

# rights review

NEWS & COMMENT ON SOCIAL SECURITY ISSUES

## centrelink staff snooping needs further action

**M**any Australians would have been shocked at recent revelations that hundreds of Centrelink staff had inappropriately looked into the files of friends, neighbours, relatives and /or ex-lovers. Given the enormous intrusiveness of the Australian Social Security system, clients are forced to place great reliance on the security and confidentiality of the information that is held on them by Centrelink. This makes it all the more disturbing when this is breached by the very organisation that is meant to be safeguarding it.

In August, Centrelink revealed that 585 staff had been sanctioned for privacy violations. Nineteen had been dismissed and 92 had resigned. Five cases were referred to the Federal Police. Earlier in the year, the Child Support Agency reported 405 breaches of privacy, including 69 cases where sensitive information was given to former spouses. Privacy breaches have also been reported by the Australian Taxation Office and the Immigration Department.

### targeting requires mountains of information

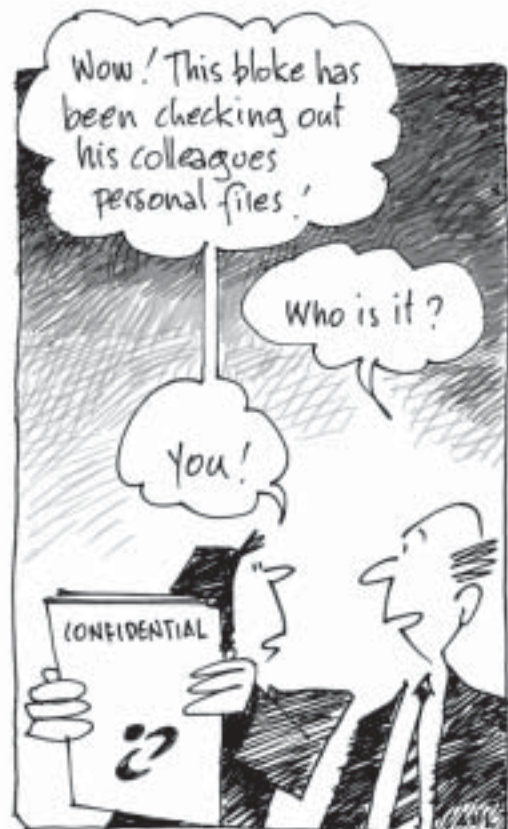
Australia's tightly targeted Social Security system requires mountains of personal information to be given to Centrelink. Confidentiality is therefore a crucial foundation of this very intrusive system. It is our view that Centrelink must therefore take a very strong stand against any staff member who breaches this fundamental responsibility.

Welfare Rights recently wrote to the Centrelink CEO, Jeff Whalan endorsing the tough stance that Centrelink has taken in clamping down on abuses of confidentiality requirements by a small number of Centrelink staff.

However, some Centrelink clients will react with fear and apprehension to these revelations, as they are already suspicious about providing information to Centrelink and may believe that their privacy is not adequately protected. This is particularly the case for many of the numerous Centrelink clients who have a mental health condition.

Welfare Rights pointed out that many of our clients were already anxious about providing information to Centrelink before the latest revelations. Unless further concrete and public steps are taken to address these concerns, many

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## Welfare Rights Centre

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

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

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## centrelink staff snooping (cont)

people may be placed in very difficult situations as they may be unwilling to provide adequate information to enable the right payment, assessment or services to be provided by Centrelink.

### further steps need to be taken

In view of these considerations, we suggested that there were a number of further steps that should be undertaken to ensure that the community generally, and Centrelink clients in particular, regain a high degree of confidence that their private information will not be accessed inappropriately. We recommended that:

- ♦ Centrelink publish a report on the recent events, outlining the nature of the confidentiality breaches, the impact on client files and, to the extent known, the impact on the clients themselves, and the steps taken to contact clients and address any actual or perceived breach of confidentiality;
- ♦ Centrelink report publicly each month over the next six to 12 months, on the number of staff who have inappropriately looked at a client's file and the

penalties that were applied;

- ♦ Centrelink write to all clients whose files have been inappropriately accessed to inform them of this, the nature of the violation and the actions taken to address this so that each person can make an assessment if there is any direct or indirect damage. If this is made public, everyone who does not receive a letter can also be reassured that their files were not involved;
- ♦ the Federal Privacy Commissioner should be asked to undertake a risk assessment of the current arrangements, with a view to strengthening procedures should this be necessary.

Action must be taken to send an even stronger message to Centrelink staff that such behaviour is not to be tolerated, and most importantly, to send an even stronger message to the public and Centrelink's 6.5 million clients that Centrelink is serious about protecting the confidentiality of the personal information that the system demands they lodge with Centrelink. ▲

## student takes on centrelink!

Marlene was on the verge of completing a two-year Advanced Diploma at TAFE when she was told that she owed Centrelink almost \$5,000 in overpaid Austudy Payment. The basis for the debt was that Marlene was not a "full-time student" in her second semester. Marlene was shocked - she had always thought of herself as a full-time student. She attended almost 85% of her classes, did substantial study at home and passed the majority of her subjects. In raising the debt, Centrelink had contacted an administrator at the TAFE college and relied solely on that person's information to decide

that the hours Marlene attended her course were not at least 75% of the "normal" hours a full-time student in that course should attend. Centrelink did not look further and consider the TAFE college's course handbook and other course information which indicated otherwise. The Centre obtained this extra information for Marlene and wrote a submission to the SSAT arguing that she was in fact a full-time student and was entitled to her Austudy Payment for that semester. The SSAT agreed with the Centre's submission and set aside Centrelink's decision to raise a debt. ▲

# parents misled by centrelink over “participation” requirements

**T**he Welfare Rights Centre and other community organisations are concerned that Centrelink staff are ill-informed about the activity requirements expected from parents as a result of the 1 July 2006 Welfare to Work changes.

Parenting Payment recipients receiving Parenting Payment before 1 July 2006 are exempt from activity requirements until at least 1 July 2007, and yet are being told that they need to connect with the Job Network or face a “participation failure” and possible financial penalty.

Centrelink staff appear not to be seeking the most basic information which should underpin their advice to parents about their activity requirements. This basic information includes when the parent became eligible for Parenting Payment and asking about the age of the parent’s youngest child, or when they separated from their partner.

Clients are getting confused by letters from Centrelink, and telephone calls to Centrelink when different information is given.

## volunteer or be penalised

Centrelink is currently contacting parents and inviting them “on a voluntary basis” to look for work and make contact with the Job Network or another employment service provider. However, parents are reporting a great deal of confusion about what their activity requirements are, and are not being provided with clear information from Centrelink.

Unfortunately it is not only Centrelink that is providing incorrect information to clients about their activity requirements and the consequences of failure to comply. In one recent case a Job Network member threatened to impose a “participation failure” on a person who had no compulsory participation requirements! Parents with significant health



problems and very young children are also being told that they must look for at least 15 hours of work a week.

For parents receiving Parenting Payment prior to 1 July 2006 there are no activity requirements until 1 July 2007 or when their youngest child turns seven, whichever happens later.

Before this time Centrelink will send letters inviting parents to come in and talk to a Centrelink Customer Service Adviser about their circumstances and when activity requirements will begin.

This interview is compulsory and parents must attend, but as they do not yet have compulsory “participation requirements” they will not be subject to a “participation failure” if they do not attend. However, if the letter is not replied to, or the interview is not attended, a person’s payment could be suspended under the normal rules.

For parents who claimed Parenting Payment after 1 July 2006, “participation requirements” will be imposed on single parents once their youngest child turns six. ▲

## youth reference group at last

**I**t's been on, then off but now it's back on again. Centrelink is finally to form a Youth Issues Reference Group at last – or at least that is the latest word.

Centrelink has formed a number of community reference groups in the past to provide feedback to it about client experiences with Centrelink practices and procedures. Current reference groups include the "Participation Reference Group" in relation to "welfare reform", as well as reference groups for older people, for people with disabilities, for carers and for multicultural community issues.

A glaring omission, however, is that there is no reference group for young people. Late last year, the National Welfare Rights Network (NWRN) had been given assurances by Centrelink that one would be formed, however that undertaking was withdrawn earlier this year.

The NWRN then wrote to Centrelink outlining the reasons why Centrelink should establish a specific Youth Reference Group. These reasons stated that young people:

- ♦ are among the most disadvantaged in the Social Security system and struggle to understand and negotiate a highly complex system. Youth Allowance has four streams and sixteen sub categories making it one of the most complicated payments;
- ♦ are particularly vulnerable to being excluded from payment or being on the incorrect payment;
- ♦ have the highest breach rates. In September 2004, 53% of all administrative and 47% of all activity test breaches were imposed on young people under 25;
- ♦ have disproportionate levels of Centrelink debt;
- ♦ have extremely low appeal rates, a fact readily acknowledged by Centrelink. Of 16,000 rejections of

"unreasonable to live at home" claims in 2004/2005, only 155 were appealed to the Original Decision Maker, 43 to the Authorised Review Officer and only two were appealed to the Social Security Appeals Tribunal;

- ♦ experience significant problems with assessment of "unreasonable to live at home" claims;
- ♦ face difficulties in obtaining adequate Proof of Identity or accessing alternative POI provisions;
- ♦ often lack the skills and confidence to negotiate the contents of Activity Agreements, often agreeing to activities they are not capable of undertaking leading, in the worst case scenario, to non payment breaches of eight weeks.

### JCA inability syndrome

Steven applied for DSP under the new Welfare to Work rules. To assess his "degree of impairment" and "continuing inability to work" he had to have a Job Capacity Assessment (JCA). Steven attended the JCA appointment and disclosed he suffers from a genetic condition affecting males known as *Klinefelter's syndrome*. Symptoms related to this syndrome vary in degree and can include delayed speech development, poor verbal skills, below-average intelligence, emotional and behavioural problems, distinctive facial features, severe retardation, deformities of bony structures and disordered development of male features.

The role of a JCA assessor is to determine whether a claimant for DSP has 20 impairment points on the statutory Impairment Tables, and whether they are able to work at least 15 hours per week within

### Minister intervenes and Centrelink wins Comaneci Award!

The National Welfare Rights Network then raised this issue with the Minister for Human Services, Joe Hockey in a meeting in May. Mr Hockey advised the NWRN that he would raise the issue with the CEO of Centrelink who had recently advised the NWRN that he thought a Student Reference Group would be sufficient. It seems that Minister Hockey's agreement with us that a Youth Reference Group is desirable has prevailed, as we have recently been informed officially that Centrelink now agrees and will establish a youth issues reference group.

As much as the National Welfare Rights Network welcomes this outcome, this series of events won the Nadia Comaneci Award for the Best Backflip of 2006 at the recent NWRN National Conference. ▲

two years. After attempting to locate the syndrome on the Centrelink database, the assessor told Steven that *Klinefelter's syndrome* was not listed and awarded Steven zero impairment points for that particular medical problem.

Ultimately, Steven's claim for DSP was rejected. However, in Steven's case, it appears that the JCA was made without full understanding of *Klinefelter's syndrome* or the impact that it has upon his capacity to work.

Welfare Rights has advised Steven to appeal the decision on the basis that relevant medical evidence was not sufficiently considered by the JCA. Meanwhile, the Centre will continue to monitor the effectiveness of JCA assessors in determining issues such as "impairment" and "continuing inability to work". ▲

# cancer doesn't count for DSP

It's appalling that the family of Matthew Pearce, the sixteen-year-old Perth boy with leukaemia who was refused DSP, felt that they had to resort to the media to get Matthew onto DSP. However, at least the media attention and Centrelink scrutiny of his case has highlighted some of the flaws in the DSP legislation and policy.

Unlike the media, Welfare Rights was not surprised that a person so ill with leukaemia could be put through such hoops and denied DSP. It is laudable that Centrelink has rather graciously taken the blame for what it conceded was poor handling of Matthew's case. But it should not be inferred from this Centrelink apology that the DSP legislation is fair, and that it was purely Centrelink errors that caused Matthew to be refused pension. Matthew's experience was not a mistake – people with serious and disabling conditions are refused pension and put through unnecessary hoops every day.

To be eligible for DSP a person not only needs to be assigned at least 20 points under the statutory Impairment Tables, they also must have a "continuing inability to work" because of the impairment, for at least two years.

## "treated and stabilised" – cancer doesn't count

Under the Impairment Tables, a person's condition must generally be "treated and stabilised" for a rating to be assigned. Where a claimant has a condition such as cancer for which they have just commenced chemotherapy or radiotherapy, it is not uncommon for no points to be assigned, and for the claimant to be advised to remain on Newstart or Sickness Allowance for the time being. This may be despite the fact that the person has an aggressive form of cancer for which the prognosis is poor, even with the treatment.

We need to go no further than the Job Capacity Assessment Guidelines for disturbing examples of departmental thinking on the question of whether a person's condition has "stabilised" or not, and the confusion of this issue with



considerations of "future capacity for work" after a period of treatment. An example is given in the Guidelines of a client with a condition which has **not** "stabilised". The woman has breast cancer. She has had a mastectomy and is currently having chemotherapy. The woman's doctor has noted that the treatment causes her significant side effects that affect her ability to work, but these are expected to improve when the course of chemotherapy is completed.

Of course it may be that this woman will respond well to the chemotherapy and that her prognosis is ultimately good. However, this is a determination that only her doctor can make and that s/he will have made in the treating doctor's report or medical certificate. It is not appropriate for the JCA to be making such an assessment.

## JCA v the treating doctor

This "zero points" situation can also

be an issue for people with a mental illness such as schizophrenia. If the person is on a new treatment, eg, medication, they may be regarded as not yet "stabilised" and advised to claim Newstart or Sickness Allowance rather than DSP. They then obtain a medical certificate from their doctor, who may be adamant that they are currently unfit for work – only to be advised by the Job Capacity Assessor that they have a "permanent" incapacity for which Newstart or Sickness Allowance is not payable.

Once a person has completed treatment, or is undertaking ongoing, indefinite treatment, a claim for DSP **may** be more straightforward as the Job Capacity Assessor will probably accept that their condition has "stabilised". However, even if they are assigned 20 points or more under the Impairment Tables, they may not be considered to have a "continuing inability to work", because despite

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# job capacity assessments - utility? capacity?

**A**s part of the Welfare to Work changes, most new claimants for DSP and Sickness Allowance, and people seeking a medical exemption for Newstart Allowance, will be referred for a Job Capacity Assessment. DEWR policy is that a person will only be exempt from a JCA assessment if they have a manifest disability, or if “special circumstances” exist. These assessments are conducted by JCA assessors employed by Centrelink, Health Services Australia, Commonwealth Rehabilitation Services Australia, and by 15 non-government organisations contracted by the Department of Human Services.

Welfare Rights has some serious misgivings about these Assessments – both in terms of unnecessary referrals and quality.

## issues for people with psychiatric conditions

We are particularly concerned regarding the potential impact of these referrals for people with serious psychiatric disabilities.

One of our clients, Aden, claimed NSA (incapacity) soon after release from involuntary in-patient treatment at a psychiatric hospital, for schizophrenia. He provided a medical certificate attesting to the diagnosis of schizophrenia, and a treating doctor’s report which explained his history, the diagnosis and ongoing treatment – all of which made his vulnerable mental state patently clear. When our client was sent a JCA appointment notice, he got a friend to ring Centrelink to advise that he was too ill to attend and that he urgently needed income support. His friend was told that until our client attended the JCA, no payments could be made.

This young man was fortunate in having a supportive, articulate friend who was able to advocate for him and contact Welfare Rights, but often this is not the case for people with schizophrenia. Apart from anything else, what is the point of such a referral? Forced referral to a JCA may have served only to alienate a young man whose most immediate need was stable income support, when his eligibility for an activity test exemption should have been immediately recognised as manifestly evident.

We acknowledge that referral for

independent assessment of medical evidence may be justified – especially for Newstart Allowance recipients with a history of repeated medical exemptions from the activity test. It may be, for example, that there is some form of intervention that would be helpful, or that they have a “partial capacity” for work (over 15 hours a week), or they may be eligible for DSP – or that they are in fact fit for work. However, we are convinced that DEWR guidelines are prompting an excessive number of referrals, and that these referrals are creating hardship for clients and producing ill-advised decisions as to entitlements.

## JCA - professional background of assessors

We are also concerned that referrals are not being directed to JCA assessors with a background relevant to the person’s illness, condition or disability. We are advised by the Department of Human Services that JCA assessors are required to have an “allied health background” – social work, psychology, physiotherapy, occupational therapy, nursing, or speech pathology. DHS considers that any such professional background would generally equip the assessor to make a functional assessment of work capacity and that their discipline is not relevant to this assessment.

While it may be that a social worker presented with good, extensive medical evidence is well placed to make an assessment of work capacity, there are situations in which a miss-match of client and the JCA assessor is risky, with

duty of care issues arising. We understand that where a client such as Aden (above), is referred to a JCA assessor who does not have a background in psychology, eg, to a speech pathologist or OT, they would generally consult with a psychologist. If so, why put a client who is being treated by a psychiatrist through this, and what purpose can the JCA consultation and referral serve? ▲

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## cancer doesn't count for DSP (cont)

what the treating doctor says, the JCA may consider that they can work 15 hours a week (30 hours prior to July 2006) within two years with rehabilitation or other intervention.

## continuing inability to know what DEWR means

The complex legislative requirements for DSP are further complicated by DEWR policies and DHS guidelines for Centrelink staff and Job Capacity Assessors (and previously for Work Capacity Assessors). DEWR policy is confused and confusing as to what a “continuing inability to work” and “stabilised condition” actually is – especially regarding conditions that are yet to be, or are being treated.

All this can create distressing hurdles for clients with severe illnesses and disabilities seeking income support with no unreasonable activity requirements. DEWR will no doubt achieve a big increase in the DSP rejection rate, but the Government’s savings will come at a big cost for people with significant medical conditions. ▲

# special disability trusts created

**F**rom 20 September 2006, the parents or close relatives of a person with a disability can establish a "special disability trust" to help meet that person's care and accommodation costs. Social Security law treats special disability trusts differently to other kinds of trusts. The main benefits of a special disability trust are:

- ✦ the income and assets of the trust up to \$500,000 will not affect the disabled child's or relative's rate of Social Security payment; and
- ✦ the income support payment or Department of Veterans' Affairs entitlements of the parent or relative who makes the gift to the trust of up to \$500,000 will not be affected by the "gifting rules".

## complex rules require legal advice

The rules about establishing special disability trusts are quite complex. It is *imperative* that a person receives specialist financial and legal advice to make sure that their trust meets all of the criteria to qualify as a special disability trust under Social Security law, and to be aware of the taxation implications of these trusts. This article will only give a brief outline of the main features of these trusts.

For a trust to be treated as a "special disability trust", the principal beneficiary must have a "severe disability". The principal beneficiary is the person for whom the trust is established. The definition of a person with a "severe disability" for the purpose of these trusts is as follows:

- ✦ *if* the principal beneficiary is under 16, they must meet the definition of a "profoundly disabled child" used for the purposes of working out eligibility to Carer Payment (child);
- ✦ *if* the principal beneficiary is 16 or over, they must be assessed as having a level of impairment

that would qualify them for the Disability Support Pension or be in receipt of certain Department of Veterans' Affairs invalidity payments; *and*

- ✦ as a result of their disability, the person is either not working or has no likelihood of working for a wage that is either at or above the relevant minimum wage; and *either*
  - has a disability that would, if the person had a sole carer, entitle the carer to Carer Payment or Carer Allowance; *or*
  - is living in an institution, hostel or group home in which care is provided for people with disabilities and for which funding is being provided under an agreement between the Commonwealth, State and Territory governments.

The assets held by the trust may be in any form, for example cash, real estate and shares. Compensation payments made to the principal beneficiary cannot form part of the trust.

## reasonable care and accommodation costs

A person can only be the principal beneficiary of **one** special disability trust. The trust income and distributions that are used solely for the care and accommodation of the principal beneficiary are exempt from the income test. Trust assets of up to \$500,000 are likewise exempt from the assets test. Any amount over this limit will not be exempted from the assets test.

## trust can only benefit one

The trust may only pay for the reasonable care and accommodation costs incurred by, or on behalf of, the principal beneficiary. The trust cannot be used to meet the costs of care provided by the beneficiary's partner, parent or immediate family member for any care that they provide to the principal beneficiary.

## gifting provisions

Any person can gift assets to a special disability trust. However, a person who gifts assets will only be exempt from the gifting rules if they are the parent or immediate family member of the principal beneficiary, and are either receiving the age pension, or they are a member of a couple and at least one member of the couple is receiving the age pension. This will include the beneficiary's:

- ✦ natural parents;
- ✦ legal guardians;
- ✦ adoptive parents;
- ✦ step-parents;
- ✦ grandparents; and
- ✦ siblings.

For trusts established before 20 September 2006, the trust may be deemed to comply as a special disability trust, where the trustee agrees to change the trust deed so that it complies by 30 June 2007. ▲

# WELFARE TO WORK CHANGES

The "Welfare to Work" changes below were introduced by the Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005 and the Family and Community Services Legislation Amendment (Welfare to Work) Act 2005. Most of them came into effect on 1 July 2006.

This list is not exhaustive. For more details on the "Welfare to Work" changes, refer to the December 2005 edition of "rights review", the Welfare Rights website ([www.welfarerights.org.au](http://www.welfarerights.org.au)) or the Independent Social Security Handbook ONLINE, which is also on the website.

## disability support pension (DSP)

### new DSP claimants

From July 2006, to qualify for DSP a person must be unable to work for 15 hours per week (reduced from 30 hours) at award wages within two years. People who were receiving DSP on 10 May 2005 will not be affected by the changes and may continue to qualify under the current rules. People who qualified for DSP between 11 May 2005 and 30 June 2006 are to be assessed under the new rules at their first review after 1 July 2006.

**Date of effect:** 1 July 2006

## parenting payment

### parenting payment

Parents who claim Parenting Payment after 1 July 2006 are to qualify only if their youngest child is under eight (single parents) or under six (partnered parents). People who were receiving or had been granted Parenting Payment as at 30 June 2005 are to retain qualification until their youngest

child turns 16, as long as they continue to have "transitional status" (i.e. a person must not change their relationship status or have their payment cancelled for more than 12 weeks).

**Date of effect:** 1 July 2006

## allowances

### parents

Single parents on Newstart Allowance (NSA) or Youth Allowance who are the "principal carer" of at least one child may also qualify for a Pensioner Concession Card.

**Date of effect:** 1 July 2006

### people with disabilities

A person who does not qualify for the DSP under the new rules, but who has a "partial capacity for work", may qualify for NSA and receive a Pensioner Concession Card. A person will have a "partial capacity for work" if, because of a physical, intellectual or psychiatric impairment, they are unable within two years to work 30 hours of work per week independently of a program of support. The person's incapacity must be such that there is no "training activity" which is likely to increase the person's capacity to undertake 30 hours of work in the next two years.

**Date of effect:** 1 July 2006

## activity requirements

### parents receiving parenting payment

Sole parents with children between six and eight and partnered parents whose youngest child has turned seven (or who are covered by transitional arrangements after July 2007) are to be required to meet "participation requirements", unless an exemption applies.

**Date of effect:** 1 July 2006

### parents and people with disabilities

Parents who are "principal carers" and people with a "partial capacity for work" due to disability are to be required to seek part-time work that Centrelink regards as "suitable".

**Date of effect:** 1 July 2006

### activity testing

The current list of terms which may be included in an activity agreement is to be removed. Instead, Centrelink will impose activities it considers "suitable". Activities will generally relate to jobseeking. Long term unemployed people who are considered not "genuine" in their job search efforts are to undertake full-time "Work for the Dole" equal to 50 hours per fortnight for 10

months of the year, as well as job search activities.

**Date of effect: 1 July 2006**

## compliance

The existing breaching and penalty regime is to be revoked. The new regime is to apply to all the payments that the old regime applied to and is also to apply to those parents with activity requirements under the Bill (see above) and to people receiving Austudy Payment. The new compliance regime provides for suspension of payments until compliance, and non-payment periods of eight weeks for a third or subsequent "participation failure" in a 12 month period, and immediately for a number of defined "participation failures" such as refusal of a suitable job offer.

**Date of effect: 1 July 2006**

## payment pending review

The provisions allowing for "automatic" payment pending the outcome of a review are to be removed.

**Date of effect: 1 July 2006**

## waiting periods

The Income Maintenance Period which currently applies to NSA, YA, Parenting Payment (partnered) and Sickness Allowance (SA) is to be extended to DSP, Carer Payment (CP), PP (single) and Austudy Payment and its calculation will now also include redundancy payments.

The Seasonal Work Preclusion Period, which currently applies to NSA, YA and PP (partnered), is to be extended to DSP, CP, PP (single), Austudy Payment and SA. The definition of "seasonal work" is to be broadened.

**Date of effect: 20 September 2006**

## pensioner concession card

Qualification for a Pensioner Concession Card is to be extended to certain people receiving NSA and YA (except full-time students and "new apprentices").

**Date of effect: 1 July 2006**

## 10% interest penalty for debts

A 10% penalty is to be applied to Social Security debts caused by a person's refusal or failure to provide information in relation to "income from personal exertion" or knowingly or recklessly providing false or misleading information in relation to income. This penalty will not apply to Age Pension, Carer Payment or Family Assistance debts.

**Date of effect: 1 July 2006**

## supplementary payments

A second, higher rate of Mobility Allowance is to be introduced. To obtain the higher rate of payment, recipients of DSP, NSA or YA (unemployed) must be looking for work or working for 15 hours or more per week.

Employment Entry Payment (EEP) of \$312 is to be payable to certain people with a "partial capacity to work" who were receiving NSA or YA immediately prior to obtaining work. Sole parents who are the "principal carer" of at least one child and receiving NSA or YA immediately prior to obtaining work may be able to qualify for EEP of \$104. Certain parents receiving PP (single) and PP (partnered) may also be able to qualify for EEP of \$104.

Qualification for Pharmaceutical Allowance and Telephone Allowance is to be extended to certain NSA and YA recipients who have a "partial capacity to work" or who are the single (un-partnered)

"principal carer" of at least one child.

**Date of effect: 1 July 2006**

## rates

The income test for NSA, YA, Austudy, and Parenting Payment is to change so that the rate at which a person's payment reduces due to income will be slightly lower (60c rather than the current 70c). This lower rate of reduction will also apply to other payments such as Widow Allowance, Partner Allowance and Mature Age Allowance.

**Date of effect: 1 July 2006**

## child care benefit (CCB)

The maximum number of hours of child care that a person can be paid CCB (without satisfying the "work test") is to increase from 20 to 24 hours per week.

The maximum number of hours of child care that a person can be paid CCB (if they satisfy the "work test") is to be 50 hours per week. To satisfy the CCB "work test" a person will need to undertake certain activities for at least 15 hours per week (although hours may be averaged over a fortnight if they amount to at least 30 hours).

**Proposed date of effect: 1 July 2006**

## exchange of personal information

There is to be an easier exchange of information between Centrelink and its contracted agencies, such as Job Network members or services conducting Comprehensive Work Capacity Assessments.

**Proposed date of effect: Royal Assent ▲**

# social security changes what's happening when

## waiting periods

From 20 September 2006, the "Income Maintenance Period" will be extended to DSP (in addition to Parenting Payment (single) (PPS) & Austudy Payment). Its calculation will also include redundancy payments as well as leave payments.

The "Seasonal Work Preclusion Period" is to be extended to DSP, CP, PPS, Austudy Payment and Sickness Allowance. The definition of "seasonal work" has also been broadened to include more types of short term employment.

**Date of effect: 20 September 2006**

## special disability trusts

From 20 September 2006, special rules will apply to certain trusts that are set up to meet the care needs of a person living with a severe disability. Assets of up to \$500,000 held by trusts that meet all of the criteria of a "special disability trust" will not affect the rate of an income support payment paid to the beneficiary of the trust. Payments made to a special disability trust by immediate family members will be exempt from the operation of the "gifting" rules, if the immediate family member or their partner receives Age Pension.

**Date of effect: 20 September 2006**

## advance payments of parenting payment (partnered)

From 20 September 2006, parents in receipt of Parenting Payment (partnered) will qualify to receive lump sum advance payments of between \$250 and \$500 once every 12 months. The rules which apply to advances for other payments will also apply to advances of Parenting Payment (partnered), primarily that they will be regarded as a debt to

be repaid to Centrelink.

**Date of effect: 20 September 2006**

## carer allowance (child)

From 1 October 2006, Diabetes Melitis is to be included in the list of "recognised disabilities" that will attract Carer Allowance (child).

**Date of effect: 1 October 2006**

## australian government disaster recovery payment

The Australian Government Disaster Recovery Payment is a new payment that will provide short-term assistance to Australians adversely affected by a major or widespread disaster. The relevant Minister will have the power to make determinations as to whether a particular event is a "major disaster" for the purposes of allowing a person to claim this payment. The payment will cover disasters occurring within and without Australia. The adult rate of this payment will initially be \$1000.

**Date of effect: 1 December 2006**

## pension assets test

The maximum amount of land adjacent to a person's principal home that is exempt from assessment under the assets test is currently two hectares, unless the Hardship Provisions apply. The Government has announced that the two hectare limit for the assets test exemption for a person's principal home will not apply to certain Age Pensioners and Carer Pensioners of Age Pension age who live on a farm or large rural block to which they have a more than twenty-year attachment. The land must be all on the same title and must be used primarily for domestic purposes.

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

## international social security agreement with norway

Australia has signed an International Social Security Agreement with Norway. The Agreement is not expected to begin operating until January 2007 after the necessary treaty, legislative and administrative processes have been completed in both Norway and Australia.

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

## proposed increase in rate of special benefit

The maximum rate of Special Benefit payable is to include an amount equivalent to Pharmaceutical Allowance where the Newstart Allowance rate that would otherwise apply would include Pharmaceutical Allowance.

**Date of effect: subject to passage of legislation**

## proposed extension to crisis payment

Crisis Payment currently cannot be paid to Special Benefit recipients who hold a temporary visa. Qualification for Crisis Payment is to be extended to Special Benefit recipients who hold a temporary visa.

**Date of effect: subject to passage of legislation**

## international social security agreement with japan

A Social Security Agreement with Japan is to be introduced. The Agreement will provide access to the Age Pension for people who have lived in both Japan and Australia as adults.

**Agreement expected to commence from 1 January 2009 ▲**

# disability access audit ordered

Following the recent front page story of Matthew from Western Australia who was in a wheel chair being treated for leukaemia and could not get into the premises he was sent to for a Job Capacity Assessment (JCA) the Department of Human Services (DHS) has told "rights review" that it will undertake an audit to determine the suitability and accessibility of the buildings which Centrelink client's have to visit to undertake a JCA. JCA's are meant to work out how much work a person can do and what support services they might need to be able to do this. Around 372,000 of these assessments will be done in 2006-07.

The site visits will be looking at things such as physical access, signage, appropriateness of the premises, private rooms for the process to take place in and for information storage. DHS has also stated that it supports efforts by assessors to help people find the JCA site (e.g. maps, public transport suggestions, etc).

DHS has also told "rights review" that it is committed to ensuring that any sites where JCA's are undertaken are fully accessible and comply with all relevant local, State/Territory and Commonwealth laws.

## JCA sites must be fully accessible

DHS has clearly stated these mandatory accessibility requirement to all providers, in:

- ✦ the original *Request for Tender* (November 2005);
- ✦ the *contracts* (May 2006) signed by providers to deliver JCA services; and
- ✦ the *Job Capacity Assessor Code of Practice* (July 2006).

According to DHS, JCA providers that do not comply with relevant legislation may have action taken against them by DHS under their contract. An external consultant has been engaged by DHS to develop an "accessibility fact sheet" which will clearly explain to JCA providers their obligations and responsibilities in accordance with legislation. Staff from DHS will also continue to conduct spot checks on JCA sites to ensure all requirements are being met.



## job network providers need audit too

Currently, 80% of the Job Capacity Assessments are done by Government agencies such as Centrelink, Health Services Australia and Commonwealth Rehabilitation Services. The remaining 20% have been tendered out to smaller private agencies. In 2008, the Government plans to run a tender for all the assessments. It is vital that not only sites where Job Capacity Assessments take

place are accessible, but also that agencies that provide employment services to unemployed people are also accessible.

## providers must demonstrate best practice

If providers of assessment services are able to demonstrate "best practice" when it comes to making their buildings accessible for people with disabilities, they may be placed a stronger position to obtain contracts in the future. ▲

# move to an area of lower employment prospects

**W**here it is determined that a person has lowered their employment prospects by moving to a new area, Centrelink can impose a non payment or "exclusion period" of 26 weeks from the date the person moved. The "exclusion period" can only be imposed where a person moves without "sufficient reason".

The "exclusion period" can only be applied to a person receiving Newstart or Youth Allowance (other than a full-time student or apprentice) or a person receiving Special Benefit who is required to meet the activity test.

The "exclusion period" does not apply where a person moves to undertake vocational training or rehabilitation which has been approved by Centrelink.

## exclusion period after moving

An "exclusion period" can be applied where a person claims a payment after moving, if the move was less than 26 weeks prior to the claim.

An "exclusion period" should not be imposed if, within 90 minutes of the new location, there is an area with employment prospects equal to or greater than the original location.

## what is "lowering a person's employment prospects"?

It is important to remember that this exclusion period should not be based solely on whether a person moves to an area with a higher unemployment rate. The proper question to ask in each case is, "has the person reduced their own individual employment prospects by moving?" For example a person may move to an area that has a higher unemployment rate, however there may be a demand in the new area for the particular skills held by the person. In this case it could not be said that the person has reduced their personal employment prospects.

## not enough to only consider unemployment rate

In making a decision about whether or not a person has reduced their employment prospects by moving, Centrelink will generally consider the unemployment rates in both locations. For this reason if a person is moving to an area with a higher unemployment rate, it can be very important to provide information to Centrelink about that person's individual employment prospects in the new area.

## what is a "sufficient reason" for moving?

A person is deemed to have "sufficient reason" for moving and hence will not have an "exclusion period" imposed if the move is:

- ♦ to live near or with a family member who has already established residence in that area;
- ♦ to accompany a parent who changes residence (for YA only);
- ♦ to treat or alleviate a physical, intellectual or psychiatric impairment of the person or an immediate family member; or
- ♦ due to an "extreme circumstance" that made it reasonable to move (for example where the person has been subject to domestic or other violence).

## what is meant by "family member"

Family member generally refers to

the parents, siblings or partner of a person, however in some circumstances another person could be treated as a family member. This could occur, for example, where another person has assumed a role of family member in the person's life.

## can an "exclusion period" be waived?

If a person is subject to an "exclusion period" for reducing their employment prospects by moving, this can be waived (ie will end), if:

- ♦ the person returns to the original place of residence; or
- ♦ moves to another area which does not lower their employment prospects when compared to the original place of residence.

## what can a person do if they do not agree with an "exclusion period"?

Where an "exclusion period" is applied and a person believes that it should not have been because either:

- ♦ they had a sufficient reason for moving; or
- ♦ the person believes their individual employment prospects have not been reduced by the move

then, an appeal should be lodged to an Authorised Review Officer and if not successful to the Social Security Appeals Tribunal. ▲

## Handbook ONLINE gets a make-over!

**A**fter two years and substantially increased usage, the Independent Social Security Handbook ONLINE has had a celebrity make-over.

All existing and new subscribers to the Independent Social Security Handbook ONLINE (“the Handbook”) are invited to log in and check out the new “look” and accessibility features of the Handbook. Key features of the Handbook’s September make-over and upgrade include:

- ♦ A new and improved table of contents. This improvement may not sound like much, but it will make finding the information you need a lot easier. By “hovering” over the Part and Chapter headings in the table of contents, you will be able to bring up a drop-down menu that will give you a list of the chapters and sections available within each option.
- ♦ An easier to read side navigation bar.
- ♦ Easier print options- after the September Update of the Handbook, all users will have the ability to choose between printing either the whole chapter they have accessed or just the section they need, even if the section extends over multiple



pages. The Handbook’s “print friendly” printing option will have separate “Print this section” and “Print this chapter” buttons.

- ♦ New background colours throughout.

In addition, the Handbook has once again had its quarterly update to include all the legislative changes that came into effect in September.

The update also incorporates a number of significant policy changes, particularly relating to the procedures covering the new Job Capacity Assessments.

To check out the Independent Social Security Handbook ONLINE, go to:

[www.welfarerights.org.au](http://www.welfarerights.org.au) and follow the instructions. ▲

## hockey reinvents case-management

**F**aced with a boycott of the Government’s financial case management system by all the major church and other large charities, the Minister for Human Services has attempted to redefine the purpose of the system.

Speaking on ABC Life Matters in late August, Minister Hockey explained that case management had really been designed to ensure that the charities and other community sector organisations involved, with their great sensitivity and expertise, would be able to interview people suffering under an eight week no payment penalty to find out whether they really had some major, as yet undetected, problem such as drug addiction or alcoholism.

He said it was really a further safety net so that if someone had slipped

through all the Job Network and Centrelink screenings, the charities would be able to ascertain the real problem and this is why they should be involved in the case management system.

This, of course, is a completely new rationale for the case management system and is not in the tender documents or any other material on case management. It seems that all the major church and other charities remain convinced that the case management is little more than an attempt to cover-up the excessive

harshness of the eight week no payment penalty. None has as yet taken it on.

It remains the view of the National Welfare Rights Network that the community sector should continue to draw a line in the sand on this one and let Centrelink do the Government’s dirty work. As only one in every five people who get an eight week no payment penalty will be offered case management, the sector should save its energy and attention for the remaining 80%. ▲

# unequal outcomes for separating couples

**T**he Welfare Rights Centre has been concerned for some time about Social Security laws that unfairly discriminate against a person who leaves the family home when they separate from their partner.

Under Social Security law a person's principal home is exempt when calculating their assets for the purpose of receiving a Social Security payment. However, the law becomes inequitable when a couple separate. While the home remains exempt from the assets test for the person remaining in the home, interest in the home is counted as an asset for the person who has left the home.

For the person who moves out of the family home, the value of their interest in the home immediately counts as an asset. This is the case even if the person has no access to the home once they move out. Depending on the value of the person's interest in the family home, this may be sufficient to prevent a person from receiving a Social Security payment.

A single person, applying for Parenting Payment, who no longer lives in the home that they own, will not be entitled to payment if their total assets are valued at over \$278,500.

The Centre has identified the above issue as a concern from a number of clients who have approached the Centre for assistance. The Centre has had a number of female clients with children, most of whom have been victims of domestic violence, who have separated from their partner and moved out of the family home. These women have had little or no income from employment. Yet, as their half share of the family home has been valued at over \$278,500 they are not entitled to a Social Security payment. Unless they can be paid under the Hardship Provisions, the only income support they receive from the Federal Government relates to their children (eg Family Tax Benefit). A few of our clients who have fled their home due to violence



have not had children, and so are left without any income support at all. These women have been faced with the costs of finding alternate accommodation and setting up a new home with no access to Social Security payments because their share of the family home is counted as an asset.

A solution for people in this situation can be to apply under the Hardship Provisions but some of these women were not advised to apply or they applied but Centrelink's consideration of the claim was protracted. Community advisers should ensure that clients in this situation appeal against the valuation of their interest in the home and claim payment under the Hardship Provisions.

## financial disadvantage gets worse

The financial disadvantage to the person who left the home continues when the separated couple sells the family home. Under Social Security law the person who remained in the house until it was sold has their share of the money received from the sale exempt from

the assets test for 12 months, giving them time to look around for another home without having to use their capital for day to day living expenses. This is not the case for the person who left the home prior to the sale. For that person, once the house is sold, the money received from the sale is immediately considered an asset by Centrelink. They do not have the benefit of a 12-month exemption, in order to purchase another home. If the total of their assets, including the proceeds from the sale of the home are over \$278,500 they will not receive a Social Security payment. They must use their capital to finance their day to day living, something that their ex-partner is not required to do.

The Centre is in the process of alerting the relevant Government Departments to the inherent problems in the legislation. The Centre believes changes are needed to allow both members of a separated couple to have the family home, and the proceeds from the sale of the family home, treated as an exempt asset. ▲

## case study – incorrect threats of penalties

**D**oris is a 58-year-old Aboriginal woman from regional NSW, with three grandchildren in her care. She has been caring for these children, the youngest of whom is eight and has a behavioural disorder, for some time, receiving Parenting Payment Partnered.

Doris has been aware of the Welfare to Work changes for some time and understands that from July 2007, she will be subject to participation requirements. She decided to enrol in a TAFE course to “gear up” for this by acquiring some work skills and also asked Centrelink whether there was any other assistance she could get. Centrelink assisted her to register with a Job Network Provider (JNP).

All went well until Doris’s health deteriorated and her youngest grandchild started trying to skip school. She struggled on with her TAFE course and the care of her grandchildren but found it difficult to attend her weekly appointments with the JNP.

Doris rang Welfare Rights because although she understood that she would not be subject to formal activity testing until July 2007, she had received two DEWR letters from the JNP, warning her that unless she attended her next appointment, her payments may be suspended or cancelled and she may incur a “participation failure”. She had contacted Centrelink about the letter, was referred back to the JNP, and was then referred back to Centrelink – only to be told that she “must” attend all appointments, and then to be told by another officer that she should de-register but had to attend the office to do so. She attended the office, but the woman at the counter could not understand what was required and went to great lengths to warn Doris that her payment would be suspended unless she attended next week’s JNP interview. Doris left the office in frustration and embarrassment.

We have now solved this problem for Doris, and she is “de-registered”. This was not without some effort on our part but most importantly, Doris felt humiliated by her efforts to prepare herself for returning to work

- only because DEWR is erroneously sending letters threatening suspension and “participation failures” to long-term PP recipients who are not yet

subject to the new participation requirements.

We shall be further pursuing this issue with DEWR. ▲

## Unfair prosecutions highlighted at conference

**A** highlight of the recent National Welfare Rights Network’s (NWRN) annual conference in Sydney (31 August to 2 September 2006) was a session on Social Security prosecutions. The guest speaker was Stephen Hodges, a Sydney criminal law solicitor with a great deal of experience in defending these matters. It was evident that the concern of the Sydney Welfare Rights Centre regarding the number of people who inappropriately plead guilty to charges of “knowingly” receiving overpayments – either because of unavailability of legal advice or poor legal advice – is shared by all other Centres in the Network.

Following the session, the NWRN adopted in principle a policy paper on Social Security prosecution issues and undertook to continue work on this issue through the NWRN Prosecutions Sub-committee.

### great opportunities provided

Generally, the Centre can send only a few delegates to the annual NWRN conference but as the conference was in Sydney, we decided to close the office for renovations in the casework intake room and most staff could therefore participate.

The Network’s annual conference is an ideal opportunity for staff to meet and discuss issues with colleagues from metropolitan and regional centres around the country. On the one hand, advocates who are lone Welfare Rights advocates in generalist Community Legal Centres (CLCs) depend on others in the Network for advice and guidance in running cases. On the other hand, capital city centres need to be exposed to the range of issues

faced by Aboriginal clients who live in regional, rural and remote Australia, and to be reminded of the dire resource constraints of the CLC’s attempting to deliver services to those communities.

### welfare to work issues emerge

The conference was a great opportunity for advocates around the country to discuss emerging Welfare to Work issues – particularly regarding Case Management of “vulnerable” people subject to an eight week non-payment penalty, and activity testing of parents and people with a partial capacity to work. Delegates all shared a concern that vulnerable clients who do not meet the DEWR “vulnerable” definition are at risk of falling between the cracks. Clients and Centrelink staff alike are confused regarding appeal rights where a client has a “participation failure”. Delegates were concerned that many people will fail to appeal where their payment has been reinstated following compliance. ▲

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