

# rights review

NEWS & COMMENT ON SOCIAL SECURITY ISSUES

## voucher proposal – wrong solution

**C**ommunity welfare organisations have unanimously rejected the Government's recently announced voucher plan for irresponsible parents.

Under the proposal, announced by Mal Brough, Minister for Families, Communities and Indigenous Affairs at the recent ACOSS Congress in Sydney, "parents who blow welfare cash on booze and gambling could be forced to surrender part of their benefits to ensure their children are fed" (Herald Sun).

State authorities would be expected to identify children at risk in homes where they believe Social Security payments are wasted on drugs, alcohol or gambling. In such cases, Mr Brough proposes to withhold up to 40% of the parent's Social Security payment (it is not clear whether this includes FTB) to be available only in the form of direct payments such as food vouchers to Woolies.

### real problem – wrong solution

There is no doubt that in a number of families affected by addictions, many parents act irresponsibly to the detriment of their children. No one in the community welfare sector denies this is a problem as we have to work with this on a daily basis.

And there is no doubt that in such circumstances there is a certain immediate attraction in populist control proposals. They certainly go down well in talk-back radio land. But as with ever tougher prison sentences, such proposals simply allow politicians to be seen to be addressing the issue, they do not actually solve the problem.

Under Mr Brough's proposal, aside from the practical implementation difficulties and enormous skill of people with addictions in thwarting such mechanisms, the problem will still be there in two, four, six years time.

Where a parent is not living up to their responsibilities it is no solution to take over those



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## Welfare Rights Centre

**W**elfare Rights Centre is a community legal Centre which specialises in Social Security law, providing advice and representation on all Social Security matters, including appeals. The Centre also provides education and training, and is active in community development, law reform and lobbying.

[www.welfarerights.org.au](http://www.welfarerights.org.au)

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## voucher proposal – wrong solution

responsibilities. The addiction is the problem that must be addressed, yet there are six to 12 month waiting lists for people with addiction and substance abuse problems to get therapy and counselling under the Commonwealth Government's own Personal Support Program. It would be far better if the Government put its time, energy and resources into addressing this shortfall and delay.

### “the task is to educate, not to dictate”

As ACOSS President Lin Hatfield Dodds said in response:

“while it is imperative that children be protected from harm, solutions to drug and alcohol abuse cannot be addressed by welfare payments, instead we need to provide services like counselling, rehabilitation and training so that people have the skills and support they need to get their lives back on track”.

The National Welfare Rights

Network dismissed the proposal as short-term, paternalistic and impractical and argued that, just as Noel Pearson has determined in dysfunctional communities in the Cape, the solution has to be one that is embraced by the recipients, not one that is imposed. Families have to be counselled and encouraged into voluntary programs of income management and dedication of portions towards such things as rent and food, or they will simply find ways around the imposed system whenever the addiction demons haunt them. As Noel Pearson's colleague Megan Irving argues, the task is “to educate, not to dictate”.

Minister Brough has committed himself to serious consultation with both state government authorities and community welfare organisations. Let us hope that in this process a consensus will emerge around a genuine solution or approach to these issues. ▲

## youth allowance granted

Karen was 12 when she arrived in Australia in 2002 with her mother. Her mother had entered into a defacto relationship with an Australian citizen and had arrived in Australia on a spouse visa. After some time, Karen was involved in serious conflict with her stepfather and left the family home. As a result of leaving the family home her visa status changed from a permanent visa to a bridging visa. Karen subsequently lodged claims for Special Benefit and Youth Allowance.

Her Youth Allowance claim was rejected on the grounds that she had not served the two year Newly Arrived Residents Waiting Period. Centrelink's initial position was that only the period when Karen was the holder of a permanent

visa, and not a bridging visa, could count towards the waiting period. Her claim for Special Benefit was rejected on the basis that even though she had suffered a “substantial change to her circumstances” beyond her control, the change, in Centrelink's view, occurred when she was the holder of the bridging visa, not when she was a permanent resident, which, under Social Security policy, prevented granting of Special Benefit.

An appeal was lodged to an Authorised Review Officer (ARO) about the rejections of these claims. The ARO granted YA stating that the initial decision was incorrect as the waiting period could be served while a person was the holder of a bridging visa.▲

# no payment periods on the increase

**In a disturbing sign for vulnerable people reliant on Social Security for their livelihood, there has been a significant increase in the number of eight week no payment periods under the new compliance regime, introduced in July 2006.**

Under the new regime, an eight week no payment period is applied for a third offence in a 12 month period. However, it is also applied immediately for a number of "more serious" offences, namely:

- ♦ refusing an offer of a suitable job without a reasonable excuse;
- ♦ resigning from a job without good reason;
- ♦ failing to participate in full-time "Work for the Dole"; and
- ♦ being dismissed from employment due to misconduct.

From 1 July 2006 to 30 September 2006, 1,940 eight week no payment penalties were handed out. This compares with only 1,400 for the same period last year, constituting a 39% increase. Even more ominous, unofficial figures indicate that in the seven week period from 1 October 2006, a further 1,825 people have been subjected to an eight week no payment penalty. If this trend continues, 14,000 to 16,000 people will be subjected to an eight week no payment penalty before the end of this financial year.

## W2W and "work choices"

We understand that 1,366 of these "first strike" eight week no payment penalties related to people "voluntarily" leaving a job and that the majority of these quit because of either bad or downgraded conditions in the workplace. In this way, the "Welfare to Work" legislation can now be seen to be working hand in hand with the "Work Choices" legislation.

Under the new compliance regime, certain "very vulnerable" people who are subjected to an eight week no payment penalty are entitled to "financial case management". Under "financial case management",



a small number of contracted welfare agencies receive funding from the Federal Government to "case manage" vulnerable people who have had the eight week no payment period imposed, by working out which of their bills should be paid each fortnight and recommending this to Centrelink. It is then up to Centrelink to pay the bills directly including the provision of food vouchers.

## vulnerable people

For the period July to November 2006, only about 244 recipients have benefited from this "financial case management" - 226 parents and 18 "very vulnerable" people. The Federal Government had estimated that approximately 5,000 people would be eligible for "financial case management" during the first year of its operation, which, despite the large number of eight week no payment penalties, now

seems unlikely. Even if that target is reached however, it would leave another 8,000 no payment penalty recipients hungry and out in the cold.

As with any Centrelink decision, under Social Security law a person has the right to appeal the imposition of an eight week no payment penalty. However, up until 20 November 2006, only 23 appeals had been lodged against the decision to impose the eight week no payment penalty. In our experience with such matters, such a limited number of appeals reflects both the lack of knowledge and lack of faith. Too many of those who suffer such penalties have no knowledge of the review and appeals system and too many others have no faith in anything to do with the Social Security system. This, rather than acceptance that the Centrelink decision was correct, is the more likely explanation of the low appeal numbers. ▲

# refugee activity exemption under threat

**S**ocial Security policy provides that once a person in Australia is the holder of a humanitarian or refugee visa they are automatically exempt from the Newstart Allowance (NSA) and Youth Allowance (YA) activity test for up to 13 weeks. This policy recognises the trauma that refugees may have experienced and provides them with some breathing space to settle in Australia once their refugee status has been determined. Most people agree that this is a sound policy.

However, the National Welfare Rights Network (NWRN) was recently informed that the Federal Government is considering removing this automatic exemption. We understand that the proposed policy would require each person to make a specific application for an activity test exemption. Whether or not an exemption was granted, and the length of the exemption, would depend on the person's particular circumstances.

The prospect that a refugee would be subject to participation penalties during their first 13 weeks in receipt of NSA/YA is alarming. This is at a time when refugees would be coming to terms with settling in Australia and would be looking for accommodation, arranging for income support payments, settling children in school, establishing links with community organisations and the like. It is a time in their life when they should be granted some leeway while they acclimatise themselves to a new country (see case study this page).

## minister's response

The NWRN wrote to Dr Sharman Stone, Minister for Workforce Participation, to voice our concerns about the proposed policy.

In her response, Dr Stone stated that the Australian Government: "recognises the rich and diverse contribution to Australian society made by humanitarian and refugee entrants."

The Minister went on to say: "At this particular time, no decision has been made to remove the

automatic exemption from the activity test. However, the Government is concerned that the blanket automatic exemption has the potential to effectively disadvantage refugee entrants by creating an environment in which they come to accept their dependence on income support and do not take advantage of the opportunities that participation in Job Network and other employment services can offer."

However, as the Minister acknowledges in her letter, it is not necessary to remove the automatic exemption from the activity test to provide refugees with access to the

Job Network:

"humanitarian and refugee entrants are eligible for the full range of Job Network services from the day of their arrival in Australia. This eligibility for voluntary access to the Job Network within the first 13 weeks of arrival has been in place since early 2005."

As this is the case, it is not necessary to remove the automatic exemption to enable humanitarian and refugee entrants to access the services of the Job Network and other employment services.

"rights review" will keep readers posted of any developments in this area. ▲

## case study

Alex recently arrived in Australia as a refugee. Immediately after arriving in Australia he enrolled in a full-time English course and received Youth Allowance (YA). After completing the four month course he intended to enrol in another course at TAFE. However, he was advised that to enrol in a trades-based course he needed to be an apprentice. Alex looked for an apprenticeship but unfortunately could not find one. He did not inform Centrelink that he had stopped studying full-time and thought that he was eligible for YA as he was looking for work and intending to study. However, as he was not a full-time student he was deemed not to be eligible for YA. A debt of \$3,500 was raised.

When Alex contacted the Welfare Rights Centre, Centrelink had commenced recovering the debt from his YA. We lodged an appeal on his behalf to Centrelink. Centrelink acknowledged that it had been unfair to recover the debt and within five days of the appeal being lodged it had reversed its decision. An excellent outcome for Alex but the question remains: how many decisions like this have been made by Centrelink which are not appealed?

This case clearly highlights the need for special consideration to be given by government agencies and departments when dealing with newly arrived residents, in particular people who are granted refugee status in Australia. ▲

# labor and the community sector

In mid-November 2006, the former leader of the ALP, Kim Beazley gave the opening address at the Federal Labor Community Sector Forum in Canberra announcing plans for a stronger partnership with the community services sector. The speech contained a number of promising undertakings which we can only hope will also be supported by the new Leader of the Opposition, Kevin Rudd.

Mr Beazley announced a *Strong Communities Partnership* which would aim to build "strong and resilient communities" and would mark an historic shift in the relationship between the Commonwealth and community sector organisations.

## guaranteed consultation

The *Strong Communities Partnership* would be aimed at helping those who are "most disadvantaged... and would acknowledge and respect the community sector's role in providing essential services, providing community infrastructure and speaking out for those who would otherwise remain unheard". This was underlined in the *Strong Communities Partnership Program* objectives. Some of the objectives include:

- ✦ guaranteed consultation on all policy issues that affect the community sector;
- ✦ establishing funding principles to ensure the community sector is sustainable and achieves results;
- ✦ building capacity within the sector so it can provide sustainable, quality services;
- ✦ ensuring uniformity of dealings and principles across government departments;
- ✦ recognising the diversity of the community sector's structure and function; and
- ✦ cultivating and supporting the important advocacy role played by the community sector.

**The Partnership was widely welcomed by participants in the Forum many of whom argued that it provided important recognition of the full scope of the role of the community sector**

## advocacy role recognised

Mr Beazley said that: "In return... I would expect the community sector to maintain high standards of governance, to meet accountability requirements and commit to the best

practice." He went on to say that: "The Commonwealth Government and the community sector have many shared values, goals and tasks... [Our] common goals... can be pursued collectively and collaboratively."

The *Partnership* was widely welcomed by participants in the Forum many of whom argued that it provided important recognition of the full scope of the role of community sector organisations as policy advisers to Government and public advocates for their constituents and clients, not just as the contracted service delivery arm the Government. ▲

## new centrelink charter

**Centrelink has recently released its new Customer Service Charter. The revised Charter promises an increased availability of Centrelink services as well as a respectful and non-discriminatory complaints process.**

Under this new charter, Centrelink claims that 70% of all calls will be answered within two and a half minutes, queue lengths will be shortened and that the resolution of complaints will be dealt with "as quickly as possible". Furthermore, Centrelink pledges to "clearly" explain their decisions and to tell customers about their rights and responsibilities.

The Charter actively encourages Centrelink clients to leave feedback

and guarantees that Centrelink officers will not discriminate against those who have made complaints. Centrelink does however ask that people assist the process by having their Customer Reference Numbers (CRN) ready when they ring or visit along with any other relevant information close at hand.

The Customer Service Charter is available on the Centrelink website [www.centerlink.gov.au](http://www.centerlink.gov.au) ▲

# ombudsman's report: centrelink tops complaints list – again!

In the last financial year, 42% of all complaints to the Commonwealth Ombudsman were about Centrelink. The majority of complaints were about Newstart Allowance (19%), Family Tax Benefit (16%), Disability Support Pension (14%), Parenting Payment (12%) and service delivery (9%).

The Commonwealth Ombudsman's Annual Report raises a number of areas that have also been of concern to the National Welfare Rights Network (NWRN) over a number of years.

A common complaint was about the absence of reasons for Centrelink decisions, or the inadequate explanations given by Centrelink. The administration of the Pension Bonus Scheme also resulted in a series of complaints with the Ombudsman set to produce an "own motion" investigation into problems with this scheme in late 2006. In fairness to Centrelink, however, the legislation with regard to the Pension Bonus Scheme is fraught with difficulties and the legislation needs to be amended if many of the problems associated with this payment are to be avoided.

Questions were also raised about nominee arrangements (where a person can authorise another person to act for them and make changes or receive payments on their behalf), and whether Centrelink was "being sufficiently rigorous" in its oversight of these arrangements.

The "banning" of clients from offices and the lack of a nationally consistent approach to this practice was also a point of criticism. Centrelink has consulted a range of organisations, including both NWRN and the Ombudsman on this issue, and Centrelink expects to have a response to community concerns about current procedures early in 2007.

## child support complaints

Complaints about the Child Support Agency (CSA) accounted for 11%



of all complaints. The main areas complained about were the CSA's registration and interpretation of court orders, the accuracy of its advice to parents and its actions in withholding or disbursing child support funds. In some cases, the CSA was found to have provided incorrect advice, obliging clients to seek compensation under the Compensation for Detriment caused by Defective Administration scheme.

In a small number of cases, the Ombudsman's investigations were hindered by significant delays in obtaining information and documents by the CSA. Difficulties also arose in prompting the CSA to instigate internal action to remedy an identified problem.

## irritating, "unavoidable" problems

The Ombudsman's Annual Report also examined a range of general administrative problems and found

that many stemmed from the "sheer complexity of legislation and administrative schemes", especially when applied to the varied circumstances of thousands of clients. Many of the problems that clients experience with government departments are not major in themselves, but, according to the Ombudsman, "cause irritation as they can add to the stress of daily life, and often seem unavoidable".

These irritants include waiting at the counter or on the telephone, receiving a letter that is difficult to understand or has a harsh tone, and being told that the contact person has left or has changed. Because of the frequency and variety of the ways that people now interact with government agencies, the Ombudsman suggests that such problems will increase over time. It encourages government agencies to eliminate or reduce administrative burdens when planning or delivering services. ▲

# raid powers dumped

**I**n September this year the Government proposed new laws that would give Centrelink officers police-like powers to obtain a warrant from a magistrate and enter the premises of a Social Security recipient. Under the proposal, where Centrelink believed there was evidence that a person was committing Social Security fraud and a warrant was obtained, Centrelink officers would be able to search and seize documents and other materials once they had entered the premises.

The proposed laws would also have allowed Centrelink officers to use reasonable force to enter premises, and to take photographs or video, access computers and copy data.

These proposals differ considerably from current laws under which Centrelink officers have to ask the Australian Federal Police (AFP) to obtain a warrant and search premises if required. Centrelink staff may accompany the AFP but they have no separate powers.

## NWRN concerns

The National Welfare Rights Centre (NWRN) and other community groups were extremely concerned about these proposals. Fortunately the matter was referred to the Senate Committee on Legal and Constitutional Affairs for an inquiry. The NWRN made a written submission and gave oral evidence to the Senate Inquiry.

The NWRN believed that it would be a grave mistake to give Centrelink officers (as opposed to the AFP) the power to enter, search and seize from the private premises of a Social Security recipient.

Although bureaucrats from other Commonwealth Government agencies have similar powers to those proposed for Centrelink, it was the NWRN's assumption that in those cases, the majority of such warrants are not used to search private premises, but rather workplaces, offices or places of business in search of relevant written material or documents (such as evidence that shows a person is working or is unlawfully in Australia).

The NWRN was concerned that Centrelink would use the proposed search and seize powers primarily in relation to marriage-like relationship investigations. These

are highly sensitive, personal, intrusive and largely subjective matters that require an holistic decision to be made, based on a number of criteria (eg social, financial, sexual and other relationships between the alleged partners where even proof that they live in the same premises is not proof of a marriage-like relationship).

The NWRN highlighted that children can be affected by such investigations. In our experience, AFP searches regarding whether a person is living with a partner may involve the seizure of a broad range of a family's personal items which may include children's belongings. Evidence seized can include diaries, personal correspondence (letters, greeting cards, party invitations), with attempts to identify clothing potentially belonging to the alleged partner. This is highly intrusive and distressing for the families involved.

## senate inquiry

Further, the NWRN suggested that the wider community does not have the confidence in Centrelink to fairly, impartially and sensitively exercise powers such as those proposed by the Government in the Bill.

The NWRN proposed that given these issues, it is crucial that any such searches of people's homes should continue to be conducted with the utmost professionalism and care. Only the AFP has the required training to fulfil this function properly. In addition to the police training and experience in such matters, there is also a widespread understanding in the Australian community that police have the power to enter, search and seize on the production of a

warrant. It is not known by many people, if any, that some bureaucrats also have this power and this would be likely to lead to disputation and possibly violence.

## AFP gives critical evidence

At the Senate Committee, Centrelink argued that the AFP was too overstretched with terrorism concerns to respond quickly to welfare fraud offences. The AFP also gave evidence to the inquiry, advising that Centrelink had not approached them with its concerns, noting that it had a very good track record of speedy response, sufficient resources to continue and expressing reservations about the ability of Centrelink's officers to carry out such raids.

A Centrelink employee also put in a submission to the inquiry. He argued that Centrelink's existing fraud unit would misuse the powers because of an adversarial culture that had prejudiced staff against Social Security recipients.

## a rare win

Shortly after the Senate Inquiry finished, and just before the report was due, the Government announced that it was withdrawing the proposed search and seize legislation. The Government reported that it had reached an agreement with the AFP to more effectively work together in executing search warrants.

This was a rare piece of good news for Centrelink clients. Centrelink was making an unjustified grab for powers that Centrelink should never have and the Senate Inquiry soon came to see this. ▲

# social security changes

## what's happening when

### extended qualification criteria for exceptional circumstances drought relief

On 26 October 2006, the Federal Government announced a number of new Exceptional Circumstances (EC) drought relief measures including:

- ◆ extension of current EC declared areas until 2008;
- ◆ reintroduction of assistance for certain previously EC declared areas;
- ◆ increase in the maximum amount of EC Interest Rate Subsidies to \$500,000 over five years and removal of the requirement to have operated independently of Government assistance for at least two of the past five years;
- ◆ new grants of up to \$5,000 for professional business and financial advice for farmers in areas that have been EC declared for more than three years;
- ◆ increase in the cap for farm management Deposits Scheme to \$400,000 and the non-primary production income test to \$65,000; and
- ◆ increased funding for Rural Financial Counselling Services, the Family Relationships Services Programme (social and emotional counselling) and the Country Women's Association (emergency family and community aid grants).

The Government has also announced that Exceptional Circumstances (EC) drought relief assistance (including Exceptional Circumstances Relief Payment and Interest Rate Subsidies) is to be extended to include small businesses in and around EC declared areas which derive at

least 70% of their income directly from agriculture.

**Date of effect: subject to advice from the Department of Agriculture, Fisheries and Forestry**

### assets test – pensioners on farms and rural residential blocks

The maximum amount of land adjacent to a person's principal home that is exempt from assessment under the assets test is currently two hectares, unless the Hardship Provisions apply. There is a bill before Parliament which, if passed, will mean that the two hectare limit will not apply to certain Age Pensioners and Carer Pensioners of Age Pension age living on a farm or large rural block to which they have a more than twenty-year attachment. The home and the land must all be on one title. Any of the land which has commercial value must be being used efficiently (for example, being worked by children or a share-farmer).

It will be possible for a person who qualifies for the exemption to be back paid to 1 January 2007 as long as the person contacts Centrelink between 1 January 2007 and 31 March 2007 to seek assessment under the new rules. An extension to this time limit may apply only in special circumstances to people who seek assessment between 1 April 2007 and 30 June 2007. Backdating to January 2007 will not be possible for a person who seeks assessment after 30 June.

**Proposed date of effect: 1 January 2007, subject to the passage of legislation**

### assets test – all pensioners

Currently, a person who sells their principal home and intends to

acquire a new home can have some or all of the proceeds of the sale of their home exempt from the assets test for up to 12 months while their new home is being acquired (eg while being bought or built). A bill before Parliament proposes to give Centrelink the power to extend that exemption beyond 12 months where the person is unable to acquire a new home. The reason for the delay must be beyond the control of the person and it must be likely that within 24 months the person will use some or all of the proceeds to acquire a new home.

**Proposed date of effect: the date of Royal Assent, subject to the passage of legislation**

### proposed extension of crisis payment to more victims of violence

Currently a person can only qualify for Crisis Payment where they have been forced from their home due to an "extreme" circumstance such as domestic violence, or when they are released from prison or psychiatric confinement. Parliament is considering a bill which would extend Crisis Payment to a person who remains in the home after a family member leaves or is removed because of domestic violence. The person who remained at home and is claiming Crisis Payment must have been living with the family member who left or was removed, must have been subjected to the violence, and must continue to live in the home. Claimants must also qualify for another Social Security payment and be in severe financial hardship. Claims must be lodged within seven days of the family member leaving or being removed from the home.

**Proposed date of effect: the date of Royal Assent, subject to the passage of legislation**

## new “disaster” payment

On 1 December 2006, the Australian Government Disaster Recovery Payment (AGDRP) replaced the former Disaster Relief Payment (DRP). The new AGDRP is a one off tax free payment intended to help victims of major or widespread disasters. It is neither income nor assets tested. The rate of AGDRP is \$1,000 in respect of an adult and \$400 in respect of each child for whom they are the principal carer. It will generally be paid as a lump sum, but may also be paid in instalments. To qualify for the AGDRP a person must, among other things, meet certain residence requirements and be “adversely affected” by a “major disaster”. The Minister will determine whether an event is a “major disaster” and who is “adversely affected”. The event may occur in Australia or overseas and may be either a natural event such as a flood, or a manmade disaster.

**Date of effect: 1 December 2006**

## international social security agreement with Norway

Australia has signed an International Social Security Agreement with Norway. The Agreement is expected to begin operating from January 2007 once the necessary treaty, legislative and administrative processes have been completed in both Norway and Australia.

**Proposed date of effect: 1 January 2007**

## increase in rate of special benefit

The maximum rate of Special Benefit payable now includes an amount equivalent to Pharmaceutical Allowance where the Newstart Allowance rate would include Pharmaceutical Allowance if the person qualified for Newstart Allowance.

**Date of effect: 27 September 2006**

## crisis payment extended to special benefit temporary visa holders

Since 27 September 2006, a person receiving Special Benefit on

a temporary visa can qualify for Crisis Payment. Previously, only Special Benefit recipients with *permanent* visas could qualify for the payment.

**Date of effect: 27 September 2006 ▲**

# beneficial application of legislation

George was in receipt of Carer Payment, however, he stopped providing care and lost qualification for this payment. However, a debt resulted and he received a summons to appear in court, charged with Social Security fraud. Given that George would have been eligible for Parenting Payment during the debt period (which is paid at the same rate as Carer Payment) the decision to raise and recover the debt, plus prosecute him, seemed an extravagant waste of resources for Centrelink’s debt recovery staff, the courts and George’s legal representatives.

When George contacted the Welfare Rights Centre he was about to appear in court. We arranged for the court hearing to be postponed while we lodged an appeal with Centrelink. The basis for our argument was that section 12 of the Social Security Administration Act provides that, in certain circumstances, a person can be transferred between Social Security payments even though a claim was not lodged at the time the transfer may have occurred. This allows for the backdating of payments and in this case, specifically for the backdating of Parenting Payment from the date that the debt started.

## the old section 12 trick!

The Federal Court had previously considered the application of

section 12 in the case of *Burgess and Secretary to the DFACS* (FCA 04/0136). In that case, the Federal Court ruled that section 12 could be used, in certain cases, to backdate a Social Security payment before a claim for that payment was lodged. We sought to apply that ruling to George’s case. After seeking legal advice, Centrelink decided that section 12 could be used for his benefit. This allowed Parenting Payment to be backdated to the date the Carer Payment debt commenced which meant that the debt was wiped.

This is an excellent result for George. However, we are of the opinion that there are many people in such a situation, who are repaying debts where they would have qualified for another Social Security payment at the same rate. Centrelink will not automatically apply section 12 to benefit a person. An appeal has to be lodged specifically requesting that section 12 be considered. This is unfair and provides for an unjust outcome as few people are aware of this provision.

Social Security law, which is meant to be beneficial law, should be amended so that where a person incorrectly receives one payment they do not have a debt raised against them (and possibly be prosecuted) where they could have been eligible for another Social Security payment during the same period. ▲

# new centrelink contact model – old problems emerge

**B**y 30 June 2007, 90% of all Youth Allowance (YA) and Newstart Allowance (NSA) recipients will be required to attend a four minute “Participation Record” interview at their local Centrelink office every fortnight. If they do not attend the interview, their Centrelink payment will not be processed and they will not be paid.

Under other changes, which have been progressively rolled out by Centrelink since mid October 2006, job seekers will be issued with a Participation Record, which replaces their existing fortnightly form, Job Seeker Diary and Mutual Obligation Diary.

Currently, around 63% of job seekers are required to report to Centrelink fortnightly, and in many cases there is only superficial contact with Centrelink staff during this contact.

## participation interviews

At the fortnightly “participation interviews” Centrelink Customer Service Advisers will deliver a series of “Work First” messages which cover a number of broad areas: correct income reporting; adequate job search efforts; referral and program placements, and messages which reinforce that NSA/YA are paid on the condition that a person makes a genuine effort to find work.

Centrelink has also announced that at each fortnightly interview it will more closely check clients’ job search activities, by directly contacting employers to see if a person has approached them about a position as they have claimed in their “Participation Record”. This additional checking will add an estimated \$30 million to Centrelink’s bottom line, and the money will have to be found from increased “efficiencies” in Centrelink’s processes.

## mixed feelings

Welfare Rights has responded with

mixed feelings about the changes, as outlined below:

- ♦ we can see some sense in making sure that jobseekers are made more aware of their responsibilities and understand how to report any earnings, but we question if the four minute interview is the right approach;
- ♦ the result may be that job-seekers are hanging around the Centrelink office for vast amounts of time for only a four minute interview. This could increase conflict between jobseekers and Centrelink staff and the time could be better spent looking for work or undertaking an activity to make them job ready;
- ♦ a person with a disability could be expected to travel for three hours to have the four minute interview, and will have to cover their own transport costs as well. This is yet one more hurdle for people with disabilities on NSA who will have to look for work for 15 hours a week or meet twice weekly with their specialist Disability Employment Provider. They will face increased obligations and be at greater risk of falling foul of the tough new compliance regime;
- ♦ employers may not keep proper records of job seekers who contact them, or may be reluctant to provide the resources to certify to Centrelink that a job seeker’s search efforts were genuine. This could lead to a “participation penalty” being incorrectly imposed;
- ♦ the capacity of Centrelink’s resources to undertake such a significant increase in one-on-one contact will be brought into question. Centrelink’s resources are already stretched as it is responsible for over half of the Job Capacity Assessments and for managing financial case management for people who lose their payments for eight weeks; and
- ♦ this system has been tried in the UK, and has been found to fall well short of expectations. It appears to be just activity for activity’s sake and increases pressure on both Centrelink staff and its clients with little beneficial outcome for anyone. ▲

# social security and new zealand citizens

**N**ew Zealand citizens arriving in Australia are generally granted a “special category visa” allowing them to live and work in Australia. Many New Zealand citizens may not know that a visa has been granted as it is often done “virtually” on arrival and does not involve stamping passports or other paperwork.

A “special category visa” allows New Zealand citizens to remain permanently in Australia, however, it is not technically a “permanent visa”. New Zealand citizens can apply to the Department of Immigration and Multicultural Affairs to become an Australian “permanent resident” but many do not know about this or that this can become extremely important.

However, unless they have been granted Australian permanent residency, New Zealand citizens can generally only claim Social Security payments if they are a “**protected** special category visa” holder. Those who are not, can live in Australia for 20 or 30 years, working and paying taxes only to find, when the need arises, that they are not entitled to any Australian Social Security payments.

## who is a “protected special category visa” holder?

Whether or not a person is a “protected special category visa” holder is complicated and depends on the date of arrival in Australia. A person is a “protected special category visa” holder if they:

- were in Australia on 26 February 2001 and arrived on a New Zealand passport;
- were in Australia for a total of 12 months between 26 February 1999 and 26 February 2001 while holding a “special category visa”;
- received a Social Security payment between 26 February 2001 and 26 February 2004 while holding a “special category visa”;
- were living in Australia on 26

February 2001 but were temporarily overseas and receiving a Social Security payment whilst overseas and returned during the period that the payment was still payable;

- were living in Australia on 26 February 2001 but were temporarily overseas on that day and not receiving a Social Security payment and returned by 26 February 2002 and applied to Centrelink before 26 February 2002 for a determination they were “residing in Australia”;
- arrived to live in Australia after 26 February 2001 but before 26 May 2001 and applied to Centrelink before 26 February 2004 for a determination they were “residing in Australia”

## other entitlements

A New Zealand citizen living in Australia who is not a “permanent resident” or a “protected special category visa” holder may qualify for:

- Family Tax Benefit;
- Maternity Allowance;
- Maternity Immunisation Allowance;
- Child Care Benefit;
- Low Income Health Care Card;
- Double Orphan Pension.

## international agreement

As with many countries, there is an International Social Security Agreement between New Zealand and Australia which sets out the conditions under which citizens of each country may qualify for Social Security in the other country. A New Zealand citizen living in Australia may qualify for Age Pension, Disability Support

Pension or Carer Payment under the Agreement regardless of the date of arrival and without being a “protected special category visa” holder but the conditions vary for each payment type.

## age pension

To qualify for Age Pension under the Agreement, a person must be at least 65 and have lived in New Zealand and Australia for a total of 10 years. Periods of residence in New Zealand can only count if they were between the ages of 16 and 64. Periods of residence in Australia at any age can count towards the 10 years.

## disability support pension

To qualify for Disability Support Pension under the Agreement a person must be assessed as:

- being “severely disabled”, and
- having lived in Australia and New Zealand (with at least one year in New Zealand) for a total of at least 10 years, and
- having become severely disabled whilst living in Australia or New Zealand.

## carer payment

To qualify for Carer Payment a person must be caring for a partner who receives Disability Support Pension and must have lived in Australia and/or New Zealand for at least two years.

## general caution

Rules relating to New Zealand citizens and Social Security are complex. It is best to obtain legal advice from your local Welfare Rights Centre where a New Zealand citizen is seeking or has been denied Social Security. ▲

# spotlight on social security prosecutions

**W**elfare Rights advocates around Australia are contacted on a daily basis by Social Security recipients seeking information and advice about Social Security prosecutions. However, as a general rule, Welfare Rights Centres are unable to provide ongoing advice and assistance in relation to prosecution matters. This is because most Centres are not funded to provide representation in criminal law proceedings. We generally refer clients to the State and Territory Legal Aid Commissions and to private solicitors for advice and assistance.

The National Welfare Rights Network's (NWRN) experience with clients who are being considered for prosecution, who have been referred to the Director of Public Prosecutions, or who have received a summons to go to court, has raised a number of significant concerns about the prosecution process. In particular, concerns have been raised in relation to many of our client's dealings with Centrelink, the Director of Public Prosecutions, Legal Aid Commissions, private solicitors and the Magistrates' office.

The vast majority of defendants in these matters plead guilty once the matter reaches court. The NWRN understands that some people facing prosecution will choose to plead guilty after having received comprehensive legal advice. However, the NWRN is concerned, given that the overwhelming majority of defendants in these matters are unrepresented, that they have not obtained comprehensive legal advice before entering court. We have encountered numerous cases where, when put to the test, the DPP just has not made out its case that a person "knowingly" obtained money to which they were not entitled, or "dishonestly" obtained a financial advantage.

## discussion paper

The NWRN resolved to prepare a discussion paper on prosecution issues for the purposes of liaising with the Legal Aid Commission, the Commonwealth Office of the Director of Public Prosecutions, Centrelink, the Department of Employment and Workplace

Relations, the Department of Families, Community Services and Indigenous Affairs and private barristers and solicitors.

This discussion paper has been prepared and has already formed part of the NWRN's discussions with prosecution staff at Centrelink. Some of the points made in the discussion paper relevant to Centrelink's involvement in the prosecution process are:

- the failure of some Centrelink prosecution officers to consider relevant information about a person's Centrelink file before interviewing a person. NWRN's members have come across numerous cases where a person's Centrelink file contains information that a person has an intellectual disability or mental illness, or has been a victim of domestic violence but this information is ignored by the prosecution staff;
- the failure of some Centrelink prosecution officers to advise a person to obtain legal advice before signing a "statement" about their alleged actions and intentions; and
- the inadequate records made by some compliance staff at Centrelink of their interviews with clients.

We hope to continue our discussions with the other relevant organisations and departments in 2007, and to argue for reform in the way Social Security prosecution matters are dealt with from the time Centrelink initiates investigation to the point that they go before a Magistrate.

If you or your organisation has any concerns about the way in which Centrelink has conducted a prosecution matter, please contact your local Welfare Rights Centre for advice. ▲

## "rights review" now available online!!!

It is now possible to keep up-to-date with all the news and current affairs about Social Security matters by subscribing to "rights review" online.

Should you or your organisation wish to subscribe to the online edition, all you need to do is complete the subscription form at the back of "rights review" (the subscription form is also on our website [www.welfarerights.org.au](http://www.welfarerights.org.au)) and fax it to the Welfare Rights Centre (02) 9211 5268 or send it to:

Welfare Rights Centre  
Level 5, 414 Elizabeth St  
SURRY HILLS NSW 2010 ▲

# sex industry target misses centrelink

**R**eaders of “rights review” will be aware that some of the more traditional areas of the cash economy are being targeted by Centrelink officials. As part of this compliance crackdown, Centrelink investigators have carried out a series of raids, known as Operation Robert, on brothels and strip clubs in and around Sydney’s red light districts.

Centrelink claims that certain cash-in-hand industries are fraught with welfare deception and has justified the latest Operation Robert raids by citing the adult entertainment industry as an area “particularly at risk” of this.

Even though Operation Robert saw only 12 welfare recipients have their payments suspended, it still “serves as a stern warning” said Joe Hockey, Federal Minister for Human Services.

Operations of this nature have also been carried out in Melbourne and Perth.

Centrelink has had more success in other areas as it conducted 10,887 cash economy investigations across the country in the 2005-2006 financial year, cutting payments by more than \$34 million.

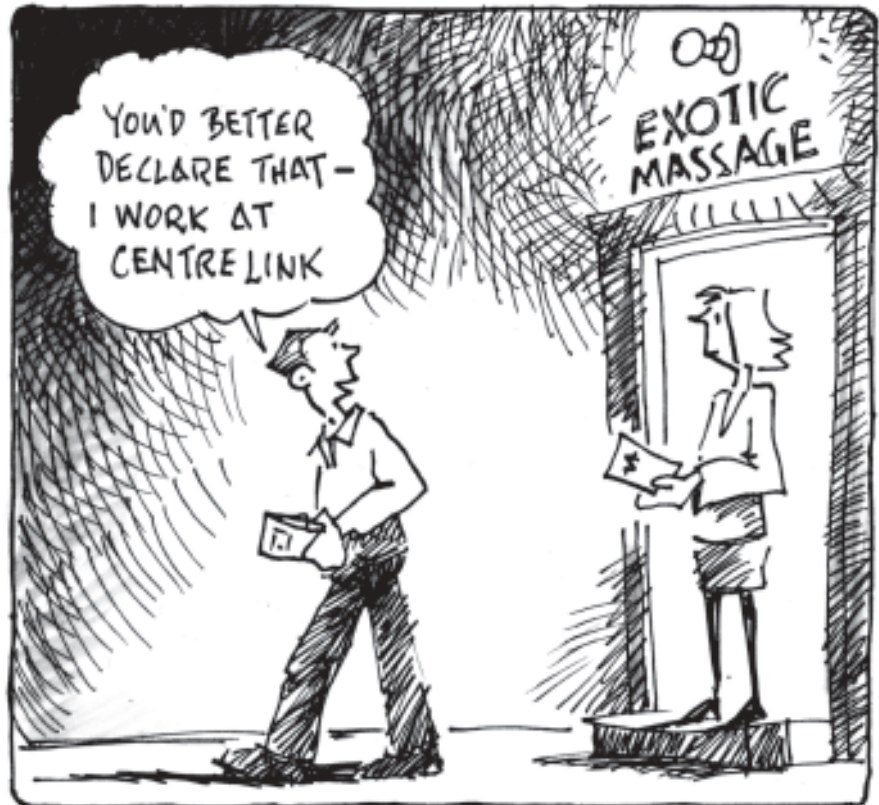
Centrelink is now recruiting new staff to increase its compliance regime.

The National Welfare Rights Network (NWRN) has no dispute with Centrelink’s focus on catching people who fraudulently fail to declare income. However, should the Government seriously wish to reduce debts it also needs to own up to the role that Centrelink errors play in creating debts.

In our experience, Centrelink error causes, or at least substantially contributes to, a significant number of Social Security debts. It is not uncommon for Centrelink to have full information about a family’s income but to still make errors which lead to debts. As a result, many honest Social Security recipients incur Social Security debts after they have provided Centrelink with full details of their assets and earnings only to have Centrelink disregard that information when it grants payment. This is a serious and

longstanding issue which requires Centrelink’s focus and the allocation

of resources if these debts are to be avoided. ▲



## ombudsman given expanded powers

**U**nder recent changes to the Ombudsman Act, the Commonwealth Ombudsman has been given the jurisdiction to investigate the actions of “Commonwealth Service Providers”.

This means that the Commonwealth Ombudsman now has the authority to investigate complaints about organisations that are contracted by the Federal Government to provide certain services. This includes Job Network Providers, Job Capacity Assessors and Financial Case Managers who have the responsibility of “case managing” a person where Centrelink has

imposed an eight week no payment “Participation Penalty”.

This development is no doubt something that will be welcomed by the community sector but nevertheless it will be interesting to see how many complaints are made about services provided by the sector to people whose main source of income is through Centrelink. ▲

# JCA ignores evidence

**M**ost of the case studies that appear in “rights review” are about cases that have involved a lot of work on the part of the Welfare Rights Centre’s caseworkers and sometimes by the client involved as well.

Not so in this case study however!

Max applied for the Disability Support Pension (DSP). His claim was rejected after a Job Capacity Assessor decided that he was capable of working more than 15 hours per week. The Centre was in possession of a copy of his Centrelink file, as we were also helping him in another matter. The Centrelink file included a fair amount of medical information about him, as Max had been in receipt of the DSP in the recent past. It was obvious that the Job Capacity Assessor had not taken this information into account.

The Centre photocopied this information and sent it to Centrelink with a brief letter asking for a new Job Capacity Assessment to be performed and reconsideration of the decision to reject the DSP claim. The new Job Capacity Assessment took place and, after the information on his Centrelink file was taken into account, DSP was granted.

As stated above, this is a relatively simple case-study. The Centre did not spend hours researching the case. All we did was write a brief letter requesting an appeal and photocopy some information. However, this case is worth noting as the information that in the end changed Centrelink’s decision was in Centrelink’s possession anyway. It is quite remarkable that, in order to have Centrelink’s original decision overturned, we had to alert the Job Capacity Assessor to entirely pertinent information that was already on Max’s Centrelink file. Even though a simple solution was found in this case, questions remain: “why did Max have a problem that needing fixing in the first place?” and “how many other people get a negative answer because the JCA has not looked at their Centrelink file?” ▲

## youth allowance debt reduced

**W**here a person is under 21, they may qualify for Youth Allowance if they are unemployed and looking for work, or are a full-time student. The rate of payment is exactly the same in both cases, depending on the person’s circumstances. Where a full-time student discontinues studies and informs Centrelink of this, Centrelink will simply amend the person’s Activity Agreement to require them to undertake certain activities (such as job search). However, where a person fails to advise Centrelink that they have stopped studying, even where they undertake activities such as job search, a debt is raised. Where the debt is above \$5,000 prosecution action may occur.

This is the exact situation Jackie found herself in. She had a \$6,000 Youth Allowance debt as she stopped studying full-time and failed to tell Centrelink. For this oversight she was being prosecuted in addition to having to repay the debt. After she stopped studying Jackie was working part-time, looking for full-time work and intended to enrol in studies when the next semester commenced. In addition, the debt incorrectly commenced from prior to the date she stopped studying.

An appeal was lodged. Centrelink acknowledged that the debt was raised incorrectly commencing from prior to when Jackie stopped studying. In addition, Centrelink accepted that Jackie satisfied the activity test when she was unemployed due to her combination of part-time work and job seeking activities. Only a small proportion of the debt remained after these decisions. The debt amount that remained was due to the fact that Jackie

turned 21 during the debt period and was no longer qualified for Youth Allowance as an unemployed person. Once an unemployed person turns 21 Newstart Allowance is the appropriate payment.

We expect that prosecution action will not be pursued as the debt is now significantly less than \$5,000. Jackie, however, is one of the lucky ones.

The National Welfare Rights Network assists many students in Jackie’s situation where they are in receipt of the incorrect category of YA. Many of these students are prosecuted, despite the fact that they would have received YA at exactly the same rate had their Activity Agreement been amended. Prosecutions for these matters should stop. The Government is not out of pocket in these cases and a criminal conviction can have serious consequences for a young person attempting to enter a profession. ▲

# “hitchhikers guide” to Social Security galaxy - available free

**T**he Independent Social Security Handbook ONLINE is available free to community workers and most state government employees in NSW, Tasmania, South Australia, Queensland and Western Australia. The Handbook ONLINE is available free in these states as the Centre has entered into partnerships with the relevant state government departments to provide this important resource to community workers and state government employees.

Should your job require you to help people with Social Security matters the Handbook ONLINE is the resource to use. The Handbook ONLINE contains 47 chapters, including information on the eligibility criteria for Social Security payments, income and assets tests plus detailed information about a person's appeal and legal rights. All for free!!!

The Handbook ONLINE is updated every quarter to take into account recent changes to Social Security law and policy. It also includes self help forms, such as a form to lodge an appeal to an Authorised Review Officer (ARO), which can be completed and lodged with Centrelink.

If you are in NSW you can access the Handbook ONLINE through the HSNET website ([www.hsnet.nsw.gov.au](http://www.hsnet.nsw.gov.au)).

If you are in South Australia, Western Australia, Queensland or Tasmania you can access the Handbook ONLINE through registering at the National Welfare Rights Network's website ([www.welfarights.org.au](http://www.welfarights.org.au)).

The Centre is currently negotiating with the Victorian State Government in the hope of having the Handbook ONLINE made available to community workers in that state. We shall advise Victorian readers of “rights review” of the outcome of the negotiations. ▲

## centrelink fails to notify nominees

**T**he Welfare Rights Centre recently presented a workshop on the “Welfare to Work” changes to local community workers. Many of the people in the audience were employed by community health organisations that assist clients who live with psychiatric illness and drug and alcohol problems. Given the difficulties faced by their clients in day to day life, these community workers usually act as their client's nominee to Centrelink.

Social Security law states that a person can act as a “correspondence nominee” for another person in some circumstances. In these cases Centrelink “may” send the nominee a copy of any notice sent to the Social Security recipient.

### failed despite nominee not knowing

The feedback given by the community workers was that their clients were often told by Centrelink they would incur a “participation failure” if they failed to attend an appointment even though their nominee had not also been advised. The workers were perplexed that their clients, who obviously had difficulties dealing with Centrelink directly, were being told to attend appointments without their nominee's knowledge.

In most cases the “participation failure” was not actually imposed,

as Centrelink accepted that the person had a reasonable excuse for not attending their appointment. However, the fact remains that important information was not communicated to the formal “nominees” of people who could not deal with Centrelink on their own.

Social Security law now states that a person need not be informed of an obligation to attend an appointment with Centrelink or a Job Network Member in writing. A person may be notified in other ways, for example, over the telephone or by email.

Unfortunately Centrelink's policy does not make it clear that a person's nominee must also be notified where these alternative notification methods are used. It is the Centre's view that this situation needs to be addressed in Centrelink's policy as a matter of urgency. ▲

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