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Senate Legal and Constitutional Affairs References Committee
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Dear Senators

Robo-debt and the inquiry into the impact of changes to service delivery models on the administration and running of Government programs

Victoria Legal Aid (**VLA**) is a Victorian statutory authority, and a major provider of legal advocacy, advice and assistance to socially and economically disadvantaged Victorians. Our organisation works to improve access to justice and pursues innovative ways of providing assistance to reduce the prevalence of legal problems in the community. We assist people with their legal problems at courts and tribunals, including the Administrative Appeals Tribunal, as well as in our 14 offices across Victoria. We also deliver early intervention programs, including community legal education, and assist more than 100,000 people each year through Legal Help, our free telephone advice service.

Informed by our work, we welcome the opportunity to contribute to the Committee's inquiry into the impact of changes to service delivery models on the administration and running of Government programs (**Inquiry**). We have confined our response to the Inquiry to term of reference b) regarding 'Centrelink's Robodebt compliance and outsourced debt collection program'.¹

We make the following four key points for the Committee:

1. We see directly that robo-debt causes hardship and distress to people and their families.
2. Robo-debt is flawed and inaccurate and people are paying Centrelink money that it is not clear they owe.
3. Review processes for robo-debt are unclear and lack transparency.
4. Automated debt collection processes (including tax garnishing and use of debt collectors) are unfair, inconsistent and have insufficient oversight.

¹ We also note that we will be contributing a detailed submission to the Senate Community Affairs References Committee's inquiry into Centrelink's compliance program in September.

VLA's clients and robo-debt

VLA is the leading provider of legal advice and advocacy to people seeking assistance with social security matters in Victoria. Since the commencement of the Better Management of the Social Welfare System Initiative (and the subsequent, differently named programs), colloquially known as 'robo-debt', VLA has been heavily involved in responding to the needs of Victorians adversely affected by robo-debt. Through our Economic and Social Rights program, we provide telephone and in person advice services. In the last financial year, we provided more than 650 separate services in relation to robo-debt matters.

As the Committee may also be aware, VLA currently has two matters in the Federal Court of Australia challenging the lawfulness of robo-debt.²

Based on our work and what we see through our clients, VLA has been concerned about the fairness and questionable lawfulness of robo-debt since its commencement. VLA provided a detailed submission to the 2017 Senate Community Affairs References Committee inquiry into the 'Design, scope, cost-benefit analysis, contracts awarded and implementation associated with the Better Management of the Social Welfare System initiative'.³ Many of the concerns raised in that submission remain, in VLA's view, unresolved and are discussed below.

1. Robo-debt causes hardship and distress

We know from what our clients tell us that suddenly being told they owe a significant debt, and having to spend large amounts of time and energy to disprove it, is causing pain and hardship. One client said, 'I was an emotional and physical wreck' and 'I didn't want to get up and face the day'. People have reported taking time off work to try to resolve their debt or because of the stress. Parents talk about not being able to afford uniforms for their children because their income has been reduced to pay an alleged debt.⁴

VLA's clients report anxiety when receiving debt notices from Centrelink, and distress at recovery methods applied (such as the garnishing of tax returns). They report considerable frustration at the effort required to get an explanation of the basis of debts raised, and to resolve their disputes about these debts.

People who cannot provide the necessary paperwork, or who find it too stressful to challenge the debt, or who simply obey the government's direction, may give up and pay

² See Victoria Legal Aid, 'It felt like guilty until proven innocent' – new test case against Centrelink's robo-debt system' (June 2019) (available at: <https://www.legalaid.vic.gov.au/about-us/news/it-felt-like-guilty-until-proven-innocent-new-test-case-against-centrelinks-robo-debt-system>).

³ See Victoria Legal Aid, 'Design, scope, cost-benefit analysis, contracts awarded and implementation associated with the Better Management of the Social Welfare System initiative', Submission to the Senate Community Affairs References Committee (April 2017).

⁴ See also Victoria Legal Aid, Submission to the Productivity Commission's Inquiry into the Economic Impacts of Mental Ill-Health (April 2019) (available at: <https://www.legalaid.vic.gov.au/about-us/news/reflecting-on-intersections-between-mental-health-and-legal-issues>); Victoria Legal Aid, Roads to Recovery: Building a Better System for People Experiencing Mental Health Issues in Victoria (July 2019) (available at: <https://www.legalaid.vic.gov.au/about-us/strategic-advocacy-and-law-reform/access-to-justice-for-people-with-mental-illness-and-disability/roads-to-recovery-building-better-system-for-people-experiencing-mental-health-issues-in-victoria>). Both submissions identify that robo-debt actively undermines people's mental health.

the amount claimed. Where people do not pay, money can be deducted from people's already low social security payments or taken from people's tax returns.

These processes and their impact, when combined with the inaccuracy and lack of transparency discussed below, should be carefully contemplated by the Committee.

2. Robo-debt is flawed and inaccurate

As the Committee knows, robo-debt matches a person's Centrelink income records with income records of the Australian Taxation Office (ATO). It uses an algorithm that 'averages' a person's income in an attempt to work out fortnightly income. This method of averaging people's income assumes that people work neat, regular hours throughout a year. In reality, people work varying hours or work some parts of the year and not others, including because they're studying, can't get regular work, have multiple jobs or are unwell. This means the calculation of alleged 'overpayments' is frequently inaccurate.

Importantly, the correspondence from Centrelink does not make it clear that averaging is the basis of the calculation of their debt and that this may mean they have to pay back more than they need to.⁵

In addition to 'averaging', robo-debt puts the burden on the person to correct any miscalculation. If a discrepancy shows up between what a person told Centrelink they earned and what the ATO says their income was, Centrelink relies on the individual to prove they were not overpaid. People are left trying to track down bank statements or payslips from employers they have not worked for in years. Some employers have shut down, others may not be cooperative. For many people, even starting this process is overwhelming.

This is supported by legal needs research which indicates that the most disadvantaged members of our community are least likely to identify that there might be a problem with the debt raised against them, and to seek appropriate assistance.⁶

There is limited publicly available quantitative data on the impacts of robo-debt. For example, there is no data which identifies clearly the percentage of debts generated inaccurately, nor any data about the number of debts wrongly paid by social security recipients who are subject to the robo-debt process.

In 2017, the Commonwealth Ombudsman asked the Department of Human Services "whether it had done modelling on how many debts were likely to be over-calculated as opposed to under-calculated". None had been done, and the Ombudsman suggested "more thorough research and analysis".⁷ While some refinement of the robo-debt

⁵ See Commonwealth Ombudsman, *Centrelink's Automated Debt Raising and Recovery System* (April 2019) (available at: http://www.ombudsman.gov.au/_data/assets/pdf_file/0025/98314/April-2019-Centrelinks-Automated-Debt-Raising-and-Recovery-System.pdf) (further recommendation 3).

⁶ See, in this regard, the body of research in relation to the correlation between a low level of 'legal capability' and various forms of social disadvantage: McDonald, HM & Wei, Z 2015, *How people solve legal problems: level of disadvantage and legal capability*, Justice issues paper 23, Law and Justice Foundation of NSW, Sydney.

⁷ Commonwealth Ombudsman, *Centrelink's automated debt raising and recovery system* (2017), 42

process followed,⁸ VLA considers that insufficient effort has been made to identify the risk of 'over-recovered' debts, or to modify robo-debt in light of such analysis.

The limited data that we do have regarding accuracy shows that that 113,334 robo-debts have been changed or written off when people have challenged them.⁹ What we do not know is how many people challenged their alleged overpayments or debts or what proportion are revised.

It is important that robo-debt recipients' lack of engagement with the robo-debt process, and lack of transparency in terms of publicly available data, are not mistaken for robo-debt's accuracy and integrity.

In our view, Centrelink is continuing to use a method that it knows is flawed and this is having a damaging impact on people and families, and the integrity of the social security system.

3. Review processes for robo-debt are unclear and lack transparency

In relation to the review process for debts, VLA notes two key concerns:

- **Exclusion from review.** Clients have instructed VLA that they have been told by Centrelink or its agents that they may not seek an internal review of a debt raised under robo-debt in the absence of providing new information in relation to the alleged debt. VLA's review of Centrelink documents confirms that such representations are made. This seems to be a clear breach of the obligation to undertake a review requested in accordance with s 129 of the *Social Security (Administration) Act 1999* (Cth).
- **'Reassessment' instead of review.** VLA has observed that our clients who have requested review under s 129 of the *Social Security (Administration) Act 1999* (Cth) have instead been diverted into a less formal 'reassessment' process. Unlike the statutory internal review process, this informal process often does not provide the recipient with a decision letter that provides any explanation of the 'reassessment' or any changes to the debt amount or period. Some clients do not receive any correspondence notifying them that a reassessment has been undertaken. Rather, they receive a letter notifying them of their current outstanding debt amount. Following 'reassessment' clients have been also been advised they must have their debt considered by a 'subject matter expert' (a more senior Centrelink employee) before they can request internal review of the decision by an authorised review officer. These additional steps seem to be a breach of the requirement for the Secretary or an authorised review officer to undertake a review requested under s 129 of the *Social Security (Administration) Act 1999* (Cth). They result in a client having to undergo three processes rather

⁸ Commonwealth Ombudsman, *Centrelink's automated debt raising and recovery system: Implementation Report*, 19 - 21

⁹ Department of Human Services, Senate Estimates, 2018-19 figures to 31 March 2019.

than one before they are advised they can apply to Administrative Appeals Tribunal for review.

For the reasons we have set out above, even if review processes are available, they are less likely to be effectively taken up by the most disadvantaged people. Furthermore, it appears to VLA that these processes have operated to shield the lawfulness and fairness of robo-debt from scrutiny. It is not clear whether the diversion to less formal processes has the effect of reducing the number of debts calculated pursuant to robo-debt showing up or being amended in decisions of authorised review officers or at the Administrative Appeals Tribunal. It is not clear whether this a deliberate or unintended consequence of diversion to less formal processes. However, it is troubling that in the context of a fundamental change in government service delivery, which has attracted some controversy, an unorthodox approach is being taken to review processes.

This is highlighted by Peta's story.

Peta's story: Barriers to accessing the review process and a lack of transparency¹⁰

In February this year, Peta received a letter from Centrelink stating she had a debt of over \$2300 in relation to payments received in 2011. Fortunately, Peta's former employer was still trading and was able to provide Peta with payslips from almost eight years ago. Peta provided the payslips to Centrelink and sent a letter to Centrelink requesting an authorised review officer review. Two weeks after Peta had spoken to Centrelink and requested a review, Peta received phone calls from debt collectors. The debt collectors told her that she had to contact Centrelink to have her debt put on hold.

In April, Peta received a letter from Centrelink stating that she had an outstanding debt of just over \$400. Peta did not receive a letter explaining that a 'reassessment' had taken place or explaining the basis for the new debt amount. Centrelink records show that interest began to accrue on the revised debt after this date.

In July, Peta contacted Centrelink requesting an update on her request for an authorised review officer review, and to confirm that her debt was on hold. Peta was told that the 'reassessment' was completed and there was no review pending. This is despite Centrelink records showing that Centrelink had been aware since April of Peta's request for review by an authorised review officer. Peta was told that she could ask for her debt to go to a 'subject matter expert'. If she was not happy with that process, then she could ask for a review by an authorised review officer.

¹⁰ Name has been changed.

4. Automated debt collection processes and methods are unfair, inconsistent and have insufficient oversight

VLA has concerns in relation to several aspects of Centrelink debt collection practices. Most particularly, VLA is concerned about the inconsistency in relation to putting debts on hold, the tax return garnishing process, and the outsourcing of debt collection.

There is inconsistency in the process of putting debt recovery 'on hold' while review of the debt takes place. From client experiences and VLA's review of Centrelink documents, it is apparent that not all debts are put on hold pending review. In addition, when a 'hold' is put in place, it is for a limited period and is automatically lifted at the end of that period, regardless of whether a review has taken place. This results in recovery action resuming.

The tax return garnishing process appears to be highly automated.¹¹ The process has limited human oversight and results in tax returns being taken in a way that is arguably not compliant with s 1230C of the *Social Security Act 1991* (Cth). We note that tax returns have been taken in the following circumstances:

- where a person has not received any correspondence regarding the debt or is not aware that they owe a debt;
- where a person's debt is currently under review; and
- within days of a debt review being completed but before a person is notified of the outcome.

A key feature of the robo-debt program is the use of private debt collection agencies to pursue recovery of social security debt. Australian law sets out various protections against unfair debt collection practices, such as the protections in the *Australian Consumer Law and Fair Trading Act 2012* (Vic). These protections, however, are not applicable to the conduct of private debt collectors pursuing Commonwealth Government debt. VLA is concerned about the adequacy of regulation of private debt collectors acting on behalf of the Commonwealth or its agencies.

5. Interim recommendations for immediate reform

Robo-debt was a huge initiative, rolled out quickly, on a large scale and, in our view, it is too flawed to continue in its current form. While government should embrace efficiency and technology, it has to do it smartly. A fundamental overhaul of robo-debt is required. In the interim, however, we recommend these immediate changes to minimise the hardship and unfairness currently embedded in the review, tax garnishing and debt collection practices:

- All debts should be put on hold pending the outcome of a review process.

¹¹ See Department of Human Services Operational Blueprint 107-05050040.

- People seeking an authorised review should not be excluded from accessing one (regardless of whether they have provided new information in relation to the alleged debt or not).
- There should be human oversight of the tax return garnish process to ensure lawfulness and fairness.
- Centrelink should not outsource debt collection to agencies in circumstances where it has not successfully made contact with the person or engaged in a payment arrangement negotiation.

We need a system that fairly and accurately identifies and investigates overpayments. As a community, we should not accept a system that is so clearly not working, that is causing overwhelming hardship, and that is undermining confidence and trust in the social security system.

It is essential that extensive engagement with stakeholders is undertaken, most importantly with people who use or have used the system.

We would be happy to talk to the Committee at greater length about the information set out in this submission and to provide evidence at any upcoming hearings.

Please contact us on joel.townsend@vla.vic.gov.au or (03) 9280 3736 with any queries.

Yours faithfully



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