David Tennant

16 February 2016

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

Dear Secretary,

Inquiry into: Design, Scope, cost-benefit analysis, contracts awarded and implementation associated with the Better Management of the Social Welfare System initiative.

I am the CEO of Shepparton-based, not-for-profit community provider FamilyCare. This submission is made in a personal capacity and is focused on paragraph i of the terms of reference.

From 1995 to 2008 I worked with Care Inc. Financial Counselling Service and the Consumer Law Centre of the ACT in Canberra. In my role at Care I participated in the consultations that preceded establishment of the first debt collection guideline in 1999 which provided information to assist creditors and debt collectors comply with the Trade Practices Act and the equivalent State and Territory Fair Trading laws. That first publication was the forerunner to the current guideline, which is produced and supervised jointly by the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission.

In response to recent public discussion of problems with Centrelink's data matching practices and the pursuit of alleged debts, I prepared a brief summary contrasting the approach to that outlined in the debt collection guideline. A copy of the summary is attached. An edited version recently appeared as an opinion piece in Pro Bono Australia's on-line news.

There are significant problems associated with a government department pursing a course of action that would likely be illegal if adopted by a body other than government. It potentially erodes the confidence of those who rely on the benefit system to treat them fairly, or to recognise them as having the same rights as all citizens. It could also frustrate industry groups from large creditors and commercial collection agents, to small businesses, that observe government being able to pressure people for payment when they are not allowed to do so, in ways that are objectively unfair.

If Centrelink were to adopt or be required to follow the debt collection guideline, Government would still be able to ensure benefit recipients only receive that to which they are entitled. It would also ensure that government is seen to behave fairly and equitably and meet the same legal obligations that apply to everyone else.

Yours sincerely

David Tennant

Is there a simple solution to Centrelink's debt collection problems?

David Tennant*

There has been a lot of public discussion about Centrelink's automated system of data matching and its approach to collecting the alleged debts produced. Some key facts do not seem to be in dispute. The data matching is not precise. It can result in the appearance of debts where none exist and benefit recipients have met all of their reporting obligations.

When the possibility of a debt is raised, Centrelink asks the benefit recipient to provide evidence to disprove the potential. This occurs even in circumstances where Centrelink already has information confirming debts do not exist, or not in the sums suggested by the data matching process.

Sometimes when the benefit recipient has not received the request for further information, Centrelink has outsourced the alleged debt and authorised collection activity. It has empowered its collection agents to pursue the debts and insist on payments being made. These activities have continued in circumstances where the benefit recipient denies the existence of a debt or any failure on their part.

Unsurprisingly, a significant number of people have reported experiencing problems with the system. Some have suggested it caused them great stress, including adverse health consequences. Also unsurprisingly, there have been suggestions that some people who have been incorrectly targeted by the system may have legal options available to them. What is surprising however, is the lack of commentary about how Centrelink's conduct stacks up against the normal rules applying to the collection of debts in Australia.

Before considering the current rules, it is worth reflecting on their evolution. The first coordinated Australian consumer protection law was the *Trade Practices Act*, 1974. Section 60 of the *Trade Practices Act* prohibited corporations from engaging in:

> *(p)hysical force, undue harassment or coercion, in connection with the supply of goods or services, or in connection with the payment for goods or services by a consumer.*

There were similar prohibitions in most of the equivalent State based Fair Trading Acts. Unfortunately, for many years section 60 failed to produce any meaningful action in response to regular reports of aggressive, bizarre and sometimes violent collection processes. That changed in 1999 when the Australian Competition and Consumer Commission launched a report and guidelines on undue harassment and coercion in debt collection. The guidelines represented the culmination of a detailed consultation process and:

> *(p)ut industry on notice of the Commission's interest in this area, thus encouraging internal review of standard procedures.*[1]

Investigations and even some prosecutions followed. So did a more coordinated approach amongst the key consumer protection regulators. In October 2005 the Australian Securities and Investments Commission joined the ACCC as joint publishers of the debt collection guidelines. The joint publication removed any doubt that the approach to appropriate debt collection in the provision of consumer services would also be consistent across financial services and credit industries.

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* *David Tennant is the Chief Executive Officer of Goulburn Valley Family Care Inc located in Shepparton, Victoria. He is a former Chairperson of the national peak body for financial counsellors, now known as Financial Counselling Australia.*

[1] Asher, Allan; *Launch of Report and Guidelines on undue harassment and coercion in debt collection – speech by Deputy Chair;* Australian Competition and Consumer Commission; Melbourne; 10 June 1999, page 3.

One of the case studies that then ACCC Deputy Chair Louise Sylvan referred to at the October 2005 launch related to a young man who received a letter of demand for unpaid video rental fees.

> *The young man was not sure if he actually owed the debt and requested some further information about the alleged debt. The collector did not provide this information.*[2]

Sylvan went on to note:

> *Collectors need to be very sure that the person they are contacting about the debt legitimately owes the amount, otherwise demands for payment could constitute misleading or deceptive conduct.*[3]

And concluded:

> *It cannot be in the community's interests for consumers to feel threatened into paying a debt that they are not sure that they owe and may in fact not owe.*[4]

The law has evolved since 2005. The *Trade Practices Act* has been replaced by the *Competition and Consumer Act 2010*. The modern equivalents of section 60 of the *Trade Practices Act* now appear in the *Australian Consumer Law* which is a schedule to the *Competition and Consumer Act*. The Commonwealth, States and Territories share responsibilities for supervising compliance with the *Australian Consumer Law*.

The ACCC and ASIC have maintained and updated the debt collection guideline consistent with changes in the legal landscape. Its most recent iteration was released in February 2016.[5] The guideline is not law. Laws are made by Parliament and interpreted by Courts. It is however a highly evolved statement about the type of conduct creditors and collectors should observe if they wish to avoid breaking the law. This is what the regulators think the law means and how they will decide when to intervene.

The debt collection guideline could be really useful to Centrelink. It recommends for example accurate record keeping (clause 10), providing information when it is requested (clause 11) and suspending collection activity if there is a genuine dispute about the existence of an alleged debt (clause 13). Centrelink is not however required to comply with the *Australian Consumer Law* and the debt collection guideline only applies to government bodies engaged in business activities.[6] In other words Centrelink is not bound by the rules that apply to every consumer creditor and collection body in Australia – even the much maligned banks.

Centrelink could opt to be bound by incorporating the debt collection guidelines into its service standards or operating procedures.

> *A creditor or collector may agree contractually to adhere to this guideline. This will be the case, for instance, if the terms and conditions for a particular product or service stipulate that the provider of the service will abide by the guideline itself…*[7]

Far better still the law could be amended to require compliance for Centrelink and all government collection activities.

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[2] Sylvan, Louise; *Debt collection guideline: for collectors and creditors – Dealing with debt: your rights and responsibilities – speech by Deputy Chair;* Australian Competition and Consumer Commission; Gold Coast; 14 October 2005; page 3
[3] ibid
[4] ibid
[5] *Debt collection guideline: for collectors and creditors;* Australian Competition and Consumer Commission and the Australian Securities and Investments Commission; February 2016
[6] ibid; see Part 2: Practical Guidance; page 5; and Appendix C: Glossary (definition of Debt collector); page 61
[7] ibid; see footnote on page 3. Some industry groups have incorporated a commitment to compliance with the debt collection guideline into broader contractual promises, for example clause 32 of the Code of Banking Practice 2013.