



21 March 2017

By email: community.affairs.sen@aph.gov.au

Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Committee Members,

Design, scope, cost-benefit analysis, contracts awarded and implementation associated with the Better Management of the Social Welfare System initiative

The Consumer Action Law Centre (**Consumer Action**) is pleased to provide a submission to the Inquiry on the *Design, scope, cost-benefit analysis, contracts awarded and implementation associated with the Better Management of the Social Welfare System initiative (the Senate Inquiry)*.

Our response to the Senate Inquiry has only addressed the first term of reference, which relates to the impact of Government automated debt collection processes. As a community legal centre that has assisted thousands of Victorians who have been subject to harassment by private debt collectors, we are concerned by reports of inappropriate conduct of Government collection agencies.

In summary, we recommend legislative reform that requires government agencies (including Centrelink) and their debt collectors to comply with the obligations that apply to private debt collectors and creditors. In the interim, we recommend that Centrelink voluntarily opt to be bound by these obligations by incorporating them into their service standards, operating procedures and contractual arrangements with debt collectors.

We provide further details below.

About Consumer Action

Consumer Action Law Centre is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national

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reach through our deep expertise in consumer law and policy, and direct knowledge of the consumer experience of modern markets.

Discussion: The impact of government automated debt collection processes upon the aged, families with young children, students, people with disability, jobseekers and any others affected by the process

Since the introduction of the Government's automated debt recovery system in July 2016, there has been severe public backlash against the inaccurate system of data-matching between Centrelink and the Australian Tax Office. In January 2017, it was estimated that 170,000 debt notices had been issued with thousands of Australians incorrectly told they owe money.¹ The impact of the Government's automated debt collection processes, and the actions of its private debt collection agencies, has been profound. There have been over 400 stories submitted to the #NotMyDebt website,² each explaining the negative impact that the Government's automated debt collection processes have had.

Centrelink has enlisted private debt collectors, including Dun & Bradstreet, to recover alleged debts. There have been multiple news reports of Centrelink's debt collectors making misleading statements, harassing debtors and misusing personal information. We have provided three examples in **Appendix A**.

The three case studies in Appendix A share a common theme: each story alleges misleading or intimidating conduct by debt collection agencies about the nature or extent of the debt owed and the consequences of non-payment. If true, this conduct would likely contravene the obligations that apply to private debt collectors and creditors. We have provided further information about these obligations, and specific prohibited debt collection practices, below.

The Debt Collection Guidelines

The standards that apply to private debt collectors are set out in the Australian Consumer and Competition Commission (**ACCC**) and Australian Securities and Investments Commission (**ASIC**) Debt Collection Guidelines (**the Debt Collection Guidelines**). The guidelines explain the application of laws that are relevant to debt collectors, including the *Australian Consumer Law*, *Australian Securities and Investments Commission Act 2001* (**the ASIC Act**) and the *National Consumer Credit Protection Act 2009* (**the National Credit Act**). Relevant provisions of those pieces of legislation include:

- prohibitions on the use of physical force, undue harassment and coercion;
- trespass, including requirements when entering private property to take possession of secured goods;
- prohibitions on misleading and deceptive conduct; and
- prohibitions on unconscionable conduct.

¹ Belot, Henry, 'Centrelink's controversial data matching program to target pensioners and disabled, Labor calls for suspension' (2017) ABC NEWS <<http://www.abc.net.au/news/2017-01-17/labor-calls-for-suspension-of-centrelink-debt-recovery-program/8187934>>

² Various authors, #NotMyDebt – confused and concerned about your Centrelink debt?, accessed 21 March 2017. Available at: <https://www.notmydebt.com.au/stories/notmydebt-stories>.

The Debt Collection Guidelines provide practical guidance on what creditors and collectors should and should not do to minimise their risk of breaching the consumer protection laws that may apply when undertaking debt collection activities, including suggested hours of contact, frequency of contact and location of contact. The Debt Collection Guidelines also provide good practice guidance for debt collectors and creditors including, for example, accurate record keeping, providing information when requested, and suspending collection activity if there is a genuine dispute about the existence of the alleged debt.

Prohibited debt collection practices in Victorian legislation

Specific debt collection practices are prohibited by Victorian legislation, which is not replicated in other state-based legislation. For example, section 45 of the *Australian Consumer Law and Fair Trading Act 2012* (the **ACLTF Act**) sets out the prohibited debt collection practices. Prohibited practices include:

- impersonating an employee or agent of the State, another state, a Territory of the Commonwealth;
- demanding the payment of a debt from a person without having a belief on reasonable grounds that the person is liable for the debt;
- attempting to take possession of or threatening to take possession of any property to which the person, or the person's principal, is not entitled to possession;
- making false or misleading representations in connection with the nature of a debt, the extent of a debt, the consequences of not paying a debt or the method of recovering a debt; and
- communicating with a person in a manner that is unreasonable in its frequency, nature or content.

Based on the media reports of debt collection practices by Centrelink's debt collection agencies, it appears that a number of these prohibited debt collection practices may have been contravened. However, as explained below, Centrelink is currently not bound by these regulations and is therefore able to engage in debt collection practices that would be prohibited for private creditors.

Section 52 of the ACLTF Act provides that it is an offence to charge debtors for the cost of debt collection (this does not apply in respect of credit contracts regulated by the National Credit Code if the contract allows for the recovery of those expenses). This does not apply to Centrelink, which appears to be routinely charging a 10 per cent "debt recovery fee".

Improving the regulation of Government debt collection

Government agencies, including Centrelink, are generally not required to comply with the Debt Collection Guidelines and associated legislation. The Debt Collection Guidelines currently apply only to government organisations engaged in business activities.

We believe that Centrelink and other Government collection agencies should, at a minimum, be subject to the same standards as private debt collectors and creditors.³

We recommend legislative reform that requires government agencies (including Centrelink) and their debt collectors to comply with the obligations that apply to private debt collectors and creditors. In the interim, we recommend Centrelink voluntarily opt to be bound by these obligations by incorporating them into their service standards, operating procedures and contractual arrangements with debt collectors.

Given that thousands of Centrelink's arrears notices have been found to be incorrect, and the numerous reported stories of harassment by Centrelink's debt collectors, we believe these reforms are urgently required.

Please contact Katherine Temple on 03 9670 5088 if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE



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³ For more information, see Tennant, David, *Finding a simple solution for managing debt collection rules*, 2 February 2017. Available at: <https://probonoaustralia.com.au/news/2017/02/finding-simple-solution-managing-debt-collection-rules/>.

Appendix A – Case Studies

Shannon's story ⁴

Shannon, a recipient of Youth Allowance, said she was sent a debt notice informing her that she owed \$2,524 to Centrelink.

Shannon said she had made a number of attempts to inform Centrelink of changes in her circumstances, which as a result meant that she no longer needed the full Youth Allowance payment. However, these attempts were largely ignored and one staff member at Centrelink even suggested to her that she was still eligible for Youth Allowance as she was still studying.

Upon receiving the debt notice, Shannon disputed her debt notice. Shannon was on the receiving end of some aggressive behaviour, with some staff accusing Shannon of 'rotting the system' despite her insistence that she had made contact with Centrelink to update her details.

Centrelink then engaged Dun & Bradstreet, a private debt collector, to recover the money owed. Shannon said that the debt collectors engaged in coercive behaviour by threatening to take legal action against her. The debt collectors said they would take Shannon to court, and take her wages and car if necessary. She said she was also told that she would have a criminal record and consequently lose her job as a result of a possible criminal record.

Shannon reluctantly agreed to repay the debt, because she feared she would have a criminal record and bad credit history.

Rhys' Story ⁵

In late 2016, Rhys received a number of letters from debt collection agency Dun & Bradstreet. In their letters, the debt collectors demanded a repayment of an \$18,000 alleged Centrelink debt, and said a failure to do so might trigger legal action or the 'garnishing' of his wages. Rhys suffered from severe depression.

On 3 January 2017, Rhys had a visit from debt collectors at his home and upon receiving no answer, they left a message saying they 'need to speak about an urgent matter'.

In January, Centrelink revised the sum owed by Rhys to \$10,283.81 for no apparent reason. The media outlet reported that these revisions are a common occurrence in the Government's automated debt recovery system.

⁴ Hickey, Conor, Hawkesbury Gazette, *Shannon Hounded for \$2500 Debt*, 20 January 2017. Available at: <http://www.hawkesburygazette.com.au/story/4411092/shannon-hounded-for-2500-debt/>.

⁵ McKenzie-Murray, Martin, The Saturday Paper, *Centrelink's Debt Collection 'Pushed Him Over the Edge*, 18 February 2017. Available at: <https://www.thesaturdaypaper.com.au/2017/02/18/centrelinks-debt-collection-pushed-him-over-the-edge/14873364004249>.

On 26 January 2017, Rhys took his own life. Rhys' family says that they believe the debt collection 'was the pinnacle that pushed him over the edge'. A week after Rhys' death, his mother says she was on the phone for an hour-and-a-half to notify Centrelink of his passing. She said that the debt collection agency basically hung up on her.

Eliza's story⁶

Eliza is a young doctor who was contacted by Probe Group, a debt collection agency, in relation to an alleged Centrelink debt earlier this year. Centrelink claims it overpaid Eliza \$800 of rental assistance five years ago, when she was studying medicine. Centrelink denies the debt was issued as part of its automated debt process. Eliza said she did not receive any notice of the debt from Centrelink, but was initially contacted by Probe Group.

Eliza said that Probe Group, an Australian company which runs a call centre out of the Philippines, called her on a Sunday evening, earlier this year. Eliza alleges that the caller said that they were from the Department of Human Services. After being challenged by Eliza, the caller admitted that they were from Probe Group, calling on behalf of the Department of Human Services.

Eliza said she also received a barrage of text messages from the debt collection agency. When she called the number provided, she was on hold for 40 minutes. Eliza said she was then asked to provide significant amounts of personal information before the debt collector would explain what they wanted to discuss.

At the time of the story's publication, Eliza said she was still waiting for formal documentation from Centrelink outlining the basis for its claim.

⁶ Triple J Hack, *Centrelink's outsourced debt collection accused of claiming to be Aus.Gov.*, 21 February 2017. Available at: <http://www.abc.net.au/triplej/programs/hack/private-debt-collector-accused-of-claiming-to-be-government/8291050>.