

rights review

NEWS & COMMENT ON SOCIAL SECURITY ISSUES

Twelve months - too long for new penalty system

As part of its review of employment services, the Government has announced changes to the Social Security penalty regime, which could lead to a significant reduction in the number of people who have their payments cut for eight weeks. However, job seekers shouldn't hold their breath waiting for the new system, as it will not come into force until 1 July 2009.

In announcing the changes, the Minister for Employment Participation, Brendan O'Connor agreed with what church, charities and welfare advocates had been arguing for over a decade: that the current system is too harsh, punitive and undermines job seekers' ability to re engage and look for work.

The number of job seekers penalised for eight weeks has doubled from July 2007, with 40,000 losing all income support for eight weeks in the 20 months since the Howard Government introduced its Welfare to Work policies.

be waived if a person agrees to take part in "intensive activities" for 25 hours a week, for eight weeks. "Intensive activities" can include things such as training or work experience. Loss of all payments for eight weeks would be used as a "last resort", and only in cases where a job seeker is "**wilfully and persistently**" not complying with their obligations. If a person cannot undertake intensive activities, these could be waived where the person is assessed by Centrelink to be in hardship or alternative activities can be done.

[\(continued page 2\)](#)

Outline of proposed new system

The current system, under which penalties escalate - three "participation failures" in a year results in a loss of income support for eight weeks - will be replaced by a "No Show, No Pay" policy. Where a person misses an interview with either Centrelink or the Job Network, and does not have a reasonable excuse, their payments will be "docked" for every day that they fail to re-connect and arrange to attend the interview. After three "failures", where a person "persistently fails to meet their requirements", Centrelink will conduct a "comprehensive compliance assessment" to determine whether an eight week no payment penalty should be applied or whether the person needs extra assistance to help them to comply.

First strike penalty to remain

Job seekers who voluntarily leave work without a good reason, who behave in such a way at work that they are dismissed from suitable employment or who refuse a suitable job offer while in receipt of income support "will have to wait eight weeks" before payment.

The eight week no payment penalty can

book launched at the Centre



The NSW Minister for Women, Climate Change & Environment and Minister for Science & Medical Research, The Hon Verity Firth with Eva Cox and Terry Priest (authors) at the launch of "**Welfare to Work: at what cost to parenting**" at the Welfare Rights Centre in Sydney. The report explores the experiences of single parents under the Howard Government's 2006 "welfare to work" changes.

Welfare Rights Centre

Welfare 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

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(continued from p. 1)

Twelve months - too long ...

This means, according to the Government, that there will be no need to retain the current Financial Case Management Scheme.

No grounds to delay 12 months

As "*rights review*" goes to print the Government is undertaking a further round of consultations on the future of employment services, which includes an examination of the new compliance regime. The National Welfare Rights Network has informed Minister O'Connor, that, given the Government's own conclusions that the current system is harsh, unfair and counterproductive, it is unacceptable to leave the current system intact for a further 12 months. For each week that the unfair, harsh and discredited system remains, an additional 1,000 vulnerable job seekers will

have their payments cut for eight weeks.

Transitional measures that could be introduced immediately are required to stop the flow of unfair penalties. Centrelink could begin for example, to undertake comprehensive compliance assessments from 1 July 2008; Centrelink and employment service providers could be allowed more flexibility to use professional judgements and local knowledge to exercise a greater level of discretion in deciding whether or not to impose an eight week no payment penalty, and the DEEWR could expand the strict eligibility criteria for the Financial Case Management Scheme to allow disadvantaged job seekers to have their essential expenses covered during the eight week no payment period. ▲

online edition freely available

Community workers who assist their clients with Social Security problems often rely on the ONLINE edition of the Independent Social Security Handbook to help find their way through the Social Security maze. The ONLINE edition includes information about income and assets tests, the eligibility criteria for all Social Security payments and a person's legal rights under Social Security law. The ONLINE edition is updated each quarter to take into account all recent changes to Social Security law and policy.

The ONLINE edition continues to be freely available to community workers due to a recent grant received by the Welfare Rights Centre from the Law and Justice Foundation of NSW. Previously, the ONLINE edition was available free to community organisations in NSW through an annual subscription by HSNet, however this annual subscription was not renewed due to a lack of funds. The Law and Justice Foundation of NSW has provided a grant to the Centre so that we can continue this service for at least the 2008 year. In the meantime the Centre is

seeking alternative sources of funding to ensure that community organisations have free access to the ONLINE edition for 2009 and beyond.

The ONLINE edition can be accessed simply by registering on the Welfare Rights Centre website (www.welfarerights.org.au)

The Welfare Rights Centre again thanks the Law and Justice Foundation of NSW for this grant which allows us to continue to provide this invaluable resource to community workers throughout NSW. ▲

Budget goes easy on Social Security

For the first time in many years, this analysis of the Commonwealth Government's Social Security Budget measures is both brief and not on the front page of "rights review"! This is because this new Government has taken a different approach.

For years the former Government gave out benefits in the form of tax cuts and transfer payments to well off Australians making a political art form of "upside down welfare", whilst at the same time cutting and curbing payments to people of workforce age on Social Security payments, particularly sole parents and people with disability. Rarely did a Budget go by without another dramatic, headline grabbing announcement of a "crackdown on welfare".

The first budget under the new Government, whilst continuing the previous Government's tax cuts and by no means rising to the challenges of repairing past damage or raising benefit and pension rates:

- ✦ was free of the usual levels of pain;
- ✦ included a number of modest but well- founded, improved benefits; and
- ✦ even managed the introduction of some long overdue targeting to reverse some of the worst examples of "well off welfare".

Expansion of Carer Payment (child)

One of the better Social Security measures funded in the Budget is the expansion in the number of people with a severely disabled child who will be able to get the pension rate Carer Payment (child) rather than just the \$100 per fortnight Carer Allowance (child). This will come about through a change in the qualification criteria which, of course, is subject to the passage of legislation.

People who receive Carer Payment (child) will also automatically qualify for Carer Allowance (child) and the access to carer payments will be streamlined to enable people to qualify for short term or episodic care.

In addition to retaining the \$500



Seniors Bonus (\$1.6 billion) and the \$1,000 and \$600 Carer's Bonus for Carer Payment and Carer Allowance recipients respectively, the Government also increased the Telephone Allowance (from \$88 to \$132) and will cease to issue Temporary Protection Visas (TPV) to refugees.

Means testing

As has been well advertised in the commercial media, the Budget contained a number of sensible targeting measures. The most notable of these are the Baby Bonus (to be limited to families with an adjusted taxable income of \$75,000 or less in the six months after the birth) and Family Tax Benefit B (to be limited to families where the primary earner has an adjusted taxable income of \$150,000 or less). These measures are estimated to save \$900 million over four years.

Conditional welfare and same sex couples

A number of other sleeper issues which will have a growing impact on Social Security provisions over the coming years were also

included in the Budget papers. The first is the expansion of "conditional welfare" and, the second is the removal of the differential treatment of same-sex couples and their children from Commonwealth laws in a number of areas including Social Security.

Income quarantining is being imposed on all 19,000 Aboriginal income support recipients in some 80 communities in the Northern Territory. This notion is to be expanded into two pilot projects in Western Australia. Child welfare authorities will be able to request that Centrelink manage parent's income support payments where they believe that the essential needs of children are not being met and that the children are therefore at risk. This measure will cost some \$36m over the next four years.

The removal of the different treatment of same sex couples will result in a massive expansion in the investigation of alleged "marriage-like relationships" by Centrelink to include potentially any two people living together. It is estimated to produce savings of \$83 million over four years as a result of numerous reductions in payments from the higher single rate to the lower couple rate. In addition, many people are likely to lose their income support altogether once their partner's income is taken into account.▲

Youth allowance - a failure and should be replaced

A new investigation by the Welfare Rights Centre has found a number of glaring anomalies which create unjustifiable anomalies in relation to Social Security payment rates for young people. This is in addition to the evidence in the NWRN Budget Submission earlier this year which shows that the Youth Allowance division between students and unemployed people causes massive confusion and debt. The NWRN has concluded that Youth Allowance has been a failure and should be replaced by Newstart Allowance for unemployed young people and Austudy Payment for students.

Payment anomalies for Students

Where a person is under 25, they may receive Youth Allowance (YA), Newstart Allowance (NSA) or Disability Support Pension (DSP), depending on their circumstances.

A student in receipt of the "independent rate" of YA is paid \$355 per fortnight compared with \$437 per fortnight where a person is in receipt of NSA. There can be no justification for this \$82 per fortnight difference, particularly given that it is generally only very vulnerable young people who are in receipt of YA at the independent rate. In order to receive YA at the "independent rate" a person must satisfy one of the following:

- ◆ be a member of a YA couple;
- ◆ have a dependent child;
- ◆ be an orphan;
- ◆ have parents who cannot exercise responsibilities (eg in prison);
- ◆ be a refugee;
- ◆ be in state care;
- ◆ it is unreasonable for the person to live at home (eg there is criminal activity in the home);
- ◆ have been self-supporting for a specified period; and
- ◆ have a "partial capacity to work", have turned 16 and not undertaking full time study.

A person 21 to 24 who is studying full-time can only qualify for YA. A person of the same age who is unemployed may qualify for NSA. The discrepancy in the payment rates cannot be justified on any grounds. How can a system be supported where a person receives a higher rate of payment where they drop out of studies and receive



NSA? The current system provides an incentive for a person to stop studying.

Additional anomalies

Further problems exist for a young job seeker who has a "partial capacity to work". The Government acknowledges that where a person has a "partial capacity for work" this limits their job opportunities and earning potential, therefore allowing them to receive the independent rate of YA, which is not subject to the Parental Income Test (PIT).

Why then have the income support needs of young students with disability been ignored? A young job seeker who has been assessed as having a "partial capacity for work" will be paid YA at the independent rate, but if they enrol in a full-time course, they will be subject to the

PIT. There can be no reasonable policy rationale for maintaining this disincentive for young people with a disability to study – particularly when study may be absolutely crucial for their future employment given the nature of their disability.

Structure forces dependence

The rate inequities carry across to Disability Support Pension (DSP) rates for people under 21.

In acknowledgment of the reduced employment opportunities for people with a significant disability, the "adult" rate of Disability Support Pension is identical to Age Pension – with the same income test and assets test. For people under 21

(continued page 5)

6th hardcopy edition of handbook to be published

The wait is over!

The Welfare Rights Centre is currently finalising the 6th hardcopy edition of the Independent Social Security Handbook, the community workers “bible” on Social Security law and policy. A major rewrite of the Handbook is currently being undertaken to take into account all the major changes to Social Security law and policy since the publication of the 5th hardcopy edition in 2004.

The 6th hardcopy edition will therefore incorporate all the “Welfare to Work” changes which resulted in thousands of Social Security recipients being subject to the current penalty regime. It will also include information about the new rules relating to eligibility for Disability Support Pension, Newstart Allowance (partial capacity) along with Parenting Payment Single and Newstart Allowance (principal carer). It will also include the income management or “quarantine” rules introduced by the previous Government.

The 6th edition will comprise over 50 chapters including chapters on Austudy and ABSTUDY. It will include the legal rights person has under Social Security law, as well as how they can appeal to an Authorised Review Officer (ARO), to the Social Security Appeals Tribunal (SSAT) and how a person can access their Centrelink file under Freedom of Information (FOI). It will

include information about all the Social Security payments, as well as details about the different income and assets tests.

The Handbook was first published in 1991 and has proved to be an invaluable resource for community workers who need to know about Social Security law and its administration through Centrelink. The 5th hardcopy edition was published in 2004 and since then, the Independent Social Security Handbook has only been published as an ONLINE edition. However, due to “popular demand” the Centre has decided it is necessary to publish another hardcopy edition.

The 6th hardcopy edition is expected to be published in August 2008 and is being made available due to a grant from the Law and Justice Foundation of NSW.

How to purchase the 6th edition

There is a limited print run so it will

be necessary to order quickly to make sure you obtain a copy. All purchasers of the 6th edition will receive one year free access to the ONLINE edition of the Handbook. To purchase the 6th edition please complete the insert inside this edition of “rights review” and return it to the Centre.

In the meantime, community organisations in Tasmania, Western Australia, Queensland and NSW can continue to access the ONLINE edition of the Handbook free of charge. For more details go to the website www.welfarerights.org.au ▲

(continued from p. 4)

Youth allowance - a failure ...

however, the rate of DSP is the rate of YA that would otherwise be paid, plus a Disability Allowance of \$100.60 per fortnight. This means that unlike a young person with a “partial capacity to work” who is in receipt of YA, a young person who receives DSP and who must live at home due to support needs, cannot avoid the PIT. A young person aged

16 or 17 with a severe disability who lives at home can receive at most \$295 per fortnight (or lower, under the PIT), despite the fact that their future employment prospects and capacity to self-support may be limited or non-existent.

Public policy should be enhancing the opportunity for young people with a severe disability to achieve

independence from their parents, rather than enforcing dependence. There should be no age differential for DSP rates, and given the Government’s stated interest in ensuring that policies for people with disability promote social inclusion, we are hopeful that the Government will be receptive to our calls for reform. ▲

Reforms for carers

The Federal Government announced in the recent Budget a suite of changes affecting Carer Payment and Carer Allowance, to take effect from 1 July 2009.

For carers of children with a disability or severe medical condition, these announcements were in response to recommendations made by the independent Carer Payment (child) Review Taskforce established last year. The proposed reforms include:

- ◆ replacing the current Child Disability Assessment Tool with an assessment that will be designed to measure the level of care required by the child and given by the carer;
- ◆ providing more flexible policies for carers of children in hospital and for children with a terminal illness, to allow for continued eligibility for Carer Payment/ Allowance while a child is in hospital;
- ◆ developing a single assessment process for Carer Payment and Carer Allowance (child);
- ◆ providing that Carer Payment (child) recipients will automatically be eligible for Carer Allowance (there are currently separate eligibility criteria);
- ◆ establishing expert Carer Assessment Teams for consideration of more complex claims;
- ◆ extending Carer Payment (child) to carers who provide short-term or episodic care for between 12 weeks and 26 weeks;
- ◆ amending the eligibility criteria for Carer Payment (adult) to allow for more streamlined transfer from Carer Payment (child); and
- ◆ extending the measure which provides additional financial support for carers of children with profound disabilities and severe medical conditions.

Reforms for ageing carers

Also announced in the Budget

were cross-portfolio reforms for ageing carers, such as:

- ◆ funding under the Commonwealth State Disability Agreement to provide more supported accommodation for people with disability whose carers are ageing; and
- ◆ additional funding for Centrelink to provide brokerage services to enhance access to respite services for carers of 65 or over, who provide care for adult children 40 or over with a disability. ▲

Same sex rules

Currently, under Social Security legislation, same sex couples are not recognised as couples. This means that a member of a gay couple can receive Social Security at the single rate, irrespective of their partner's income or assets. This may change under the Labor Government as it moves to end discrimination against gay couples with proposed changes to federal legislation.

Should the Government introduce these laws, it is expected that it will save approximately \$66m annually mostly in Social Security payments. These savings will be the result of Centrelink denying a person Social Security, or reducing a person's fortnightly rate, where the person is a member of a same sex couple and their partner's income and

assets impact on their rate of Social Security.

Under the proposed laws, Centrelink will be required to examine the nature of a person's relationship with their partner where the person claims Social Security. Should the legislation be passed, Centrelink will most likely review current recipient's entitlements as well. ▲

Caring for carers

The Government announced in the 2008-2009 Budget that a bonus one-off payment will be provided to recipients of Carer Payment and Carer Allowance who were receiving the payment, or made a claim for the payment, on or before 13 May 2008.

Recipients of Carer Payment, an income support payment for people who are providing "constant care" to a disabled child or adult, will receive a one-off lump sum payment of \$1,000. In addition, recipients of the income supplement Carer Allowance, which provides income assistance to people who provide daily care and attention to a person who has a disability or severe medical

condition, will receive a lump sum payment of \$600. Generally, people receiving Carer Payment would also be receiving Carer Allowance and so they will receive a total of \$1,600. In addition, those in receipt of both the Carer Allowance and either the Wife Pension or Department of Veterans' Affairs Partner Service Pension will receive both bonus payments. ▲

Penalty surge hits Indigenous Australians hardest

New data provided through the Senate has revealed that in the final months of the Howard Government there was a 200 per cent increase in the number of eight week no payment penalties imposed by Centrelink and that Aboriginal people were in the front line of this attack.

In 2006-07, the first year of the former Government's Welfare to Work scheme, 15,509 eight week no payment penalties were imposed, yet in the following eight months to February this year 31,789 more penalties were applied.

In many Centrelink areas, Indigenous Australians are bearing the brunt of the penalty regime. In North Australia, 68% of those who lost all Social Security payments for eight weeks were Indigenous and in Western Australia, 29%, or almost one in three who lost payments for eight weeks were Indigenous.

Numbers out of all proportion

While some areas have high numbers of Indigenous job seekers it is difficult to account for the large proportions of Indigenous people being penalised. The former Government's removal of Remote Area Exemptions has meant that many Indigenous people are faced with compulsory job seeking activities for the first time. Practical difficulties, such as receiving mail, travelling to meet with Centrelink or their Job Network Provider, or understanding the notices, mean that many Indigenous people are falling foul of the compliance system.

At this rate, every week that passes another 1,000 people will lose their payments. These first and third strike eight week no payment penalties constitute an individual income loss of \$1,720 and add up to a total loss of \$70,300,000 from already very low income people and Indigenous communities over 20 months.

Links with homelessness

Homelessness Australia has stated, based on SPRC research,



that 30% of people who have an eight week no payment penalty imposed lose their accommodation. National Welfare Rights Network casework experience would suggest that the figure is probably much higher than this by the time the eight week penalty is up.

In April the National Welfare Rights Network wrote to the Minister for Employment Services, Brendan

O'Connor seeking an urgent review of the compliance arrangements, pointing out that "the penalty regime is working to push people into homelessness and is working directly against the Prime Minister Kevin Rudd's genuine concern to address this. It is also absolutely contrary to Deputy Prime Minister Julia Gillard's equally strong commitment to attacking the social exclusion of the most marginalised people in our society." ▲

budget changes at a glance

Family Assistance Changes

Changes to the Baby Bonus

The Baby Bonus will increase to \$5,000 on 1 July 2008 and will be indexed annually in line with other family payments.

From 1 January 2009, eligibility for the Baby Bonus will be limited to families with adjusted taxable incomes of up to \$150,000. The income test will apply on a pro-rata annual basis so that the amount is equivalent to \$75,000 in the six months after birth or adopted child entering a parent's care.

Further, from 1 January 2009, the Baby Bonus will be paid to families in 13 fortnightly instalments rather than as a lump sum and will be extended to families who adopt a child up to the age of 16 years (currently two years).

Date of effect: 1 July 2008 and 1 January 2009

Changes to the Maternity Immunisation Allowance (MIA)

MIA is to be paid in two instalments instead of one lump sum. The first instalment is to be paid at 18 to 24 months of age and the second at 4 to 5 years of age.

Date of effect: 1 January 2009

Changes to means test for Family Tax Benefit (FTB) Part B

An income test for Family Tax Benefit (FTB) Part B will be introduced for the "primary earner" in a family (currently there is only an income test for the "lower earner"). FTB Part B is to be limited to families where the primary earner has an adjusted taxable income of \$150,000 per year or less. Adjusted taxable income is to include taxable income, plus other amounts that reflect a person's

financial means, eg net rental property losses and tax free pensions or benefits.

An income test will also be introduced for single parents, who currently receive FTB B automatically. Single parents will no longer receive FTB B where their adjusted taxable income is more than \$150,000 per year.

Date of effect: 1 July 2008

Other changes to Family Assistance

- ◆ Payment by fortnightly instalments is to cease for a person who has a "non-lodger" debt (eg where a person fails to lodge a Tax Return within 12 months of the end of the relevant financial year and does not respond to a Centrelink notice asking them to do so).
- ◆ Where a person notifies of an increase in income estimate, their FTB rate will automatically be adjusted with the aim of avoiding an overpayment. This is in contrast to the current system, where such adjustments are possible only with the consent of the person.
- ◆ FTB will no longer be paid through the Australian Tax Office. From 1 July 2009, FTB is to be claimed and paid only through Centrelink and Medicare offices.
- ◆ Amounts of salary that are sacrificed to superannuation and net investment losses are to be included in adjusted taxable income for Family Assistance income tests.

Date of effect: 1 July 2009

Child Care Tax Rebate (CCTR)

The CCTR is to be increased to 50% (previously 30%) of out of pocket child care costs with the maximum amount of CCTR payable also increasing from \$4,354 to

\$7,500 per child per year. From 1 July 2008, CCTR will be paid quarterly rather than annually.

Date of effect: 1 July 2008

Jobs, Education and Training - Child Care Fee Assistance (JET- CCFA)

JET-CCFA, currently available for up to one year of study, is to be extended to up to two years of study.

Date of effect: not announced

Child Care Benefit (CCB) minimum rate to be abolished for children in "approved care"

From the first Monday in July 2008 the current minimum rate of CCB for children in approved care is to be abolished. The effect of this will be that the minimum rate of CCB will be reduced down to zero under the income test.

This measure will not affect child care benefit for children in "registered care".

Date of effect: 7 July 2008 (ie the first Monday in July)

Social Security Changes

Changes to definition of income

Salary sacrificed to superannuation is to be treated as income for all income support payments and Family Assistance payments.

Date of effect: 1 July 2009

Changes to Carer Payment (child)

From 1 July 2009, a number of changes to Carer Payment (child) are expected to commence including:

budget changes at a glance

- ◆ new eligibility criteria based on the levels of care required by and provided to the child;
- ◆ automatic qualification for Carer Allowance (child) to recipients of Carer Payment (child) and a single assessment process for both payments;
- ◆ access to Carer Payment (child) for short-term or episodic care where the care is required for at least 12 weeks and not more than 26 weeks;
- ◆ changes to the transition arrangements for people moving from Carer Payment (child) to Carer Payment (adult).

Date of effect: 1 July 2009

Employment Entry Payment

The Employment Entry Payment is to be abolished from 1 July 2008.

Date of effect: 1 July 2008

International Agreements

New International Agreements, between Australia and Poland and Australia and Finland respectively, are expected to come into effect from 1 July 2009.

Date of effect: 1 July 2009

Income management debit card – Northern Territory

An “income management debit card” is to be introduced in the Northern Territory.

The card will be able to be used in certain approved shops with EFTPOS facilities that adhere to certain Government terms and conditions (eg – the restriction on the sale of certain types of “prohibited goods” such as alcohol and tobacco).

Date of effect: not announced

Income management pilot program – Western Australia

A trial of “income management” (quarantining of Social Security and Family Assistance payments) similar to the income management scheme in operation in the Northern Territory is to be introduced to certain communities in Western Australia from July 2008.

Under the pilot scheme, the Department for Child Protection will be able to request that Centrelink apply compulsory income management of Social Security and Family Assistance payments. Parents will receive payments through an “Income Management Debit Card” the use of which is limited to certain types of purchases.

Date of effect: From mid 2008

School attendance and enrolment pilot program

A school attendance and enrolment pilot program will be introduced in six Northern Territory communities and two metropolitan locations in other jurisdictions from January 2009. Welfare recipients in these locations will be required to notify Centrelink of their child’s school enrolment details. State education authorities or schools will be able to notify Centrelink in cases where parents fail to take reasonable steps to ensure their children attend school. Centrelink will then advise the parent that taking reasonable steps to ensure school attendance is a condition for continued payment of their income support and failure to comply may result in suspension of income support payments.

Date of effect: January 2009

Review of employment services and compliance regime

A reformed employment services system and compliance regime is

to be introduced from 1 July 2009 following a review of the current arrangements.

In particular, the current compliance regime for job seekers is expected to be replaced with a “no show, no pay” concept with penalties based on the level of participation failure. It is proposed that eight week no payment penalties will be retained for cases of “persistent” or “wilful” non-compliance but that such a penalty may be lifted if certain intensive activities are undertaken.

Date of effect: 1 July 2009

Concession Cards

Concession cards are no longer to be cancelled for temporary absences from Australia. Rather, cards will remain current during a temporary absence of up to 13 weeks.

Date of effect: 1 July 2008

Carer bonuses

A lump sum “bonus” is to be paid to eligible Carer Payment and Carer Allowance recipients before the end of June 2008.

People are to receive **\$1,000** where they were receiving one of the following payments on Budget night (13 May 2008):

- ◆ Carer Payment;
- ◆ both Wife Pension and Carer Allowance;
- ◆ Veteran’s Affairs Carer Service Pension on Budget night (13 May 2008); or
- ◆ both Veteran’s Affairs Partner Service Pension and Carer Allowance.

People who were receiving Carer Allowance on Budget night are to receive **\$600** in respect of each person in their care who attracts Carer Allowance.

Where relevant criteria are met, a person may be entitled to both bonus payments.

budget changes at a glance

The bonuses may also be payable to certain people who had claimed, but were not yet receiving the payments on Budget night.

Date of effect: 30 June 2008

Drought relief

A transitional income support program will commence from 16 June 2008 providing up to 12 months of income support payments equivalent to the rate of Newstart Allowance for eligible farm families in areas which are not "exceptional circumstances" declared areas. Eligibility criteria are expected to include a similar income test to the Newstart Allowance test and a limit on the net value of assets of \$1.5 million.

Date of effect: 16 June 2008

Information exchange with universities

Information technology changes will enable universities to notify Centrelink weekly of enrolment and study load changes for income support recipients. This change may lead to fewer income support debts for students but it is important to note that this change *will not remove the legal requirement for students to notify Centrelink of changes to enrolment and study load within 14 days of the change.*

Date of effect: not announced

Increase in supplementary allowances

These Budget announcements came into effect prior to Budget night in March 2008:

- ◆ **Telephone Allowance** has been increased to \$33 per quarter for certain income support recipients who have an internet connection at home, namely:
 - income support recipients over Age Pension age;

- people receiving Disability Support Pension or Carer Payment; and
- holders of a Senior's Health Card.

- ◆ **Seniors Concession Allowance** has been increased to \$500 (or \$250 for each member of a couple) and instalments are now payable quarterly, rather than biannually.
- ◆ **Utilities Allowance** has been extended to certain people who are under Age Pension age and are receiving a Disability Support Pension, Carer Payment, Wife Pension, Widow B Pension, Bereavement Allowance or certain Veteran's payments. Further, the rate of Utilities Allowance was increased to \$500 (or \$250 for each member of a couple) and instalments are now payable quarterly, rather than biannually.

Date of effect: varied, see above

Commonwealth Senior's Health Card (CSHC) – income test and compliance reviews

From 1 July 2009, the income test for the CSHC will include gross income from superannuation income streams from a taxed source and income that is salary sacrificed to superannuation in the income assessment.

From July 2008, a compliance program is to be established to ensure that only those who continue to be entitled retain access to the card. The program will involve:

- ◆ direct reviews with cardholders;
- ◆ profile based reviews;
- ◆ collection of Tax File Numbers; and
- ◆ data-matching with the ATO and Registrars of Births, Deaths and Marriages.

A person will still be required to notify Centrelink if their income exceeds the income limit for the card.

Date of effect: varied, see above

Senior's bonus

A bonus payment of \$500 is to be paid to all income support recipients of Age Pension age and to people who were receiving Widow B Pension, Wife Pension, Partner Allowance, Widow Allowance or Senior's Concession Allowance on 13 May 2008. Further, a person must be in Australia or temporarily absent for less than 13 weeks to qualify.

The bonus may also be payable to certain people who had claimed, but were not yet receiving, a payment on Budget night.

Date of effect: 30 June 2008

Same sex couples

Differential treatment of same sex couples and their children is to be removed prospectively in a number of areas of law including Social Security. Legislative changes are expected to take effect from 1 July 2009, but details of the nature of the changes are not yet available.

Date of effect: 1 July 2009

Debts and overpayments

Social Security debt is one of the biggest issues confronting anyone who tries to assist people on Social Security payments. The purpose of this Practitioners' Guide is to explain current law and policy on Social Security debts, the waiver of debts and prosecution action that may occur where a person has a debt. We also explain a person's appeal rights.

What is a debt?

A Social Security overpayment occurs when a person receives more money than they were entitled to. A debt is when the overpayment is legally recoverable by Centrelink. Due to changes to the law in October 1997, almost all overpayments are debts.

Waiver and write off of debts

However, not all debts have to be repaid to Centrelink. There are several grounds for either "**waiver**" or "**write off**" of a debt.

Where Centrelink **waives** all or part of a debt that amount never has to be repaid. The most common grounds for **waiver** are:

- ♦ the overpayment arose "solely due to Centrelink's error" and the person received the monies "in good faith" (this means they did not know or have reason to know they were receiving more money than they were entitled to), and the debt was not raised within six weeks of the commencement of the overpayment;
- ♦ there are "special circumstances", other than financial hardship alone, in a person's case and the debt did not arise through the person or another person "knowingly making a false statement or failing to comply with Social Security law". Special circumstances can be anything that are unusual to a particular person such as their health, the health of their dependents and their financial situation.

Centrelink can also "**write off**" a debt. This means the debt does not have to be repaid immediately and Centrelink will agree to suspend repayment for a period of time. A person's ability to repay the debt will be reviewed at the end of the period

of time. Debts are most commonly written off where repayment would cause severe financial hardship.

Recovery of debts

There are a number of ways in which Centrelink is able to recover an overpayment. The most common are:

- ♦ Centrelink automatically "withholding" an amount from a person's Social Security payment. The standard rate of withholding is 14%, but for Family Tax Benefit the rate of withholding can be up to 95%. These rates are guidelines only and can be reduced where a person is in financial hardship. To establish financial hardship it is important to provide Centrelink with as much financial information as possible. Where Centrelink agrees to reduce a person's withholdings it will generally review this every three months; or
- ♦ Centrelink may recover a debt through issuing a garnishee notice. Garnishees can be made from a person's wages, bank account or tax return.

Debts and prosecution

Where Centrelink determines an overpayment has arisen due to the person deliberately providing Centrelink with false information or failing to provide information, the matter may be referred to the Director of Public Prosecutions (DPP) for consideration of prosecution action. If the DPP determines that fraud has been committed, it may issue a summons for the person to appear in court.

Appealing against decisions

A person has the right to appeal

against most decisions relating to debts, including:

- ♦ the raising of the debt;
- ♦ the amount of the debt; and
- ♦ the rate and method of recovery of the debt.

Where a person is not happy with a decision made in relation to the raising or recovery of a debt, they should appeal against that decision to an Authorised Review Officer. Where the person is not happy with this decision they can appeal to the Social Security Appeals Tribunal. For more information on debts and overpayments and appeal rights, see the Welfare Rights website at www.welfarerights.org.au ▲

unnecessary appeal by DEEWR

Max was on the run. He had been involved in criminal activities and was running away from both the police and his former partners in crime. To do this, he assumed another identity. He chose another name and obtained further qualifications in that name. Due to a psychiatric condition and drug dependence issues, he was not able to support himself through paid employment. He claimed and was granted Newstart Allowance (NSA) under his assumed identity.

Max received NSA for about 18 months before he was finally caught by the police. He served lengthy gaol sentences both in relation to his drug-related crimes and the criminal offence of providing false documents to Centrelink. When he was released from gaol, he sought further psychiatric treatment and counselling, before securing full-time employment and settling down in a new city.

Appeal

After his release from gaol, Centrelink decided to raise a debt of over \$17,000. This debt

represented the entire amount of NSA Max received under his assumed identity. Max thought this was unfair, as he had complied with all of his obligations while he was receiving his payment. Why should Centrelink recover all of his payments, when he had fulfilled his activity requirements?

In an appeal to the Social Security Appeals Tribunal (SSAT) Max was successful, however the Department of Employment, Education and Workplace Relations (DEEWR) appealed to the Administrative Appeals Tribunal (AAT). Due to the Centre's lack of

resources we were unable to represent Max in person at the AAT. However, as his case raised important issues and as DEEWR was represented by both solicitors and a barrister, the Centre decided to prepare extensive written submissions for Max. The AAT agreed with our submissions that Max remained qualified for Newstart Allowance throughout the relevant period, despite the fact that he used a different name to claim those payments. This means that Max's entire debt ceased to exist, which we believe is a very fair and appropriate outcome. ▲

No payment period overturned

After finishing work last year, Spiro contacted Centrelink and claimed Newstart Allowance (NSA). However, his claim was rejected as he initially failed to attend interviews with his Job Network Provider (JNP). Approximately six weeks after his initial contact with Centrelink, Spiro attended an interview with his JNP and he was paid from the date of that interview. Spiro then lodged an appeal in order to receive the six weeks arrears of NSA.

After an Authorised Review Officer rejected the appeal Spiro lodged an appeal to the Social Security Appeals Tribunal (SSAT). The SSAT was able to make him feel relaxed enough so that he could tell his story, which was bleak. Homeless and living in his car he had recently separated from his wife. He had had a very stable work history, having worked for the one employer for about 15 years. By the time Spiro attended the

SSAT hearing Centrelink had placed him on the Personal Support Programme (PSP).

The issue before the SSAT was whether section 615 (2) of the Social Security Act could be exercised in his favour. This section allows the Secretary (in this case the SSAT) to waive the requirement that a person must attend an interview with their JNP directly after claiming NSA. The SSAT ruled in Spiro's favour, stating that when taking into account his entire

social, psychological and personal situation, it was unsuitable for him to attend the interview.

Centrelink accepted the decision by the SSAT and did not appeal to the Administrative Appeals Tribunal (AAT). This resulted in Spiro receiving six weeks arrears of NSA. ▲

social security changes

what's happening when

For proposed changes announced in the recent 2007-2008 Federal Budget, see "budget changes at a glance".

Family Tax Benefit changes

The third stage of reforms to the Child Support Scheme comes into effect on 1 July 2008 and will have a significant impact on Family Tax Benefit (FTB) and other Family Assistance payments. Some of the main changes to Family Tax Benefit will include the following:

- ♦ it will be no longer possible for parents to "share" FTB for a child where one person has less than 35% care of the child;
- ♦ child support income for FTB will be based on a person's "notional assessment" as calculated by the

Child Support Agency;

- ♦ the Child Support Agency will notify Centrelink directly of a person's "notional assessment" for child support; and
- ♦ the definition of income for FTB is amended to include *gross reportable* fringe benefits.

Date of effect: 1 July 2008

International Agreements

A number of new International Agreements are expected to commence, subject to the passage

of legislation, as follows:

- ♦ Agreement with Korea – 1 July 2008
- ♦ Agreement with Germany – 1 July 2008
- ♦ Agreement with Greece – 1 October 2008
- ♦ Agreement with Japan – 1 January 2009

Agreements with Finland and Poland are yet to be negotiated – for more information see "budget changes at a glance".

Date of effect: Varied – see above

Major victory for Social Security clients

In a major victory for Social Security recipients, the Federal Government has announced a significant overhaul of the litigation practices of one of its major departments. Under the previous Federal Government, the former Department of Employment and Workplace Relations (DEWR) took an extremely aggressive approach to appealing matters to the Administrative Appeals Tribunal (AAT) and in some cases the Federal Court. It was common practice for the Department to appeal virtually any Disability Support Pension (DSP) matter to the AAT. The approach of the former Federal Government led to a number of welfare agencies, including the Welfare Rights Centre, raising serious concerns about the Department's aggressive stance. Fortunately, the new Federal Government has listened.

When Brendan O'Connor became the Minister for Employment Participation after the November 2007 election, he announced a review of the former DEWR's litigation practices. The National Welfare Rights Network, National Legal Aid, the Attorney General's Department and Centrelink were represented on the review committee. The review committee was chaired by Lisa Paul, the new Secretary of the Department of Education, Employment and Workplace Relations (DEEWR). The review found that the previous Department had withdrawn 62% of cases that it had appealed to the AAT. Of those cases, 80% related to the DSP.

Room for improvement

The review also found that based on the practice of other government departments, it would be possible for the Department to use alternative methods, "particularly in matters where the outcome of the decision has limited consequences for the broader administration of the Social Security system".

The review made six recommendations including:

- ♦ establishing ongoing dialogue between DEEWR, Centrelink, National Legal Aid and the National Welfare Rights Network about litigation practices;
- ♦ introducing four new principles when determining whether to

appeal decisions under Social Security law including having regard to the circumstances of the recipient and providing a transparent and fair appeals process to guide DEEWR;

- ♦ making the principles publicly available in a bid to increase DEEWR's transparency in decision making; and
- ♦ having the Steering Committee reflect on the experience of DEEWR's litigation appeals six months after the release of the report.

Minister O'Connor has accepted all six of the Review's recommendations, which the NWRN applauds. ▲

changes to how FTB is shared

Most separated parents would be aware that the Child Support Scheme is undergoing extensive changes at present. One of the changes that forms part of these Child Support Scheme reforms concerns separated parents' rights in terms of "sharing" Family Tax Benefit (FTB) payments.

At present a person who provides care to a child for at least 10% of the year will qualify for FTB. They receive a rate of FTB that is proportionate to the amount of time they care for the child.

However, from 1 July 2008, a person will only qualify for FTB if they have at least 35% care of a child. That is, a person needs to have a child in their care for at least 128 nights in the year in order to qualify for FTB. A person with a child in their care for at least 35% of the year will receive a 25% share of the FTB. They will receive an extra 1% of the share of FTB for every 2% of care they provide over 3%.

A person providing care of a child for at least 65% of the relevant period will be entitled to 100% of the FTB payments.

Unlike the current rules however, a person providing between 14% and 34% of care for a child may be entitled to certain other supplementary payments, even though they will not receive FTB. These supplementary payments include Rent Assistance, a Health Care Card and Child Care Benefit.

A person who is unsure of how these rules will affect them should contact Centrelink or a Family Assistance Office directly.

Any person who is unsure of how the rest of the extensive reforms of the Child Support Scheme will affect them should contact the Child Support Agency.▲

Debt waived

Holly is 17 and currently shares accommodation with six other people in a three bedroom home. Her parents left Sydney at the end of 2006 to move to Queensland, leaving Holly, then 16, and her brother in Sydney.

Holly was sentenced to a Community Service Order at the end of 2006. As a result of a conviction and this sentence, Holly has been involved with the Department of Juvenile Justice. This all occurred at the time that Holly's parents moved interstate. At the same time, Holly was enrolled as a full-time student at TAFE to complete a Year 10 equivalence course. However, as she was falling behind in her studies, TAFE advised her to change her enrolment to part-time, to allow her to complete her Community Service Order and counselling sessions at the Department of Juvenile Justice. When Centrelink matched its records with TAFE it discovered that Holly had failed to complete her full-time studies and had not advised Centrelink of this. A Youth Allowance debt of \$3,000 was raised.

Needless to say, Holly had real difficulty repaying the debt on her already low rate of Youth Allowance so she contacted the Welfare Rights Centre after advice from one of her counsellors. After talking to

Holly, the Centre wrote a request for review to a Centrelink Authorised Review Officer (ARO) and included background reports prepared by the Department of Juvenile Justice. The Centre pointed out that Holly was living independently at the age of 16 and that she had suffered from domestic violence by her own brother. After her brother left the home they were renting together, Holly did not have the funds to pay the rent by her herself and was evicted. The submission also noted that Holly's parents moved interstate at a very difficult time for her and that she had enough on her plate with studying part-time, complying with her Community Service Order and attending counselling sessions.

The ARO agreed that there were "special circumstances" in Holly's case and waived recovery of the entire debt. Without having to repay this debt Holly is in a better position to get her life back on track and pick up her studies again.▲

Asset hardship provisions

Where a person has assets, the value of those assets may effect their entitlement to a Social Security payment. The value of their assets may result in a reduction in their rate of payment or prevent them from receiving any payments.

There are special hardship provisions in Social Security law that allow for an asset to be disregarded if a person is in "severe financial hardship". In order to qualify under the hardship provisions a person must also be unable to sell or borrow against their asset, or, if they are a pensioner, it must be unreasonable to expect them to sell or borrow against the asset.

New guidelines improve rates

Under new guidelines issued by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), a person who is receiving (or applying for) a pension such as Age

Pension, Disability Support Pension or Carer Pension will be considered to be in "severe financial hardship" if their readily available funds are less than:

- ◆ \$14,216.80 for singles; or
- ◆ \$23,753.60 for couples.

This is a significant increase on the previous limits of \$6,000 for singles and \$10,000 for couples.

Unfortunately, the Department of Employment and Workplace Relations (DEEWR) has not increased the limit for people receiving allowances such as Newstart Allowance, Youth Allowance and Parenting Payment. A person receiving (or applying for) any of these payments will not be classed as being in "severe financial

hardship" where they have readily available funds of \$6,000 for singles or \$10,000 for couples.

The Welfare Rights Centre calls on the DEEWR to increase the "severe financial hardship" test in line with the new FaHCSIA guidelines. Maintaining different tests of "severe financial hardship" is yet another example of the Government treating allowees more harshly than pensioners. ▲

Compensation preclusion period reduced

David was attacked at work and subsequently received compensation due to injuries suffered. Under Social Security law, David was therefore precluded from receiving Social Security (because of his lump sum payment) from April 2008 to September 2008. During this time he could not receive Social Security unless he had "special circumstances". Immediately prior to receiving the compensation payment David had been in receipt of Disability Support Pension (DSP) due to his injuries.

When the compensation preclusion period was imposed David was down on his luck. He had no income, no savings and had recently received assistance from a local charity so he could obtain food. He also suffered from depression, anxiety and post-traumatic stress syndrome. He also had a medical certificate from his doctor stating that due to his injuries he was unable to work.

Special circumstances clear

The Welfare Rights Centre lodged

an Authorised Review Officer (ARO) request on behalf of David. We submitted that under section 1184 of the Social Security Act David had "special circumstances" which warranted a reduction in the preclusion period. Prior to the matter being dealt with by the ARO, Centrelink, as is its practice, referred our appeal to the Original Decision Maker (ODM). The ODM upheld the original decision and then referred the matter to the ARO, advising our client that the ARO had 28 days in which to

review the decision.

David was understandably distressed about this timeframe due to his precarious financial situation. The Centre arranged for an ARO to review the matter promptly and the ARO decided in David's favour. The ARO was of the same view as the Centre, which was that David's injuries, his inability to work and his financial circumstances all amounted to a case of "special circumstances".

David's DSP was restored from the date the appeal was lodged. ▲

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