

# rights review

NEWS & COMMENT ON SOCIAL SECURITY ISSUES

## more than 215,000 worse off in welfare changes

**140,000 single parents and their 210,000 children, plus 75,000 people with disabilities will be financially worse off should the Federal Government's welfare changes pass through Parliament without major modifications.**

After 1 July 2006, sole parents placed onto the lower paying Newstart Allowance (NSA) will be \$58 per fortnight worse off than had they been still eligible for Parenting Payment single (PPS). People with disabilities who are assessed as being able to work between 15 and 30 hours a week will receive NSA, which is \$77 per fortnight less than Disability Support Pension (DSP).

These dramatic figures come to light as flaws were uncovered in the "guarantee" that the Federal Government gave to single parents on Budget night that existing recipients would remain on the higher rate of PPS until their youngest child turned 16.

### grand illusion

This "guarantee" has turned out to be a grand illusion, as it has been subsequently revealed that where a parent's PPS is cancelled or suspended for 12 weeks, *for any reason*, and they do not lodge a new claim for PPS within this 12 week period, they will not subsequently qualify for PPS where their youngest child is six or older. In these cases, sole parents will only qualify for NSA, with the lower rate of payment and onerous activity test.

PPS recipients who have their payment cancelled where they re-partner, obtain casual work, or lose custody of their child for a short period, will be placed on NSA should they re-claim Social Security 12 weeks after their PPS was cancelled.

The Government's decision to end the PPS for a person when their youngest child turns six, and to replace it with a much lower rate "parent dole" with its much harsher income test, will cause major financial disincentives for sole parents who wish to seek extra work, or who attempt to reconcile with their former partner or live with a new partner.

(continued page 2)

### Cartoon 1



### inside

.....	p. 3
.....	p. 5
.....	p. 8
.....	p.12

## 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)

(continued from p. 1)

## more than 215,000 worse off in welfare changes

### major impact

The National Welfare Rights Network (NWRN) has produced a number of cameos based on real life circumstances to demonstrate the financial impact of these changes. The cameos assume that a person's PPS is cancelled due to a change in their circumstances and that when they subsequently re-claim Social Security they receive NSA. These situations produce the following outcomes:

- > Marcia goes from PP (partnered) to PPS when her husband dies and her payment is reduced from \$476pf to \$432pf when her son turns six;
- > Kate's loss of PPS through re-partnering leads to a \$44pf cut in payment; and
- > Claire suffers a loss of \$136pf

through taking on extra work, having her PPS cancelled and subsequently claiming NSA (this assumes she continues to work at reduced hours and her NSA is reduced due to the income test). Sally, her flat mate, who did not take on extra work, stays on PPS and is \$136pf better off than Claire.

See Danni's story below for further details on how these changes will penalise people.

The NWRN has further information on its website about the impact of the Welfare to Work changes, including two comprehensive charts detailing the financial consequences of a person on Parenting Payment or DSP, being moved onto Newstart Allowance. Go to [www.welfarerights.org.au](http://www.welfarerights.org.au) for further details.▲

## danni's \$84pf income cut

**O**n 1 October 2006 Danni claims and receives Parenting Payment single (PPS). She is a sole parent as a result of sustained domestic violence over many years and has two children, Keisha 10 and Simon, five. Danni works part-time and earns \$140pf from her casual job. She can earn \$148pf before her pension is affected so she receives the maximum rate of PPS - \$476pf. Her combined income from PPS and her casual job is \$616pf.

When Simon turns six, Danni is transferred to Newstart Allowance (NSA). The maximum weekly rate of NSA is \$432pf, \$44pf less than the maximum rate of PPS.

Danni is also subject to the NSA income test which is more harsh than the PPS income test. Earnings above \$62pf will reduce her NSA by 50c for each dollar earned. Due to her \$140pf casual earnings she would no longer

receive the maximum rate of NSA. Her casual earnings reduce her NSA by approximately \$40pf to \$392pf. Her combined income from NSA and her casual job is now \$532pf.

Before Simon turned six, Danni received combined income of \$616pf from PPS and part-time work. After his sixth birthday, this income would drop to \$532pf, a reduction of \$84pf.▲

# ftb – pocket money for millionaires

**T**he Federal Government's determination to reduce Social Security payments to people with disabilities and to sole parents where their youngest child is six or older stands in stark contrast to its Family Tax Benefit largesse for thousands of wealthy families throughout Australia.

Answers to questions in Senate Estimates hearings recently revealed that in 2003-2004, there were 76 families with an annual income of more than \$1 million who received Family Tax Benefit (FTB) Part (B) of up to \$117 per fortnight. This is an increase from the 31 millionaire families who received this payment in the previous year. In addition, there were a further 352 families earning over \$500,000 receiving the payment in 2003-2004.

The reason that these families can receive FTB (B) is that in two parent families, the income of the main carer is not taken into account to work out the rate paid. For example, if the husband in a family earns \$1 million per year and their partner is not in receipt of any income, the primary carer is entitled to the maximum rate of FTB (B) of \$117 per fortnight.

This outcome is not unintended. The Federal Government is fully

## Cartoon 2

aware and endorses such an outcome. The Government reasons that FTB (B) provides extra help for families with only one main income earner, as a key purpose of FTB (B) is to compensate single income families for the fact that they only

have access to one tax free threshold.

However, given the cuts to Social Security that sole parents and people with disabilities will have to endure, the continued payment of FTB (B) to millionaire families is no longer justifiable.

# welfare to work?

**O**ne of the major unanswered questions about the “Welfare to Work” changes is the nature of the activity and mutual obligation requirements parents and people with disabilities will be required to undertake.

The nature of the activity requirements, and their reasonableness, is a critical issue. If people have difficulties fulfilling their requirements the consequences are severe – they could lose their payments for a number of days, or in the worse case scenario, be left without income support for eight weeks at a time (see article page 6 for information on the proposed suspension regime).

## key issues

It appears that the Department of Employment and Workplace Relations (DEWR) is of the view that the activities for parents and people with disabilities should generally mirror those that apply to people receiving Newstart Allowance. However, as parents and people with disabilities are acknowledged to have only a part-time work capacity, their activity test requirements will need to be individually tailored.

Key issues to be considered are:

- the number of jobs per fortnight that a person will need to apply for;
- whether these new activity-tested groups will have to provide Centrelink with Employer Contact Certificates and Job Seeker Diaries; and
- whether they will be placed on fortnightly reporting.

## exemptions needed

The range of situations where exemptions from activity testing may be granted will also have to be flexible enough to take into account the range of circumstances that may arise with this group.

The Welfare Rights Centre has raised a range of concerns about how the activity testing of these

new groups will operate. Our major concerns include:

- the administration of an activity test system for people with episodic illness (such as HIV) or brain injuries is fraught with problems and challenges. A person with severe depression may have their interview when their condition is under control and they may therefore agree to a full range of requirements, yet a month later, this same person may struggle to even get out of bed;
- people with acquired brain injury or even mild intellectual disabilities may find it very challenging, if not impossible, to get employers to sign Employer Contact Certificates to prove their job search activities;
- standard forms for recording job contacts may be inaccessible for certain people with visual impairments or intellectual disabilities;

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**"any activities a person is required to undertake must take into account a person's disability, their children's disability, their caring responsibilities and any assistance they may need to overcome public transport barriers"**

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- transport difficulties and the time taken to travel could pose significant barriers for people with disabilities, even with the planned increase in the rate of Mobility Allowance;
- part-time Work for the Dole will

be introduced for people with disabilities, though in many cases such work is unsuitable for people with disabilities;

- the length of exemptions from activity testing for a “profoundly disabled child” is unknown;
- the intention to allow exemptions for people in a range of situations, such as a family or personal crisis, separation and domestic violence is welcome, however, the period of such exemptions is unknown, as is the nature of any exemptions for people with episodic mental health conditions that flare up, and exemptions for people with deteriorating health conditions, such as multiple sclerosis; and
- protections and flexible activity arrangements for mature age unemployed people and parents that were included in the Australian’s Working Together legislation, will most probably be removed when the “Welfare to Work” bill is introduced in early September. Only mature aged people will be able to have voluntary work included in their activity agreements.

## care needed

The Centre’s view is that any activities a person is required to undertake must take into account a person’s disability, their children’s disability, their caring responsibilities and any assistance they may need to overcome public transport barriers. Care must also be taken to make sure that people are not required to undertake an endless series of worthless activities, and that any requirements should be genuinely designed to assist a person to obtain employment.▲

## age pension arrears paid

**D**on finished work as a bus driver in November 2003. As he had been working casually he had also been receiving the Age Pension. Directly after he finished work, Don provided Centrelink with a letter from his employer advising that he no longer worked and therefore had no income apart from his Age Pension. However, Centrelink did not adjust Don's rate of Age Pension and continued to pay him a reduced rate of pension on the basis that he was still working and earning an income.

Don had stopped work as his wife had a terminal illness. He said he wasn't paying much attention to his rate of pension, given his wife's illness and the stress he was under. He assumed, incorrectly, that Centrelink was paying him the correct rate given that he had told it that he was no longer working.

In late 2004 Don's wife died. He promptly notified Centrelink of her death, as she was also in receipt of the Age Pension, and this is

when Centrelink noticed that Don had been underpaid for two years.

To seek the arrears, Don lodged an appeal to the Authorised Review Officer (ARO). The ARO promptly reviewed the decision and on the basis that Don had provided Centrelink with written information about the cessation of his employment, the appeal was successful and arrears of just under \$5,000 were paid.▲

## get legal advice!

**J**enny is a nurse who took unpaid leave to receive treatment for cancer. As she had a job to return to she received Sickness Allowance while she was on sick leave from work.

After her period of approved unpaid leave had come to an end, her employer wanted her to either return to work or to use her annual and long service leave entitlements.

Jenny rang the Welfare Rights Centre for advice on how her leave entitlements would affect her Sickness Allowance payments. The Centre was able to provide Jenny with detailed advice on the Income Maintenance Period that she would be required to serve and the impact of this on her Sickness Allowance.

The advocate assisting Jenny made further enquiries into her current situation and was able to advise her to lodge a claim for Parenting Payment Single (PPS) which, for now at least, has a higher rate of payment, access to a Pensioner Concession Card, less harsh income and assets tests and minimal activity testing requirements.

The Centre also advised Jenny that she should ask Centrelink to use section 12 of the Social Security Administration Act to retrospectively pay PPS from the date of her original claim for Sickness Allowance.

We will follow Jenny's progress to ensure that her payment is properly backdated and that she is not disadvantaged by Centrelink's error in advising her to claim Sickness Allowance rather than PPS.▲

## new ftb debt recovery measures

**T**housands of Australian families still get an FTB overpayment debt each year due to their inability to accurately estimate their total family income one year in advance. When they submit their tax return at the end of the year, the Tax Office reconciles their actual income with the amount of FTB they received and many end up with a debt. Now the Government

From 1 July 2006, Family Tax Benefit (FTB) reconciliation "top ups" and tax refunds will be garnished to offset FTB debts from previous years. Under the current reconciliation process, tax refunds and reconciliation "top ups" are not used to recover FTB debts from previous years. Also, from 1 July 2006, debt recovery of FTB overpayments that are picked up in an end of year reconciliation, will increase from \$20 per fortnight (for overpayments under \$750) to \$30 per fortnight, and from \$40 per

fortnight (for overpayments over \$750) to \$60 per fortnight.

Families with larger debts will be "case managed" by specialist debt recovery officers within the Family Assistance Office. These officers will look at whether a person has a greater capacity to pay off the debt at a faster rate, or pay it in full. The National Welfare Rights Network is to meet with the Family Assistance Office to ensure that the new recovery arrangements do not place families in financial hardship.▲

# proposed compliance regime needs “suspension”

In its “welfare to work” announcements in this year’s Budget, the Federal Government proposed an intention to drop the current breach and penalty regime and to replace it with a “new suspension” model to accompany the introduction of the “disability dole” and the “parent dole” in July 2006.

The proposal was mainly conceptual without a lot of detail. The idea is to attempt to move away from the excessive and misplaced emphasis on punishment in the current six month rate reduction breach penalty system and to replace this with a system that encourages compliance at all times and rapid re-connection between “jobseeker” and “Job Network”. Despite this admirable intention, the proposal has not been thought through enough to achieve this and has a number of features that actually run counter to it. These flaws are obvious to the Welfare Rights Centre and numerous other community welfare organisations, many of which have joined together to seek major changes from the Department of Employment and Workplace Relations (DEWR) which now has carriage of this issue.

## fundamental differences

The detail that has been provided by DEWR suggests that there are a number of confusions and contradictions in the proposal, some of which are:

1. The system proposed is **not actually a “suspension” of payment system** but rather a hair-trigger “immediate daily deduction of benefit system”;
2. The word *suspension* is understood by most people to mean “temporary blocking of payment” until contact is re-established, followed by reinstatement of payment in full and a separate determination by Centrelink on whether or not to impose a breach /penalty (this is how “suspension” currently works);
3. Under the proposed system,

## Cartoon 3

once Centrelink has determined to apply a “suspension”, a person’s payment ceases to accumulate for each day until they contact Centrelink. Where they do not have “a reasonable excuse”, up to 13 day’s payment could be deducted immediately from a person’s fortnightly payment. This is a very new construction of “suspension”.

## unfairness

In addition to these significant problems, there are a number of other major flaws in the proposal:

- two people in exactly the same circumstances who commit exactly the same offence but at different ends of their payment cycle would end up with very different penalties and overall outcomes;
- under the proposal, a third “suspension” in 12 months would lead to the imposition of an eight week no payment period. This is not a “suspension” but a severe penalty that would contradict the

whole notion of “emphasis on compliance and engagement” and “rapid reconnection” as during this period, no activity requirements could be imposed on a person who would be totally disconnected from both their Job Network agency and Centrelink during their eight week battle for survival. The eight week length has no rationale or logic in the proposed new “suspension” system as it is simply a hang-over from the current breach and penalty system where a third penalty is eight weeks without payment (\$1,600) simply because it has to be bigger in money terms than the second penalty of a 24% reduction in payment for six months (\$1,250); and

- any compliance regime that centres around “suspension” of payment, especially where this can result in a person finding no money in their account on payment day without notice or

(continued page 7)

(continued from p. 6)

## proposed compliance regime needs “suspension”

warning, is highly likely to result in additional “penalties” in the form of bank dishonour charges, additional fees and costs resulting from such automatic deductions as rent, loan repayment and utility payments not being met, and reconnection fees when phone and utility bills are not paid. These can occur even where Centrelink subsequently determines that a person has a “reasonable excuse”.

### intentions

The proposal may mean that some people who do not attend an interview or meet an activity test requirement without a reasonable excuse, may have their payment “suspended”, find out quickly, contact Centrelink immediately, be judged to have no “reasonable excuse”, remedy the matter almost immediately and have their payment restored before their next payday, thus having no actual “suspension” just a penalty of the loss of one or two day’s payment (\$15 - 7% or \$30 - 14%). This would certainly be better than the current system which would result in a six month rate reduction of 18% (\$1,029).

### reality

However, it will not work this way for many people. Rather, for many it could result in a significant penalty of up to 13 days loss of payment (\$204 / 92%), depending on:

- when their “offence” occurs in their 14 day payment cycle, or when a Job Network member participation report is forwarded to Centrelink and when in the payment cycle Centrelink acts on it;
- when they find out about Centrelink’s imposition of a “suspension”; and

- how long they take to contact Centrelink after Centrelink imposes the “suspension” decision.

### changes possible

These differences in approach to “suspension” and flaws in the way the timing works give rise to inconsistent outcomes for people in otherwise similar circumstances as well as unnecessary complexity and practical implementation problems. In addition, there will be unintended but unavoidable additional or external penalties and the creation of barriers to compliance and rapid reconnection that are contrary to the whole

intention of the system. The proposals are unfair and need to be remedied before any suspension system could have credibility.

Welfare Rights, working with church based Job Network providers, disability organisations and ACROSS, have put a comprehensive series of recommendations to DEWR to solve the many flaws in its proposal. Discussions are taking place but it is too soon to tell whether the inexperienced DEWR, the new tough department on the Social Security block, will be prepared to listen and reshape its compliance regime before the legislation is finalised in late August. Stay tuned.▲

## compensation changes required

**Where a person receives periodic compensation from an insurance company, that compensation is not treated as “ordinary income” for Social Security purposes. Instead, each dollar of compensation received reduces a person’s entitlement to a Social Security payment by a dollar, often cancelling the Social Security payment altogether.**

The Welfare Rights Centre has recently been contacted by clients who have had their Social Security payments cancelled before they have actually started to receive periodic compensation, leaving them with no income at all. In many cases, a person has to fight for their right to be paid periodic compensation. Once an agreement has been reached with an insurance company for a person to be paid compensation, the insurance company must notify Centrelink of the amount of periodic compensation to be paid and the amount of any arrears owing to the person. Centrelink will then act upon this advice to adjust (or cancel) the person’s Social

Security payment and to recover any amounts owing to it.

However, in many cases insurance companies contact Centrelink to notify of the compensation before any money has actually been paid to the person. In a recent case, a person who had to wait for six weeks after his Newstart Allowance was cancelled before he started to receive periodic compensation. This is six weeks without any income at all.

This situation is clearly unacceptable. Centrelink’s compensation team should not reduce or cancel a person’s Social Security payment until they commence receiving the periodic compensation.▲

# social security changes

## what's happening when

### new special benefit qualification for visa sub-class 070

A new ministerial determination adds visa sub-class 070 to the list of sub-classes which attract Special Benefit.

**Date of effect:** 11 May 2005

### no access to FTB advance for child support debtors

Introduction of new rules which preclude certain child support debtors from accessing Family Tax Benefit (FTB) advance payments where the child support debt could be recovered directly from their FTB payments.

**Date of effect:** 26 June 2005

### FTB "quarantining" of income

Introduction of new qualification and rate calculation rules for FTB Part B "secondary earners" who return to work after a child is born or comes into their care. The rules are complicated, for example, it must be the first time the person has returned to work after the child became an "FTB child" and the person must not have been either engaged in paid work or receiving "passive employment income".

**Date of effect:** 1 July 2005

### extension of maternity payment to adoption of children under two

Parents who adopt a child under the age of two can now receive Maternity Payment where claims are made within 26 weeks of the date the child is entrusted to the care of the adopting parent, or in the case of overseas adoptions, within 26 weeks of the child's arrival in Australia.

**Date of effect:** 1 July 2005

### extension of Austudy and Youth Allowance to new apprentices

The Federal Government has extended qualification for Youth Allowance and Austudy Payment to people registered under the "New Apprenticeships" scheme. Health Care Cards are not automatically issued, although a person may still qualify for a Low Income Health Care Card. New Apprentices also have access to the "student income bank" of up to \$1000 (any existing

working credits are transferable).

**Date of effect:** 1 July 2005

### "non-lodger" Family Tax Benefit (FTB) debts

Introduction of new rules for setting aside and writing off "non-lodger" FTB debts in certain circumstances where a couple has separated and a person has incurred a debt because their former partner has failed to lodge a tax return.

**Date of effect:** 1 January 2006 ▲

## youth allowance and austudy extended to "new apprentices"

**A** person who is registered as a "new apprentice" under the "New Apprenticeships" scheme may now qualify either for Youth Allowance (YA) if the person is under 25, or Austudy Payment if the person is 25 or older.

The income and assets tests which apply to YA and Austudy Payment will now apply to the "new apprentices" who claim these payments. For example, "new apprentices" claiming YA will be subject to a parental means test, unless they have established that they are "independent".

In relation to both YA and Austudy Payment, "new apprentices" will have access to the Student Income Bank, but only to a maximum of \$1,000, unlike full-time students who have access to up to \$6,000.

Although "new apprentices" will not be automatically issued with a Health Care Card, they may still

qualify for a low income Health Care Card.

To be paid YA or Austudy Payment as a full-time new apprentice, a person must have a current (and not suspended) Commonwealth registration number.

YA "new apprentices" may remain qualified until after their 25<sup>th</sup> birthday if they have been paid YA and have maintained continuous qualification as a "new apprentice".

There are no additional activity test requirements beyond undertaking the new apprenticeship.

A person enquiring about the payments for "new apprentices" should call Centrelink on 13 36 33.▲

# social security and prosecution

## what is prosecution?

Prosecution is the process of going to court for a criminal offence. The court decides if a person should be convicted of the offence and what penalty should be imposed.

## prosecution for Social Security matters

It is an offence to intentionally tell Centrelink something that is not true in order to receive a Social Security payment or a higher rate of payment. It is also an offence to help another person do this or to intentionally mislead Centrelink by not providing information that would affect the rate of Social Security paid.

Centrelink will raise a debt where it determines that a person has been receiving more money than they were entitled to receive. Once a debt has been raised, Centrelink will then separately consider if the debt arose because the person intentionally told Centrelink incorrect information or intentionally withheld information. If Centrelink determines this is the case, the matter can be referred to the Commonwealth Director of Public Prosecutions (DPP) for consideration of prosecution. Centrelink can refer a matter to the DPP whether or not the debt is repaid.

## the prosecution process

Where Centrelink considers that there may be evidence that a person intentionally failed to provide information it can investigate further. Centrelink has wide powers to obtain information. For example, it has the power to obtain information from a person's employer and their bank.

Where Centrelink is considering referring the matter to the DPP, the

person will generally be invited to attend a "prosecution interview". The letter requesting attendance at the interview should state it is a "prosecution interview". It is also possible to tell if it is a prosecution interview as these interviews are taped.

## prosecution interview

The purpose of a prosecution interview is to ask a person questions which may prove an offence was committed. Before deciding whether or not to attend a prosecution interview, a person should always obtain legal advice. In most cases it is not in a person's best interest to attend the interview. This is because the interviews are conducted in a manner designed to fill in the gaps in the case against the person. A person has the right not to attend the prosecution interview and there is no penalty for not attending.

Once Centrelink has made a decision to refer the matter to the DPP, a letter will be sent to the person advising them of the referral. The DPP will then look at the information provided by Centrelink and decide if an offence can be proven. If the DPP decides an offence can be proven, proceedings will be commenced in court. It can take the DPP many months to make a decision about whether or not to proceed.

In some cases, the DPP will agree to discontinue prosecution action where it is not in the public interest. In these cases information can be provided to Centrelink or the DPP regarding, for example, a person's health, disability or other special reasons why the prosecution should be discontinued. If a person is going to provide this sort of information to Centrelink or the DPP, it is a good idea to get legal advice before providing it.

If the DPP is proceeding with the prosecution a Court Attendance Notice (CAN) will be issued requiring the person to attend court on a certain date. It is an offence not to attend court on the day specified in the CAN.

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**"A person has the right not to attend the prosecution interview and there is no penalty for not attending"**

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If a person receives a CAN they should seek legal advice from either the Legal Aid Commission or a private solicitor about whether to plead guilty or defend the case. If a person is unable to obtain this advice prior to the required court attendance date, the court can be asked to adjourn the case in order for the person to obtain legal advice. In most courts there are duty solicitors available on the day who may be able to assist in requesting an adjournment.

## the penalties?

If a person is prosecuted, the penalties will vary depending on the seriousness of the offence, the person's attitude to the offence, any history of previous offences and their circumstances. Penalties range from good behaviour bonds, fines, community service orders and imprisonment. Generally, the court will also make a "reparation order" requiring the person to repay the debt to Centrelink. Even if a reparation order is not made by the court a person will be required to repay the debt unless the court has indicated it has imposed a longer than usual sentence as the person is unable to repay the debt.▲

## residency issues

**D**iane recently claimed Newstart Allowance (NSA) but the claim was rejected on the grounds that she was not a “resident of Australia”. To receive NSA a person must be a resident of Australia. The factors that Centrelink look at when determining whether a person is a resident of Australia are detailed in the Social Security Act.

These factors are:

- the nature of the accommodation used by the person in Australia; and
- the nature and extent of the family relationships the person has in Australia; and
- the nature and extent of the person’s employment, business or financial ties with Australia; and
- the nature and extent of the person’s assets located in Australia; and
- the frequency and duration of the person’s travel outside Australia; and
- any other matter relevant to determining whether the person intends to remain permanently in Australia.

Diane is an Australian citizen having arrived in Australia in the late 1960s as a child. She lived here continuously until 1992. When she married in the early 1990s she moved to her husband’s country of birth.

Diane returned to Australia in early 2005 with the intention of residing here permanently. One of her sons had already returned to Australia and was studying at university and receiving Youth Allowance (YA). Her other son and her husband were finalising their affairs overseas before returning to Australia. Diane resided with her father and son after her return to Australia. She also has two brothers in Australia. She had closed her bank accounts overseas and her husband was attempting to sell their unit.

The Original Decision Maker (ODM) rejected the NSA claim on the basis that Diane was not a resident of Australia. An appeal was lodged to an Authorised Review Officer (ARO). The ARO changed the original decision, deciding that Diane was in fact a resident of Australia on the basis that she had strong family ties here, intended to reside here permanently and her husband was attempting to sell their unit. Diane was granted NSA and full arrears were paid.▲

## don’t make me sue!

**T**rudy is 19 and in receipt of Youth Allowance (YA). She started a casual job with a fast food outlet earlier this year and declared all of her income to Centrelink. After about a month on the job, Trudy broke her finger while at work. She was then told by her boss that she would be fired from her casual position as she was just not up to the job.

Trudy was understandably upset by this situation. She had not been treated well at her job but she still needed the money and the experience. She went to Centrelink to advise that she was no longer working at the fast food outlet. She did not expect what happened next - her YA was cancelled as she could not show that she was taking action to obtain compensation from her former employer for her broken finger.

Trudy was outraged by this. She was effectively left with no money at this point. Her broken finger was healing and she had no idea whether there was anything she could do to claim compensation for her finger.

In need of legal advice, Trudy called the Welfare Rights Centre. The Centre contacted Centrelink on her behalf and argued that Centrelink was acting unreasonably. A week later Trudy’s YA was restored, full arrears were paid and she was given some time to make an appointment with the Legal Aid Commission to find out if there was anything she could do about obtaining compensation in relation to her injury.

Centrelink clearly acted far too rashly in this case, expecting a 19 year old to have undertaken legal action against a large company almost as soon as her injury occurred.▲

## arrears paid

**S**arah was in receipt of Youth Allowance (YA) when her mother’s Parenting Payment single (PPS) was cancelled as Centrelink believed she was a “member of a couple”. Sarah’s mother had to appeal to the Social Security Appeals Tribunal (SSAT) before her PPS was restored. The Tribunal ruled that she was not a member of a couple and therefore qualified for PPS from date of cancellation.

However, during the three months that her mother was not in receipt of PPS, Sarah did not receive YA as Centrelink advised her that to receive YA she would have to provide the income details of her mother’s alleged partner.

Sarah’s YA was restored when her mother’s PPS was restored. Her mother was paid arrears of PPS,

courtesy of the SSAT decision. But Sarah then had to lodge a separate appeal with Centrelink to obtain arrears of her YA for the three months that it was cancelled. Arrears of YA were promptly paid to Sarah given that the only income relevant to working out her rate of YA was her mother’s.▲

# Young people falter in Centrelink hurdles

The Youth Allowance (YA) independent rate is to ensure that young people forced to leave home because of reasons such as extreme family breakdown, are provided with income support and access to services and programs that will assist them. One of the categories of the independent rate is where it is “unreasonable” for a young person to live at home. Centrelink policy provides that the independent rate of YA may be granted where a young person cannot live at the family home due to serious risk to his or her physical or mental well-being due to violence, sexual abuse or other similar unreasonable circumstances.

In the last two financial years there have been 90,204 claims for this rate. Almost a third of all claims are rejected. The rejection of such a large number of claims is of concern to the Welfare Rights Centre (WRC) as is the administrative procedures that Centrelink adopts in dealing with such claims.

For instance, there are no specific timeliness standards for “unreasonable to live at home” claims, though Centrelink states that it makes every effort to complete the assessment process within 21 days, or sooner.

Another problem is that few young people appeal a Centrelink decision, and a small number appeal to either the Authorised Review Officer or the Social Security Appeals Tribunal. Unfortunately, many young people who are denied this payment fall through the cracks, and become just another statistic and join the army of homeless Australians living on the streets.

The WRC believes one area in need of reconsideration is the current Centrelink practice of having Social Workers as the decision makers who are in the position to approve or reject the claim that a person has suffered extreme family breakdown.

Young people who cannot live at home are often facing family crisis, emotional, physical or sexual abuse or neglect, are in need of significant support, but often their main and first contact with Centrelink is about the decision to grant them the away from home rate.

A young person who has had their claim rejected by the Social Worker

is unlikely to come back to the Social Worker for support of assistance at a later date if their problems worsen. In the young person’s mind, the Social Worker is perceived as part of the administrative system. As it was the Social Worker who made the decision feel that Centrelink do not believe them and is not on their side, so a young person is be unlikely to seek Social Work support in the future when they are facing another personal crisis.

In our experience, the quality and thoroughness of some of the assessments undertaken by Social Workers is totally inadequate. At times, they can appeal to be more concerned by any potential complaint of a parent to the local Member of Parliament, than in looking after the needs and interests of the young person.

It is also the experience of WRC that Social Workers are frustrated that they can find that doing “unreasonable to live at home” assessments can be their primary function. This can mean that there is less time and resources to provide the support and counselling and referrals both these young people in crisis and to other Centrelink clients experiencing significant distress.

Welfare Rights understands the need for a professional and thorough assessment, though we believe that it is a legitimate question as to whether it is a legitimate and appropriate role for Social Workers to have to role of deciding claims for unreasonable

to live at home rates. The lack of standards of time taken to assess claims needs to be address – we have had young people languishing with no money for months at a time, and often the young person simply gives up out of sheer frustration. The general low level of appeals by young people is a problem already acknowledged by Centrelink – the lack of appeals by young people in cases involving unreasonable to live at home claims is an area that deserves the urgent attention of Centrelink.

# social security reporter lives on !!

**F**or people who work in the area of Social Security law and who need to keep up-to-date with decisions made by the Social Security Appeals Tribunal (SSAT), Administrative Appeals Tribunal (AAT) and Federal Court, the journal "Social Security Reporter" (SSR) was the resource on which we all relied.

Published by the Legal Service Bulletin, Monash University, the SSR summarised important recent decisions by the SSAT and AAT as well as the Federal Court. It saved practitioners working in the area of Social Security law literally hundreds of hours of research as the important cases were detailed in the SSR.

So it was a sad day in December 2004 when subscribers were informed that the SSR would no longer be published. However, the Welfare Rights Centre, the previous editor of the SSR, Andrea Treble, and Griffith University have now combined to resurrect the SSR.

ssr rises from the ashes

From November this year, the SSR will be published quarterly by the Socio-Legal Research Centre of Griffith Law School, Griffith University with the previous editor Andrea Treble back in the Editor seat. The Welfare Rights Centre, Sydney will provide the administrative and publications support including managing subscriptions and distribution, but will not be involved in the content.

The SSR will continue to provide detailed summaries of topical or noteworthy Social Security cases in the tribunals -and Federal Court, and will be published in two formats for the choice of subscribers— both PDF and e-publication. Subscriptions are now open.

If you previously subscribed to the SSR and wish to continue by subscribing to the "new" SSR, please complete the subscription form on the back of this edition of "rights review". Alternatively you may obtain a subscription form the National Welfare Rights Network website

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

Either fax the form to (02) 9211 5268 or send it to Welfare Rights Centre

Should you have any questions about

the SSR please contact the Centre's Administration Officer, Catalina Loyola, on (02) 9211 5389.▲

## "rights review" now available online !!

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

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

## two factsheets translated into five languages

**T**he Welfare Rights Centre now has two Factsheets available in five languages other than English.

The Factsheets are:

"Appeals - how to appeal against a Centrelink decision"; and

"Your Social Security rights".

The Factsheets have been translated into Arabic, Spanish, Vietnamese, Serbian and Mandarin.

These Factsheets provide information about a person's basic legal rights under Social Security law, including the right to appeal a Centrelink

decision they are not happy about.

To access these Factsheets, go to the National Welfare Rights Network website [www.welfarerights.org.au](http://www.welfarerights.org.au).

The Centre would like to thank the Law and Justice Foundation of NSW for funding this project.▲

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

**F**or anyone who has worked in the area of Social Security law or policy, or tried to assist a person with a Social Security problem, they will be aware of the complexity of Social Security law. This complexity is not new, and in recognition of this complexity, the Welfare Rights Centre first published the Independent Social Security Handbook in 1991. The Handbook became known as the bible among advocates and community workers and it was the resource that community workers turned to understand Social Security law and policy, their client’s legal rights and how best to advocate for a person with a Social Security problem.

Five editions of the Handbook have been produced since 1991 to take into account the constant changes to Social Security law and policy and the Handbook is now available in an ONLINE EDITION.

Regular readers of “rights review” will be aware that the ONLINE edition is now available free to community workers and most state government employees in NSW, Tasmania, South Australia and Western Australia. The ONLINE EDITION is available free in these states as the Centre has entered into partnerships with the relevant state government departments to provide this important resource to community workers and state government employees.

If ever you need to know how to deal with a Centrelink problem or about Social Security to assist a client with their Social Security problem, the ONLINE EDITION, updated each quarter, is the best place to start. If you are a community worker or state government employee in one of the above mentioned states and you wish to access the ONLINE EDITION of the Handbook go to [www.welfarerights.org.au](http://www.welfarerights.org.au) for details about how to do so.

For community works in Victoria and Queensland, the Centre is continuing to negotiate with the relevant state government departments to try and extend the partnerships to those two states. In the meantime community workers and state government departments in those states will have to subscribe to the ONLINE EDITION for \$99 per annum.

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#### Cartoon 4

# marriage-like relationships - centrelink under investigation

**T**he Commonwealth Ombudsman recently announced the establishment of an inquiry into Centrelink's handling of marriage-like relationship (MLR) issues, following an outcry over claims of intimidation and harassment of people investigated by Centrelink.

The development comes after the National Welfare Rights Network (NWRN) raised concerns about Centrelink's practices and decision making processes with the Ombudsman, politicians, the media and Centrelink.

Centrelink has formed a working group to address MLR issues raised by the Ombudsman. Membership of the Centrelink working group includes representatives from the multicultural, Indigenous and disabilities community, as well as representatives from various Government departments. The working group will focus on:

- examining internal processes and Centrelink practices relating to MLR investigations;
- review of Centrelink staff training, reference material, Centrelink forms and information products associated with MLR review activities; and
- identifying aspects of policy that could be looked at by the Interdepartmental Committee being chaired by the Department of Family and Community Services.

The NWRN looks forward to working with the Ombudsman, the

Department of Employment and Workplace Relations, Centrelink and the Department of Family and Community Services to ensure that Centrelink policies and processes concerning investigations of marriage-like relationships are both fair and reasonable.

Readers who would like to raise any issues about this matter with the Commonwealth Ombudsman should write to the Commonwealth Ombudsman, GPO Box 442, Canberra ACT 2601, call 1300 362 702 or email to [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au).▲

# foster carers overlooked in welfare to work changes

**T**here are 8,000 foster carers in Australia, providing care for around 11,500 children at any one time. Census data indicates that the fostering system is heavily reliant on single carers and in particular, sole parents with dependent children. Single carers account for almost a third of all foster carers, and more than half of all single carers are sole parents.

Support for these foster carers is under attack due to the proposed "Welfare to Work" changes. Under the changes from July 06, people on Parenting Payment (PP) will be transferred to Newstart Allowance (NSA) once their youngest child turns six and will be subject to an activity test, with penalties to apply should they fail the test. However, where a person has a foster child, they are generally not qualified for PP (if the foster child is the only child in their care) as the foster child generally does not fit the definition of "dependent child" for PP purposes. Where a foster carer has school aged children of their own, but the foster child in their care is younger than six, the carer would still be transferred to NSA and be subject to the activity test, as the foster child would generally not be considered the youngest member of the family.

This poses problems for the thousands of foster parents in Australia. Foster parents point out that foster care, by its nature, is unpredictable, with children coming in and out of their care with little prior notice. Subjecting foster parents with foster children under the age of six in their care to activity testing ignores the additional requirements imposed on foster carers and the special circumstances and care needs of foster children. For instance, they may be required to attend meetings and planning conferences for the children in their care, or be "on call" to assist the school to manage disruptive behaviour or to look after the child if suspended from school, or to accompany the child to a specialist appointment or to counselling.

A further issue is that foster caring was recognised as suitable

voluntary work for mutual obligation purposes under the Australian's Working Together legislation. But to date, the special situation of foster carers has not been recognised in the proposed Welfare to Work changes. The Welfare Rights Centre recommends that where a person

has a foster child under six in their care they should remain qualified for PP and that foster caring should be recognised as a suitable activity where a foster parent is subject to activity testing.▲

## "non-lodger" debts

**A**t present, where a person in receipt of FTB separates from their partner and their partner fails to lodge a tax return, the FTB recipient may incur a debt. These debts are known as "non-lodger" debts and occur even where the income of the FTB recipient's ex-partner would not have affected their rate of FTB. Many low income people incur these FTB debts despite the fact that they were entitled to the rate of FTB that they received.

The Federal Government has recognised this anomaly in the Social Security legislation and from 1 January 2006, the legislation will be amended to allow Centrelink to "set aside" and "write-off" certain FTB "non-lodger" debts which have been raised where a couple separate during or after the second financial year after the debt year. When the ex-partner lodges a tax return for the debt year, Centrelink will then calculate whether a debt is owed.

### debt relief delayed

Unfortunately, this new legislation will not come into effect until 1 January 2006 because Centrelink needs time to make administrative systems changes to be able to implement the new laws.

This means that many people will continue to make repayments towards FTB "non-lodger" debts throughout the 2005 year, despite the probability that the debt may be "set aside" or "written off" from January 2006.

The Welfare Rights Centre has

written to various Federal Government Ministers and senior Centrelink officials requesting an exercise of the Act of Grace power to "write off" or suspend recovery of certain "non-lodger" debts until they can be reviewed under the new laws.

The Centre has asked that the Act of Grace apply where:

1. a person appeals a "non-lodger" debt which was raised because their ex-partner has not lodged a tax return; and
2. the person has lodged their own tax return (if required); and
3. the person separated from their partner during or after the second lodgement year.

The Centre argued that it is desirable that Act of Grace be granted in these situations so that people with these debts are not further disadvantaged by the existing law merely because Centrelink needs more time to implement the changes.▲

# Publications Order Form

To receive a yearly subscription to "rights review" or to order the 5<sup>th</sup> edition of the Independent Social Security Handbook and/or the ONLINE EDITION, please complete the form below and send it with a cheque made out to "Welfare Rights Centre". Alternatively, just complete and sign the credit card payment authority. Prices are inclusive of GST. ABN 76 002 708 714

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