

# rights review

NEWS & COMMENT ON SOCIAL SECURITY ISSUES

## “A dog’s breakfast” – income support for families and young people

**A** major study of income support for young people has found that the Social Security system is “riddled with inconsistencies, disincentives and unfairness” and that it fails to “meet the average costs of living for young people.” The report, recently released by the National Welfare Rights Network and available at [www.welfarerights.org.au](http://www.welfarerights.org.au), also found that 14% of 15 to 24 year old Australians are neither studying nor working, which according to OECD data, is higher when compared with other OECD countries. This finding comes at a time when the Federal Government acknowledges the skills shortages in the workforce and is looking at options such as guest workers, rather than committing to train young Australians.

The report highlights the fact that the manifest inadequacy of the basic rates of Youth Allowance (and Newstart Allowance) is being compounded by a number of other serious design and structural flaws which require immediate fixing if the Social Security system is to assist young Australians become more skilled workers.

### major findings of the study include:

- ♦ Youth Allowance rates range from 33 percent to 50 percent below the Henderson Poverty Line. Adult students over 24 receive only \$163 per week, 49 percent below the Henderson Poverty Line as Austudy Payment recipients do not qualify for Rent Assistance;
- ♦ The Parental Income Test for dependent young people is so low that families surviving on incomes only marginally above the Henderson Poverty Line are ineligible for Youth Allowance unless the young person can prove independence;
- ♦ Many families are being “triple taxed” on the receipt of additional income, losing over 60 percent of each additional dollar earned. When two or more Social Security payments are received, for example Family Tax Benefit, Youth Allowance and /or Child Care Benefit, the individual income tests for each payment all apply and stack-up on top of each other thus creating punishingly high effective marginal tax rates;



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## Contact details for Welfare Rights

**T**he contact details of the Welfare Rights Centres involved in the publication of the "rights review" are contained below. For contact details of all member organisations of the National Welfare Rights Network please refer to the website [www.welfarerights.org.au](http://www.welfarerights.org.au)

### Adelaide

Welfare Rights Centre  
Street address: Torrens Building, 220 Victoria Square, Adelaide, SA 5000  
Postal address: As above  
Telephone contact number: (08) 8226 4123, 1800 246 287  
Fax: (08) 8226 4124  
TTY: None  
Email: [wrcsa@wrcsa.org.au](mailto:wrcsa@wrcsa.org.au)

### Brisbane

Welfare Rights Centre  
Street address: Suite 3, 28 Old Cleveland Rd, Stones Corner, QLD 4120  
Postal address: As above  
Telephone contact number: (07) 3847 5532, 1800 358 511  
Fax: (07) 3421 2500  
TTY: (07) 3847 5533  
Email: [wrcqld@uq.net.au](mailto:wrcqld@uq.net.au)

### Sydney

Welfare Rights Centre  
Street address: Level 5B, 414 Elizabeth St, Surry Hills, NSW 2010  
Postal address: As above  
Telephone: (02) 9211 5300 and 1800 226 028 for people calling from outside the Sydney metropolitan area  
Fax: (02) 9211 5268  
TTY: (02) 9211 0238  
Email: [welfarerights@welfarerights.org.au](mailto:welfarerights@welfarerights.org.au)

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## "A dog's breakfast" – income support for families and young people

### indexation lacking

- ✦ A major, unjustifiable inconsistency exists in the method of indexation for different Social Security payments. Youth Allowance, Austudy Payment and ABSTUDY are indexed far less favourably than other income support payments. These payments are indexed once a year only and indexation is based on the Consumer Price Index (CPI). In contrast, pensions are indexed by the higher of Male Total Average Weekly Earnings or CPI and twice each year. As a consequence, since 1998, the highest single rate of Youth Allowance has increased by just \$61 per fortnight, NSA by \$73 per fortnight, while the single rate of pensions has increased by \$116 per fortnight and the couple rate of pension by \$73 per fortnight;
- ✦ In addition, the income free area for Newstart and Youth Allowance has not been increased for 29 years (aside from a \$1 per week increase with the introduction of the GST). This is in contrast to the pension income free area which is indexed annually to the Consumer Price Index.
- ✦ The student income bank of \$6,000 per annum has not been indexed since its introduction in 1998.

### families lose money

- ✦ Families whose youngest child turns 16 are often faced with a dramatic decrease in overall family income. This decrease is worst for sole parent families. The problem is exacerbated by the loss of Rent Assistance, which is payable with Family Tax Benefit (FTB), but not with Youth Allowance. The parent will generally move from a pension

rate to the lower Newstart Allowance rate and will lose the benefits available with the Pensioner Concession Card. This drastic decrease in income comes at precisely the time when the costs of raising a child are at their highest. It is estimated that it costs \$213 a week to raise a 16-17 year old, yet the maximum Youth Allowance payment for a 16 or 17 year old living at home is \$89 a week.

- ✦ Despite its supposed simplicity, Youth Allowance remains one of the most complex payment structures in the Social Security system. Within the four streams, there are sixteen subcategories.
- ✦ Young people are far more likely to have a breach imposed than older people. Centrelink data for the quarter ending September 2004 reveals that 53 percent of all administrative breaches and 47 percent of all activity breaches were imposed on young people under 25.

There is no doubt that an adequate level of income to support young Australians through their studies and through periods of unemployment is critical not only to their personal success and life chances, but also to the quality of the labour force and the future economic growth of the nation.

The Social Security system is an essential investment by the Federal Government in our human capital. But it not only needs to be adequate, it also needs to be structured so as to provide the right incentives. The key question is how to best support young people in Australia as they make the transition from childhood to adulthood and from education and training to employment.▲

# new disability alliance adopts reform principles

**P**ublic discussion in recent months over proposals to change eligibility criteria for the Disability Support Pension (DSP) has frequently focused on stereotypes of people with “bad backs” pretending to be unable to work, and of people with minor disabilities getting on a pension to avoid work.

People with disabilities are presented as all the same, as “welfare dependent” and a drain on taxpayer resources.

The reality for a person with a disability is starkly different.

The vast majority of people with disabilities who have the capacity to participate fully in employment and community life want to do so. They would welcome a positive agenda for reform of Social Security, work practices and employment and other supports that promote such participation.

## principles

At a meeting of national disability and welfare organisations recently held in Melbourne, the following principles for reform to promote participation among people with disabilities were endorsed. The organisations will use the principles as guidelines to develop strategies for reform, and to critically assess proposals for change from the Government and others.

## the guidelines for disability welfare reform include:

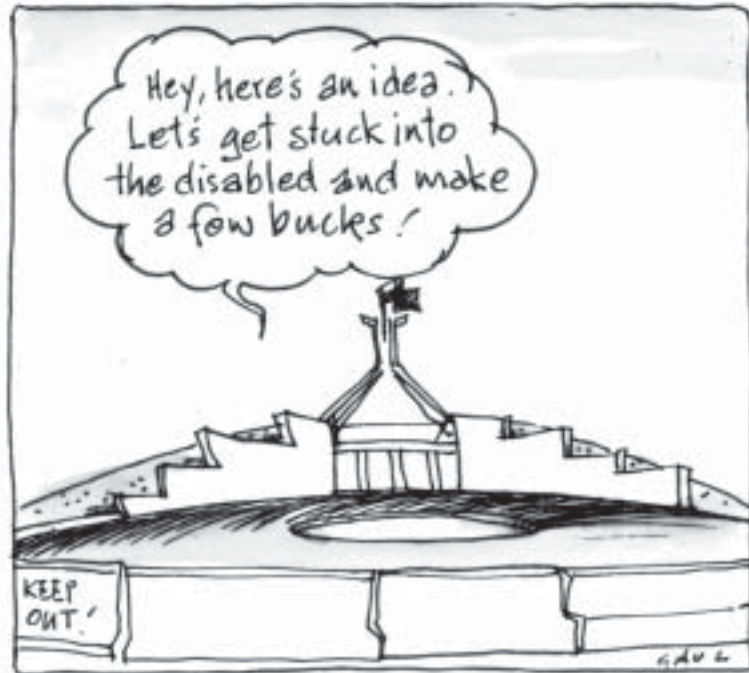
- ✦ that the main objective of reform of disability payments and services should be to open up opportunities for the full participation of people with disabilities in Australia’s economic and community life;
- ✦ that a crucial goal to improve the job prospects and capacities of people with disabilities, rather than diverting people with disabilities from one Social Security payment to another, is the fairest and most effective way to reduce the overall level of reliance on Social Security;

- ✦ thorough public consultation with people with disabilities and welfare and disability organisations over future reform of disability payments and broader welfare reform;
- ✦ a National Disability Workforce Strategy to overcome discrimination in the workforce, build infrastructure to improve access and support employers of people with disabilities;
- ✦ new investment in employment assistance for people with disabilities on Social Security payments, to help those who can find work and keep a job;
- ✦ reform of Social Security payments to remove anomalies between pensions and allowances, without reductions

in the level of payments;

- ✦ people with disabilities should not be financially worse off as a result of any changes made. This includes both current and future recipients of Social Security benefits;
- ✦ a Disability Allowance to cover the extra costs faced by people with disabilities.

Since there are no quick fixes to overcome the barriers to participation confronting people with disabilities, reform should be comprehensive and well planned. Any changes to Social Security payments for people with disabilities should be steps towards wider reform of workforce age payments.▲



# disability support pension: myths & facts

**D**espite media reports to the contrary, it's not easy to receive the Disability Support Pension (DSP). To be eligible for DSP a person must have a serious medical condition, independently assessed by doctors and vocational experts. The condition must prevent them, within the next two years, from working 30 hours a week or more.

Again, despite how the media and politicians portray the disabilities of people on DSP, a "sore back" won't allow a person to qualify for the pension. The reality is that 33% of people on DSP have musculo-skeletal disabilities (loss of mobility or limbs), 25% have psychological or psychiatric conditions, 11% have intellectual or learning disabilities, 5% have circulatory system problems and 21% have other conditions.

While the number of people in receipt of DSP has doubled over the past 15 years there are sound reasons for this including:

## increased recognition of disabilities in society

- ♦ The Australian Bureau of Statistics estimate that the number of Australians of workforce age with a "core activity restriction" rose from 1.2 million in 1988 to 1.5 million in 1998. Improved identification of disabilities such as mental illness and lower mortality rates after accidents account for this increase. The strongest growth was in severe and profound disabilities.
- ♦ The closure of Social Security payments and pensions to older women.
- ♦ The fastest growing category of DSP recipients is not older men but mature aged women. The closure of payments such as the Wife Pension, Widow's Pension and the Age Pension for women 60-65 years means that more women with disabilities applied for the DSP.
- ♦ The decline in the number of low-skilled full-time jobs and

lack of employer support for people with disabilities.

- ♦ In the 1990s, growth in full-time permanent jobs was in higher

skilled employment whereas people with disabilities on average have a low level of skills.▲

## migration agents and community workers - be alert!

**W**hen the Newly Arrived Resident's Waiting Period was extended from six months to two years in 1996, many newly arrived residents who were granted visas soon after the change were confused regarding how long they would need to wait before they could seek financial assistance from Centrelink. Letters from the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) added to the confusion, as they did not stipulate what Social Security payments the Waiting Period applied to, and what visa subclasses gave exemptions from the Waiting Period.

The situation for people with children and for people granted spouse provisional and permanent visas was particularly confusing, as DIMIA letters failed to stipulate that Family Payments were not subject to the Newly Arrived Resident's Waiting Period and that holders of spouse provisional visas were generally exempt from the Waiting Period for Special Benefit.

DIMIA worked with Centrelink to improve these visa grant letters and until recently the problem appeared to have been resolved.

Recently, however, the Welfare Rights Centre was contacted by a migration lawyer regarding a DIMIA letter to his client advising of the grant of a spouse provisional visa, which incorrectly implies that she will not be eligible for Social Security payments for two years, despite the fact that she is potentially eligible for

Special Benefit. Further, the letter does not draw attention to the fact that Family Tax Benefit is not subject to a Newly Arrived Resident's Waiting Period.

The Welfare Rights Centre has drawn the inadequacies of the grant letters to Centrelink's attention so that they can work with DIMIA to fix these "standard" letters. In the meantime, community advisers and migration agents dealing with newly arrived residents should ensure that they approach Centrelink for accurate and complete information regarding Social Security rights and entitlements. If in doubt about whether a Newly Arrived Resident's Waiting Period applies, lodge a claim anyway and contact Welfare Rights for independent advice.▲

# aat amendment bill

**I**n 2004 the Federal Government introduced a Bill into Federal Parliament that proposes to make substantial changes to the Administrative Appeals Tribunal (AAT) operations. The National Welfare Rights Network (NWRN) has serious concerns that a number of proposals contained in the Bill are not justified and represent a direct threat to the quality of the administrative review process. The NWRN is concerned that the Bill contains some provisions that will clearly erode the independence of the Tribunal.

The Bill was referred to the Senate Legal and Constitutional Committee for further evaluation. The NWRN provided a submission to the Senate Committee, and members of the NWRN also appeared before the Senate Committee to give evidence.

## no judge required

The major concern with the Bill is the proposal to expand the qualification requirements to be appointed as President of the Tribunal. Currently the President of the Tribunal must be a Judge of the Federal Court. The Bill proposes to expand the qualification requirements to include a federal magistrate, a former judge, or a

legal practitioner enrolled for at least five years. The NWRN believes that the status and authority that judges bring gives the public confidence in the Tribunal's independence and respect for the authority of its decision.

The NWRN is of the view that having a Federal Court judge as President makes the Tribunal less vulnerable to political interference and helps to ensure that decision makers at the lower levels of the review process and government departments give Tribunal decisions appropriate regard.

The NWRN also highlighted its concern with the proposal to reduce the appointment of all members (including the President) to terms of

up to seven years. It is critical that the AAT remain fully independent. The capacity, if not the propensity of governments to influence the result in external review processes is high because Tribunals lack the constitutional, historical and traditional protections enjoyed by the Courts.

In both its submission and in evidence before the Senate Committee, the NWRN urged the Committee to recommend that the above proposal, amongst others, be rejected.

The NWRN eagerly awaits the Senate Committee's report on the Bill. ▲

## aat victory

**T**he Welfare Rights Centre, Sydney, was recently successful before the Administrative Appeals Tribunal in a matter involving a number of Family Tax Benefit debts incurred by a family who had recently moved to Australia.

Our client and his family were living in Australia on temporary resident visas. He was entitled to work, entitled to Medicare and was required to pay tax on his income. After consultations with the Australian Tax Office, the family put in a claim for Family Tax Benefit in conjunction with their tax return for three consecutive years. Centrelink processed the claims and granted lump sum payments of Family Tax Benefit.

After three years in Australia the family became permanent residents. Centrelink then detected that they had been paid Family Tax Benefit in error

because the payment is not payable to people on temporary visas. This error was not detected earlier because the Family Tax Benefit claim forms attached to tax returns are defective and do not ask the person to specify their residence status. Centrelink processed the claim without seeking this additional necessary information.

Notwithstanding that it was clear that the sole cause of these debts was that our client received incorrect advice from the Tax Office, the claim form was deficient and that Centrelink had not processed the claim correctly, Centrelink raised a debt of \$10,000 against the family

and sought to recover it.

After a lengthy appeal process our client was successful at the Social Security Appeals Tribunal and again at the Administrative Appeals Tribunal (after a Centrelink appeal). The debts were held to have arisen solely due to errors by the Commonwealth (Centrelink and the Australian Tax Office) and the payments to have been received by our client in good faith. ▲

# ONLINE Handbook available free!!

**T**he Independent Social Security Handbook is primarily produced for community workers so that they can assist their clients to solve their Social Security problems. The Handbook provides information on such things as appeals, debts, Freedom of Information and contains all the essential information to help people with their Social Security problems. The ONLINE EDITION of the Handbook is updated every three months to take into account the most recent changes to Social Security law and policy.

All community workers and state government employees in NSW, and most community welfare workers and state government employees in South Australia, Western Australia and Tasmania have "free" access to the ONLINE EDITION. This arrangement had been brought about due to agreements being reached between the Sydney Welfare Rights Centre (WRC) and the various state government departments in each state.

For information on how to access the ONLINE EDITION see below.

## Tasmania

To access the ONLINE EDITION community workers and state government employees in Tasmania should register at the Welfare Rights website ([www.welfarights.org.au](http://www.welfarights.org.au)) After registration, where you choose your own password and username, you will be able to access the Handbook. A Factsheet providing more details about this arrangement is currently on the NWRN website.

## NSW

For community workers/ government employees in NSW the ONLINE EDITION is available "free" through the NSW Government's Better Service Delivery Program (BSDP). All organisations that provide human services in NSW are eligible to join the Program. Members of the Program receive access to the HSNet website (which gives direct

access to the ONLINE EDITION of the Handbook).

To join the BSDP, simply go to [www.bsdp.hsnet.nsw.gov.au](http://www.bsdp.hsnet.nsw.gov.au) and after filling in some basic information (which takes about one minute to provide) you will be instantly issued a password providing you with access to HSNet.

Once you have been issued a password to gain access to HSNet, just click on the "Independent Social Security Handbook" and you will go to the homepage of the ONLINE EDITION.

## South Australia & Western Australia

In South Australia free access to the ONLINE EDITION is provided to community organisations which receive funding from the South Australian Department for Families and Communities as well as its employees as a result of a subscription arrangement between the Department and the Welfare Rights Centre.

In Western Australia, free access to the ONLINE EDITION is provided to community organisations who receive funding from the Western Australia Department of Community Development as well as its employees as a result of an arrangement between the Department and the Welfare Rights Centre.

If you work in a community organisation in either Western Australia or South Australia and receive funding from the relevant



government department and wish to access the ONLINE EDITION, all you need to do is, register at the [www.welfarights.org.au](http://www.welfarights.org.au) website.

## Queensland and Victoria?

The Centre is currently negotiating with both the Queensland and Victorian State Governments to extend the arrangements into those two states. We shall advise readers of "rights review" the outcome of these negotiations.

If anyone has any questions about these arrangements please contact the Sydney Welfare Rights Centre (WRC) on 902) 9211 5389 or 1800 226 028 for people calling from outside the Sydney metropolitan area or email [welfarights@welfarights.org.au](mailto:welfarights@welfarights.org.au).▲

# family tax benefits debts

**M**any people incur a Family Tax Benefit (FTB) debt due to the difficulty in accurately estimating their income for the current financial year. Where a person underestimates their income they will incur a debt. Under the current system, these debts are virtually unavoidable as people are required to accurately estimate their family income a year in advance, and a change to their circumstances will mean that the initial estimate is incorrect.

However, there is another aspect of FTB debts which can be avoided.

These debts are incurred where a person's **Social Security payment** has not been taken into account when working out the rate of FTB Part B which is payable.

## income

Where a person is in receipt of FTB and another Social Security payment (such as Disability Support Pension or Parenting Payment) their Social Security payment is defined as income for FTB purposes. Social Security legislation requires that the person notifies Centrelink of their Social Security income so that the correct rate of FTB can be paid. Where a person is in receipt of the full rate of a pension or benefit, FTB Part B is generally not payable as the Social Security income reduces the fortnightly rate of FTB Part B to nil (or allows for only a small amount to be payable).

The National Welfare Rights Network (NWRN) has dealt with a number of cases where a person in receipt of FTB Part B incurs an FTB Part B debt as their Social Security income has not been taken into account by Centrelink when working out the rate of FTB Part B. The debts generally arise as the person is of the mistaken belief that it is not necessary to declare Social Security income to Centrelink, as Centrelink makes the payments.

Most people would consider that to be a reasonable assumption to make.

## aat case

A recent Administrative Appeals Tribunal case highlights the issue. Mrs White was in receipt of FTB and Disability Support Pension (DSP) and her husband was in receipt of Newstart Allowance



(NSA). Mrs White estimated her income for FTB purposes to be nil. She incurred a debt of \$1,919.90. The AAT noted that there were several elements of administrative error which included:

1. Centrelink administering Mrs White's DSP payments and so was aware of them, but did not check them when assessing her estimate of income;
2. Mrs White advising the Centrelink officer that she was in receipt of DSP, but that officer is alleged to have told her not to worry about the DSP as it was not taxable; and
3. Centrelink's acceptance that Mr and Mrs White's estimate of \$12,000 was reasonable, even though Centrelink knew that they received a total of more than that each year in DSP and NSA payments made by Centrelink.

The AAT found that the debt arose solely through the administrative error of Centrelink. However, despite this, the debt was waived under section 101 of the Family Assistance Administrative Act, "special circumstances" waiver, as

the AAT found that Mrs White did not satisfy the severe financial hardship criteria as required by section 97 of the Act.

## action taken

Inevitably, many people in Mrs White's financial situation will not declare their Social Security income for FTB Part B purposes as they will be of the view that Centrelink is aware of the income (that DSP is not taxable also adds to the confusion).

It is Monty Pythonesque to expect a person to contact Centrelink to notify it that they are in receipt of a Social Security payment through Centrelink and then to request that Centrelink take that income into account when working out their rate of FTB Part B. The current administrative system must be changed so that people can avoid these debts.

The Welfare Rights Centre (Sydney) has written to the Chief Executive Officer of Centrelink advising him of the problem and suggesting solutions. Given the absurdity of the current system we expect to receive a positive response.▲

# social security changes

## what's happening when

### UTILITIES ALLOWANCE

Utilities Allowance (\$100 per year for a single person or \$50 per year for a member of a couple), introduced for recipients of Age Pension, and recipients of a Service Pension or Income Support Supplement from the Department of Veterans Affairs. Payment to be made in two instalments, on the pension payday following 20 March and 20 September each year. First payment - March 2005.

**Date of effect: 1 December 2004**

### SENIORS CONCESSIONS ALLOWANCE

Seniors Concessions Allowance of \$200 per year introduced for "self-funded" retirees. The allowance to be made in two \$100 instalments to people who hold a Commonwealth Seniors Health Card on 1 December and 1 June each year.

**Date of effect: 1 December 2004**

### FAMILY TAX BENEFIT (B) SUPPLEMENT

Introduction of a new Family Tax Benefit supplement of \$302.95 for recipients of Family Tax Benefit part B, with proportional rates payable for shared care of a child or children. The supplement will be added to the standard rate of Family Tax Benefit (B). The supplement will be subject to annual indexation increases, from 1 July 2005.

**Proposed date of effect: 1 January 2005 (subject to passage of legislation)**

### GRANDPARENT CHILD CARE BENEFIT

Introduction of Grandparent Child Care Benefit, to assist people who

have the primary care of a grandchild with the costs of child care. To be eligible, the grandparent must be in receipt of an income support payment. The Benefit will cover the full cost of child care for up to 50 hours of child care per week (or more in certain circumstances), for each child in approved care. Payment can be made in respect of more than one child.

The claimant need not necessarily be a natural grand-parent. A great-grandparent, adoptive grand-parent or the partner of a grand-parent can qualify.

**Date of effect: 1 January 2005**

### JPET extension

Reconnect and Job Placement, Employment and Training (JPET) programs extended to target young newly arrived migrants.

**Date of effect: 1 February 2005**

### CARER PAYMENT – respite extension

The number of hours per week that a Carer Payment recipient may temporarily cease providing care in order to undertake work, training or study to be extended from 20 to 25 hours.

**Date of effect: 1 April 2005**

### ACCOMMODATION BONDS means test exemptions

Bond payments made for aged care accommodation to be exempt from assessment under the assets test.

Where a person or their partner receives rent in respect of their former principal home and their accommodation charge is paid by instalments, the rent received will be exempt from assessment as

income under the income test. In this situation, the person will be regarded as a "homeowner" under the assets test, and the value of their former home will be disregarded under the assets test.

**Proposed date of effect: 1 July 2005 (subject to passage of legislation)**

### DISABILITY SUPPORT PENSION - proposals

#### Disability Support Pension eligibility criteria to be tightened

Changes may include:

- ♦ claimants for Disability Support Pension who are assessed as being able to work at least 15 hours per week at award wages will not be eligible (the current test is 30 hours per week);
- ♦ claimants' capacity to undertake training and/or pre-vocational assistance specifically designed for people with a physical, intellectual or psychiatric impairment will be taken into account in assessing eligibility; and
- ♦ assessment of Disability Support Pension eligibility for people over 55 will no longer take into account local labour market conditions.

These changes require the passage of legislation which has so far been blocked in the Senate.

**Date of effect: 1 July 2005 ▲**

# appealing centrelink decisions

**A**lmost every decision made by Centrelink can be appealed. For example, Centrelink decisions about rejecting a claim, imposing a breach, or raising and recovering a debt can all be appealed.

Where a person is not happy with a Centrelink decision they should consider appealing, particularly where as a result of that decision the person is placed in financial hardship. About 35% of appeals are successful.

Here are some frequently asked appeal questions:

## How much does it cost to appeal?

Nothing - appealing is free.

## What are a person's rights?

A person has the right to:

- ♦ know why Centrelink made a decision about their payment. The reasons for the decision must be in writing;
- ♦ appeal any Centrelink decision that they believe is wrong;
- ♦ obtain copies of the law or policy which Centrelink uses in making its decision; and
- ♦ obtain their Social Security file under Freedom of Information laws.

## Can a person get in trouble for appealing?

No - A person cannot get in trouble or be penalised for appealing a decision about their Social Security entitlement. Centrelink deals with an enormous number of people every week, and knows that its staff make mistakes. Also, Social Security law is very complex and open to different interpretations. That is why there is an appeal system.

## What is the appeal process?

**1. The first step is to appeal to an Authorised Review Officer**

If a Centrelink officer makes a decision with which a person is not happy, they should ask for a review of that decision by an Authorised Review Officer (ARO). Most times the matter will be referred back to the Original Decision Maker (ODM). If this happens and they are not happy with the ODM decision, they will need to insist that the matter then be referred to an ARO. An ARO is a senior Centrelink officer who reviews decisions by the Original Decision Maker.

ARO appeals are best lodged in writing, though they can be lodged over the telephone.

When lodging an appeal, the person should provide:

- ♦ name and contact details;
- ♦ Social Security reference number;
- ♦ details about the decision being appealed;
- ♦ why they think the original decision is wrong; and
- ♦ any evidence that may help their case.

The appeal should be lodged in writing and a copy kept by the person for their own records. If the appeal is lodged verbally at a Centrelink office or over the phone, a "receipt number" should be noted as well as making note of the name of the Centrelink officer, the date of the appeal and details of the request.

### 2. Appealing to the SSAT

If a person is not happy with the ARO decision, they have the right to appeal to the Social Security Appeals Tribunal (SSAT). The SSAT is independent of Centrelink and is fairly informal.

### 3. Appealing to the AAT

If a person is not happy with the SSAT decision, they have the right to appeal to the Administrative Appeals Tribunal (AAT). Centrelink can also appeal against the SSAT decision to the AAT. The AAT is more formal than the SSAT and Centrelink is represented at the AAT.

## payment pending review

In certain cases a person's Social Security payment can be restored until the appeal is decided. This is generally called "continuation of payment pending review".

## time limits

An appeal can be lodged to an ARO or the SSAT at any time. However, in order to ensure that full arrears are paid, an appeal must be lodged to the ARO within 13 weeks of the letter advising of the original decision. An appeal can be lodged outside the 13 week period, however back payment will only be made from the date the appeal is lodged, rather than the date of the original decision, if the appeal is successful. An appeal to the SSAT must be lodged within 13 weeks of the ARO decision to receive full back payment.

An appeal to the AAT should be lodged within 28 days of the date of receipt of the SSAT decision. Appeals will only be accepted outside the 28 day limit in "special circumstances" so it is important that a person appeals as soon as possible after receiving the SSAT decision in writing.

For advice regarding an appeal or further information on the appeals process please feel free to contact your local Welfare Rights Centre (contact details are at [www.welfarerights.org.au](http://www.welfarerights.org.au)). ▲

## defective administration

**Jenny was a student receiving ABSTUDY and a Student Financial Supplement Scheme loan by instalments from the Commonwealth Bank when she had a breakdown and was admitted to an institution by her doctor.**

Her doctor promptly notified Centrelink that she had been admitted to the rehabilitation facility for mental health reasons, however, Centrelink failed to act on this information. This meant that Jenny continued to receive ABSTUDY payments. Further, because Centrelink failed to notify the Commonwealth Bank, she also continued to receive the loan payments throughout the period. Centrelink subsequently discovered its error and raised a debt against Jenny for the amount of ABSTUDY she had received while institutionalized. Centrelink decided to waive this debt, because of its error. Centrelink then contacted Welfare Rights Centre to find out if there was any way that the amount

of the loan received by her during her rehabilitation treatment could be similarly waived due to Centrelink's error and the special circumstances of the case. Centrelink itself could not waive the loan with the bank, because the loan is a contract between Jenny and the Commonwealth Bank to which Centrelink is not a party. Welfare Rights Centre contacted the Banking Ombudsman, who noted that the Commonwealth bank is a signatory to, and therefore bound by, the Code of Banking Practice. At clause 25.2 the code states "... we will try to help you overcome your financial difficulties with any credit facility you have with us." This means that the bank is required to consider a person's

financial difficulties and try to help overcome these difficulties. A person wanting the bank to consider their financial situation under the Code of Banking Practice should write to the head office of the Commonwealth Bank in their state. However, in Jenny's case, the Welfare Rights Centre considers that a negligence claim against Centrelink will have more chance of success than seeking to have the Commonwealth Bank extinguish the loan. We have therefore assisted her to lodge a claim for compensation from Centrelink, for the same amount that she owes the Commonwealth Bank. ▲

## caring responsibilities

**Alf and Amie's son Ben, who is 15, has severe autism. Amie is in receipt of Disability Support Pension and receives Carer Allowance for Ben who requires constant care and attention, 24 hours a day. Alf also provides a lot of care for Ben and he is in receipt of Parenting Payment.**

Ben cannot wash, clothe, feed or toilet himself. He frequently becomes aggressive and uncontrollable, throwing any object he can reach. He often wets the bed in the evening and cannot return to sleep, requiring constant supervision whenever he is awake. During the morning, he attends "school". During these hours, Alf washes the sheets from the evening before, does the cleaning and shopping and catches up on sleep lost the night before. Occasionally, Ben goes into respite care, however, one of the

two respite care providers recently discontinued his care, because of his uncontrollable behaviour and because two people were required to care for him at any time. Alf recently contacted the Welfare Rights Centre when Centrelink pressured him to enter into a "Participation Agreement" requiring him to participate in job-seeking activities for six hours each week. The Welfare Rights Centre contacted Centrelink and pointed out Alf's immense and onerous caring duties and the fact that, once Ben turns 16 next year, Alf is

likely to become eligible for Carer Payment (Adult) and therefore not subject to job-seeking activities. After considerable advocacy on Alf's behalf, a senior Centrelink officer agreed that it was appropriate in this situation to provide Alf with an exemption from the requirement to enter into a "Participation Agreement". ▲

# odm waives \$20,000 debt

**C**entrelink raised two Disability Support Pension (DSP) debts totalling \$30,000 against Merv. The debts were raised as Centrelink claimed that Merv had not advised it of increases to his wife's wages.

Merv had been in receipt of DSP since the late 1980s as he suffered from schizophrenia. He had arrived in Australia in the late 1960s and speaks very limited English. He had been under the care of various psychiatrists since the mid 1970s and had led a sheltered life in Australia.

In 1997 Merv's wife became ill and stopped work. She applied for and received Sickness Allowance (SA). As a result, Merv's DSP increased from \$172 per fortnight to about \$270.00 per fortnight.

Merv's wife returned to full-time work a few months after she started to receive SA. She advised Centrelink of her return to work and her SA was cancelled. Merv did not think that it was also necessary for him to advise Centrelink of his wife's return to work. After his wife had returned to work Centrelink did not adjust Merv's rate of DSP. This is when the debt started.

The Welfare Rights Centre obtained Merv's file under Freedom of Information.

Merv received only one notice during the period of the debt which required him to tell Centrelink:

If your combined income, not including maintenance becomes more than \$76 per week;

If you or your partner start work or recommence work.

The Welfare Rights Centre argued that Merv had satisfied his obligations of notifying Centrelink of his wife's return to work and that her combined income increased above \$76 per week, through his wife notifying Centrelink of her return to work. The Centre further argued that as Centrelink did not adjust Merv's rate of pension, administrative error was the sole reason for her debt.

Centrelink agreed and accepted that Merv received the payments in good faith.

The debt was therefore waived and

all monies that Merv had paid Centrelink towards the debt were repaid to him.▲

## debt waived

**M**orrie arrived in Australia from Europe in 1970. He was subsequently granted Disability Support Pension, (DSP) following a mining accident in Australia.

In 1991, while overseas with his family, Centrelink cut Morrie's wife's Wife Pension due to changes to the portability rules. Shortly after they separated.

Back in Australia in 2001, Morrie turned 65. Without consulting him, Centrelink cancelled Morrie's DSP and placed him on Age Pension. No letter advising of the cancellation was ever sent, although Morrie asked on several occasions about his payments.

A few years down the track, Centrelink decided that Morrie did not qualify for the Age Pension as he did not meet the ten year residence requirement.

Centrelink subsequently cancelled his pension, at the same time raising a debt for all of the Age Pension he had received, some \$25,000.

### Morrie appealed to the SSAT

The Tribunal found that Morrie did not have the ten year's residence required for Age Pension and decided Centrelink's decision to cancel his Age Pension was correct.

The Tribunal then looked at the

decision to cancel DSP. The Tribunal found Morrie's inquiries about being transferred off DSP to Age Pension amounted to a request for review. Under section 109, any favourable SSAT decision takes effect from the time a review is sought.

Next the Tribunal looked at Centrelink's power under the Act to remove a person from payment.

The Social Security Act at section 103 (2) provides specifically that a person may be removed from DSP where, "...another social security [payment] becomes payable".

The Tribunal rightly pointed out that this section could not apply to Morrie. As he was never entitled to Age Pension, the cancellation of DSP was invalid. It said, "*It is not the case that Centrelink can, of its own volition, transfer a (person) from a payment they are entitled to a different payment and then, once it is determined there is no entitlement, recover the payments made... as a debt.*"

The Tribunal waived the debt in full and reinstated his DSP entitlement.▲

# read those notices!

**A** person in receipt of Social Security payments has certain obligations regarding what changes and information they need to notify Centrelink about. These obligations include the requirement to notify Centrelink of such things as leaving Australia, commencement of work or an increase in income. The obligations are listed in fine print on the back of Centrelink notices.

It is important that people read these notices, including the fine print on the back, as failure to notify Centrelink of certain changes in circumstances can lead to a recoverable debt and in some cases prosecution action may be taken.

Within a few days of being granted a Social Security payment a person will generally receive a Social Security "notice". That legal "notice" effectively puts the person on notice as to what changes they need to tell Centrelink about. Even if the person does not receive another notice for five years, the obligations listed on the first notice will still stand for that five year period.

## debts

Centrelink relies on these notices to apportion blame where a debt is raised. For instance, where a person claims a Social Security payment, a debt may arise where the Centrelink officer does not accurately code in details about a person's income, even where the person gave complete details of that income at the time of claim. When payment is granted Centrelink will send out a notice to the person stating that they have been granted payment at a particular rate. The fine print on the back of the notice advises the client that they must tell Centrelink about certain changes or "if the income details listed above are incorrect". Where a person fails to tell Centrelink that the income details listed on the back of the notice are incorrect (despite the person providing full

details of their income on their Social Security claim form), Social Security law may not allow the debt to be waived as the debt did not arise solely through Centrelink's administrative error.

## waiver

Social Security debt legislation provides that where a person has been overpaid, for any reason, then the Commonwealth can recover the debt. So even if the Centrelink worker intentionally overpaid a person, the overpayment is still a recoverable debt. A debt can be waived (ie not repaid) in certain circumstances. The two most common waiver provisions are:

- ♦ administrative error; and
- ♦ special circumstances.

## administrative error

The Social Security Act provides that a debt can be waived under this provision where:

**"1237A.(1)** Subject to subsection (1A), the Secretary must waive the right to recover the proportion of a debt that is attributable **solely** to an administrative error made by the Commonwealth if the debtor received in good faith the payment or payments that gave rise to that proportion of the debt."

The key word here is **solely**. Where the person does not respond to the notice and correct any errors Centrelink made, the debt cannot be said to be **solely** due to administrative error. So regardless of how negligent Centrelink's administrative practices may be, the issuing of a notice puts the requirement on the person to inform Centrelink of its own errors.

Where a debt cannot be waived due

to administrative error, the other common waiver provision is "special circumstances" waiver.

## special circumstances

Special circumstances waiver is used where the debt did not arise due to any person making a false statement or failing to comply with the Act and where the debtor has "special circumstances". The term "special circumstances" is not defined in Social Security law, however a person's health, the health of their dependents, their financial position, whether administrative error contributed to the debt and other unusual factors will generally be taken into account in determining whether a person has "special circumstances".

Achieving waiver of a debt is very difficult as the waiver legislation is very tight. Debts are waived however, where one of the waiver provisions is satisfied. A person with a debt should be encouraged to appeal where they consider a debt may be waived and particularly where Centrelink error contributed to the debt.

The best way, however, to avoid a debt is for a person to continually check that Centrelink has accurate information, to carefully read notices and to keep Centrelink informed about changes of circumstances.▲

# prisoners and social security

**A**s a general rule, Social Security payments cannot be paid to a person while that person is in prison or in psychiatric confinement, following a criminal charge.

This is the case where a person has actually been found guilty and is serving a sentence, as well as where a person is on remand awaiting trial or sentencing. The minor exceptions to this rule relate to some situations where a person is undergoing a course of rehabilitation. People undergoing courses of rehabilitation while in psychiatric confinement should be encouraged to seek advice as to whether or not they fall within this exception.

## partner in prison

There are special rules for Social Security recipients whose partner is in prison. If a Social Security recipient's partner is in prison, then they can be paid their Social Security payment at the *single* rate, which is higher than the rate paid to each member of a couple. This is the case even though they still consider themselves to be a member of a couple. So, a person who has been receiving Parenting Payment (partnered) at the maximum rate of \$356 per fortnight could receive Parenting Payment (single) at the maximum rate of \$470.70, if their partner is in prison. What must be kept in mind, however, is that even though such a person will be paid at the *single* rate, any assets and income their imprisoned partner may have will still have an effect on their payment.

## crisis payment

Once a person is released after having spent at least 14 days in prison, they may be eligible for Crisis Payment. This payment is provided in recognition of the fact that recently released prisoners are likely to face difficulties re-establishing themselves in the

community. However, given that the rate of Crisis Payment is the equivalent of just one week's maximum payment rate of the Social Security payment they are likely to receive (about \$197 for a single person on Newstart Allowance), the assistance Crisis Payment actually gives is quite minimal. It is also important that released prisoners claim Crisis Payment within seven days of release, otherwise it will not be paid at all.

## debts

Where a person continued to receive Social Security while they were in prison, Centrelink generally raises a debt. This generally

happens where the person or the relevant prison's welfare officer has not informed Centrelink that they are in prison. Where a person enters prison or psychiatric confinement, they are required to notify Centrelink so that their Social Security payments can be stopped, otherwise they will incur a debt to Centrelink.

Keep in mind that, as with all Social Security debts, the provisions that allow a debt to be waived where there are "special circumstances" in the person's case or where the debt arose solely due to the Commonwealth's administrative error may be applicable in these situations.▲

## Pearson gets job

**C**ape York Aboriginal leader Noel Pearson has been hired by the Federal Government to examine ways to reduce the number of people in receipt of Social Security.

His brief includes welfare reform for people of working age with an emphasis on moving people from Disability Support Pension and Parenting Payment into the workforce. A statement from the Department of Prime Minister and Cabinet stated that Mr Pearson's "extensive experience in developing innovative solutions to the overreliance on welfare in Indigenous communities will

provide a valuable context for his work."

Recently, Cabinet Ministers decided not to change the tax system to improve incentives to work for those in receipt of Social Security. It also ruled out a single welfare benefit to all. The preferred option appears to be to extend requirements for people in receipt of Social Security to look for work or retrain.▲

# lack of indexation of allowance income free area

One of the most significant anomalies in the Social Security system is that the Newstart and Youth Allowance “income free area”, ie the amount that a person can earn before their payments start to reduce, is not indexed to the Consumer Price Index (CPI). This is in contrast to the pension income free area, which is indexed on 1 July each year to the CPI. Partly as a consequence of this indexation, the single pension income free area is currently \$30 a week higher than the income free area for allowances.

Apart from a \$1 per week increase in July 2000 as part of the payments adjustments to maintain their value as a result of the introduction of the Goods and Services Tax, the last increase to the allowance income free area occurred 29 years ago! On 1 May 1986 the income free area for the single rate of Newstart was increased from \$20 to \$30 a week. At the time, the single rate of Newstart Allowance was \$95.40 a week, with the income free area representing 22 percent of the payment. In March 2005, the single rate of Newstart is \$197.30, yet the income free area has remained unchanged and now represents just 15 percent of the

payment. In addition, the relative value of the payment itself has fallen dramatically compared with the pension. People on Newstart and Youth Allowance have missed out both ways.

If the income free area had been indexed to the CPI for the last 29

years, it would now be around \$43 a week, which would be a whole lot better but still \$18 a week less than the single pension income free area.

It is time for the income free area for allowances to increase in line with CPI increases.▲

| Year | Newstart                    |                       | Pension                     |                       |
|------|-----------------------------|-----------------------|-----------------------------|-----------------------|
|      | Single rate of payment (pw) | Income Free Area (pw) | Single rate of payment (pw) | Income Free Area (pw) |
| 1985 | \$91.45                     | \$20                  | \$97.90                     | \$30                  |
| 1986 | \$95.40                     | \$30                  | \$102.10                    | \$30                  |
| 2000 | \$172.45                    | \$31                  | \$193.45                    | \$56                  |
| 2005 | \$197.30                    | \$31                  | \$235.35                    | \$61                  |

## allowances below Poverty Line

If you are in receipt of a Social Security allowance such as Newstart Allowance (NSA), this article will tell you things that you already know and experience each day – that is, that people in receipt of allowances live below the Poverty Line.

And unfortunately things are getting worse.

In 1996, the year the Federal Government first came to power, the single rate of NSA was 85% of the Henderson Poverty Line. Today it is just 75% of the Poverty Line.

At present, the maximum amount of NSA that a single person can receive is \$245.70 per fortnight (this includes the maximum amount of Rent Assistance). According to the Melbourne Institute of Applied Economic and Social Research, the Henderson

Poverty Line is \$317.61 per week. So people in receipt of an allowance survive on a payment which is \$72 per week below the Poverty Line.

### pensions favoured – deserving

That the Government has allowed the rate of allowances to slip further below the Poverty Line since it came to power is a clear indication that the welfare of people in receipt of payments such as NSA is not a priority. There is an immediate need for the Government to increase the

rate of allowances and to relax the allowance income test which is much harsher than the pension income test.

The picture is brighter for sole parents however, with their rate of payment now above the Poverty Line. This reflects the Federal Government’s policy change in favour of Age (and other) Pensions through changing indexation of pensions to Male Total Average Weekly Earnings rather than the lower CPI indexation figure that applies to allowances. ▲

# NWRN website

**T**he National Welfare Rights Network (NWRN) website contains a variety of Factsheets designed to provide information on different Social Security payments. It also provides masses of information on rights, obligations, entitlements and problem issues such as debts. The purpose of the Factsheets is to assist individuals with Social Security or Centrelink problems.

In addition to these Factsheets there are a number of self-help guides and forms to assist in dealing with Centrelink and navigating the appeals process. Two self-help guides explain the Social Security Appeals Tribunal and the Administrative Appeals Tribunal processes. These guides explain the structure of the Tribunals and how a person can best represent themselves before them.

Two new forms have been added to the website to help in appealing Centrelink decisions. The forms are:

- ✦ **Appealing to an Authorised Review Officer.** This form provides information about the appeals process, appeal time limits and explains how appeals are undertaken. It is not necessary to lodge appeals in writing, however this form is designed to be filled in and sent off to Centrelink and also provides a helpful guide to the type of information to provide to Centrelink when appealing.
- ✦ **Freedom of Information and how to make specific requests.** To access a Centrelink file and records, a person needs to lodge a written request to Centrelink stating what papers are being requested. Again this form helps to clarify the information needed. Alternatively Centrelink has a form called "I want to see my file and personal documents", that can also be used.

All forms, Factsheets and self-help guides can be downloaded free from the website at [www.welfarerights.org.au](http://www.welfarerights.org.au).

## government pays millionaires

**E**ver heard the Federal Government's rhetoric that Social Security is designed to assist those in need? Well, the 31 millionaire families who received Family Tax Benefit part B, paid up to the maximum rate \$114 a fortnight, wouldn't fit most peoples definition of being in "need". Nor would the other 30,000 families, who in 2002-2003, earned more than \$100,000 yet still received FTB part B.

Family Tax Benefit part B, introduced primarily to support stay-at-home mothers, is not means-tested on the main earner's income. So regardless of the income of the main earner, if their partner has little income and dependent children, they can be paid the maximum rate of FTB part B.

On the other side of the fence things are starkly different. Where a sole parent's youngest child is 13 or over, they are required to enter into a "Participation Agreement" and to undertake activities designed to get them back into the workforce. Post July 2005, with the Federal Government having the power to pass any legislation it sees fit, it is expected that sole parents with school age children will also be required to enter into "Participation Agreements". The failure for complying with terms of a "Participation Agreement" can result in a breach being imposed, with the possibility of cancellation of Parenting Payment for eight weeks.

### intended largesse

Prior to the 2003-2004 Federal Budget, the FTB part B income test

provided that where the income of the secondary earner reached \$1,825 per annum, payment of FTB part B was reduced by 30c in the dollar for every dollar of income above \$1,825. The Government relaxed this income test considerably in the Budget so that now, not only can the secondary earner earn up to \$4,000 per annum before it affects FTB part B, but earnings over that amount reduce the payment by 20c in the dollar, not 30c in the dollar.

Post July 2005, when the Government considers its options, including shaving funds from the Social Security budget, the best place to start would be to fix the FTB part B income test to ensure the money is not wasted on millionaires and is directed instead to those most in need.▲

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