

dealing with breaches

To receive Newstart Allowance (NSA) or Youth Allowance (YA) a person must satisfy the “activity test” and attend interviews with Centrelink or a Job Network agency as required. Failing to satisfy these requirements can result in a penalty or “breach” being imposed. Breaches can mean a reduction in payment for up to 26 weeks or the imposition of an eight week non-payment period.

There are two types of breach, “administrative” and “activity test”.

administrative breaches

Administrative breaches apply when a person does not attend an interview at Centrelink or a Job Network agency, or where a person fails to respond to correspondence or provide information when asked for it by Centrelink or a Job Network agency. However it should be noted that these breaches **cannot be applied** when the letter which is sent to the person advising them of the interview does not include information about the penalties that can be imposed for failure to comply.

activity test breaches

An activity test breach will apply where a person does not satisfy the requirements of the “activity test”. For example, not attending a job interview, not accepting suitable work, resigning from employment without sufficient reason, not actively seeking work or failing to correctly declare income. Activity test breaches should only be applied when a person fails to meet the requirements “without reasonable excuse”. This of course means that Centrelink must interview a person **before** any breach is imposed.

breach penalties

The severity of the penalty depends on whether it is an “activity test” or “administrative” breach. For activity test breaches the severity of the penalty depends on whether the breach is the first, second or third activity test breach in a two-year period.

what to do if breached

If a person in receipt of NSA/YA is breached and they disagree with the decision, they should appeal to an Authorised Review Officer (ARO). Breaches are often imposed where Centrelink has not fulfilled all the notice requirements or the breach has been imposed unreasonably. Centrelink should interview a person before applying a breach to determine if the person has a “reasonable excuse” for not complying with the requirements. Before a breach is imposed the person should be notified by Centrelink of the intention to impose a rate reduction or non-payment period and the date the breach occurred.

It is important to establish the reason for the breach, for example, if a person has not attended a job interview they may have a reasonable explanation as to why they were not able to attend. For instance, if they were ill and were able to provide a medical certificate, no breach should be imposed. If a person can show any reasonably unforeseen circumstances that have occurred

outside their control it may be possible to have a breach decision reversed.

ARO appeals

An appeal to an ARO can be lodged in writing or by telephone or by attending a Centrelink office. It is simply necessary to ask for the breach decision to be reviewed by an ARO. Any evidence that may support a person's case, for example a medical certificate should be supplied. If a person is not happy with the decision of the ARO they have the right to appeal to the Social Security Appeals Tribunal (SSAT).

A breach penalty must be waived when a person commences a "Work for the Dole" program.

continuation of payment

Where a person has an eight week non-payment period imposed (as a result of a third activity test breach in a two-year period) and they request an ARO review they can also request that their NSA/YA payment be continued pending the outcome of the appeal.

If you are assisting a person with a breach, don't hesitate to contact the Welfare Rights Centre on telephone 9211 5300 or 1800 226 028 for those contacting from outside the Sydney metropolitan area. People from outside NSW should contact the Welfare Rights Centre/service in their state. ▲