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Committee Secretary
Senate Standing Committee on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
E-submission only: community.affairs.sen@aph.gov.au

Dear Committee Secretary,

ALHR submission: *Centrelink's compliance program*

1. Australian Lawyers for Human Rights (**ALHR**) is grateful for the opportunity to provide this submission in relation to Centrelink's compliance program.
2. ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and Specialist National Thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas. ALHR welcomes the opportunity to comment on the Senate's inquiry into Centrelink's compliance program.
3. The Centrelink debt program was established in July 2016 by Centrelink, within the Department of Human Services (**DHS**). It commenced using a new online compliance intervention system for raising and recovering debts. The use of this automated system has been colloquially referred to as 'Robodebt'. Whilst the system has been somewhat modified in response to various inquiries and feedback, it remains deeply problematic and raises significant human rights concerns, particularly in respect of Australia's

international legal obligations under the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*.¹

4. Before Robodebt commenced, DHS would typically investigate and pursue around 20,000 overpayments each year. Under Robodebt, debt collection increased to 20,000 overpayments each week.² The most recent Senate estimates suggest that around 6,000 reviews – where an alleged debt is raised – are now conducted each week.³

5. The system appears fundamentally flawed in respect of the following:

- a. The method of calculating the alleged debt (with a large number of debts raised incorrectly):
 - i. Reliance on data-matching between Centrelink and the Australian Taxation Office. The available data is incomplete and inappropriate for use in this way. It strongly disadvantages people in casual employment (of which people with disabilities are disproportionately overrepresented) and provides an inaccurate assessment of their entitlement.
 - ii. Date-matching relies on underlying assumptions that have not been proven to be error-free e.g. all information in the database is accurate, the algorithms for data-matching and extrapolation of outcomes are accurate, and data-matching between disparate sources is reliable
 - iii. Averaging of income is fundamentally flawed and should be discontinued immediately.
- b. Failure to adequately evidence the alleged debt before issuing a notice. There appears to be a heavy reliance on assumptions.
- c. The onus being placed on the recipient to disprove the alleged debt. These people are often disadvantaged by not having access to relevant records (including details about how DHS calculated the debt).
- d. Inadequate staffing levels within DHS to assist recipients in relation to inquiries. The problems with Centrelink's customer service are well documented. The ability of recipients to access information and complaints processes will remain significantly hampered until the Federal Government provides appropriate levels of funding and staffing.

¹ International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 22; Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3rd Sess, 183rd Plen Mtg, UN Doc A/810 (10 December 1948) Art 22.

² Amie Meers, Suseela Durvasula, Thomas Newton, Louise Macleod (2017) 'Lessons learnt about digital transformation and public administration: Centrelink's online compliance intervention' Commonwealth Ombudsman, p.1

³ Department of Human Services (2019) Evidence provided at Senate Estimates, Community Affairs Legislation Committee, Friday 5 April, https://www.aph.gov.au/~media/Estimates/ca/bud1920/Hansard/Community_Affairs_Legislation_Committee_2019_04_05_7050.pdf?la=en p.129

- e. Inadequate training of DHS staff both in terms of the law, DHS processes and practices and how to adequately relate to vulnerable people.
 - f. Dispute resolution processes remain difficult and unfair. There is nothing particularly timely about decision-making. The legislation governing payments from DHS is extraordinarily complex and beyond the understanding of most. Whilst the Administrative Appeals Tribunal is less formal than a Court, it remains a daunting and formidable process that few will navigate, especially without some form of support.
 - g. The use of debt collection agencies that may not comply with debt collection guidelines (let alone be trained in how to communicate with vulnerable people).
 - h. Disproportionate impact on some of the most vulnerable members of our society, especially people with living with a disability. These people already experience higher rates of poverty. In addition, they are likely to face additional difficulties accessing relevant information and can require support to make basic inquiries or to register a complaint or appeal. The disadvantage is further compounded for those living in rural and remote areas. Already overwhelmed services (including community legal centres and financial support services) are unable to cope with the increased demand and this leaves many vulnerable people without adequate recourse.
6. The use of an automated decision-making system as a means of collecting debts relating to social security entitlements engages a range of human rights. Most relevantly, the right to social security is protected by Article 9 of the ICESCR.⁴
7. As a party to ICESCR, Australia must fulfil this right by establishing a social security system, within the government's maximum available resources, to support access to social security support without discrimination.⁵ While everyone has the right to social security, nation states should give special attention to those 'who traditionally face difficulties in exercising this right'.⁶ In addition, governments must ensure that eligibility criteria for social security benefits are 'reasonable, proportionate and transparent'.⁷ Further, any 'withdrawal, reduction or suspension' of social security benefits should be circumscribed and 'based on grounds that are reasonable, subject to due process, and provided for in national law'.⁸

⁴ International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 22; Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3rd Sess, 183rd Plen Mtg, UN Doc A/810 (10 December 1948) Art 22.

⁵ UN Committee on Economic, Social and Cultural Rights General Comment No. 19: The right to social security (Art 9 of the Covenant), 39th session, UN Doc E/C.12/GC/19 (4 February 2008), [4].

⁶ Ibid [31].

⁷ 14 Ibid [24].

⁸ Ibid [24].

8. The right to social security has been recognised as an enabling right, supporting the realisation of a range of human rights in the ICESCR and other human rights treaties, such as the right to an effective remedy,⁹ provision of child care and welfare,¹⁰ right to health,¹¹ right to work,¹² and right to an adequate standard of living.¹³ In addition, social security plays an important role, ‘through its redistributive character ... in poverty reduction and alleviation, preventing social exclusion and promoting social inclusion’.¹⁴ Any system that arbitrarily interferes with people’s social security entitlements will be likely to interfere impermissibly with the ICESCR rights discussed above.
9. The implementation and management of Australia’s social security system does not comply with our obligations under the ICESCR. Australia is, arguably, also in breach of obligations under the *Convention on the Rights of Persons with Disabilities (CRPD)*.¹⁵
10. ALHR submits that the current debt program is manifestly unjust. The raising of alleged debts that are incorrectly calculated within a system that has little regard for the wellbeing of the most vulnerable in our community is in direct contrast with the obligations under the ICESCR. It is imperative that the Federal Government take immediate steps to address the issues and reform the system to ensure compliance with our obligations.

Recommendations

11. ALHR recommends the following:

- a. That Robodebt be immediately abolished. If this does not occur:
 - i. Robodebt should not be used with recipients who have been flagged as vulnerable (and DHS should revise and improve processes for identifying vulnerable recipients);

⁹ International Covenant on Civil and Political Rights, opened for signature on 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976), Art 2(3).

¹⁰ International Convention on the Rights of the Child, opened for signature on 20 November 1989 (entered into force 2 September 1990), Art’s 3(2), 18(3).

¹¹ International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976), Art 12(1).

¹² International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976), Art 6.

¹³ International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) Art 11.

¹⁴ UN Committee on Economic, Social and Cultural Rights General Comment No. 19: The right to social security (Art 9 of the Covenant), 39th session, UN Doc E/C.12/GC/19 (4 February 2008), [3].

¹⁵ Opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008)

- ii. individuals who receive Centrelink debt notices should be given more information about the basis of the debt, including copies of their debt schedule setting out their alleged overpayments across each fortnightly payment period;
 - iii. if there is insufficient evidence to prove the debt, DHS should refrain from raising a debt or taking any debt recovery action until such evidence is obtained by DHS using its power to request information directly from employers and financial institutions; and
 - iv. the recovery of old debts should not be pursued, especially where these debts allegedly accrued more than 6 years ago, particularly in cases where it is obvious that the person is of old age, suffering from ill health, living with disabilities, or in an obvious state of hardship.
- b. The Federal Government convene a roundtable of experts in social security, including people affected, to redesign a fair, accurate and human rights compliant system of debt recovery.
 - c. The Federal Government cease outsourcing the administration of income support to private operators.
 - d. The Federal Government strengthen the capacity of DHS to meet need by increasing permanent staffing levels.

ALHR is happy to appear before the Committee or to provide any further information or clarification in relation to the above if the Committee so requires.

Yours faithfully,



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