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David Hazlehurst
CEO
Services Australia
PO Box 7803
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By email:
Centrepay.Reform.Engagement@servicesaustralia.gov.au

Dear Mr Hazlehurst

Re: Centrepay Reform

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to make a submission to Services Australia's Discussion Paper on Centrepay Reform.

The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The primary responsibilities of the ACCC are to enforce compliance with the competition, consumer protection, fair trading and product safety provisions of the *Competition and Consumer Act 2010* (Cth) (CCA), regulate national infrastructure and undertake market studies.

The CCA contains the Australian Consumer Law (ACL), which is a national law that deals with consumer protection and fair trading issues arising across the economy. The states and territories also enforce the ACL under a 'one law, multi regulator' model.

The ACCC considers Centrepay plays an important role for consumers and recognises the benefits of it in assisting consumers to manage their welfare payments and expenses. The ACCC also recognises that to realise those benefits the system should only be available to appropriate businesses. It is also important that those businesses comply with their Centrepay obligations and that Services Australia has an effective regulatory framework to enforce those obligations. Included at **Attachment A** are suggestions that may assist Services Australia in improving the Centrepay model.

The ACCC regularly consults with a range of consumer and community groups, including its Consumer Consultative Committee (the Committee). Members of the Committee, whilst supportive of Centrepay, have for many years raised concerns regarding the conduct of some Centrepay businesses and the ability of Services Australia to manage poor conduct.

The ACL contains a number of specific provisions that have potential application to conduct that may arise in consumer transactions involving Centrepay, including, but not limited to, the following:

- The misleading or deceptive conduct provisions contained at section 18 of the ACL prohibit misleading or deceptive conduct in trade or commerce. The term 'conduct' includes verbal and written statements as well as (in certain circumstances) the failure to take action, such as not disclosing key facts.
- The false or misleading representation provisions contained at section 29 of the ACL prohibit the making of false or misleading representations in trade or commerce, by enumerating specific types of conduct.
- The unfair contract terms provisions contained at sections 23 to 28 of the ACL prohibit the inclusion of unfair contract terms in standard form contracts, often being pre-written contracts, a business offers all consumers on a 'take it or leave it' basis, where the consumer can't change any, or the majority, of the terms of the contract. Contract terms are unfair if they:
 - cause a significant imbalance in the rights and obligations of the parties under the contract,
 - are not reasonably necessary to protect the legitimate interests of the party who gets an advantage from the term, and
 - would cause financial or other harm to the other party if enforced.
- The unconscionable conduct provisions contained at section 21 of the ACL prohibit unconscionable conduct in trade or commerce in relation to the supply, or possible supply, of goods or services.

While the ACL has a role to play in addressing such misconduct after the fact, including where it involves the use of Centrepay, the ACCC considers improved policy settings for Centrepay can help prevent misconduct from occurring in the first place. The ACCC considers a robust compliance model, administered by Services Australia, the most appropriate means of ensuring Centrepay customers are not exposed to financial harm through their use of Centrepay. A robust compliance framework is particularly important, as the ACCC considers that some consumers, including those experiencing vulnerability, may be reluctant to complain about the conduct of Centrepay businesses for fear of losing access to the service. In addition, the ACCC considers Services Australia could raise the profile of its compliance approach through a public information campaign, which may incentivise improved compliance by Centrepay businesses and provide greater transparency to consumers.

The ACCC is aware of circumstances where it has been alleged that some consumers have been signed to Centrepay arrangements by Centrepay businesses, for goods they do not want or need, or could not afford, resulting in financial harm to those consumers. The ACCC is also aware of circumstances where it is alleged that consumers experiencing vulnerability or disadvantage, including some First Nations consumers, have been signed to Centrepay arrangements where they have not given their free, prior and informed consent which has also led to those consumers experiencing financial harm.

The ACCC also notes the Australian Energy Regulator (AER) has proceedings underway against AGL Retail Energy Limited and three other subsidiaries of AGL Energy Limited (together, AGL) in relation to 483 customers who AGL allegedly overcharged as a result of obtaining deductions through Centrepay payments after the customer had ceased to obtain services. The AER alleges that AGL failed to notify affected customers of the overcharges

and failed to use best endeavours to refund the overcharges within the required time periods.

We are pleased to further discuss with Services Australia our views on how the suggestions at Attachment A may assist in improving the policy settings for Centrepay.

I hope this information is of assistance and thank you again for the opportunity to make this submission. If you have any queries, please contact Rami Greiss, Executive General Manager, Consumer and Fair Trading Division, on (02) 6243 1226 or by email at rami.greiss@accc.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'C. Lowe', with a large loop at the top and a long tail.

Catriona Lowe
Deputy Chair

Attachment A - Centrepay Reform suggestions

- Equipping Services Australia with the appropriate powers to:
 - review and approve businesses applying for Centrepay registration to ensure they are fit and proper persons commensurate with the Centrepay objective, and
 - allow Services Australia to undertake regular audits of Centrepay businesses to ensure they remain compliant with the Centrepay framework, including the ability to impose conditions on, temporarily suspend, or remove non-compliant businesses from Centrepay.
- Consideration be given to restricting the categories of goods or services that can be sold pursuant to a Centrepay arrangement where deductions are ongoing. Ongoing deductions could be limited to circumstances where a separate supply arrangement exists for the ongoing supply of a particular good or service including, but not limited to accommodation rental payments, utility payments or childcare payments.
- It is the ACCC's experience that unsolicited sales practices, namely door-to-door and telemarketing, can lead to misconduct due to the fact that businesses are usually in a stronger bargaining position. This can be the case for a number of reasons including that sale agents can be very persistent and may take advantage of the tendency of consumers to be polite and non-confrontational. This can result in financial harm to the consumer where the consumer agrees to purchase goods or services they don't need, want or cannot afford. For these reasons the ACCC recommends that unsolicited sales models should not be permitted.
- It is also the ACCC's experience that incentivised sales models that include the use of commissions, bonuses or sales targets, have the potential to encourage high pressure sales tactics that can lead to consumer financial harm in certain circumstances. For these reasons incentivised sales models should not be permitted for Centrepay purposes. The risk of consumer harm is particularly amplified when business models combine unsolicited sales practices and incentivised sales models.
- Prohibiting the promotion of the use of Centrepay as a payment method over other payment methods, such as cash or EFTPOS (using debit cards) might be a further avenue open to Services Australia to reduce potential consumer harm. This would also include, discounting goods or services purchased by way of Centrepay or by paying bonuses or commissions to sales staff for directing consumers to use Centrepay as the payment method.
- Misconduct involved in debt collection practices may raise concerns under legislation administered by the ACCC, the Australian Securities and Investments Commission (ASIC) and the Australian Energy Regulator (AER). While debtors are legally responsible for paying the debts that they owe, the ACCC, ASIC and the AER encourage a flexible approach by debt collectors including by implementing specific flexible policies to deal with debtors experiencing vulnerability and/or financial hardship. It is our view that Centrepay, as an expense management tool consistent with the purpose of welfare payments, is arguably inconsistent with debt collection activities and is not designed to meet the unique and often personal requirements of a debt collection arrangement and it is our view therefore, that Centrepay is unsuitable for debt collection purposes.
- Services Australia may wish to consider clarifying rules relating to the accumulation of credit balances and payment of arrears in Centrepay arrangements, to prevent financial hardship for consumers.

- Services Australia might consider restricting a Centrepay business' ability to establish Centrepay deductions on a customer's behalf to circumstances where the prior approval of Services Australia has been given. This approach may proactively assist Services Australia in maintaining a Centrepay business' activities consistent with the Centrepay objective.
- The ACCC notes that enhancements to consumer facing Centrepay resources and information may help to improve access to, and understanding of, those resources and information by consumers experiencing vulnerability and/or disadvantage. Consumers experiencing vulnerability and/or disadvantage may include:
 - those with low literacy and/or numeracy skills,
 - those without, or with limited, access to online services,
 - those for whom English is not their first language,
 - Aboriginal and Torres Strait Islander people living in remote locations,
 - newly arrived Australians, and/or
 - those in specific circumstances or situations that may create situational vulnerability or disadvantage (for example, people escaping domestic and family violence).

Enhancements might include:

- point of sale brochures and/or posters in plain English, and/or traditional First Nations languages, where appropriate, explaining Centrepay, and/or
- promoting the work of financial counsellors and the inclusion of local contact details of same
- Developing minimum standards for Centrepay registered business representatives who are responsible for signing customers to Centrepay arrangements, including Centrepay deduction authorities (Centrepay Business Representatives), might further assist Services Australia in ensuring business' compliance with their Centrepay obligations.

Such a standard could be designed to ensure consumers are making informed decisions around their use of Centrepay and, that businesses are not misusing the Centrepay system and causing financial harm to consumers.

The minimum standard may include Services Australia developing a 'Centrepay Business Training Module' that Centrepay Business Representatives are required to successfully complete prior to them being authorised to sign customers to Centrepay arrangements. A Centrepay Business Training Module could include:

- an overview of the business obligations pursuant to Centrepay,
- an explanation of what constitutes a consumer's free, prior and informed consent and means by which businesses are obliged to obtain that consent in the Centrepay environment,
- an overview of key consumer protection provisions in the ACL including but not limited to the misleading or deceptive conduct, false or misleading representations and unconscionable conduct provisions, and associated penalties for breaches of these provisions, and
- First Nations cultural awareness.

Businesses could be required to keep a record of the name of their Centrepay Business Representative responsible for each Centrepay arrangement entered into by their business for compliance purposes, with Services Australia maintaining a corresponding register. Should incentivised sales models be permitted pursuant to Centrepay, such a register might include separate information of a Centrepay business and names of its sales staff using these sales models.