Consumer Credit
Legal Centre NSW

March 2013

Submission in relation to the Independent Review of the Centrepay Scheme by the Consumer Credit Legal Centre (NSW) Inc

General Comments

Thank you for the opportunity to comment on the independent review of the Centrepay scheme. The CCLC would first like to emphasise that it believes Centrepay is an invaluable service provided by Centrelink for social security recipients. The financial counsellors as well as the solicitors in our Centre agree that Centrepay is an important financial self-management tool for disadvantaged consumers and we strongly support its continued operation.

Nevertheless, in light of this independent review we do have some comments and concerns about the current administrative of the Centrepay scheme.

Primary Concerns

1. Centrepay should revisit its founding policy objective of assisting Customer financial self-management by enabling the payment of living expenses, which should only include certain priority goods and services.

2. Retail/Consumer Lease companies for consumer goods should be removed from the Centrepay scheme or in the alternative be treated by Centrepay with increased scrutiny both in the application phase and necessary review of existing Participants.

3. Other problematic Participants such as solicitors and funeral homes should be treated by Centrepay with increased scrutiny during the initial application phase as well as during subsequent reviews.

4. An itemized list of all Centrepay deductions should be included on every Centrelink Statement provided to Customers whether generated automatically or after a customer request.

5. There should be a better complaint mechanism for Customers and consumer advocates who have a grievance against a Centrepay Participant organisation.

6. The amount of funds able to be deducted through Centrepay should not be capped.

7. Centrepay should allow the deduction of mortgage repayments in limited circumstances.

Reasoning

1. Centrepay should revisit its founding policy objective of assisting Customer financial self-management by enabling the payment of living expenses, which should only include certain <u>priority goods and services</u>.

According to the Department of Human Services, Centrepay's primary Objective[1] is to "enhance the well-being of its Customers by improving their social capacity and encouraging their movement towards financial self-management." Centrepay achieves this by "enabling Customers to access a fee-free method for payment of their household and associated living expenses." Although Centrepay seems to have been originally designed to prioritize the payment of necessary living expenses, over time it has expanded to include a large range of both necessary and non-essential goods and services.

The CCLC believes that the Centrepay system should primarily be used to help Centrelink members arrange payments for <u>priority goods and services</u>. Centrepay is an excellent financial self-management tool for disadvantaged consumers and persons with low financial literacy. Unfortunately, case studies from consumer advocate groups have shown that Centrepay can also be used as a tool by certain businesses to take advantage of these vulnerable consumers.

We recognize that the definition of 'priority goods and services' is a moving target, and that drawing a line at which goods and services are included in this definition can be very controversial (and arguably patronising). The CCLC is not interested in telling Centrelink users how to spend their social security benefits, but we believe that Centrepay should not be used to *prioritize* payments unless they are for necessary living expenses. Otherwise this highly useful government service risks facilitating exploitation of those consumers most in need of protection from unscrupulous marketing and debt collection practices.

The CCLC suggests the "Priority Needs Goods and Services" list from Section 123TH of the *Social Security (Administrative) Act 1999* is a good starting-off point for defining "priority goods and services." These goods and services include food, housing (rent and home loan payments), household utilities, rates and land tax, health (medical appointments, pharmacy items, dental, vision, disability services, etc.), child care, education and training, public transport services, and items required for the purpose of the person's employment. We would also add certain types of essential insurance (motor vehicle, home building and home contents insurance).

Centrelink users will still be able to purchase all other goods and services with their benefits as they choose, but not as a <u>priority</u>. CCLC does not, in saying this, support the Income Management regime from which Section 123TH is drawn. In fact, we support the use of the Centrepay system in preference to Income Management.

[1] Australian Government Department of Human Services, "Centrepay Policy." Available at: http://www.humanservices.gov.au/spw/business/publications/resources/9174/9174-1207en.pdf

2. **<u>Retail/Consumer Lease companies for consumer goods</u> should be removed from the Centrepay scheme or in the alternative be treated by Centrepay with increased scrutiny both in the application phase and necessary review of existing Participants.**

The Financial Counselling Australia (FCA) report about Centrepay released November 2012 goes into great detail about the many problems associated with Rental/Consumer Lease companies' business practices. The CCLC agrees with all of the FCA's concerns, especially the fact that these companies often target vulnerable consumers.

Centrepay does not currently allow lenders charging commercial interest rates to access the Centrepay system. We generally support this approach (subject to point 7 below). Many consumer leases for consumer goods are structured as leases in order to avoid the more stringent regulation of consumer credit. A cost comparison of the price over the term of a consumer lease compared to a loan at commercial interest rates (even relatively high interest rates such as credit card rates) usually reveals that the loan would be the cheaper option, sometimes by a significant margin. While we understand the policy drivers behind allowing people to rent basic household goods (especially when they may not qualify for a loan to buy them), it seems anomalous to exclude loans on the basis that they attract interest while including consumer leases, which are the more expensive product.

The CCLC strongly contends that Centrepay has a duty of care to its Customers to protect them as much as possible from irresponsible lenders/lessors. We recognize that removing Rental/Consumer Lease companies from Centrepay will not prevent Customers from contracting with them, and may put Customers in greater risk of overdrawing bank accounts because direct debits will come out of their Centrelink payments after Customers have access to those funds. Nevertheless, we believe a Government-backed scheme such as Centrepay adds legitimacy to Participant organisations and makes it too easy for Participants to access vulnerable consumers. Rental/Consumer Lease companies have repeatedly demonstrated irresponsible and even misleading business practices through the use of Centrepay, and the CCLC does not believe Centrepay can adequately regulate their compliance with Centrepay's terms and conditions.

We further submit that in relation to the greater risk posed by direct debit dishonour fees outside the Centrepay system, it is preferable for Government work with the banks and credit unions (as financial counsellors and credit advocates have been doing) to improve the features and availability of basic bank accounts in particular, and to reduce unfairly punitive fees on transaction accounts, rather than using such fees as a justification for allowing expensive/exploitative products to be accessible via Centrepay.

It has been proposed by other stakeholders that Centrepay should determine whether lease companies operate in accordance with responsible lending practices in determining their suitability for access to (or continued access) to the Centrepay system. The CCLC supports this proposal in principle but is concerned that, in practical effect, this measure will have a very limited impact. Due process principles will likely dictate that only operators who are subject to formal enforcement processes by ASIC in relation to responsible lending will ever be excluded. Given that ASIC has limited resources with which to take enforcement action, and targets its actions sparingly, this will be a very limited barrier to the Centrepay system.

Despite our reservations as to its effectives, in the alternative to removing Rental/Consumer Lease companies from the Approved Centrepay Organisations, the CCLC requests that at the very least these types of companies be treated with increased scrutiny during the application phase as well as during a necessary of existing Participant organisations, and periodic additional reviews going forward.

Case Study

Ms A is a single aboriginal mother with eight children all living with her in department housing. She grew up in a rural aboriginal environment, and until now has never lived in an urban area. She has very low financial literacy and receives Centrelink payments as her sole source of income.

Ms A agreed to rent household goods from a man in a local rental company and she told the CCLC that "everyone in the aboriginal community was using him." She ended up renting nearly every item in her house from him. He told her that she could only pay for her rentals through Centrepay, and he would arrange for all of the payments himself on the phone after Ms A put the call through to Centrepay. Ms A said she felt like she had no control over the payments, and that the salesman controlled all of the transactions.

Ms A believed that she was renting to own the items in her house as she had been directed by the rental company to go to a particular furniture shop and to choose all her goods. Mrs A had multiple contracts with the same rental company. After the time she believed a contract had finished she was then advised by the rental company that NO it was a rental contract but if she wanted to purchase the goods she would need to come into the store and pay $100 cash per contract after each contract had expired. If she stopped any Centrepay dedications then they would come and take the goods.

Client never had the $100 cash so she continued with the Centrepay deductions indefinitely to keep all her goods (most of which had depreciated to be of very little value). Almost all of Ms A's Centrelink benefits were going through Centrepay, and she was left with almost no money each fortnight to pay for food, electricity, clothing, etc., She had incurred rent arrears and eviction hearing was pending and she was being assisted by local charities.

The CCLC took the salesman and the rental company to the Consumer Trader & Tenancy Tribunal. The company settled privately and now Ms A owns everything that she was renting. As there was no identifiable way for the CCLC to report this Participant to Centrepay on the client's behalf, no formal complaint was ever made through the Department of Human Services. Unfortunately, as a result, this company is still on the list of "Approved Centrepay Participant Organisations".

Recommendations for Scrutiny Procedures

Centrepay processes during the application phase as well as during periodic reviews into the conduct of existing Participants should be strengthened. We recommend that

1. A group of regulators, industry, financial counsellors and consumer advocates is set up to review existing Participants. Members of this group should be able to object to a Participant organisation, and Centrepay should be required to respond to and investigate those objections.

2. New participants that fall outside the categories of *priority goods and services* are checked for complaints and regulator investigation. Good character fitness tests or similar should be passed

3. Names of new Participant organisations that are approved by Centrepay should be made publicly available and open to appeal;

4. Complaints and investigations into existing Participant organisations should be more transparent, including timeframes in which Centrepay responds to complaints, and reasons why Participants are or are not subsequently terminated.

5. Centrepay should make regular audits of Participants and report the results.

3. **Other problematic Participants such as solicitors and funeral homes should be treated by Centrepay with increased scrutiny during the initial application phase as well as during subsequent reviews.**

The CCLC believes that certain types of organisations that have been given access to Centrepay pose an increased risk to vulnerable consumers. Accordingly, we propose that these types of organisations should be treated with the increased scrutiny procedures outlined above when they apply to become a Centrepay Participant, and also when they are periodically reviewed for compliance.

Legal/solicitors' costs are listed under 'Professional Services' in the Service Reasons Attachment to Centrepay's Policy document. The CCLC is concerned that solicitors may be able to take advantage of the benefits of Centrepay's guaranteed income stream to provide legal services that are not necessary living expenses to Customers. We are also concerned that some solicitors may be using Centrepay as a means of debt collection. Although we have no case studies that confirm our concerns, we have found that some solicitors on the Participants list advertise themselves to perform debt collection services on their private websites, which would be completely inappropriate to perform through Centrepay.

There are many funeral homes listed as approved Participant organisations on the Centrepay website. These Participants seem to fall under the 'Funeral Benefit Fund' Service Reason in Centrepay's Policy document. The CCLC is concerned that some of these Participants offer high priced funeral plans with onerous clauses that target disadvantaged consumers, especially in indigenous communities. We recognise that the ability to save for one's funeral or to purchase a pre-paid funeral is very important to many low-income consumers. However, due to their heavy influence with indigenous communities and vulnerable consumers, we believe this category of organisation should be treated with increased scrutiny by Centrepay to ensure that they are exercising responsible business practices.

We are not currently aware of funeral insurance products being purchased through Centrepay, but we would like to emphasise that these products should be expressly excluded from the Centrepay service reasons. Other types of essential insurance however, such as motor vehicle, home building and home contents insurance should be permitted.

4. **An itemized list of all Centrepay deductions should be included on every Centrelink Statement provided to Customers whether generated automatically or after a customer request.**

The Department of Human Services Business Terms and Conditions document for Centrepay [2] states that a

> "Participant must provide a written statement to a Customer upon request from the Customer, showing details of the amounts paid by the department to the Participant on the Customer's behalf as Deductions through Centrepay."

The Department itself however does not give the Customer any equivalent statement about all of the deductions that are paid through Centrepay, even though it records this information as evidenced by its provision of 'Deduction Reports' to Participant organisations in relation to deductions paid to Participants.

The CCLC believes it is very important for Customers to be able to access an itemized list of all Centrepay deductions whenever they go online to check their Centrelink statements, request for a statement to be sent to them in hard copy, or are sent an automatically generated statement by Centrelink. Specifically, on all Centrelink payment/income statements that contain any payment through Centrepay, the following information should be automatically included for each deduction:

- Name of Participant receiving the payment;
- The amount and date this payment commenced; and
- If a target amount is set, then the balance remaining.
- How to cancel a deduction if it is no longer needed.

The current practice is to list a total Centrepay deduction amount on Customers' Centrelink payment/income statements, but statements do not itemize the amount of each deduction made to each Participant, or for what purpose those deductions were made. We believe that an itemized statement is critical for Customers' financial self-management. Without an itemized account of all of the deductions that the Customer has agreed to pay to Participants through Centrepay it is very easy for Customers to forget to cancel services

[2] Department of Human Services, "Centrepay Schedule 1 to the Department of Human Services Business Terms and Conditions." Available at: http://www.humanservices.gov.au/spw/business/publications/resources/8989/8989-1203en.pdf

that they no longer need, or fail to notice discrepancies in deduction agreements made with Participants. We also note that many Participants essentially control the sign up process (and subsequent variations) after receiving an initial authority from the Customer. We note that it is both consistent with the rules, and with the self-management objectives of Centrepay, for additional steps to be taken to ensure that Customers feel in control of the process. When Centrepay receives authority from a customer the staff member should emphasise that the Customer is in control of the process and can cancel or vary the repayments at any time. Other procedures could possibly be amended to ensure the principle of self-management and control is embedded in the process from initiation to conclusion.

5. **There should be a <u>better complaint mechanism</u> for Customers and consumer advocates who have a grievance against a Centrepay Participant organisation.**

As it currently stands there is no clear dedicated complaint procedure for Centrepay Customers who believe they have been wronged by a Participant organisation. Customers can contact the Department of Human Services to make a complaint about a Centrelink service (which would include Centrepay), but this information is not readily available on the Centrepay website, or in the Centrepay brochure.

There is a fair amount of information about how Centrepay reviews complaints made by Customers in the Centrepay Policy document, but the only information about where to make a complaint is:

> "Complaints are received in Department of Human Services (DHS) Service Centres, Smart Centres, the Centrelink Business Support Unit, by Account Managers at the state level or by the Customer Relations Unit."

There is no contact information for these entities or procedures for how to make a complaint. There is also no information about whether consumer advocates can make a complaint on behalf of consumer clients that they assist. Even if Customers do manage to make a complaint to Centrepay about a Participant organisation the stated Centrepay policy is to direct Customers "to the regulatory authorities and external dispute resolution bodies which are set up to inform Customers of their rights and assist with resolutions." There is no information in Centrepay's policy about how they follow-up these complaints, or how they decide to terminate Participants.

Complaints and investigations into existing Participant organisations should be more transparent, including timeframes in which Centrepay responds to complaints, and reasons why Participants are or are not subsequently terminated. Centrepay should make regular audits of Participants and report the results.

6. **The amount of funds able to be deducted through Centrepay should <u>not be capped</u>.**

The CCLC submits that Centrepay provides an invaluable financial self-management service for consumers who lack financial literacy. For some consumers who are extremely financially illiterate, being able to pay almost all of their living expenses and bills through Centrepay is the only thing that allows them to live an independent life. For this reason the

CCLC does not support capping the amount of Centrelink benefits that can be deducted through Centrepay.

Case Study

Ms B is an aboriginal woman who was a member of the stolen generations. She was raised overseas by adoptive parents who did everything for her. As an adult she has no financial literacy and her only income is her Centrelink benefits.

When her adoptive parents died, Ms B inherited a modest home with a small mortgage to pay off. Her mortgage payments were being paid by direct deposit from her Centrelink benefits immediately after they were deposited in her bank account. At some point her Centrelink benefits were deposited a few days earlier than usual because of a public holiday and Ms B did not understand that her mortgage payments had not yet been paid and she deducted too much money from her account. The subsequent mortgage deduction then overdrew her account and she began a cycle of continually over-drawing her account without realising it.

When Ms B came to the CCLC for assistance she brought with her several months of unopened mail. She did not understand about the bank overdraft fees or the mortgage arrears. She had also never been explained how to pay council or water rates and those were now deeply in arrears as well.

The CCLC was able to get the Indigenous Business Association (IBA) to refinance all of her debt. The CCLC then arranged for the IBA to be paid through Centrepay, including the mortgage payments. The CCLC also arranged for nearly all of her household expenses to be paid through Centrepay so that the only Centrelink payments that go into her account she can spend on food and personal expenses. This has enabled Ms B to gain an independent life.

7. Centrepay should allow the deduction of mortgage repayments in limited circumstances.

Currently the IBA is the only mortgage lender permitted access to the Centrepay system. While CCLC generally supports excluding commercial lenders from the system, CCLC believes that Aged Pensioners and Disability Support Pensioners could benefit enormously from being able to make their mortgage payments through Centrepay, provided those payments were within affordable limits. In some cases customers fall ill or become disabled with very small amounts left to pay on their mortgage. In some cases they also have a limited ability to understand repayment cycles or organise their finances accordingly. Access to Centrepay could ensure these people are not evicted unnecessarily after years of paying off their home, and allow them to remain physically and financially independent longer than might otherwise be the case. Centrepay could consult more broadly to develop a workable policy to allow access in some limited circumstances.

Thank you again for the opportunity to comment on the Independent Review of the Centrepay Scheme. If you have any questions or concerns please do not hesitate to contact the Consumer Credit Legal Centre on (02) 9212 4216.

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Consumer Credit Legal Centre (NSW) Inc ("CCLC") is a community-based consumer advice, advocacy and education service specialising in personal credit, debt, banking and insurance law and practice. CCLC operates the Credit & Debt Hotline, which is the first port of call for NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. We provide legal advice and representation, financial counselling, information and strategies, referral to face-to-face financial counselling services, and limited direct financial counselling. CCLC took over 18,000 calls for advice or assistance during the 2011/2012 financial year.

A significant part of CCLC's work is in advocating for improvements to advance the interests of consumers, by influencing developments in law, industry practice, dispute resolution processes, government enforcement action, and access to advice and assistance. CCLC also provides extensive web-based resources, other education resources, workshops, presentations and media comment.