

Our references: s 47E(d), s 47F

15 September 2020

Mr Jeff Derix  
General Counsel  
Business Transformation Legal  
Legal Services Division  
Services Australia

By email: s 47E(d)

Dear Mr Derix

**Finalisation of investigation of complaints from s 47F - with comment**

I refer to our investigations into 10 complaints received from s 47F from the Consumer Action Law Centre (CALC). Thank you for providing Services Australia's responses to these investigations. Having considered all the relevant circumstances we have decided to finalise our investigations.

Although we are finalising these investigations, I make the following comments and suggestions to Services Australia under s 12(4) of the *Ombudsman Act 1976*.

**Background**

Since 2017, the CALC has complained to Centrelink on behalf of 10 clients who paid their consumer leases for household goods through Centrepay that the businesses were not complying with the Centrepay Policy and Terms (the Centrepay policy). The CALC complained that the consumer leases were excluded goods under the Centrepay deductions policy as they fell into the category of 'high cost but low value' and contained unfair contract terms. The CALC alleged that several businesses had engaged in unlawful conduct such as irresponsible lending, which had exposed its clients to unacceptable financial stress, when they were experiencing vulnerable circumstances.

The CALC also complained that allowing consumer lease providers to participate in Centrepay systematically exposes vulnerable people to the unacceptable risks of financial stress and exploitation. The CALC complained to this Office that Services Australia had not adequately responded to its complaints.

Our investigation found that in most of the CALC's complaints, Services Australia determined the issues related to regulatory matters and referred the issues to the Australian Investments and Securities Commission (ASIC) for consideration. With the exception of one complaint, Services Australia determined that further action was not required for reasons such as the age of the events, no current Centrepay deductions, the businesses were no longer registered with Centrepay or issues had already been addressed with additional conditions imposed on the businesses' Centrepay registration.

In December 2019, we wrote to Services Australia with our preliminary view on the issues arising in these investigations. Based on the information provided to us, the action Services Australia took in

response to the CALC's complaints was not consistent with the Centrepay policy. While we agree that it is appropriate to refer regulatory matters to the relevant agency for action, in our view the CALC's complaints raised issues that are specific to Centrepay and which only Services Australia could take action to resolve. The Centrepay policy provides the framework for Services Australia to investigate the CALC's complaints but it was not apparent to us that Services Australia took action to scrutinise the businesses' compliance with the Centrepay policy.

In February 2020, Services Australia responded to our preliminary view advising that it is committed to reviewing complaints about Centrepay and its investigations into Centrepay complaints are based on the Centrepay Assurance Framework, with targeted and substantial inquiries undertaken. Services Australia acknowledged the Office's view on the operation of the Centrepay policy and advised that it is considering how to clarify the intent of the 'other' category of excluded goods,<sup>1</sup> to ensure it is effectively defined and applied to all businesses participating in Centrepay.

### Comments and suggestions

#### *Complaint handling*

We acknowledge that Centrepay is a payment method and Services Australia does not have a role regulating business practices under the Australian Consumer Law. We are pleased Services Australia is committed to reviewing complaints about Centrepay and encourage it to continue using its customer feedback register to identify trends and non-compliance.

We remain of the view that while it may have been appropriate to refer regulatory issues to the relevant body, the CALC's complaints raised issues which were specific to Centrepay and could only have been addressed by Services Australia. These issues included the CALC's concerns that the businesses had received payments for goods that fell within the 'other' category<sup>2</sup> of excluded goods and services in the Centrepay policy.

s 47F

While Services Australia considered issues relating to consent, it appears that it failed to consider if the business was complying with the requirement to offer at least one viable payment method in addition to Centrepay.<sup>4</sup> In our view, the evidence should have reasonably prompted Services Australia to investigate the business's compliance with the Centrepay policy, by taking steps such as requesting evidence of available payment methods, and seeking an explanation for the demand that s 47F pay for his consumer lease through Centrepay.

The CALC's complaints also raised concerns about potential systemic issues with the policy of allowing businesses providing consumer leases to participate in Centrepay. In our view, Services Australia's response to the CALC's complaints did not adequately address each individual's circumstances with regard to Centrepay or respond to the CALC's concerns that there are systemic issues with the policy of allowing businesses providing consumer leases to access Centrepay.

We suggest that:

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<sup>1</sup> Section 4 table 2

<sup>2</sup> Section 4, Table 2

s 47E(d), s 47F

<sup>4</sup> Section 5.1(f) requires businesses 'to have at least one viable payment method for Customers to pay for goods and services in addition to Centrepay' to be eligible to participate in Centrepay.

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- 1) Services Australia review its operational procedures and policies, and update as necessary to ensure that all staff handling Centrepay complaints have appropriate guidance to identify and consider all of the issues raised in a complaint. The procedures should also assist staff to understand the tools available to them under the Centrepay framework to investigate and respond to complaints.
- 2) Services Australia provide a written response to the CALC about its complaints. Given the time passed since the complaints were made, Services Australia may wish to contact the CALC to clarify its remaining concerns in order to provide an appropriate response.
- 3) Services Australia reconsider the issues raised in **s 47F** complaint, investigate whether the business continues to meet the Centrepay eligibility requirements and take any necessary compliance action.

### *Clarifying the 'other' category of excluded goods*

We welcome Services Australia's advice that it is considering how to clarify the intent of the 'other' category of excluded goods. We acknowledge that while many of the points within this category are linked to regulatory matters, the meaning of the terms 'high cost, low value' and 'expose customers to unacceptable financial risk or exploitation' are subjective and not defined by the regulators. We understand that Services Australia is consulting with regulatory bodies to define those terms and apply them to all businesses registered for Centrepay.

- 4) We suggest Services Australia consult with other stakeholders such as the CALC. The CALC may offer a unique perspective which can inform the policy decisions, based on its knowledge of the barriers, vulnerabilities and other factors that may expose people to financial risk or exploitation, with regard to the relevant consumer laws.

### *Improving operational procedures for assessing consumer leases*

The Operational Blueprint for *Processing a Centrepay Business Application*<sup>5</sup> sets out the requirements that consumer lease businesses must meet to use Centrepay<sup>6</sup> including that they must:

- *not provide any goods or payment arrangements that, in the Department's view:*
  - *have significant potential for high cost but low value goods or services*
  - *contain unfair contract terms within the meaning of the Australian Consumer Law*
  - *expose Customers to unacceptable risks of financial stress or exploitation.*

While the above conditions reflect the terms regarding excluded goods in the Centrepay policy<sup>7</sup>, the procedure does not explain what criteria, factors or evidence staff should consider when determining whether a business satisfies the requirements to participate in Centrepay.

- 5) We suggest Services Australia review and update its Operational procedures to ensure staff understand the criteria, factors and evidence that should be considered when assessing consumer lease businesses for Centrepay purposes. Services Australia should also link the Operational Blueprint to the Centrepay compliant handling procedures.

### *Implementing a feedback loop with the regulators*

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<sup>5</sup> 103-09010010

<sup>6</sup> See table 6, step 1 of Operational Blueprint, 103-09010010

<sup>7</sup> Section 4 table 2 (Other Category)

## OFFICIAL

In response to our investigations, Services Australia advised it does not assess the terms of a contract between an individual and a business. As we understand it, Services Australia generally relies on regulatory bodies such as ASIC to form a view about issues such as unfair contract terms. While it is not unreasonable for Services Australia to rely on the expertise of a regulatory body, it is not apparent to us whether there is a feedback loop in the referral arrangements.

As there are matters in the Centrepay policy that are closely aligned with regulatory issues, it seems that information provided by the regulatory bodies could assist Services Australia to enforce compliance with the policy. The information provided to us indicates that when Services Australia referred the CALC's complaints to ASIC, it did not seek ASIC's view about the issues raised. Had it done so, Services Australia would have been better placed to form a view on whether the consumer leases fell within the 'other' category of excluded goods under the Centrepay policy and respond to the CALC's complaints.

- 6) If not already in place, we suggest that Services Australia implement a feedback loop into its referral arrangements with regulatory bodies, to help inform its enforcement of the Centrepay policy.

### Action

Please provide Services Australia's response to the above comments and suggestions by close of business on 14 October 2020. The response may be sent by return email.

You are welcome to contact me on s 47E(d) or Samantha s 47F on s 47E(d), if you have any queries or concerns about this letter.

Yours sincerely

s 47F

Hamish s 47F  
Director Investigations