

debts and overpayments

The purpose of this practitioners' guide is to provide you with information which can help your clients should they have to repay a debt to Centrelink.

what is a debt?

A Social Security "overpayment" occurs when a person receives more money than they were entitled to. A "debt" is when the overpayment is legally recoverable by Centrelink. Since October 1997, almost all overpayments are debts. Below is an outline of Centrelink's powers to recover money, and what to do if the recovery is too high.

recovery of debts

There are three ways in which Centrelink can recover a debt. These are:

- **recovery from social security payment:** where a person is continuing to receive a Social Security payment, Centrelink can recover an amount each fortnight from their payment. This is called "withholdings". Centrelink has guidelines about the amount of money it can withhold each fortnight. The guidelines provide that fortnightly withholdings should be limited to 14% of the maximum basic benefit (eg 14% of Newstart Allowance or Disability Support Pension). Withholding of Family Allowance can be up to 95%. Where a person has a breach or rate reduction penalty imposed, the combined impact of the debt recovery and breach should not exceed 25% of the maximum basic benefit.
- **recovery of a debt through garnishee:** Centrelink can recover money through issuing a garnishee notice. This means it can request a third party, such as an employer or bank, to take money from wages or bank accounts to recover the overpayment. Garnishee can be made from continuing income such as wages or compensation. The rate of garnishee from continuing income usually will be 10% of the person's wages or \$50 per week, whichever is greater.
- **legal proceedings:** Centrelink can take legal proceedings in court to recover money. If legal proceedings are taken, Centrelink can also ask for interest on top of the debt amount. Legal proceedings can involve the forced sale of a person's principal residence in order to repay the debt.

centrelink debts and bankruptcy

Centrelink cannot withhold, garnishee or start legal proceedings to recover a debt where a person is bankrupt unless the debt occurred through fraud. Once a person has been discharged from bankruptcy, the debt will be irrecoverable if the debt occurred before the discharge and did not occur due to fraud.

getting "withholdings" reduced

Where Centrelink's recovery of an overpayment causes financial hardship, the person can negotiate with Centrelink to reduce the amount recovered each fortnight. To do this a person should contact their local Centrelink office and complete the "Statement of Financial Circumstances" form. The purpose of this form is for Centrelink to assess the financial situation of the person and see if it is appropriate to reduce withholdings.

If a person wants Centrelink to consider reducing the amount recovered each fortnight, they should:

- provide as much information about their financial situation as possible;
- provide proof of any outstanding bills; and

- detail unusual regular expenditure (such as weekly medical costs).

If Centrelink agrees to reduce the withholdings it will review this every three months to determine if the person's financial situation has improved and recovery should return to the standard rate.

appealing decisions

A person has the right to appeal against most decisions relating to debts, including:

- the raising of the overpayment;
- the recovery of the debt; and/or
- the fortnightly recovery rate.

If a person is not happy with a decision made in relation to the raising and recovery of a debt then they should appeal that decision to an Authorised Review Officer. It is best to appeal to an ARO in writing and to clearly set out the reason why they believe the Centrelink decision is wrong or unfair. If the person is not happy with the ARO decision, then they can appeal to the Social Security Appeals Tribunal (SSAT).

other information

For further information on debts and debt recovery please see "The Independent Social Security Handbook", (3rd edition) produced by the Welfare Rights Centre and the Centre's factsheets:

- social security debts and overpayments;
- social security and prosecutions; and
- centrelink has got it wrong! I want to appeal. ▲