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8 April 2013

Ms Anna Buduls  
Centrepay Review Team  
PO Box 7788  
Canberra BC ACT 2610

By email: [abuduls@tepog.com.au](mailto:abuduls@tepog.com.au)

Dear Ms Buduls

**Submission to the Department of Human Services on the Independent Review of the Centrepay System**

Please find attached the Australian Competition and Consumer Commission's submission to the Department of Human Services Independent Review of the Centrepay System.

Should you require any further information, please contact Derek Farrell, Regional Director - Enforcement Operations Northern Territory, on (08) 8946 9610.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Brian Cassidy'.

Brian Cassidy  
Chief Executive Officer



Australian  
Competition &  
Consumer  
Commission



AUSTRALIAN  
ENERGY  
REGULATOR

## SUBMISSION TO DEPARTMENT OF HUMAN SERVICES ON THE INDEPENDENT REVIEW OF THE CENTREPAY SYSTEM

The Australian Competition and Consumer Commission (ACCC) and the Australian Energy Regulator (AER) welcome the opportunity to provide this submission to the independent review being conducted of the Centrepay system.

This report outlines the ACCC's and the AER's roles, describes some examples of concern to the ACCC and the AER relating to these agencies' experience of Centrepay and related matters, and suggests measures the ACCC and the AER consider may mitigate these concerns.

### ***The Australian Competition and Consumer Commission and the Australian Energy Regulator***

The ACCC is an independent statutory authority responsible for enforcing the *Competition and Consumer Act* (2010) (CCA) and the Australian Consumer Law (ACL) which is contained within the CCA. The ACCC promotes competition and fair trade in markets to benefit consumers, businesses and the community.

As part of its consumer protection role, the ACCC has a particular interest in protecting the rights those consumers most vulnerable to business practices that mislead and exploit them. This interest is outlined in the ACCC's *Compliance and Enforcement Policy* and the ACCC has published guidance for businesses on their rights and obligations in dealing with such consumers.<sup>1</sup>

In the ACCC's experience, disadvantaged or vulnerable consumers experiencing problems are more likely to contact community organisations than government regulators. The ACCC works actively with a wide range of community and consumer organisations to help ensure it is alert to emerging consumer concerns. The ACCC also has a national Indigenous Consumer Outreach Program to better identify and respond to consumer concerns in remote communities.

The AER is Australia's national energy regulator and an independent statutory authority. The AER is also established under the CCA. It is funded by the Commonwealth, with staff, resources and facilities, provided by the ACCC. The AER's functions are set out in national energy legislation and rules, and mostly relate to energy markets and networks in eastern and southern Australia.

The AER assumed new responsibilities for regulating retail energy markets from 1 July 2012 under the National Energy Customer Framework (NECF). The NECF includes the National Energy Retail Law

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<sup>1</sup> Available at <http://transition.accc.gov.au/content/index.phtml/itemId/704340>.

(Retail Law), National Energy Retail Rules (Retail Rules) and National Energy Retail Regulations. Together, these Laws and Rules set out key protections and obligations that apply to energy customers and the businesses they buy their energy from. Under the Retail Law, energy retailers must offer Centrepay as an energy bill payment option, particularly for customers experiencing hardship.

### ***ACCC and AER concerns relating to Centrepay and vulnerable consumers***

The ACCC and the AER recognise that Centrepay provides many potential benefits to both consumers and businesses through the assistance it offers to consumers to manage their financial obligations and to businesses to ensure they receive appropriate payment for their goods and services. Centrepay can, for example, assist consumers on low incomes meet necessary payments for essential services such as electricity and water supply, and thereby help avoid the accrual of large debts and consequential debt collection action or disconnection of services.

In the ACCC and AER's view, however, the prospect of a steady long term income stream offered by Centrepay can attract less scrupulous business operators prepared to engage in misleading or deceptive and unconscionable conduct in their dealings with Centrelink benefit recipients.

The ACCC's and AER's concerns arise from:

- a) consumer complaints relating to Centrepay designated businesses
- b) concerns raised with the ACCC by consumer representative agencies, and
- c) the high risk of vulnerable consumers to unconscionable sales practices.

The ACCC considers that disadvantaged or vulnerable consumers who use Centrepay may be at particular risk of these practices. Through its Indigenous Outreach Program, the ACCC understands that many Indigenous consumers believe that a business' participation in the Centrepay scheme means that the business has received endorsement from the Department of Human Services. Consumers are therefore more likely to trust these businesses and less likely to exercise caution when faced with dishonest sales tactics. The ACCC considers that this consumer trust in businesses associated with Centrepay may extend to other consumers who use Centrepay.

Further, the exploitation by a business of a consumer receiving Centrelink payments is likely to have a proportionately higher impact on that consumer than it might on someone with a comparatively higher salary.

### ***Complaints relating to Centrepay-approved businesses***

The ACCC has received a number of consumer complaints about businesses which are receiving payments from consumers through Centrepay. While many of these complaints were not matters that the ACCC was in a position to take enforcement action on, the ACCC did investigate one matter against a Darwin based trader who was using Centrepay to obtain payment for second hand goods. In that matter consumers entered into indefinite automatic Centrepay deductions to pay in advance for a 'wish list' of items, and either the goods were not supplied at all, or the goods supplied were of

very poor quality. The trader went into liquidation owing thousands of dollars to consumers across Indigenous communities in the Northern Territory.

Other complaints that the ACCC has received have similarly related to the potential exploitation of vulnerable consumers include:

- businesses billing a regular set amount through Centrepay in circumstances where that amount exceeded the cost of goods provided
- businesses refusing to provide a refund to consumers in cases where the business has been overpaid due to ongoing payments through Centrepay
- sales practices which led to consumers being charged for goods and services where those consumers either did not know that they are authorising Centrepay payments or where they do not consider they gave their consent for payment
- sales practices which result in consumers paying substantially higher prices than is the norm for certain goods by authorising ongoing Centrepay payments in circumstances where the consumer has not understood the aggregate cost of these payments
- businesses which, at their discretion, provide meals for indigenous consumers who authorise ongoing Centrepay payments

#### *Concerns raised with the ACCC by consumer representative agencies*

The ACCC's Consumer Consultative Committee (CCC) is a forum that enables consumer representatives to alert the ACCC to emerging consumer problems that come to their attention. Members of the CCC have raised certain consumer protection concerns about businesses that use Centrepay on a number of occasions since 2011.

A primary concern has been the practice of door to door salespeople signing Indigenous consumers up to multiple agreements via Centrepay, in circumstances where these consumers have virtually no residual Centrelink benefit payment once the business' payments have been deducted.

The ACCC has received a complaint about a company which signed up Indigenous consumers to multiple contracts via Centrepay, such that the remaining payment being made directly to the consumers was very small.

CCC members have also expressed concerns about difficulties they have experienced when attempting to engage with Centrepay on systemic issues of concern relating to Centrepay.

#### *Certain business models and practices manifest greater risk of exploiting consumers who use Centrepay*

There are certain business models and practices in the market place which in the ACCC's view are more likely than others to put Centrelink recipients at risk of being misled or exploited.

Unsolicited consumer agreements, door to door sales and telemarketing are a particular area of concern for the ACCC. Consumers in those situations are often poorly placed to consider the terms of the agreement they are entering into and to assess the quality of the goods or services they will

be obliged to purchase as part of the agreement. This is particularly the case in remote communities where consumers do not have the benefit of shopping or comparing prices at competitor's stores.

The ACCC's experience is that when faced with an unsolicited sale at a consumer's home or by phone, consumers can often be distracted or confused and agree to purchases in order to be polite or to have the seller leave or end the call. This can be more so in certain cultural backgrounds such as certain indigenous communities where the ACCC experience is that the rate of take up of unsolicited agreements is high. Consumers agreeing to purchases from unsolicited approaches may also suffer from an absence of retained paperwork making it harder to keep track of ongoing commitments. Again this may be more so in remote areas or communities.

In the Northern Territory in 2005, a man named Ramon Lal Keshow was found to have engaged in misleading and deceptive and unconscionable conduct after signing up indigenous women to contracts for educational materials. These women had little or no English literacy or understanding of financial matters, such as the consequences of signing up for indefinite direct deductions from their bank accounts. While almost no educational materials were delivered the payments continued to be deducted. Between 1998 and 2004 Mr Keshow it is estimated that Mr Keshow nearly \$800,000 from customers in the Northern Territory and Western Australia and took more than ten thousand dollars from one Alice Springs town camp resident through automatic deductions.

More recently, in late 2012, EDirect Pty Ltd trading as VIPtel Mobile was fined \$2.5m for telemarketing and 'voice' contracting with 350 customers from remote and regional communities across Australia who had no network coverage where they live.

While these business operators were not associated with Centrepay, they are nonetheless examples of unscrupulous traders targeting vulnerable consumers with unsolicited selling practices.

Phoenix traders pose an additional risk for consumers and concern for regulators. Phoenix traders, or "fly by night" operators generally establish a corporate entity under which to sell goods or services they do not intend to supply then close that entity to avoid the legal and financial obligations that would otherwise be required of that entity. These traders typically establish a series of corporate entities with different names and sometimes in different market sectors to repeat the exercise.

*Certain market sectors are more regularly associated with attempts to exploit consumers who use Centrepay*

The ACCC has identified a number of business sectors more commonly associated with less scrupulous business operators. While many businesses within these sectors conduct honest and legitimate businesses, the particular nature of such industries is such that they place consumers at particular risk of exploitation. This is demonstrated in high numbers of consumer complaints to the ACCC relating to businesses in these industries. Although not an exhaustive list, some examples of industry sectors generating a high volume of consumer complaint include telecommunication services, credit reporting and debt collection services, electrical goods and appliance suppliers, utility services and motor vehicle suppliers.

Electrical goods and appliances suppliers of concern to consumers in remote areas often charge significant mark-ups compared with a similar product in an urban area. As mentioned above, consumers in remote areas and particularly those without access to the internet, have reduced choice and ability to compare prices of the products being sold to them. This applies to both new and second hand goods, although second hand goods carry an additional risk of being of particular poor quality.

Another issue that commonly arises in relation to electrical goods and appliances relates to hire-to-purchase agreements. Consumers are commonly not provided with the information they need to know how much they must actually pay to receive the contracted goods. Ongoing hire or hire-to-purchase arrangements expose consumers to long-term recurring payments with no specified end date and potentially high fees to break the contract. In some cases consumers may have been denied their right to an appropriate cooling-off period. For example, one complaint received by the ACCC related to a consumer who was charged regular payments for a hire-to-purchase washing machine and freezer over six years from 2005 to 2011. The consumer was not aware that these payments were still continuing and when the consumer attempted to contact the business directly it refused to assist. The only statements available regarding these transactions were transactions from Centrelink which detailed the ongoing Centrepay payments but did not give any indication of an end date for the payments.

#### ***ACCC and AER suggestions to mitigate the risk of consumers being exploited by Centrepay-approved businesses***

With the above concerns in mind, the ACCC and AER believe there are five key areas which would improve the protection of Centrepay consumers. They include:

##### ***1. Enhanced scrutiny of businesses applying to be Centrepay-approved businesses***

To reduce the risk of unscrupulous business operators exploiting consumers who use Centrepay, the ACCC notes the importance of having in place a robust vetting and application process. The ACCC suggests that such a process could involve routine checks of a business' credibility - including for example checks of a business' current and historical criminal, bankruptcy, online identity and business registration records.

The ACCC recommends a risk based approach be considered in which those businesses more likely to exploit consumers who use Centrepay receive prioritised and increased scrutiny. The business models and practices and the industry sectors noted above may provide some useful indicia of those businesses with a greater risk profile. Similarly, businesses providing goods or services to consumers who authorise the deduction of 100% of their Centrelink benefit warrant increased scrutiny.

An example of an additional check for higher risk businesses may be for Centrelink to confirm with appropriate Australian Consumer Law regulators, including the ACCC, whether or not the business has a history of non-compliance with the Australian Consumer Law. The ACCC would be willing to assist Centrelink in this regard.

## *2. Ongoing scrutiny of Centre-pay approved businesses and internal processes*

In addition to an initial vetting process, the ACCC considers that measures to build the transparency and ongoing scrutiny of Centrepay-approved businesses could reduce the risk of potential exploitation of consumers by these businesses.

Scrutiny might be developed by further measures to test compliance with rules regarding the types of payments permitted under Centrepay, as well as measures to provide ongoing review of Centrepay-approved businesses. Such measures may include:

- record keeping requirements with respect to statements, invoices and the like that may be called on for audit purposes
- a requirement for businesses to self disclose any consumer complaints it has received in relation to goods or services to be offered under the Centrepay system
- an obligation for businesses, particularly those with high risk profiles, to develop and maintain a compliance program to mitigate the risk of non-compliance
- a program of independent audits of Centrepay-approved businesses

A program of audits might be both generated in accordance with an ongoing sampling but also initiated in response to matters of concern raised by ACL regulators and other relevant agencies.

Typically, the cost of these independent audits would be borne by the businesses which enjoy the benefits that access to Centrepay provides them.

Measures to increase the transparency of conduct by Centrepay-approved businesses might include monthly statements supplied by the trader to their customers who use Centrepay. Copies of such statements retained by the trader could also be available to DHS when conducting audits of traders.

Given that information from individual traders will often not alert consumers who use Centrepay to the full extent of their commitments, regular written statements issued by Centrelink providing a table of all current commitments could contribute to substantially greater transparency. Such statements might list traders; amount deducted for each trader; the nature of the goods or services for which the deductions are made; the total amount deducted and the scheduled end dates for each trader agreement.

The greater transparency provided by statements from both the trader and Centrepay will better equip consumers to seek advice from financial counsellors or legal service providers, and will assist the ACCC and other regulatory bodies in investigating allegations of contraventions of the ACL.

The ACCC and AER considers there may be benefit in Centrelink exploring whether the payment of essential goods and services (such as rent, mortgages, utilities bills including electricity, gas, water etc) could be prioritised in some way so that these Centrepay payments are made before payments of other non-essential goods or services, or where additional checks are required to alter or cancel these payments. While we understand it is difficult to be prescriptive in this area, there is the potential for significant hardship and detriment to customers if their essential services are disconnected due to non-payment.

Further, under the National Energy Retail Law (Retail Law), retailers must develop, obtain AER approval of, maintain and implement a customer hardship policy.<sup>[1]</sup> The purpose of a retailer's customer hardship policy is to identify customers experiencing payment difficulties due to hardship and to assist those customers to better manage their energy bills on an ongoing basis.<sup>[2]</sup> In May 2011, the AER published guidance for retailers on the hardship policy approval process and the information that retailers could include in their policies to demonstrate that it satisfies all the requirements and obligations specified in the Retail Law and Rules. The Guidance on AER approval of customer hardship policies (Guidance) is available on the AER's website.<sup>[3]</sup>

Section 44(c) of the Retail Law requires energy retailers to offer Centrepay to their hardship program customers as a payment option. Payment plans and bill smoothing are designed to help customers manage their household budget and energy bills by paying regular, smaller amounts and avoiding having to pay large quarterly bills. The Retail Rules set out a number of requirements energy retailers must meet when establishing payment plans, including those where payments are made through a Centrepay arrangement. Rule 72 of the Retail Rules requires a retailer to consider a customer's capacity to pay, any arrears owing and the customer's expected energy consumption needs over the following 12-month period when setting up a payment plan. Centrepay is therefore an important mechanism for energy customers in hardship who are seeking to better manage their ongoing energy bills and may also be an effective tool for energy retailers to assist these customers.

This is another example of where prioritisation of certain goods and services over others could be of benefit to Centrepay consumers.

The ACCC and AER consider it important that the Centrepay program has sufficient scrutiny and controls in place to ensure it allows energy customers in hardship to pay for these essential services.

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<sup>[1]</sup> s43(2), National Energy Retail Law

<sup>[2]</sup> s43(1), National Energy Retail Law

<sup>[3]</sup> <http://www.aer.gov.au/node/6768>



#### *4 Improved coordination with related agencies*

The ACCC and AER support further development of the engagement and cooperation that the Department of Human Services (DHS) has with relevant regulators such as the ACCC and AER as well as the State and Territory fair trading and consumer affairs agencies.

Greater collaboration with these agencies will improve the integrity and credibility of Centrepay and to resist attempts by unscrupulous business operators to exploit consumers who use it.

The ACCC and fair trading agencies are well placed to identify traders who are currently, or have a previous history of, contravening the ACL. The ACCC is keen to develop a closer partnership with DHS to identify traders that may not be suitable to obtain or retain Centrepay contracts. A clear system of notifying DHS of traders who may be contravening the ACL is recommended.

Specific consideration should be given to those regulators obtaining access, on a confidential basis, to information that might expedite investigations of contraventions of the ACL and thereby assist in identifying businesses engaging in exploitative and unacceptable conduct.

A clear contact point within DHS would facilitate these proposed cooperative efforts.

#### *5 Greater transparency and information on how consumers using Centrepay and consumer organisations can raise concerns*

In the ACCC's experience, improved knowledge of consumer concerns about business operators assists in securing better consumer outcomes.

The ACCC's contact information suggests that many Centrepay customers do not know how they can make a complaint about a business or how they can arrange for payments to a business to be stopped. The ACCC considers that Centrepay consumers would benefit from information regarding appropriate contact points for complaints and other matters being made clearly available on the Centrepay website, as well as outlined in the regular statements provided to Centrepay consumers. Periodic training for staff on how to handle such complaints and informing consumers of their rights may also be worthwhile.

Regular engagement with those community and consumer organisations likely to hear of concerns experienced by consumers who use Centrepay might also help improve knowledge of those concerns. The ACCC and AER's own experience of consumer and customer consultative bodies have been consistently positive in that regard.