



20th September, 2019

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

Re: Centrelink's compliance program

Our submission addresses the ongoing impact of the Federal Government's automated debt collection processes upon current and past income support recipients.

This submission gives examples from financial counsellors about their client experiences who have had to go to great lengths over considerable time to disprove these alleged debts in part or in full. The case studies demonstrate the serious impact of disputing the alleged debts.

We remain concerned that the robo-debt program remains fundamentally and systemically flawed. The data-matching process produces errors that are not checked in detail before a claim is made. The case studies below cover clients who saw a financial counsellor for help to dispute the debt. It does not cover the many people who were so vulnerable and/or disadvantaged they were unable to seek help to dispute the debt claimed. We remain concerned that people are paying debts they do not owe.

Each of the case studies below have been anonymised with a pseudonym used for the client. Following each case study is an analysis of how the case study demonstrates the systemic problems with robo-debt and suggested recommendations to resolve these problems.

Thank you for the opportunity to submit our concerns.

Yours sincerely

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Case Study 1

Data matching techniques and the use of real time wages

Leah is the mother of a severely disabled daughter, working as a permanent casual in an office assistant position had a debt of \$12,000 raised against her. Due to the daughter's disability she needs to take time off this job to care for her daughter or to recover after a night where the daughter has required her assistance all night long.

Leah had reported her payments to Centrelink consistently.

A debt was raised using the robo-debt method of averaging a casual wage out over the year. When the wage varies so much over the year this method does not work.

Leah appealed on the grounds of "special circumstance" as with a severely disabled 24 year old daughter, her life is not easy and there is the potential to make a reporting mistake.

She was basically told her circumstances were not special enough as there were other people on the Carers payment in similar circumstances. However, at the first tier of AAT she was offered a settlement with half the original debt waived. She took the offer which will leave her short some \$130 per fortnight over the next 2 years from her Carers payment to pay off the remaining \$6000 debt.

Leah continues to worry that the same problem will happen again and she will need to go through the same stressful process again.

Further to writing this case study, Leah found out she was in arrears with her rent. She had never been behind in her rent and it was paid via Centrepay.

After two and a half hours on the phone to get through to the appropriate area of Centrelink she discovered that her robo-debt repayment had been increased to \$300 per fortnight without any consultation. When she explained that by increasing the repayment amount it had put her into rent arrears she was told that, "the debt is always taken before your rent".

Analysis and recommendations from Case Study 1

Vulnerability

Leah is vulnerable or highly likely to be vulnerable. She is a carer of a severely disabled daughter. This means that when a demand is made for payment, Leah will have difficulty even working out what this means or responding to the demand given her already heavy responsibilities.

Leah will have difficulty working out whether the claim is accurate. The demand does not tell her where she can get independent help. It does not tell her in any detail how the claim was calculated.

Extra care is required for people who are vulnerable.

Recommendations:

Extra care is required when collecting debts from vulnerable people. People receiving Centrelink are likely to be vulnerable or become vulnerable when a claim is made.

Centrelink must:

- Acknowledge that the alleged debtor may be vulnerable;
- Fully assess the potential debt before making a claim. This would include checking evidence held and asking for more information from the Centrelink recipient if needed;
- Only making a claim for the debt if the debt is owed
- Negotiating a repayment arrangement for anyone still receiving Centrelink
- Not make arbitrary decisions to increase debt repayment arrangements which would not happen in any other instance where repayment arrangements have been negotiated, including financial institutions or the ATO.

Averaging

This is not an accurate way to calculate a debt and must not be used. The data from the ATO is evidence not conclusive evidence and further investigation and accurate calculations are required.

Recommendation:

The ATO data must not be averaged to raise a debt as it leads to inaccurate claims.

Case Study 2

Centrelink using incorrect information to incorrectly calculate a debt

An Aboriginal woman, Kate working at a not for profit organisation was advised that a debt had been raised of some \$24,000 in Family Tax Benefit overpayments from 2014-2016.

This was not in fact true. After many phone calls she finally understood that it was believed that she worked for two organisations. Kate actually only had one position within the one organisation but was paid from two different strands of funding therefore resulting in two different program titles. Centrelink incorrectly assumed this meant two different jobs.

It took considerable time, letters of support and direct evidence from her pay office for the Compliance area of Human Services to be convinced that they had made an erroneous claim.

As the circumstances that led to the erroneous claim are likely to occur again, there is a likelihood that further inaccurate claims could be made by Centrelink in the future. Although a request for the department to issue a letter exonerating her has been made on several occasions, it has not been forthcoming, leaving Kate worried that she may have to go through the whole process again.

Analysis and recommendations from Case Study 2

Failure to check evidence and assumptions

This case study demonstrates what can go wrong when Centrelink makes assumptions without checking the actual evidence. It is further evidence of the need to fully check the information held (and request further information if necessary) before a claim is made.

Recommendation

It is not acceptable and unfair to claim debts based on assumptions. Debts must be claimed based on actual evidence.

Concern that this will happen again

This concern is justified. If Centrelink continues to make claims based on assumptions and poor evidence, it is likely that further erroneous claims will be made. It will mean people will have to run the same dispute repeatedly.

Recommendation

Centrelink needs to learn from its mistakes. A review should be required on all claims where the debt was reduced when disputed.

Case Study 3

Impact of errors in calculation, the review and appeal processes

A financial counsellor has been working with Tami for 3 years to finalise a debt raised by the robo method for an overpayment in 2011/2012.

Tami is a high functioning depressive and works as a Registered nurse via nursing agencies.

She presented to financial counselling with a debt of over \$9000 to Centrelink and at the time was working only extremely casually as she was suffering severe mental health problems due to an incident at one of her workplaces in 2012 which had left her battling PTSD along with her other mental health diagnoses.

After dealing with the Compliance office in Canberra and twice having the dates in question changed and the information sought changed, Tami was told that various periods of employment history were not required. Then the Human Services department did not have a recording of that conversation and denied it ever happened. Then the information provided by Tami sat on someone's desk for over 12 months.

Once the compliance office was contacted and it discovered that this inquiry was ongoing, the appeals process was begun and the client gained documents from Centrelink under FOI. Very fortunately Tami is an organised person and had kept most of her payslips going back as far as was required. Tami always agreed she had been overpaid as she had gone to the Centrelink office several times in order to have them stop her payments, as she was working. She offered to pay back the overpayments at that time (2012) but was told she would have to wait until a debt was raised.

The Department of Human Services reduced the debt to \$7757 during the initial appeals process. No explanation was given for the reduction.

Tami escalated to the Administrative Appeals Tribunal. A waiver of half the debt was offered by Human Services.

The client chose to go ahead with the hearing. The first hearing was not very satisfactory with the member not hearing what the client was saying, concentrating on issues which were not pertinent to the facts, talking to her in detail about the incident which led to her PTSD. This re-traumatised Tami. (Note: In the previous 2 1/2 years the financial counsellor who

knew about the PTSD had not sought to know the reason as there was the possibility of re-traumatizing the client.)

The resulting decision was that the client did not qualify for a debt waiver under special circumstances as Tami was no more special than other people on DSP.

Incidentally, Welfare Rights knows of no-one who has had their robo-debt waived under the "special circumstance" provision.

Tami chose to persevere with the appeals process to the General division of the AAT as she felt strongly that she didn't owe the debt indicated and the reduced settlement offer of half the \$7757 was still not acceptable.

At the mediation hearing of the AAT with the Department's lawyer, the client pointed out the anomalies in the previous AAT member's decision with one point being "It is not clear from Centrelink documents if and how these lump sums were taken into account in calculating (the) debt."

If the above is the case – how can anyone be sure the debt exists?

The AAT mediator was scathing in his questioning of the government lawyer not knowing how much Tami earned in the period in question but her being expected to know exactly what she should have been paid by Centrelink, when employed casually through a number of different nursing agencies, over the period in question and with her mental health fluctuating in severity during the time. All information was evidenced previously.

He thought it telling how the robo-debt system did not work, particularly for nurses being engaged by agencies, as they had been an over-represented group at mediations he had been involved with.

Tami made a settlement offer for \$2500 which she believed she owed, less what she had already paid. Ultimately this was agreed on after further negotiation.

Tami makes the point that had she been able to pay the debt when she had first received the overpayment which was clearly a Centrelink mistake initially, she was working and would not have been in hardship. Now, after the passing of all this time her circumstances are entirely different for Tami as she: -

-Suffers from PTSD after a workplace incident which occurred at a similar time to the debt being raised leaving her with lack of clear memory about that time period

-Has a 3 year old child

-Now on a Disability Support pension as she has been unable to sustain work for any length of time due to her mental health condition.

-Has a physical health problems for which she is waiting for major heart surgery.

This whole process has impacted substantially on her health. Tami also needs to repay a debt when she remains on the DSP causing her further financial hardship.

Analysis and recommendations from Case Study 3

Procedural fairness

Tami ended up in a long running dispute process with Centrelink. The process was considerably delayed by Centrelink failing to engage with the dispute. This led to a stressful lengthy dispute where the debt claimed was considerably reduced at the end. For Centrelink this dispute was business as usual. For Tami, it was a highly stressful experience where she was retraumatized following questioning on the incident that caused her PTSD.

Recommendation

Centrelink dispute resolution processes remain difficult and unfair. An independent review is required to ensure the process is accessible, speedy and fair.

Delay

In this case, the delay by Centrelink on making a claim severely affected Tami. If a claim for the small amount owed was made at the time of the overpayment then this entire matter could have been resolved without a lengthy dispute in the AAT. Delay is fundamentally unfair as records go missing. This is why there are statutes of limitation in every State and Territory in Australia.

Recommendation

Delay can be unfair. Consideration should be given to barring further action after 6 years.

Debt collection

Centrelink is not required to comply with the ACCC/ASIC Debt Collection Guideline. This guideline provides detailed guidance on acceptable and unacceptable conduct in Debt Collection. It gives people rights to request evidence of a debt claimed. Centrelink should be held to this standard or a higher standard.

Recommendation

Centrelink must use fair debt collection practices and comply with the Debt Collection Guideline.