28 February 2013

By email: centrepay.review@humanservices.gov.au

Centrepay Review Team
PO Box 7788
CANBERRA BC ACT 2610

Dear Sir or Madam

Independent Review of the Centrepay System

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the independent review of the Centrepay system.

Consumer Action believes that Centrepay can be a valuable financial management tool. However, it has a number of problems that mean Centrepay may be causing harm to those who use it.

Key problems are that:

- there is a lack of a clear statement of the purpose behind Centrepay;
- Centrepay is permitted to be used as a marketing tool for businesses, and in particular it seems to be encouraging development of business models which sell overpriced products to low income consumers;
- Centrepay is being used to facilitate 'Rent to Own' transactions. These transactions have substantially the same effect as credit contracts, so should be treated in the same way—that is, Centrepay should not be permitted to be used to pay off Rent to Own transactions except in very limited cases (for example Centrepay can be used for credit contracts taken out under the No Interest Loan Scheme and similar community/government programs).
- Centrepay is being used by some businesses as a de facto debt collection device.

We have also provided responses to the inquiry's terms of reference. Our comments are detailed more fully below.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action offers free legal advice, pursues consumer litigation and provides financial counselling to vulnerable and disadvantaged consumers across Victoria. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

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Support for Centrepay

Consumer Action believes that Centrepay can be a valuable financial management tool for Centrelink payment recipients. However, we believe that there are a number of problems which mean that Centrepay may be causing harm to people who use it. Many of these problems are discussed below, and also in Financial Counselling Australia's report *Centrepay: A Good Idea that has Lost its Way*.[1]

The purpose of the independent review should be to ensure Centrepay remains useful but limits as far as possible the capacity for harm.

Key problem: lack of clear statement of purpose for Centrepay

It seems to us that many of Centrepay's problems were allowed to develop because there is a lack of clear purpose behind Centrepay. For example, Centrepay does not currently allow deductions for credit contracts but does allow Rent to Own arrangements, which are in substance identical (we discuss this further below). It is also unclear whether part of the purpose of Centrepay is to provide 'security' for payments. While not technically a security, consumers are generally reluctant to cancel Centrepay, so we believe some businesses enter into agreements using Centrepay which they would not otherwise enter into with the individual.

More generally, there seems to be no firm view on whether Centrepay exists to facilitate payment of ongoing expenses (like rent or utilities), to smooth lump sum essential purchases, or why Centrepay is better for these purposes than any other option. This prevents the development of a clear strategy on how to make Centrepay as user-friendly as possible and how Centrepay relates other payment methods. We welcome that the reviewers have been asked to look at how Centrepay fits in with other financial products and services in this review.

The Government's *Centrepay Policy* document says that the 'primary objective' of Centrepay is:

> to enhance the well-being of its Customers by improving their social capacity and encouraging their movement towards financial self management.

This statement of objectives would be more useful if it explained:

- what Centrepay is;
- what Centrepay is designed to do;
- what Centrepay is not designed to do;
- how Centrepay complements other options (such as Centrelink Advance Payments, No Interest Loan Schemes, mainstream direct debit and payment systems) and what it gives customers that those other options do not.

> ***Recommendation 1***
> Whatever other changes are made, the Government should produce a clear statement of the policy objective behind Centrepay.

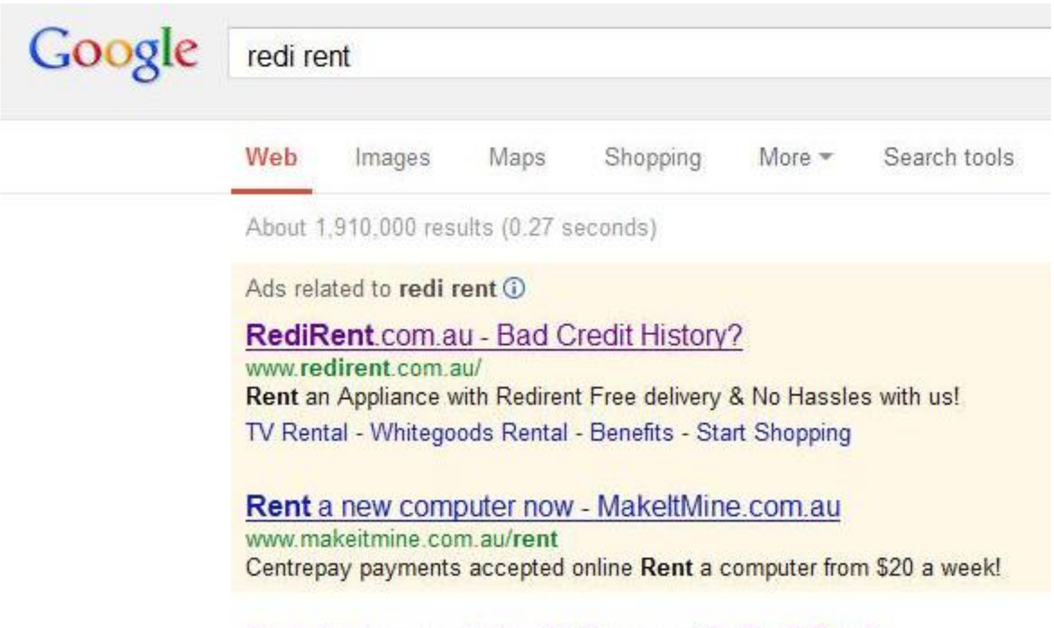
[1] Financial Counselling Australia's report can be accessed from: http://www.financialcounsellingaustralia.org.au/getattachment/Corporate/Publications/Reports/Centrepay-A-Good-Idea-that-Has-Lost-Its-Way-February-2013.pdf

Key problem: use of Centrepay as a marketing and selling tool

One of our most significant concern with Centrepay is its widespread use as a marketing and selling device for businesses. In particular, the availability of Centrepay seems to be encouraging the development of business models which involve the sale of overpriced products to low income consumers to be paid off over a long period. These models would not be sustainable if Centrepay was not available to guarantee repayment. Indeed, official Centrepay documents have actually promoted how competitive the Centrepay deduction fee is for business and the fact that customers will 'set and forget' their Centrepay deductions resulting in less cost chasing overdue payments.[2]

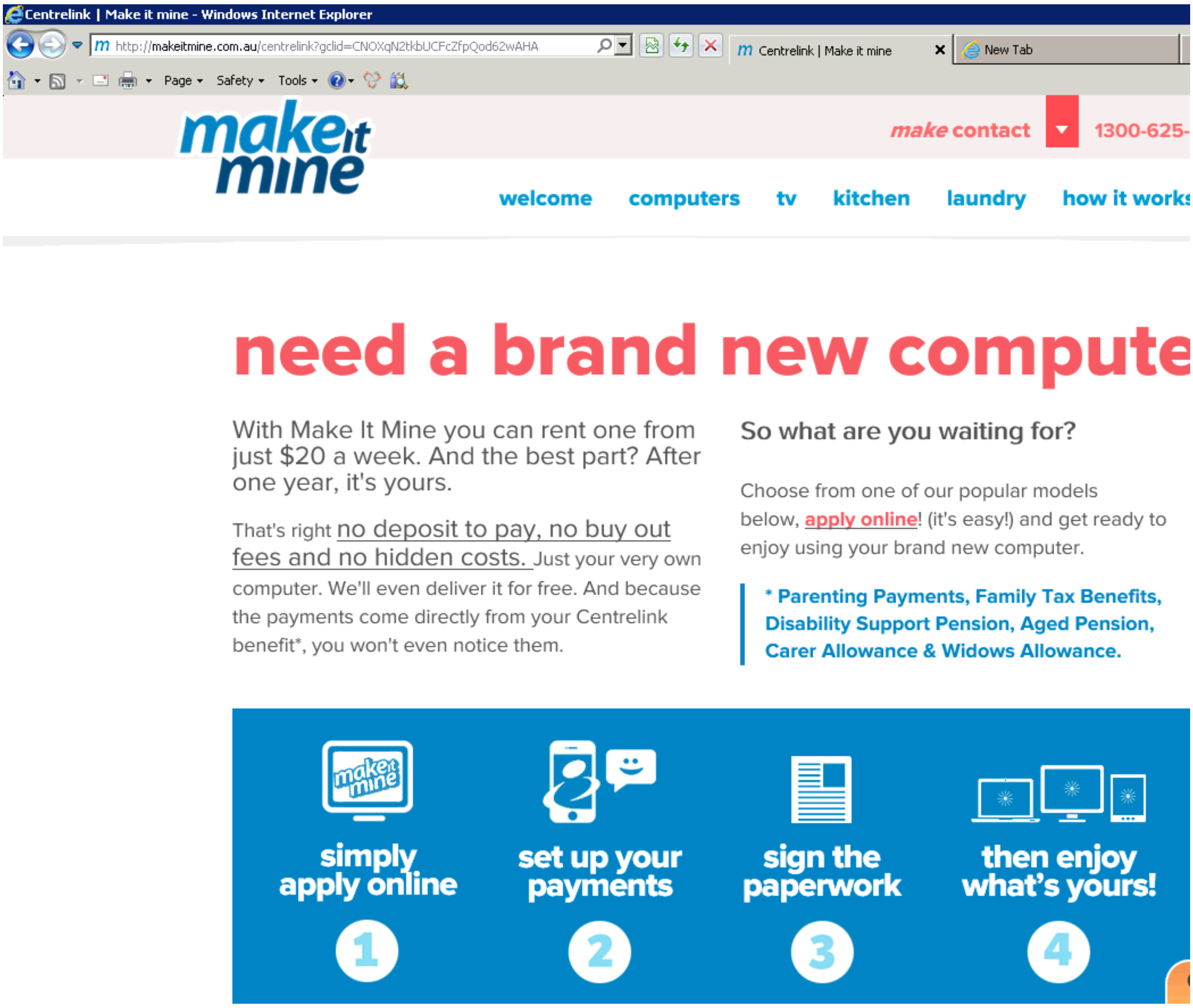
We are not suggesting that Centrelink recipients should be prevented from buying products from certain business models or indeed from any business. However, Centrepay was designed for a specific purpose[3] and should not be available for all transactions. It should certainly not be used as a promotional tool for business—it exists to assist social security recipients, not traders.

One of the clearest examples of the use of Centrepay for promotion is by the 'Rent to Own' provider Make It Mine. The process begins with advertising on Google searches, as seen below when we searched for Redirent (one of Make It Mine's competitor's).[4] Note that even in such a small advertisement which allows only one or two key messages, Make It Mine chooses to promote the ability to use Centrepay. This suggests that Centrepay is an essential part of this firm's business model and strategy for attracting customers.



[2] 'Centrepay Principles', p 13, cited in Financial Counselling Australia (2012) *Centrepay: A Good Idea that has Lost its Way*, p 7-8.
[3] Australian Government, Department of Human Services (nd) *Centrepay Policy*, p 3. Accessed 31 January 2013 from http://www.humanservices.gov.au/spw/business/publications/resources/9174/9174-1207en.pdf
[4] Searched on 31 January 2013.

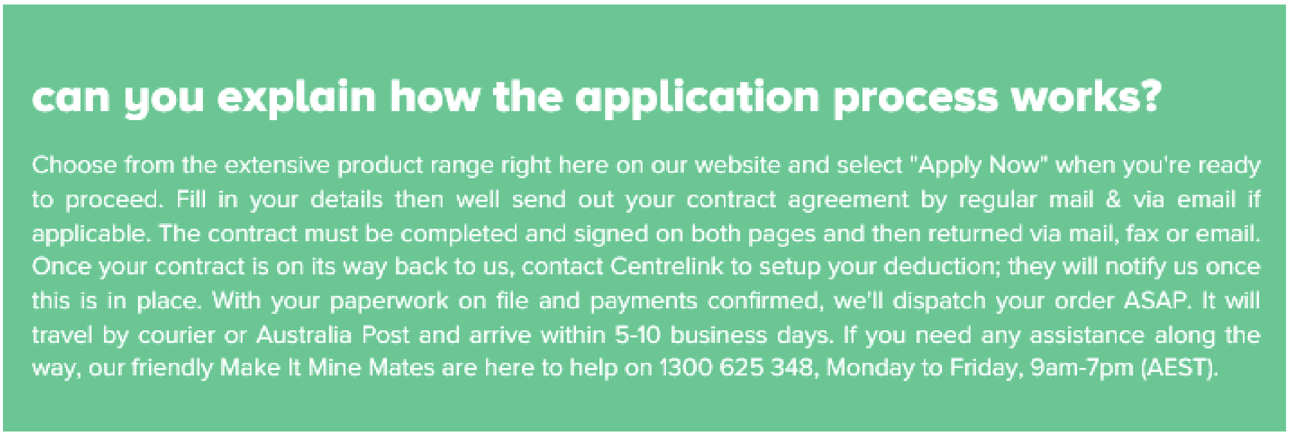
Clicking the link in the advertisement takes us to a page labelled 'Centrelink | Make It Mine'.[5]



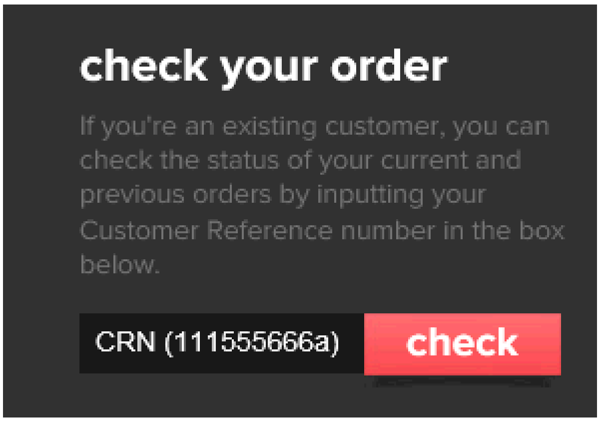
The page states 'And because the payments come directly from your Centrelink benefit, you won't even notice them'. Note also the image at step two of the four stage process ('set up your payments') uses the Centrelink logo.

This seems to suggest that Centrepay is not simply an option for Make It Mine's customers, it is a necessary part of the transaction. The text below from Make It Mine's FAQ page[6] gives the same impression—arranging a deduction from a Centrepay payment is one of the required steps in the application.

[5] Accessed 31 January 2013. This page can be accessed at http://www.makeitmine.com.au/centrelink without having to go via the advertisement.
[6] Accessed 31 January 2013 from http://www.makeitmine.com.au/how_it_works



Make It Mine customers are even identified by their Centrelink Customer Reference Number (as shown right) which they can use to track their order.[7]



We are not suggesting that there is anything unlawful in how Make It Mine are promoting their product. However, we are strongly of the view that Centrepay was not intended to be used for this purpose (that is, assisting a business to market its product) and should not be permitted to be used in such a way.

Centrepay is also used as a tool at the point of sale. The act of simply handing over a Centrelink number avoids discussion about how payments are to be made, and can make the sale a much "smoother" process, avoiding what sales people call "customer objections".

We believe that at least some businesses (such as those providing Rent to Own arrangements) should be prevented from arranging (or having the consumer to arrange) a Centrepay deduction at point of sale. Rather, once an agreement is completed (and goods delivered) a consumer could be able to sign up to a Centrepay deduction arrangement without any pressure or incentive from the seller. The may be different ways that this could be achieved, but it may be that a Centrepay deduction could not be arranged until after a fixed period after entering the contract (for example, a 5 day period), and that should be arranged by the consumer without direction or assistance from the supplier. We think this requirement could significantly change the risk assessment of certain businesses—they would have to consider whether repayment is likely to be forthcoming without the certainty of a Centrepay deduction, and we think would impact the marketing behaviour of these businesses. Of course this could potentially reduce access to some contracts for some Centrepay recipients, where the seller relies on a Centrepay authority to "secure" payment. However, we believe that the use of Centrepay as a form of security for some forms of credit is one which we believe is problematic.

[7] Accessed on 31 January 2013 from http://www.makeitmine.com.au/

Recommendation 2
There should be a clear separation between the marketing and purchase of goods or services and the customer choosing to pay through Centrepay. Businesses should not be permitted to:

- establish a Centrepay deduction for a customer (or assist a customer to establish a deduction by, for example, giving them a pre-filled application); or
- require (either in contract terms or in business practice) that a customer pay for goods or services by Centrepay.

Businesses (other than housing providers, and ongoing utility bills and the like) should not be permitted to establish a Centrepay deduction at the time of entering into a contract with a consumer. A defined period of time should apply before a consumer can establish a Centrepay deduction arrangement to pay for these expenses (or an alternative measure which ensures that Centrepay is clearly the consumer's choice).

This would not prevent consumers from using Centrepay. However it would remove some of the incentives from businesses to market expensive or overpriced products at low income consumers and to use Centrepay as a selling tool.

Key problem: use of Centrepay to facilitate 'Rent to Own' transactions

<u>'Rent to Own' contracts and Credit contracts</u>
We have considerable concerns with Centrepay being made available for use in 'Rent to Own' consumer lease transactions. These transactions allow a consumer to lease household appliances for a required minimum term (often 3 years) and then own the goods after that.

The Centrepay service reasons allow 'rental of basic household goods (e.g. washing machine, refrigerator, furniture etc)' as well as 'rent to buy schemes where there is no accumulation of debt'.[8] Note that a credit contract for the purchase of the same goods would usually not be permitted to be repaid through Centrepay—the service reasons only allow specified public interest credit contracts such as approved no-interest loans to use Centrepay.[9]

The inconsistency is that credit contracts and Rent to Own contracts are in substance identical arrangements—in both cases a consumer takes possession of goods with the intent to own them, pays for those goods through regular repayments over a set term, pays an amount which is higher than the ticket price and in practical terms the financial obligations are very similar. Rent to Own arrangements are technically categorised as consumer leases rather than credit contracts under the credit law, but are regulated by the same piece of legislation—the purpose of which is to protect consumers entering credit arrangements (including consumer leases). In fact, many Rent to Own arrangements are only considered consumer leases rather than credit contracts (the definition of which includes sales by instalments) because lease providers have discovered methods of exploiting a loophole in the credit law. We explain this in more detail in

[8] *Centrepay Policy*, p 9.
[9] *Centrepay Policy*, p 9.

Attachment 1. Centrepay service reasons should acknowledge that credit contracts and rent to own contracts are substantially the same thing and treat them the same way.

It seems that the service reasons may allow Rent to Own deals because they do not consider them to involve an 'accumulation of debt'. We would again disagree—rent to own contracts require the consumer to make rental payments for an extended period before they accrue ownership. If they fail to make payments or otherwise terminate the contract before the minimum term the consumer is liable to pay a considerable termination fee. In a very techical sense, there is no accumulation of debt in a Rent to Own transaction as the consumer has not borrowed any money. In practical terms however the effect is the same—once a consumer has entered a Rent to Own contract they must continue to make the repayments, pay out the contract or have the goods repossessed. If goods are repossessed the termination fee could result in a significant debt.

Possible breaches of consumer credit obligations

We are also aware of numerous examples of lease providers entering consumers into rent to own contracts without properly assessing whether the consumer is capable of making the repayments.[10] Recent complaints involving Zaam Rentals were well publicised[11] but Consumer Action has also seen many other cases involving better-known firms.

It is also worth noting at this point that Rent to Own is an extremely expensive way to purchase a product. Our research and casework indicates that a Rent to Own arrangement usually costs around three times the price of buying the same goods retail and can be much more (contracts offered by Zaam Rentals reportedly cost around eight times retail price[12]).

More concerning is that it is not at all clear from advertising how expensive these contracts are. Rent to Own deals are typically advertised as a certain amount 'per week'. Some traders then disclose in the fine print the required term (though some do not even do that) but none that we know of give upfront disclosure of the total cost of the contract being advertised. This makes it difficult for consumers (and probably impossible for some) to shop around and make informed comparisons between the cost of buying a product outright, on credit or through Rent to Own.

Case Study – Angela

Angela (not her real name) is a single mother, survivor of domestic violence and the sole carer of her 3 children. Angela's only source of income is Centrelink payments.

Angela entered into three lease contracts with the same business in 2010:

- the first for a TV, fridge and a freezer for $180 per fortnight over a 36 month term;

[10] Sections 151-156 of the National Consumer Credit Protection Act 2009 (Cth) require providers of consumer leases to assess whether a consumer can make the required repayments without hardship and prohibit lessors from entering a lease which would be unsuitable for the consumer.

[11] See for example 'Rental company probed over predatory loans', *The Age*, 18 October 2012, http://www.theage.com.au/victoria/rental-company-probed-over-predatory-loans-20121017-27rl7.html. Zaam Rentals is also discussed in Financial Counselling Australia's *Centrepay: A Good Idea that has Lost its Way*, pp 15-17.

[12] See *Centrepay: A Good Idea that has Lost its Way*, p 11.

- The second for a computer and software for $60 per fortnight over 30 months;
- The third for a vacuum cleaner for $50 per fortnight over 24 months.

In each contract, payments were made via Centrepay which prioritised the unaffordable rental payments over Angela's essential expenses. It appeared that, when entering these contracts the lessor may have been in breach of their responsible lending obligations under the *National Consumer Protection Act 2009* (Cth). Each contract also contained terms that would require Angela to continue making payments for the entire contract term even if these goods broke down, and that if she wanted to terminate the agreement early then she would need to pay a very large additional fee.

A complaint was lodged with the Credit Ombudsman service alleging a number of breaches of credit and general consumer law. The credit provider ultimately agreed to terminate all three agreements, waive the outstanding debt and transfer ownership of the goods to the client.

Case Study – Veronica

Veronica (not her real name) attended an electronics retailer to purchase a laptop and accessories for her daughter. Veronica’s daughter wanted to enter a rental agreement to obtain the goods but was rejected, so Veronica sought to apply on her behalf.

Veronica, who is solely reliant on a Centrelink Carer’s Pension and had significant existing debts, originally had her application rejected. The sales staff then made a telephone call, after which the application was approved. Veronica expressed concern about whether she would be able to afford the repayments (48 monthly payments of just over $100) but was told 'don't worry about it' by the salesman. We are advised that the salesman made no inquiry into her employment, income or financial situation. However, Veronica was later told that her rental application stated that she was a government employee with an income of $35,000 per annum.

Insufficient explanation of the terms of the agreement was given, and Veronica ultimately signed the agreement under the impression that she could easily terminate the contract if she could no longer afford the goods she was renting.

Veronica made payments for some time, but ultimately found them unaffordable. She applied for a hardship variation and was rejected by the lessor. Consumer Action has assisted Veronica to apply to the Financial Ombudsman Service.

In our view, there is ample evidence that Rent to Own transactions regularly cause harm to vulnerable consumers and as such should not have access to Centrepay. For clarity we repeat that we do not think Centrelink recipients should be prevented from entering Rent to Own contracts if they so choose. However we do not believe Centrepay should be associated with a demonstrably problematic business model. At the very least, a firm should lose their Centrepay provider status where there is evidence of systemic or serious breaches of obligations under the consumer credit legislation.

> ***Recommendation 3***
> The Centrelink service reasons should treat rent to own arrangements the same way as credit contracts. That is, rent to own contracts should not have access to Centrepay except in very limited cases (for example Centrepay can be used for credit contracts taken out under the No Interest Loan Scheme and similar programs).
>
> ***Recommendation 4***
> Lessors should lose their Centrepay provider status where there is evidence of systemic or serious breaches of obligations under the consumer credit legislation.

Key problem: use of Centrepay as a de facto debt collection device

The Centrepay service reasons do not permit Centrepay to be used for debt collection. However, it is not uncommon to hear of utility companies requiring customers to use initiate Centrepay deductions to pay arrears.

> **Case Study - Rose**
> Rose (not her real name) called MoneyHelp in January 2013 because she was having difficulty paying her utility bills. Rose, who has been unemployed since October 2012 and receiving Newstart Allowance, had an electricity bill and a gas bill with the same provider with nearly $500 to pay.
>
> Rose phoned her utility provider and informed them she was in hardship. The provider responded that she must arrange a Centrepay deduction of $70 per fortnight which would cover future needs as well as pay off the arrears. After paying her rent, this Centrepay deduction would have left Rose with $10-20 per fortnight to live on. The utility provider was firm that the availability of a payment plan was conditional on Rose setting up a Centrepay deduction.
>
> A MoneyHelp Financial Counsellor discussed the possibility of deferring payment of Rose's utility bills and applying for Utility Relief Grant. Rose was then referred to a face-to-face financial counsellor in her area.

Rose's case demonstrates that some Centrepay providers—even large, well resourced businesses like the utility provider in this case—are engaging in significant abuse of the Centrepay system. In this case, the utility provider is effectively obliging a customer to create a Centrepay deduction (presumably because it guarantees repayment of the debt) and does not have systems in place to ensure that a Centrepay deduction they encourage is affordable for the customer. In turn, this example suggests that Centrepay itself is unable to monitor whether deductions are affordable. If the deduction in Rose's case study had have been made, Rose would have been placed in severe financial hardship. In this event, Centrepay would clearly not be meeting its objectives of '[enhancing] the wellbeing of its Customers' or 'encouraging their movement to financial self-management'.[13]

We are particularly concerned if housing or utilities providers are collecting arrears payments through Centrepay where the individual is no longer using the services of that provider. In these cases, there is little benefit for a consumer to have these arrears payments deducted because:

- (assuming they are on a very low income) it is unlikely that they could afford to make the payments without hardship;
- they would no longer be at risk of eviction or disconnection if the arrears are not paid; and
- in many cases would not be subject to any enforcement action through the courts because they are effectively 'judgement proof' (see Appendix 2 for an explanation of what this means).

While we have concerns about the collection of arrears by energy companies, we accept that there may not be a simple solution. For example, we would be wary of preventing Centrepay from being used to cover utility arrears—affordable Centrepay deductions designed to cover both arrears and future payments may be a useful way for consumers to get out of utility debt as long as they are entered voluntarily. However, the kind of misuse of Centrepay discussed in Rose's story undermines the system, harms Centrelink recipients and should not be allowed to continue.

Recommendation 5

The Minister for Human Services should:

- raise concerns with utility providers about customers being compelled to enter into Centrepay deductions to pay off arrears and staff encouraging deductions which exacerbate hardship; and
- seek assurances that retailers will review their processes to ensure these problems do not continue to occur.

Responses to review terms of reference

The controls, risk management and administrative processes in place to ensure the Centrepay service is used in a way that protects people's entitlements

We have concerns that the whole of a recipient's Centrelink payment can be diverted to Centrepay leaving nothing to pay for day to day expenses. We do not believe that recipients should be prevented from committing all of their benefit to Centrepay deductions, as this may be part of a considered strategy (people may use Centrelink income to core expenses while other income or their partner's income is used for day-to-day costs). However, the existence of predatory sales techniques by Centrepay providers (such as Zaam Rentals) and the lack of any requirement to assess affordability before creating a Centrepay deduction may allow the exploitation of customers.

[13] Centrepay Policy, p 3.

Recommendation 6
The Government should consider the feasibility of:

- sending a notice or warning to customers if they commit more than a certain percentage of their benefit to Centrepay (perhaps 65 per cent). The notice should itemise the current payments that are being made and explain how customers can cancel a deduction (but warning that this may lead them to default on a contract they are paying off through Centrepay); and
- requiring Centrelink staff to check Centrepay deductions at certain trigger points, for example when a customer is being transferred from one payment to another, or if their payment is being reduced. If more than a certain percentage of a payment is being directed to Centrepay, staff could mention this to the customer and confirm they are happy with the deductions.

Alternatively, Centrelink staff could be required to perform an affordability assessment when a Centrelink recipient applies for a Centrepay deduction—this could involve an assessment that the deduction would not cause the recipient to be in substantial hardship, considering all of their income and expenditure.

We also receive complaints about utility companies generating substantial credits in accounts because regular Centrepay payments are too high. We accept that utility bills vary between seasons and that a credit accrued during 'low' seasons will often be used up when bills rise in 'high' seasons. However, there should be no reason a customer's account should persistently be in credit by more than about $50 for more than 12 months.

Recommendation 7
Providers who collect payments in advance or allow customers to accrue credit should be required by their agreement with Centrepay to regularly assess whether customers are in credit and by how much. If customers are persistently in credit by more than a certain amount (this could be determined in guidance from Centrepay), providers should be required to contact customers and offer to refund the amount.

<u>The approaches taken to ensure Centrepay is used to distribute money to legitimate organisations providing services to people on a fair and reasonable basis, and the associated contract management approaches used</u>
The Government's *Centrepay Policy* document states that Centrepay will consider a number of 'approval criteria' when assessing an application to be a Centrepay provider. These include that the applicant business is understands the objective of Centrepay and is willing to further those objectives, and whether adverse reports have been received about the applicant business.[14] Centrepay also have the ability to remove participants if it comes to light that they no longer meet approval criteria.[15]

[14] Page 5.
[15] Page 7.

Zaam rentals cases and others we see make us doubt the assessment process is as rigorous as it appears in the Centrelink Policy. This is all the more concerning given Financial Counselling Australia's report *A Good Idea that Has Lost its Way* indicates that the same concerns have been raised with Centrepay management by financial counsellors since at least 2005.

We are also concerned by the possibility that traders could register with Centrepay claiming that they provide a good or service within the Centrepay service reasons but once listed also receive Centrepay deductions for other goods which are not permitted. For example, we have recently seen cases where a consumer was paying off a motor vehicle on a Rent to Own arrangement through Centrepay. Centrepay's service reasons do not permit Centrepay to be used for either the purchase or lease of motor vehicles. In one of the cases, the Centrepay deduction authority said that the deductions were for 'household bills'.

The existing list of approval criteria seem appropriate, but it appears that a far more stringent process is needed to ensure unsuitable traders do not access the Centrepay system.

Recommendation 8

Centrepay processes for assessing applicants and investigating conduct of current providers should be strengthened. We recommend that

- there be an opportunity for regulators, individuals, and advocates to object to an organisation getting provider status, and Centrepay should be required to consider those submissions before approving an application;
- when Centrepay approves an application from a business wishing to become a provider, Centrepay's assessment should be publicly available and open to appeal;
- there be a transparent, accessible process through which complaints can be made about a Centrepay provider and timeframes for Centrepay to respond;
- there be a publicly available list of things which will trigger an investigation by Centrepay into whether a provider should remain in the system (for example, adverse information received by a regulator, or a certain number of individual complaints);
- Centrepay should publicly report (perhaps in the Department of Human Services' Annual Report) on whether any Centrepay providers have been removed from the system and why they were removed; and
- Centrepay should make regular audits of providers and report the results.

<u>Which businesses and services should have access to the Centrepay service, and services that might be excluded</u>

Items which should be included

There are a number of essential items which are accessible through Centrepay but which are not widely purchased through this method:

- Rent: we understand that Centrepay is not widely used by private renters;

- Car registration and compulsory insurance: at around $700 for a standard vehicle in Victoria,[16] registration is an enormous expense for people reliant on Centrelink benefits and a key reason why consumers take out payday loans[17]. Registration is relatively affordable (less than $27 for a standard vehicle) if paid per fortnight by Centrepay.
- Council rates: another significant expense for those on low incomes that could be more easily paid off through regular Centrepay deductions.[18]

In our view, these three expenses are among the most essential products many Centrelink recipients will need to purchase and are the types of payments for which Centrepay is most useful. However, we understand few people pay for them with Centrepay.

Recommendation 7

The Commonwealth Government should seek agreement with the States, Territories and local government peak bodies that Centrepay should be actively promoted as a payment method for council rates, car registration, compulsory insurance and rent for public housing.

Recommendation 8

Centrelink staff should consult with real estate agents, private landlords and tenants to find out:

- whether it is widely understood that Centrepay can be used to pay rent;
- how frequently Centrepay is used to pay private rent; and
- whether steps should be taken to increase the use of Centrepay for paying rent.

Centrepay could also be more widely used to pay for essential insurance (particularly motor vehicle, home building and home contents). It is widely accepted by both consumer advocates and the insurance industry that there is an unacceptable level of underinsurance in the community. Ensuring Centrepay is available for essential insurance is way one of overcoming the barriers to low income consumers taking up insurance.[19]

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[16] VicRoads, *Common Registration Fees*, accessed 1 February 2013 from http://www.vicroads.vic.gov.au/Home/Registration/FeesFormsAndFAQs/Fees/Commonregistrationfees.htm

[17] Gillam and the Consumer Action Law Centre (2010) found that 22 per cent of payday loan borrowers interviewed said that they used payday loans to pay for car repairs or registration. *Payday Loans: Helping Hand or Quicksand*, pages 5-6. http://consumeraction.org.au/wp-content/uploads/2012/05/PayDayLendingReport-FINAL.pdf

[18] The Federation of Community Legal Centres Victoria and Footscray Community Legal Centre (2012) recommended that local councils should allow Centrelink recipients to pay rates through Centrepay to reduce the number of council debt cases proceeding to court. *Council Debt Collection: Alternatives to Suing Ratepayers in Hardship.* www.fclc.org.au/public_resource_details.php?resource_id=2220

[19] Research by the Brotherhood of St Laurence has found significant interest among low income consumers for using Centrepay to pay insurance premiums. See Dominic Collins (2011) *Reducing the Risks: Improving Access to Home Contents and Vehicle Insurance for Low-Income Australians*, pages vii-viii. Accessed from http://www.bsl.org.au/pdfs/Collins_Reducing_the_risks_insurance_2011.pdf#page=1

We understand that there are a number of barriers which prevent greater use of Centrepay. Insurers argue (among other things) that their systems are not capable of receiving fortnightly payments without costly upgrades. It is also argued that Centrepay's requirement for payments to be at least $10 per fortnight prevents uptake, because many policies for low income consumers would cost less than this amount.

These barriers remain despite long running discussions between Department of Human Services staff, insurers and consumer advocates. Solving this problem may require intervention at the Ministerial level or regulation.

> ***Recommendation 9***
> The Minister for Human Services and the Minister for Financial Services should:
> - publicly commit to ensuring that there are no barriers to insurers using Centrepay; and
> - consider requiring insurers to offer Centrepay as a payment option (as it has done for some utility providers)

Items which should be or remain excluded
Currently credit contracts are not permitted to be repaid using Centrepay (apart from specified credit products nominated in the Centrepay service reasons). We believe credit contracts should remain ineligible for repayment by Centrepay and (as we have discussed above), Rent to Own contracts should also be removed from the service reasons.

Although we are in favour of Centrepay being more widely used for basic insurance products, consumer credit insurance and funeral insurance products should be excluded from the service reasons. Note that we are not aware of these products being purchased by Centrepay currently.

Both of these products are targeted at low income, vulnerable consumers are often marketed in a way which we believe to be deceptive. We suggest that the Centrepay service reasons should expressly exclude these products from Centrepay. At a minimum, the Minister for Human Services should consider the available evidence and decide whether these products should be excluded through a legislative instrument made by the Minister under section 123TI of the *Social Security (Administration Act) 1999*.

This kind of carve-out would not be inconsistent with current approach. We note that, as well as the Minister having statutory power to exclude certain products, access for insurers to Centrepay is already limited to 'existing participants'.[20] As before, we believe recipients of Centrepay benefits should be free to spend their benefits on any product they choose, but Centrepay should not facilitate the purchase of products which are demonstrated to cause harm.

> ***Recommendation 10***
> The Centrepay service reasons should expressly exclude funeral insurance and consumer credit insurance from access to Centrepay, or at a minimum, the Minister for

[20] Centrepay Policy, p 10.

Human Services should consider the evidence at hand and decide whether these products meet Centrepay objectives.

Recommendation 11
There should be a clear, accessible and well publicised process for Centrepay to investigate particular products or business models (either in response to a complaint or on their own motion) and consider whether those products should be removed from the Centrepay service reasons. The results of the investigation should be forwarded to the Minister for Human Services who may then choose to deny access to Centrepay under section 123TI of the *Social Security (Administration Act) 1999* (Cth)

Ways in which Centrepay can be used to build the financial capability of its customers and to assist them to manage their money in the best way possible

Centrepay could give its customers more control over their money if it provided regular information about the Centrepay deductions which are being made.

Recommendation 12
Centrepay should provide regular updates to customers about their deductions which itemise Centrepay deductions noting:

- each organisation being paid;
- the amount paid to each organisation;
- how to cancel a deduction if it is no longer needed and providing a simple process for cancellation. The Banking Code of Practice provides (at clause 19.1) that on request a bank will promptly cancel a direct debit authority without requiring the customer to direct their enquiry to the merchant. Centrepay guidelines could require a similar solution. However, notifications should include a warning that if a customer cancels an ongoing payment they may need to arrange another way to pay or seek advice about any financial obligations.

Complaints and feedback mechanisms associated with Centrepay to ensure that issues are resolved in a fair way

As recommended above, an accessible and transparent complaints process should be established for receiving complaints about Centrepay service providers. Centrepay should be required to respond within a set timeframe. A summary of the complaints received, how Centrepay responded and any systemic issues uncovered should be reported in the Department of Human Service's annual report.

How Centrepay relates to other financial products and services available to the Department's customers

As discussed above, the question of how Centrepay fits in with other payment mechanisms is directly related to the broader question of the policy purpose behind Centrepay. Whatever the Government's final view on the purpose of Centrepay, it should be informed by a clearly expressed understanding of how Centrepay relates to other financial management options and what Centrepay is able to do that other options cannot (or cannot do as well).

In our view, Centrepay is best suited to managing core recurring expenses such as rent and utilities bills. This aligns with Centrepay's original purpose as a method for covering the most essential costs automatically without the risk of these deductions overdrawing the recipient's account.

Centrepay is in our view less suited to paying off lump sum purchases or less essential ongoing expenses. Use of Centrepay for lump sum purchases (such as for appliances on a rent to own deal) raises the possibility of the deduction continuing after the final payment has been made (we regularly see a similar problem with 'set and forget' direct debit deductions). Applying Centrepay deductions to less essential expenses gives those expenses a priority of equal or greater than rent and utilities. This seems to undercut the aim of Centrepay.

As we have said already, we do not believe that there should be any restrictions on what Centrelink benefit recipients spend their money on. However we do think it is appropriate to restrict the uses of Centrepay if to do otherwise would give a questionable product a stamp of approval, or compromise the effectiveness of the Centrepay scheme.

Nor is it appropriate for Centrepay to be available to purchase any goods or services if this compromises principles of competitive neutrality. Centrepay provides a cheaper and simpler alternative payment option for Centrelink recipients than commercial systems (such as direct debit through transaction accounts or BPay). Arguably this reduces the incentives for the private sector to tailor products for those customers. As we have indicated, we believe there are clear benefits for providing Centrepay as an option for paying the most essential, recurrent expenses. However, commercial payment systems will be better suited for some purchases than Centrepay and Government should be careful to not crowd those options out of the market.

It is important to note that, even if Centrepay is not available for some purchases, many other options still exist. Where another option is better suited than Centrepay for different purposes, they should be more actively promoted. For example, we believe that:

- Centrelink Advance Payments may be a better option for covering one off emergencies (eg doctors bills, car repairs) than Centrepay;
- No Interest Loans Schemes or Centrelink Advances may be better suited to purchases of large lump sum purchases (eg, household appliances, tyres); and
- mainstream direct debit or automated payments organised by the consumer through internet banking may be a better option for non-essential or less essential recurrent expenses like personal loans, rent to own arrangements.

<u>Future opportunities and directions for the Centrepay service</u>

We believe the most important future directions for Centrepay are to improve the uptake and/or reduce barriers to the use of Centrepay for rent, car registration and basic insurance. We have discussed these points above.

Please contact David Leermakers on 03 9670 5088 or at david@consumeraction.org.au if you have any questions about this submission.

Yours sincerely
CONSUMER ACTION LAW CENTRE

Carolyn Bond	David Leermakers
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Appendix 1 - Regulation of consumer credit and consumer leases

A rent to own arrangement is a contract made to look like something it is not; 'a Loan in Lease Clothing'.[21] They allow the lease provider to attract business by offering what is in substance a credit contract, while avoiding the higher regulatory burden that applies to credit providers. In our view, Rent to Own arrangements are only able considered leases because the lease providers structure their contracts to exploit a loophole in the National Credit Code.

Consumer credit and consumer leases are both regulated by the National Credit Code[22].

What is 'credit'?

As briefly as possible, 'credit' is where a debt is owed by one person (the debtor) to another (the credit provider) but payment of that debt is deferred. The National Credit Code generally regulates credit contracts where:

- the debtor is an individual;
- the debt is incurred for personal, domestic or household purposes;
- the credit provider is in the business of providing credit; and
- a charge is made for the provision of credit.[23]

What is a 'consumer lease'?

For the purposes of the National Credit Code, a consumer lease is a contract where an individual (the lessee) hires goods from a business (the lessor), but the contract does not create a right or an obligation for the lessee to purchase the goods. As with credit, the National Credit Code only regulates contracts where the lessor is in the business of providing leases and a charge is made for the lease of the product.[24]

Note also that the credit code only applies to consumer leases in which the consumer is required to pay an amount in lease payments which exceeds the value of the goods.[25] Lease agreements where the price paid will be less than the price of the goods rented (such as renting a car for a weekend) are not regulated by the Credit Code.

The most significant part about the definition of a consumer lease for the purposes of this paper is that a consumer lease cannot create a right or an obligation for the consumer to own the goods being leased. If a contract does create such a right or obligation, the Code deems it to be a 'sale by instalments' and requires it to be regulated as a credit contract.[26]

Although both consumer credit and consumer leases are regulated by the same piece of legislation, credit contracts are regulated more tightly than consumer leases. These differences

[21] As it was described in the Micah Law Centre's 2006 report *A Loan in Lease Clothing: Problems identified with instalment based rent/purchase contracts for household goods.* The report can be accessed from: http://consumeraction.org.au/wp-content/uploads/2012/07/A-Loan-in-Lease-Clothing-report-Micah-Law-Centre.pdf

[22] The National Credit Code is a schedule to the *National Consumer Credit Protection Act 2009* (Cth).

[23] National Credit Code sections 3-5.

[24] National Credit Code sections 169-170.

[25] National Credit Code section 170.

[26] National Credit Code section 9.

mean that there is less regulatory burden around the provision of consumer lease than credit contracts, and so some incentive to providing leases rather than credit.

The problem - 'Rent to Buy' or 'Rent to Own' arrangements

The definitions in the Code reflect the differences between the standard conceptions of a credit contract and a lease, that is:

- In a credit contract, a consumer intends to own goods but cannot afford to purchase them upfront. The consumer receives a loan from a credit provider, takes ownership of the goods and ultimately pays a charge (in interest or fees) for the ability to access funds in advance.
- In a typical lease, a consumer never intends to own the goods they are renting. They merely wish to have possession and use of those goods for a certain period and then return them to the provider. The consumer pays a premium for the ability to access the goods without having to purchase them upfront.

To the extent that a consumer lease meets this typical definition, there is a clear conceptual distinction between a credit contract and a lease. However, that distinction becomes blurred when lease providers offer 'Rent to Buy' or 'Rent to Own' arrangements. These arrangements are offered by many lease providers and provide that if a consumer rents a product for a minimum term they may then (effectively) take ownership of it.

As discussed above, a consumer lease contract cannot ever create a right or obligation for the consumer to purchase the goods. If it does, it ceases to be considered a lease and instead is regulated as credit. However, this is exactly the model of a Rent to Own contract—by leasing the goods for a certain period, the consumer has effectively purchased them.

To ensure that their product can be classified as a lease (despite the requirements of the Credit Code) providers of Rent to Own deals include complex and artificial terms in their contracts. For example:

- the contract of one lessor provides that, after renting goods for 36 months, the consumer can offer to purchase 'similar' goods for $1. That is, the consumer accrues a right to purchase (or offer to purchase) different goods, not the goods they are renting;
- others allow the lessee to nominate a person to whom the rented goods can be given as a gift after the completion of the minimum term. In this way, the consumer never accrues a right to purchas the goods under the contract, but can ensure they keep possession of the goods by, for example, gifting them to their husband or wife;
- another lessor allows customers to 'keep' the goods (without technically 'purchasing' them). At the end of the minimum term, the lessee is permitted to keep the goods by paying an additional fee and entering into a new lease of indefinite term.

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Law reform is underway but it will not solve these problems

Reform of the law concerning consumer leases is currently underway. This reform is welcome and indeed overdue. However, this reform will not address our primary concern with Rent to Own arrangements—that consumers are told that if they rent goods for long enough they effectively gain a right to purchase (or at least 'own') those goods.

The law is very clear that a consumer lease cannot ever provide a right or obligation for the consumer to purchase the goods being leased. This definition is not being changed by the current reform and nor should it be. What is needed is enforcement of the existing law to ensure Rent to Own arrangements—which in substance operate as credit contracts—are regulated as credit contracts.

Appendix 2 - Meaning of 'Judgment Proof'

By judgment proof, we mean that a debtor is effectively protected from recovery action by a creditor because any such action would likely be fruitless.

For example, income of less than around $48,000 per annum, basic household goods and motor vehicles worth less than $7,200 cannot be accessed by creditors through bankruptcy proceedings[27]. That being so, a creditor will not bother to force such a debtor with income and assets below this level into bankruptcy.

Further, section 60(1) of the Social Security Administration Act 1991 (Cth) provides that

> A social security payment is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

The Victorian *Judgment Debt Recovery Act 1984* also prevents instalment orders being made against a debtor whose sole income is derived from Commonwealth benefits unless the debtor consents[28]. Victorian court rules also prevent creditors from obtaining garnishee orders in relation to social security income.[29] A debtor who owns only basic household goods and receives income of less than the Bankruptcy Act threshold and/or receives only Centrelink benefits is thereby protected from debt collection.

There are sound reasons why creditors are not permitted to collect debts from people in this situation. Forcing a person with low income and no assets to repay an unaffordable debt will rarely end in a creditor recovering their money, and never without forcing the debtor into destitution. Further, it is the stated intent of Parliament that Centrelink benefits are 'inalienable' because they are provided to allow the recipient to maintain a basic standard of living.

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[27] Bankruptcy Act sections 139K and 116(2)(ca); ITSA *Indexed Amounts*, current at 23 January 2013. The income figure is based on a debtor with no dependants.
[28] Section 12.
[29] See, eg, order 72.01, Magistrates' Court General Civil Procedure Rules 2010 (Vic).