revenue NSW for funds recovery’. This email then followed with ‘Please note that it is an offence under the *Crimes Act 1900* to make a false declaration when applying for grant funding. Any application deemed fraudulent will be referred to NSW Police for further action’.

Recipients of these communications were individuals running very small businesses – typically sole-traders, and often home-based businesses.

Complainants, against whom there was no evidence or suggestion that they acted otherwise than in good faith, described to us the impact of receiving emails that were ‘persistent and at times accusing and aggressive.’ One complainant said the following:

This treatment by Service NSW, has been threatening, intimidating, and their action unconscionable. I consider that Service NSW has failed completely and that their threatening letters with the “accusations” that I was being fraudulent is to be inaccurate and is absolute nonsense ...Their calls and emails have been extremely intimidating. It has caused much stress, anxiety, and depression. Have they not learnt from the Robo Debt and all the suicides that happened with that?

By June 2023, Service NSW had modified the way it communicated. Language was softened with auditees being advised that their application was being reviewed by a dedicated staff member ‘to ensure public funds have been used in accordance with the Terms and Conditions of this grant’. The email also added an acknowledgement that the audit process might create a burden and advised that, ‘we are here to help and address any distress with this process. Our priority is to provide you with ongoing assistance and support when you need it, ensuring our compliance process is conducted in a way that is sensitive to your circumstances.’

After November 2023, the email advising of the audit had changed again so that auditees were advised that Service NSW was carrying out a compliance review of the Micro-business grant and that along with other micro-businesses their application had been selected for review. The email acknowledged that some time had passed since the applications had been approved and noted that auditees would be given at least 30 calendar days to provide supporting documents to Service NSW. The email also explained that a compliance review ‘seeks to ensure that grant eligibility and program Terms and Conditions and Guidelines have been followed, such as ensuring that the required documents were included when applying for the grant’. The email now also listed internal review options. The changes appear to have been a belated recognition by the agencies that it was not appropriate to assume that the audit process was dealing only, or even primarily, with likely fraudsters.

The changing communication content and style over time appears to reflect the broader issues with the way in which the audit program, including audit guides, training and templates, was inadequately designed and planned from the outset.

### 5.1.2 Communication about debt waiver and hardship exemptions

Although the *Compliance Audit Exemption Framework* and the *Alternatives to Funds Recovery Framework* were introduced by Service NSW in August 2024, by February 2025, there was still no process for advising auditees about their ability to apply for a debt waiver or an exemption from compliance activity. Jemma's case below provides an example.

In response to a notice issued to Service NSW in February 2025, we were advised that:

Service NSW already provides information about the hardship pathway to customers through standard customer letters (TAB BT), in phone calls, and emails, and will take steps to further embed the two hardship policies into Service NSW processes and operations<sup>55</sup>

The complaint files we reviewed do not support Service NSW's claim that it provides information about the hardship pathway in standard letters. Of the 20 complaints that had internal reviews conducted after the implementation of the two frameworks, only one case contained formal advice to the auditee of the right to request a hardship review.

We note that while a number of auditees who complained to our office were ultimately able to apply for and obtain relief on hardship grounds, those auditees had all either made representations to their local MP, the media or our office.

#### Case Study 15 – Jemma

Jemma's application for the Micro-business grant was approved by the automated system. In November 2023 she was told she was subject to audit and asked to provide further supporting documents. In July 2024 she was found ineligible for the grant and was advised that she was required to pay back \$14,250. She requested an internal review and 3 months later in October the review affirmed the original decision.

She then complained to Service NSW, stating:

We provided the required information and had we not been eligible then we should have been declined at the time.

Big businesses like Harvey Norman who have the money to engage their lawyers to liaise with you don't have to pay anything back

How could you possibly surmise that we would have enough money to pay back what you approved we could have when we needed the money to survive in the first place?

To ask for this when we are currently living in financial distress in the current financial crisis is abhorrent and a disgrace to Service NSW.

We are being targeted to make up for your staff inadequacy and error at the time of when our application was approved.

We are beyond upset about this.

My husband is currently on a disability pension after battling cancer and many other health conditions

<sup>55</sup> Service NSW response to s18 Notice dated 28 February 2025, page 2.

and it's difficult enough to make ends meet.

Had we known we would have to pay it back we would never have applied in the first place.

She followed up with Service NSW as she did not receive a response to her complaint. In November 2024, Service NSW responded as follows:

Thank you for taking the time to discuss your comments escalated to the Customer Resolution Team regarding the 2021 COVID-19 Micro-Business Grant.

With respect to the audit of grants, I can confirm that the audit requirements provided strict guidelines for the provision of information in line with the terms and conditions and the eligibility requirements of the grant. Your matter was also reviewed by Service NSW as part of an internal review. Following this assessment, it has been determined that the audit findings and resulting actions are correct and should stand. I acknowledge your distress and frustration and understand that this isn't the outcome you were hoping for.

I can confirm that a hold has been placed on any recovery action until 8 December 2024. I would encourage you to contact Revenue NSW if you have received a request for any repayment of funds to discuss hardship provisions or a suitable payment plan.

Despite the fact that the *Alternatives to Funds Recovery Framework* was adopted in August 2024 prior to this correspondence with Jedda, no action was taken by Service NSW to advise her about it, even though she clearly fell within the hardship categories in the framework based on the information she had provided to Service NSW in writing.

In October 2025, in its submissions to this investigation, DCS told us that:

SNSW has made the hardship policies available to all SNSW staff and compliance auditors. Work Instruction documents have been created for all staff conducting assessments and hardship reviews. SNSW will be publishing a page on its website to inform customers of the hardship pathways that are available for grant programs where a customer is found to be non-compliant.<sup>56</sup>

On 2 October 2025, Service NSW added a section to its website outlining how customers subject to a compliance audit can request hardship consideration.<sup>57</sup>

## 5.2 Timeframes given to provide supporting information

The timeframes given to auditees to respond to the audits were not consistent across the 2 agencies and Revenue NSW in particular applied unreasonably short and demanding timeframes.

When a Revenue NSW auditor assessed that the supporting documentation that was provided with the initial grant application was not sufficient to assess a grant recipient's eligibility at audit, they would contact the auditee initially by telephone and, if unsuccessful, follow up by email. If no contact had been established after 3 attempts over 3 days, a Letter of Review was sent. The letter advised the auditee that they were subject to a compliance audit and requested that they provide documents to support their eligibility for the relevant grant.

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<sup>56</sup> DCS response to provisional statement dated 27 October 2025, page 16.

<sup>57</sup> <https://www.service.nsw.gov.au/about-us/our-services/consideration-of-hardship>.

Revenue NSW work instructions stated that auditees were to be given 10 business days to respond to the Letter of Review. If there had been no response within 10 business days (and the staff member had attempted to contact the auditee 3 times by email and phone) they were instructed to send a final follow-up email, allowing a further 2 business days to reply. Revenue NSW advised us that auditees were given additional time to comply with requests for information, if required, and were kept informed of the progress of the audit.<sup>58</sup>

Among the 73 complaints we reviewed, there was little consistency in the number of days auditees were actually given to produce documents. On average, 6 business days was the time given to provide documents when an auditee was first contacted and 3 days to produce additional documents after they were advised they were not eligible. In some cases, applicants, such as Lars below, were required to provide a large volume of documents.

### 5.3 Reasons for decisions on audit outcomes

Auditees were advised which eligibility criterion they failed at audit, but in the case of the audits conducted by Revenue NSW, were not always provided with a coherent and easy-to-understand explanation as to why they were found ineligible. An example is provided below:

Thank you for your assistance during my recent review. During the review, we identified ABC MANAGEMENT PTY LTD is ineligible for part of the amount of the fortnightly JobSaver payment. As a result, you will need to repay a total of \$617,589

ABC MANAGEMENT PTY LTD did not meet eligibility because:  
Your provided accountant letter confirmed your business was having more than 30% of turnover decline when comparing with the period from 17/07/2021–31/07/2021 with the same period in 2020.

Regarding the reconfirmation of the turnover decline period from 12/09/2021, you can either choose 17/07/2020–31/07/2020 as fixed period for all the comparisons or compare the same period in 2020 from 12/09/2021.

We were using the period from 17/07/2021–31/07/2021 as specified from your accountant letter as fixed period for all the turnover tests. And we identified your business was not having 30% of turnover decline for the last JobSaver period from 21/11/2021–30/11/2021, as the turnover was \$272,727.28 for the 10 days period in 2021 & the pro-rata 14 days turnover was \$341,631 (\$478,284/14 \*10 days).

Your business is entitled to the total of 9 payments include 6 payments of \$365,688 (40%), 1 payment of \$49,249 (30%), 2 payments of \$24,625 (15%), totalling \$492,495. However, your business has been paid for \$510,084. The difference is \$17,589.

Should you disagree with the outcomes of this audit as outlined above, please provide relevant documents and an explanation via return email prior to 16 June 2022. If we do not receive a response, we will proceed to finalise the audit and refer this matter to our State Debt Recovery team.

The reasons provided in cases such as these deprived auditees of the opportunity to understand why they were found ineligible and led to some not trusting that a fair process had been followed, as illustrated by Lars' case.

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<sup>58</sup> Service NSW, Further response to Section 18 Notice, 7 June 2024, Schedule A, pp.1-2.

## Case Study 16 – Lars

Lars complained to us about the audit conducted by Revenue NSW, including that he was only given 4 days to provide documents (he said the business, a railway contracting company, suffered losses due to having to prepare the documentation) and 2 days after review to provide additional information. He told us that the email responses he had received from Revenue NSW failed to satisfactorily address the arguments he had made.

Lars received a preliminary audit outcome that, based on the information he provided, his business was not eligible for the JobSaver payments that it received because it did not experience a decline in turnover during the lock-down but in fact experienced an increase. He was advised to repay \$116,992.

Lars responded the next day explaining that because of the nature of the business, the bank statements provided were not an accurate record of sales, as invoices are only paid 30 days after the completion of work. He advised that the business sales register was the accurate reflection of the downturn and that this had been confirmed by Service NSW in a phone call in late July 2021, where they agreed that accrual was the most accurate way to reflect the sales of the business.

Lars also provided calculations of decline in turnover based on reporting on a cash basis. He provided sales figures showing a 40% decline in turnover for the period 19 July 2021 to 1 August 2021 compared to the same period in 2019. He attached supporting records.

Revenue NSW responded on the same day repeating its previous advice and advising that decline in turnover would be based on:

the modified Goods and Services Tax (GST) turnover of the business. As such, if you report GST turnover on your BAS to the ATO on an accrual basis, you should use this method. If you report GST turnover on your BAS to the ATO on a cash basis, you should use this method.

Lars complained to us saying that he had asked several times to speak to a supervisor to explain the basis on which the business had calculated its eligibility and also that the business qualified regardless of the method used, but his request had been dismissed. We referred Lars' case to Revenue to resolve, however, we do not know the final outcome.

DCS submitted in its response to this investigation that the work instructions that were issued to Revenue NSW compliance officers required them to issue a finalisation letter outlining the reasons for decisions and addressing any key points raised by the auditee. The letters were reviewed by Revenue NSW team leaders prior to being issued.

However, the work instructions do not provide any guidance about giving reasons for decisions. The instructions are as follows:

Generate a Finalisation Letter template email from Salesforce (via emails) and save the template into a Word Document.

Save this Word Document into 11 Working Folder to complete.

Prepare your draft Finalisation Letter, detailing audit outcomes (NFA / under / over payment.)

Once both the Audit Report and Draft Finalisation Letter are completed, tag your TL / Manager in a Salesforce Post, notifying them the audit report & finalisation letter are ready for their review. Do not submit the Salesforce cases for approval yet.

## 5.4 Findings

The following conduct was wrong within the meaning of s 26 (1) (g) of the Ombudsman Act:

- Service NSW and Revenue NSW failure to take a customer-centric approach to communication.
- Service NSW and Revenue NSW's failure to provide consistent advice and access to debt waiver or exemptions.

## 6. List of findings and recommendations

### 6.1 Findings

I find the following conduct of the agencies was wrong within the meaning of s 26 (1) (g) of the Ombudsman Act:

- Service NSW's failure to develop a clear and comprehensive audit framework prior to the commencement of the audits to ensure consistency and equity in both audit processes and outcomes.
- Service NSW and Revenue NSW's failure to adopt policies on exemption, alternatives to enforcement and hardship from the start of the audits.
- Service NSW and Revenue NSW's failure to develop audit internal review policies and processes from the outset.
- Service NSW and Revenue NSW's failure to apply relevant policies and guidelines consistently, and to exercise discretion reasonably across auditees and across time, resulting in some unreasonable and inequitable outcomes.
- Service NSW and Revenue NSW's failure to take a customer-centric approach to communication.
- Service NSW and Revenue NSW's failure to provide consistent advice and access to debt waiver or exemptions.

### 6.2 Recommendations

I note the advice of DCS that the audit programs have been discontinued, and that no recovery action is being pursued or will be pursued in respect of any still outstanding debt (other than persons already on a Revenue NSW debt recovery payment plan).

Given that, and having regard to the findings contained within this report, I make the following recommendations to DCS and its portfolio agencies:

1. Service NSW (and any other agency involved in the administration of a grant program) should put applicants for grants and other payments on notice:
  - a. if the approval system is 'automated' (wholly or partly) and/or is otherwise reliant on self-declaration or self-assessment
  - b. the extent to which it does or does not assess the information submitted at the time of application
  - c. the extent to which applications are subject to any pre-approval assessment of eligibility and/or post-approval (audit) eligibility assessment.
2. Revenue NSW and Service NSW (and any other agency involved in the auditing of grant programs) should ensure that, in any audits it may conduct in future, the audit methodology is settled prior to the commencement of the audits. The methodology should set out details of the audit process, including:
  - a. the elements referred to in Service NSW's Compliance Audit Framework to ensure a consistently fair process
  - b. an internal review procedure

- c. whether auditees will be exempted from compliance activity and the basis upon which this will occur
  - d. whether auditees will be entitled to debt waiver on hardship/vulnerability grounds and the factors to be considered in determining this
  - e. whether auditees will be entitled to debt waiver on the basis of administrative errors during the grant approval process, including what is considered to be an administrative error in the context of the particular audit and how the agency will consider that error when deciding whether or not to recover the debt.
3. Service NSW should amend its Alternatives to Funds Recovery Framework to provide that administrative error (in the grant approval process) is grounds to exercise discretion not to pursue a debt arising from a grant payment, including providing guidance in the framework regarding:
    - a. what it considers to be an administrative error (for example, incorrect advice provided or errors in the assessment of eligibility) for the purposes of the framework
    - b. how it will consider such errors when deciding whether not to recover the debt.
  4. Service NSW should advise us of the outcome of its review of the raw data of applicants who applied for the JobSaver payment (referred to at page 22 of this report and had their applications automatically assessed, and that have been referred for debt recovery) and confirm whether it has:
    - a. identified any other applicants who ticked 'no' to the turnover threshold question and were paid the grant in error
    - b. refunded any debt paid to such applicants.
  5. Service NSW should conduct a review of auditees who were found ineligible for the JobSaver payment and/or the Business Grant and:
    - a. identify whether any were eligible for the Micro-business offset, but have not been given the offset
    - b. apply the offset to those applicants' debts
    - c. advise this office of the outcome of this review.
  6. Service NSW should conduct a review of auditees who were found ineligible for the JobSaver payment and/or the Business Grant and:
    - a. identify if any of those auditees demonstrated any hardship factors
    - b. consider whether those auditees should have any or all of their debts waived
    - c. advise this office of the outcome of the review.
  7. Service NSW should conduct a review of auditees who were found ineligible for the Micro-business grant on the basis that their turnover was under the threshold because they had included JobKeeper payments when calculating turnover, and:
    - a. waive the debt where the application was made before the changes to the guidelines on 6 August 2021
    - b. advise this office of the outcome of the review.

## Appendix A – Grants eligibility criteria

The table below summarises the standard eligibility criteria for each grant.

Eligibility criteria	JobSaver payment	Business grant	Micro-business grant
Active ABN and NSW Operations	An active ABN held on 01 June 2021 (Only one application can be submitted per ABN)		
Total Wages	N/A	Total annual Australian wages of \$10 million or less on 1 July 2020.	N/A
Aggregated annual turnover for year ending June 2020	Between \$75,000 and \$250 million inclusive <sup>[1]</sup>	Between \$75,000 and \$50 million (inclusive).	Between \$30,000 and \$75,000 (inclusive) <sup>[2]</sup> .
Decline in turnover due to PHO	30% or more reduction in turnover in a 2-week period from 26 June 2021 to 30 Nov 2021 compared to the same 2-week period in 2019, 2020, or 12–25 June 2021 (inclusive) <sup>[3]</sup> .	30% or more reduction in turnover since 26 June 2021 – 17 July 2021 compared to the same 2-week period in 2019, 2020, 12–25 June 2021 (inclusive), or the 2-week period immediately before the Victorian Stay at Home Directions commenced (13 May–26 May 2021) <sup>[4]</sup>	30% or more reduction in turnover in a 2-week period between 26 June 2021 and 30 Nov 2021 compared to the same 2-week period in 2019, 2020, or 12–25 June 2021 (inclusive).
Employee headcount	Employing business is required to maintain employee headcount from 13 July 2021 if it received payments from the start of JobSaver, or from the day before the fortnight they first experienced the required decline in turnover.	Employing business is required to maintain employee headcount from 13 July 2021 while they continue to receive payments under this Grant.	Employing business is required to maintain employee headcount from 13 July 2021, if they received payments from the start of the micro-business grant, or from the day immediately prior to the fortnight they first experienced the required decline in turnover.
Primary income source	Non-employed business – the business receiving payments must be the primary income source (i.e., 50 per cent or more of total income) for the associated person. Individuals with more than one non-employed business may only claim payments for one business.		

<sup>[1]</sup> Larger businesses in the hospitality, tourism, and recreation industries with a turnover more than \$250 million and up to \$1 billion may also be eligible under the extension to the JobSaver scheme

<sup>[2]</sup> To be eligible for this grant the business have not applied for either the 2021 COVID-19 Business Grant, or the JobSaver scheme

<sup>[3]</sup> Registered not-for-profit (NFP) charities in the social services and animal welfare sectors with 15% to 30% decline in turnover are eligible. Standard turnover decline eligibility criterion applies to NFPs not covered above.

<sup>[4]</sup> A different comparison period may be used for businesses on the Victorian border impacted by the Victorian Stay at Home Directions that commenced on 27 May 2021

## Appendix B – Applications processed by the automated system

The table below shows the number of JobSaver payment applications processed by the automated system alone, and those where additional manual checks were performed.

Grant	Processing method	Paid	NOT Paid	Total	% of applications	Decline rate
JobSaver payment	Processed through the automated system	164,163	2,246	166,409	78%	1.3%
	Processed through the digital system with additional manual checks	43,156	3,326	46,482	22%	7.1%
	<b>Total</b>	<b>207,319</b>	<b>5,572</b>	<b>212,891</b>		

The table below<sup>59</sup> shows the number of COVID-19 Business grant applications processed by the digital system alone, and those where additional manual checks were performed.

Grant	Processing method	Paid	NOT Paid	Total	% of applications	Decline rate
COVID-19 Business grant	Processed through the automated system	78,657	690	79,347	40%	0.8%
	Processed through the automated system with additional manual checks	109,401	8,026	117,427	60%	6.8%
	<b>Total</b>	<b>188,058</b>	<b>8,716</b>	<b>196,774</b>		

The table below<sup>60</sup> shows the number of Micro-business grant applications processed by the automated system alone, and those where additional manual checks were performed.

Grant	Processing method	Paid	NOT Paid	Total	% of applications	Decline rate
Micro-business grant	Processed using an automated system	62,265	17,683	79,948	97%	22.1%
	Processed through the automated system with additional manual checks	744	1,522	2,266	3%	67.1%
	<b>Total</b>	<b>63,039</b>	<b>19,205</b>	<b>82,244</b>		

<sup>59</sup> Service NSW, Further response to Section 18 Notice, 7 June 2024, Schedule A, pp.1-2.

<sup>60</sup> Service NSW, Further response to Section 18 Notice, 7 June 2024, Schedule A, pp.1-2.

# Pursuing fairness for the people of NSW.

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ISBN: 978-1-922862-81-5

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**28 April 2026**