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Submission

Senate Inquiry: Centrelink's compliance program

September 2019

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About Financial Counselling Australia and Financial Counselling

Financial counsellors provide advice to people with money and debt issues. Working in community organisations, their services are free, confidential and independent.

Financial Counselling Australia (FCA) is the peak body for financial counsellors in Australia. FCA's members are the State and Territory financial counselling associations.

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1 Introduction

Financial Counselling Australia (FCA) welcomes the Senate Inquiry into Centrelink's compliance program.

Financial counsellors assist people in financial difficulty. They advise and assist people when dealing with debts - debt collection is therefore a core part of their work. People on Centrelink as their sole or main source of income, may experience financial difficulty. This is a particular problem for people on Newstart as the payment is below the poverty line.¹ People on Newstart are in ongoing serious financial difficulty and need a lot of support because of insufficient income.

Centrelink's compliance program involves data matching with the Australian Taxation Office (ATO) to establish whether there has been an over payment in Centrelink payments. When the data matching reveals there is an over payment then there is a request for further information and possibly a claim for repayment of the overpayment. The process of making a demand and enforcing the debt claimed is debt collection. Centrelink uses debt collectors as agents to collect the debts in addition to collecting the alleged debts itself.

In this submission, we will not cover the problems with data matching. We expect that Legal Aid Victoria and many others will provide excellent evidence on the problems and inaccuracies that arise with data matching. It is also noted that a class action may be filed against the Commonwealth Government to further clarify this issue in Court.²

This submission will focus on two main issues:

- 1) Vulnerability and debt collection; and
- 2) A comparison between the obligations of Centrelink and a bank when collecting an alleged debt (an attempt to benchmark practice).

A discussion about the role of vulnerability is necessary for Centrelink's debt collection. People on Centrelink are more likely to be vulnerable or become vulnerable when a debt is being collected. The Centrelink compliance program does not seem to have this factored into its processes. We believe the failure to take extra care with vulnerability makes the debt collection process unsafe and unfair for many people.

This submission will also discuss why Centrelink should benchmark its debt collection practices to at least the same standard as a bank and should aim for even higher standards. In our view, the current Centrelink debt collection processes fall well below acceptable standards for even industry practice (which still needs significant improvement).

¹ Newstart is \$100 below the poverty line. See <https://www.acoss.org.au/wp-content/uploads/2019/07/190729-Survey-of-people-on-Newstart-and-Youth-Allowance.pdf>

² Centrelink robodebt class action lawsuit to be brought against the Federal Government, ABC news available at: <https://www.abc.net.au/news/2019-09-17/centrelink-robodebt-class-action-lawsuit-announced/11520338>

2 Summary

We do not support the continuation of the Centrelink automated debt collection process (robodebt). We remain concerned that debts claimed are inaccurate and people who may be experiencing vulnerability are paying debts they do not owe. Centrelink must be sure that a debt is owed before it commences any debt collection process and has the onus of proof. The debt collection process must be designed to be fair and take extra care in all circumstances as it is likely that the person receiving Centrelink is in financial difficulty, disadvantaged or vulnerable.

3 Summary of recommendations

Our recommendations are as follows:

1. Centrelink robodebt must be discontinued.
2. Possible debts from automated data matching need to be reviewed in detail. If further information is required to verify the debt this can be requested. The principle should be that a debt should not be claimed until there is an assessment that it can be reasonably claimed based on a review of the evidence.
3. Centrelink must make specific commitments to design all practices around taking extra care for vulnerable people. This would include defining vulnerability and reviewing all processes to ensure that the standard of “extra care” is being met. The Social Security Guide must be updated following this review.
4. All debt collection processes must be fair and meet best practice standards. Binding standards are needed to ensure that Centrelink complies with best practice at all times. There must be a reasonable basis for collecting the debt.
5. If the automated data matching continues then:
 - a. the onus of proof should be on Centrelink, not the person, to prove that the debt is owed;
 - b. people need access to advice and assistance to review any debt claimed with representation to dispute the debt (if required). This means funding financial counsellors and lawyers to specifically provide advice to clients in these circumstances.
6. Collecting a debt that is not owed or only partly owed causes serious stress for the alleged debtor. Centrelink needs to compensate people for the stress caused.
7. The Administrative Appeals Tribunal is arguably not a user-friendly process and people should be able to access a free and independent dispute resolution scheme which is accessible and informal. This dispute resolution scheme should be similar to the Australian Financial Complaints Authority.

4 Vulnerability

There are many definitions of vulnerability. It has also been clearly established that people can experience long-term vulnerability or be temporarily vulnerable depending on circumstances. It follows, and this has been reflected in many laws over many years, that service providers need to take extra care not to “take advantage” of vulnerable people.

As an example of possible indicators of vulnerability, the recently released Banking Code of Practice includes a dedicated chapter on this topic called *Taking extra care with customers who may be vulnerable*.³ It includes a positive commitment to take extra care with vulnerable customers including those who are experiencing:

- a. Age related impairment
- b. Cognitive impairment
- c. Elder abuse
- d. Family or domestic violence
- e. Financial abuse
- f. Mental illness
- g. Serious illness; or
- h. Any other personal, or financial, circumstance causing significant detriment.

Other established indicators of vulnerability identified by the European Commission are people at higher risk of poverty and social exclusion which may include ethnic minorities, disabled people, the homeless, those struggling with substance abuse, isolated elderly people, children, migrants and long-term unemployed.⁴ Serious financial difficulty is clearly an indicator of vulnerability.

Case study - Jack

Jack is on the disability support pension and has an intellectual disability. He does not have any family members to support and assist him. He inherited \$250,000 a number of years ago. Most of the money was used to renovate his old house that was left to him by his parents. When he inherited the money, his DSP was reduced because of the asset threshold. Jack went to see a financial counsellor as he was struggling to make ends meet on \$700 a fortnight. The financial counsellor noticed that his DSP was about \$200 a fortnight less than what it should be. The financial counsellor obtained a letter from his bank to advise that there was no longer this money in his account and the full DSP was reinstated. Jack was unaware he needed to report changes to his financial situation. The financial counsellor calculated that he has missed out on receiving \$36,000 from Centrelink over the years. Jack was not eating properly, was falling behind in utility bills and could not afford to buy clothes. At no time, did Centrelink review his financial situation even though it was fully aware of his vulnerability.

³ Chapter 14.

⁴ See for example *The European Social Fund and Social Inclusion*, European Commission Available at https://ec.europa.eu/employment_social/esf/docs/sf_social_inclusion_en.pdf

Centrelink provides a safety net of welfare services for many people in Australia. Centrelink is also a Government agency. The Social Security Guide contains an explicit mention of indicators of vulnerability in relation to income management.⁵ The indicators listed are:

- Financial hardship
- Financial exploitation
- Failure to undertake reasonable self-care
- Homelessness or risk of homelessness

The other mentions of vulnerability in the Social Security Guide are very limited.

It is apparent that there is no overarching approach and procedures in place by Centrelink to ensure that people experiencing vulnerability have procedures in place for extra care.

If Centrelink had a comprehensive policy and procedures in place to take extra care for vulnerable people, it would not have been possible to continue with a mass mail out for robodebt as it would not comply with those procedures or overarching policy.

We believe it is fundamentally unfair for Centrelink to send out letters asking for evidence so that a person can try to prove they do not owe a debt. It is contrary to procedural fairness and inconsistent with the operation of our legal system – if you claim a debt then it is incumbent on the party making that claim to prove that the debt is owed.

That unfairness becomes catastrophically unfair and unconscionable when a person may be vulnerable. There are three fundamental problems with robodebt for vulnerable people:

1. Providing evidence is onerous and difficult for vulnerable people;
2. Disputing the debt is difficult; and
3. They are likely to pay a debt they may not owe

1. Providing evidence

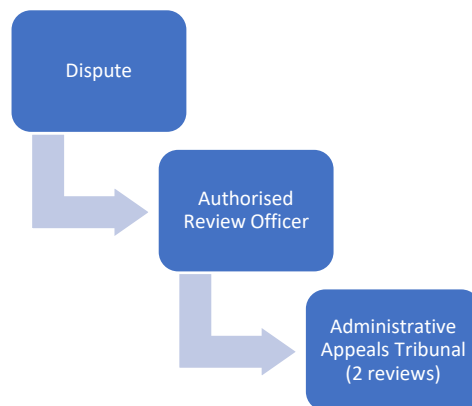
Providing evidence is difficult because:

- It is not held because of, for example: homelessness, family violence, chronic illness, difficulty keeping records because of mental illness, low literacy levels;
- Calling Centrelink involves long times waiting and lengthy periods on the phone. Many people find the phone confronting and difficult (particularly people with mental illness) and Centrelink does not provide other ways to engage effectively; and
- There is a prospect of a debt being owed which scares people into limited functioning and being unable to engage.

⁵ Social Security Guide Version 1.257 Released 12 August 2019 at 11.4.2.20, Department of Social Services. Available at <https://guides.dss.gov.au/guide-social-security-law/11/4/2/20>

2. Disputing the debt

There can be barriers for vulnerable people to dispute the debt. The dispute resolution system for Centrelink is:



This is a complicated review process which culminates with a hearing in a Tribunal which can be highly intimidating.

Vulnerable people often need help to get through this process and free specialist representation is difficult to access and in high demand.

Many people have already disputed robodebts and the debt has been reduced or wiped for over 70,000 people.⁶ The question must be raised of how many extra debts would have been reduced or wiped if every vulnerable person had representation to dispute the debt. In our view, the answer must be that many thousands more debts would need to be wiped or reduced.

3. Paying a debt that is not owed

This is the most disturbing concern. Vulnerable people can pay debts they do not owe. They do this for many reasons:

- They are scared
- They do not know how to get the evidence
- They cannot get help
- They cannot handle the stress of a dispute
- They just want the debt collection to stop

When it comes to Centrelink, paying a debt that is not owed is not a “commercial decision” (like it would be for a business or for people with good incomes), it is a decision to have less money for basic living expenses. It also means that the Government has intimidated people to get money they are not entitled to.

⁶ Henriques-Gomes, L. 'Centrelink cancels 40,000 robodebts, new figures reveal', *The Guardian Australia*, 6 February 2019, available from: <https://www.theguardian.com/australia-news/2019/feb/06/robodebt-faces-landmark-legal-challenge-over-crude-income-calculations>,

Recommendation

Centrelink must make specific commitments to design all practices around taking extra care for vulnerable people. This would include defining vulnerability and reviewing all processes to ensure that the standard of “extra care” is being met. The Social Security Guide must be updated following this review.

5 Benchmarking Centrelink debt collection practices

Financial counsellors deal with issues relating to debt collection on an almost daily basis. There should be an expectation that when financial counsellors deal with debt collection for a client with a Centrelink debt the conduct should be best practice.

Centrelink debt collection practices should also meet community expectations. The Government must be meeting and exceeding industry and ethical standards on debt collection. The Government must be a fair debt collector.

We thought it would be useful to compare the Government’s debt collection practices to banks. The banks have recently been subject to a Royal Commission. There is no doubt that the banks still need to do a lot of work to gain the trust of the public. There is also a need to continue to carefully review the conduct of the banks and further regulation is required. In this context, Centrelink should definitely be exceeding industry standards.

The question is would robodebt be permissible legally if it was conducted by a bank or other finance provider?

Below, we discuss a number of debt collection standards that Centrelink should meet. These are only a few key standards. We compare the practices of Centrelink in collecting robodebt to bank debt collection practices.

Overall, we find that the standards that apply to the debt collection for bank debts are at a higher standard than that required of Centrelink.

Standard 1: There must be a reasonable basis for collecting the debt

With robodebt, Centrelink asks for further information and if that information is not provided or does not change their position about the alleged debt then a debt is claimed. The person needs to somehow prove they do not owe a debt. The consumer protection laws outlined below do not apply to Centrelink.

In contrast, if a bank demands a loan debt, they must have a reasonable basis for demanding that debt. If they do not have a reasonable basis, the demands for the debt may be in breach of:

- The Australian Securities and Investments Commission Act 2001 – misleading and deceptive conduct (s.12DA) and/or unconscionable conduct (s. 12CB).
- Banking Code of Practice

The ACCC/ASIC Debt Collection Guideline⁷ (Debt Collection Guideline) at section 13(g) states that:

“It is misleading to state or imply that the debtor must prove they are not liable for the debt. In legal proceedings, proof of debt lies with the person alleging the debt is owed to them.”

The Government states that robodebt is not in breach of any law.

Case study - Fred

Fred was on Newstart until November 2018 when he found a job. He reported his income to Centrelink, which continued to pay him. He rang staff to alert them that the payment was incorrect and was told it would be fixed up. Some six months later he lost his job and when he went to claim Newstart, Centrelink staff denied his request for three months. Fred became suicidal and had to live on charity from family and friends. He is now back on Newstart but is now deeply in debt.

Standard 2: If liability is disputed

Many people disputed liability for debts claimed following robodebt. This did not stop garnisheeing of tax returns or accounts. Disputing a debt does not stop debt collection by Centrelink.

If a bank was collecting a debt, the Debt Collection Guideline (Section 13) clearly states:

Collection activity (including credit report listing) should be suspended if a person contacted about a debt claims that:

- *they are not the alleged debtor*
- *the debt was never incurred, or*
- *the debt has been paid or otherwise settled*

and you have not already confirmed their identity and liability.

(b) If collection activity is continued without properly investigating claims that a debt is not owed, including whether a debt is statute-barred, there is considerable risk of breaching the law.

When the amount claimed is disputed the Debt Collection Guideline (s.13 (f) to (j)) deals with the steps to resolve the dispute which includes suspending debt collection activity and entering into an internal dispute resolution process.

⁷ ACCC/ASIC Debt Collection Guideline for collectors and creditors. Available at <https://www.accc.gov.au/publications/debt-collection-guideline-for-collectors-creditors>.

Recommendations

All debt collection processes must be fair and meet best practice standards. Binding standards are needed to ensure that Centrelink complies with best practice at all times. There must be a reasonable basis for collecting the debt.

Standard 3: Requesting documents

People need to lodge a freedom of information request to get documents relating to their Centrelink debt. It is generally difficult to get the required documents.

For a bank debt there are comprehensive rights⁸ to request the documents being relied on to claim the debt.

Standard 4: Resolving disputes

The dispute process for Centrelink is different to the dispute process for other debts (for example, for a bank). When disputing a Centrelink debt, the ultimate independent decision maker is the Administrative Appeals Tribunal (AAT). There is no cost to make an application to the AAT. There is a first review and second review. The AAT cannot consider the dispute until a Centrelink Authorised Review Officer or Subject Matter Expert has made a decision. The AAT is a Tribunal and can require attendance and does have semi-formal rules.

For a bank debt, the process for a dispute is:

1. raise a dispute with the bank in writing or verbally. The bank has 45 days to respond.
2. If the bank does not respond within 45 days or the dispute is not resolved, the person can lodge a dispute in the Australian Financial Complaints Authority for free. The decision will be made on the papers and there is help for vulnerable people in lodging and responding. Compensation can be claimed for stress and inconvenience.

Recommendation

1. The Administrative Appeals Tribunal is arguably not a user-friendly process and people should be able to access a free and independent dispute resolution scheme which is accessible and informal. This dispute resolution scheme should be similar to the Australian Financial Complaints Authority.
2. Collecting a debt that is not owed or only partly owed causes serious stress for the alleged debtor. Centrelink must compensate people for the stress caused.

⁸ The National Credit Code, Debt Collection Guideline, Banking Code of Practice, and Privacy Act 1988 all have specific rights to request documents that must be supplied.

6 Advice and assistance

People must be able to access free advice and assistance with Centrelink disputes. There must be sufficient funding of free services including specialist welfare rights services, community legal centres, legal aid and financial counsellors to ensure all people with a Centrelink dispute have access to advice and assistance.

Recommendation

People need access to advice and assistance to review any debt claimed with representation to dispute the debt (if required). This means funding financial counsellors and lawyers to specifically provide advice to clients in these circumstances.