

rights review

NEWS & COMMENT ON SOCIAL SECURITY ISSUES

"unfair and counter-productive"

- report calls for major changes to breaches and penalties

The Independent Review of Breaches and Penalties in the Social Security System has found that failings in the design and implementation of the system cause "many unemployed people to suffer arbitrary, unfair or excessively harsh" penalties. It has also found that the system "often diminishes people's capacity to seek and obtain work and thus become less dependent on social security".

The Independent Review was established six months ago by nine leading charities and other organisations including ACOSS and the National Welfare Rights Network. It followed a trebling in the number of penalties imposed over the three years since 1998. Despite some reforms by the Government since the Review was established, the number of penalties remains at least twice as high as in 1998. Individual penalties often exceed \$1,000 and cause severe hardship for unemployed people and their families.

the need for reform

The Review found that the system has concentrated excessively on achieving high breach rates and imposing harsh penalties rather than on encouraging active efforts to find work or compliance with reasonable Centrelink requirements. The Review concluded that the system should be "fairer, more cost-effective and strongly supportive of attempts to escape welfare dependency".

The Review sets out 36 recommendations which constitute a package of reforms that would go a long way towards shifting the balance from trigger-happy punishment for minor failure, to encouragement of compliance to improve job search efforts and increase successful employment outcomes. See page 4-5 for more details on the Review.▲



inside ...

breaches	p. 4
practitioners guide	p. 9
case studies	p. 11
welfare reform	p. 12

Available at www.welfarerights.org.au
Poster size guide to social security payments!!!

Welfare Rights Centre

Welfare 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.

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The views expressed in this Newsletter are those of the Welfare Rights Centre, except where the article is signed by an individual or organisation.

All cases cited are actual cases but names have been changed.

The Centre welcomes feedback about the issues raised in the Newsletter and will publish correspondence whenever possible. ▲

age pension cuts likely

Proposed changes to Social Security law would result in a reduction of Age Pension for thousands of pensioners who wish to go overseas.

At present the rate of Australian pensions paid in Australia does not depend on a person's length of Australian residence. Once a person qualifies, they get the full rate—subject to income and assets, but not years of residence. However, Australian pensioners residing overseas on a long-term basis are paid a "proportional" rate that reflects their length of Australian residence. Currently, to be paid a full pension after an absence of longer than 26 weeks, pensioners overseas are required to have had 25 years of "Australian working life residence".

from 25 to 30 years

The Federal Government is proposing to increase the 25 years working life residence to 30 years. This means that unless a person has had 30 years working life residence in Australia they will not receive the full rate of pension after being outside Australia for six months. The Federal Government claims that as other countries require people to contribute for around 40 years before the full rate of pension can be paid, and often there are further restrictions on the payability of these pensions outside those countries, that it is appropriate for Australia to bring its

pension system into line with other countries.

mean spirited

What the Government fails to mention when comparing our system of Social Security payments with other countries is that most other countries have a contributions based pension scheme. This means that specific taxes are paid by individuals over many years towards their own "age pension", making it more like our superannuation system. In Australia, pensions are funded through general revenue and the amount of Age Pension a person receives is not linked to their life time contributions but rather to the fact that they have been a resident of Australia for at least ten years and that they retain on ongoing connection with or residency in Australia.

Given this fundamental difference and the lack of logic in the Government's argument, it is hard not to see that this measure is one that is simply designed to net the Federal Government a few extra dollars. If the proposed legislation is passed, this will be at the expense of migrants who have made a significant contribution to our cultural, social and economic well-being over many, but not quite 30, years. ▲

rates chart now on website

"rights review" subscribers will have noticed that the last two editions have not included the "Welfare Rights Centre guide to Social Security payments". The reason for this is that the wall chart, a much loved and valuable resource for community workers, is now available on the National Welfare Rights Centre website.

Being available on line allows for significantly reduced cost and increased access to the wall chart. The wall chart includes eligibility details on all Social Security payments as well as details on the various Social Security income and

assets tests.

The wall chart can be found at www.welfarerights.org.au. When printing the wall chart from the website, it is best to print it on A3 size paper. ▲

government caught out on figures

“Catching welfare cheats, saves \$20.2 million per week” cried the headline on the recent media release from Senator Amanda Vanstone, Minister for Family and Community Services.

Taken at a face value, the Federal Government would have us believe that all Social Security debts were caused by people whose intention was to commit fraud.

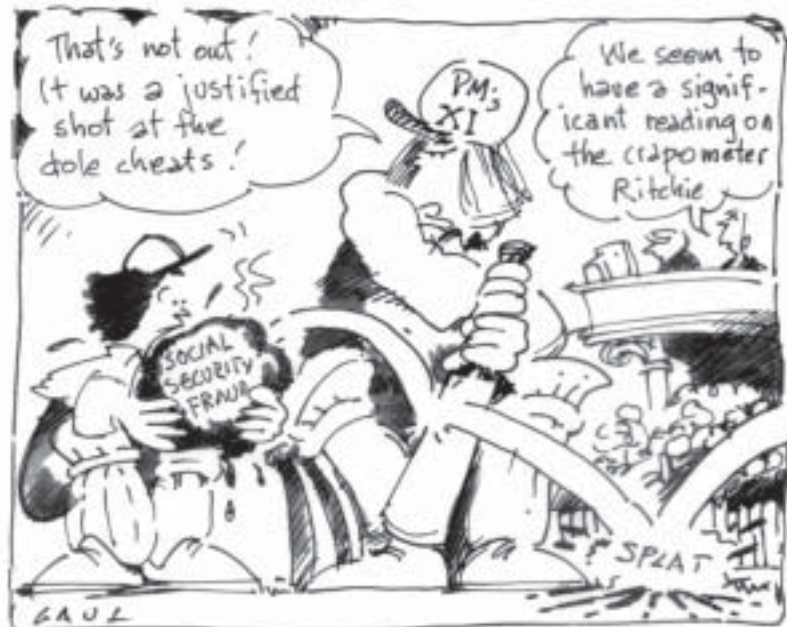
The Government’s figure of \$20.2 m a week comes from calculating what it thinks the future savings might be (over the next year or two) from reducing or cancelling payments as a result of undertaking regular “entitlement reviews”. In the period from 1 July 2000 to 30 June 2001, Centrelink conducted some 2.5 million such “entitlement reviews” which led to nearly 250,000 payment reductions or cancellations. As a result, the Government estimates (formula unknown) that it will save \$20.2m per week into the future. These “entitlement reviews” also led to the identification of some \$320m in actual debt.

The Government would have the public believe that, whenever “entitlement reviews” lead to “payment adjustments or cancellations”, all these adjustments and cancellations resulted from welfare cheating. This proposition could only be substantiated if a very large proportion of the debts arising from these adjustments and cancellations led to convictions for Social Security fraud.

The evidence however, shows that nothing could be further from the truth.

freedom of information data obtained

Recently, the Welfare Rights Centre obtained data, through a Freedom of Information (FOI) application, from the Department of Family and Community Services about Social Security debts covering the same 1



July 2000 to 30 June 2001 period. **It is obvious from the information that the Government’s argument that the bulk of the savings from “entitlement reviews” relate to cheating, cannot be sustained.**

In the period 1 July 2000 to 30 June 2001, there was a total of 1,374,293 Centrelink debts raised for all payment types. Given this substantial number of debts, it is right for the Government to be concerned and to introduce measures to reduce debt (although much of this is “good debt” - see article p.10). But how many of these debts are due to fraud? Well, out of all these debts, only 12,272, ie less than 1%, were referred for “prosecution action”. Of these, by 30 November 2001, only 5,240, less than half, resulted in “prosecution action”. Even fewer will end up actually being prosecuted and fewer still will be convicted. In each of the last few years, there have been only about 2,800 successful prosecutions. **In short therefore, less than one fifth of one percent of all debts, or**

1 in 500 debtors, are fraudulent.

That such a small percentage of debtors are guilty of Social Security fraud makes a lie of the Federal Government’s claim that welfare cheats cost the taxpayer \$20.2 million per week. Even if the figure was increased ten fold to two percent to allow for such things as Centrelink generally not recommending prosecution for debts that are under \$5,000, this figure is still a long, long way from the Minister’s assertion that all the projected savings result from catching cheats. **The truth is that the bulk of debts come from innocent errors and Centrelink mistakes.** Given these facts, it is not only outrageous for the Minister to make such a claim, it is also extremely disappointing, from the perspective of Social Security recipients, that the Government is prepared to vilify so many of them for such populist and dubious political gain.▲

(see also p.10)

review slams penalties

The most significant finding of the recently released Independent Review of Breaches and Penalties is that the penalties suffered by unemployed people for minor failures are “unfair and excessively harsh”.

According to the report of the Independent Review, the penalties, many in excess of \$1,000, are often:

- ♦ substantially harsher in impact than the penalties commonly imposed for some criminal offences which threaten physical harm. (p81)
- ♦ “counter-productive” and end up making unemployed people dependent on Social Security longer. This is because the “penalties commonly make it more difficult for jobseekers to meet the costs of search for, travel to, and effective presentation at, potential employment opportunities”. (p79)

The report contained a number of other significant and disturbing findings, especially in relation to the way breaches and penalties are imposed. Key amongst these are:

- ♦ The design of the penalty system and its application to particular jobseekers does not pay sufficient regard to the **degree of seriousness** of the conduct in question or to the **likely impact of the penalty** on the individual jobseeker. These are both factors that are regarded as fundamental in the sentencing practices of the courts, yet the amounts involved in breach penalties can be substantially greater than many court-imposed penalties.
- ♦ The existence of phrases such as “reasonable steps”, “reasonable excuse”, “without sufficient reason” and “special circumstances” in the relevant legislation indicates that the Parliament intended to guard against arbitrary and unfair imposition of penalties. In practice, however, insufficient investigation and consideration of reasons and surrounding circumstances have often prevented achievement of this intention.

Independent Review of Breaches and Penalties in the Social Security system

Members

Professor Emeritus Dennis Pearce, Chairperson

Dean, Law Faculty, Australian National University,

Former Commonwealth Ombudsman, and

Chair, Australian Press Council

Professor Julian Disney

Director, Social Justice Project, University of New South Wales;

Former President ACOSS & International Council on Social Welfare

and

Ms. Heather Ridout

Deputy Chief Executive, Australian Industry Group

Board member, Macquarie Graduate School of Management

Former member National Board of Employment, Education & Training.

- ♦ Courts have always placed strict requirements on the right of a person to be afforded **natural justice** before a penalty is imposed. This carries two principles relevant in the present context. **First**, the onus of establishing a breach of the law leading to the imposition of a penalty is on the party asserting that a breach has occurred. **Second**, a penalty cannot be imposed unless the person affected has a reasonable opportunity to present their case in answer to the assertions being made against them. **Neither of these basic principles of the rule of law are sufficiently observed in the administration of the breaches and penalties system.**
- ♦ ensure that investigations and assessments of the circumstances behind apparent non-compliance are thorough and objective;
- ♦ closer attention should be paid to the legal requirements of procedural fairness (especially giving jobseekers a reasonable opportunity to explain their action before a decision is taken);
- ♦ more rigorous action should be taken to ensure that Centrelink staff apply the relevant **statutory requirements**, and appropriate policy criteria, when deciding whether a breach has occurred;
- ♦ the penalty system should be made fairer and more effective, including through refunding penalties in the event of prompt compliance;
- ♦ greater efforts should be made to avoid excessively harsh consequences of penalties.

new penalty structure proposed

The Independent Review concluded that:

- ♦ greater efforts should be made to

and proposes changes

centre backs reforms

In response to these findings, the Welfare Rights Centre called on the Government, the Opposition and the Democrats to accept the major recommendations of the Review for a new penalty structure and work together on new legislation to significantly cut the overall severity of these unfair penalties.

The Director of the Centre, Mr Michael Raper said that “According to the McClure Report, penalties should only be used as a last resort and the system should be weighted towards **compliance** not **punishment**. The current system has been exposed as out of balance with no rational basis to the current penalties.

We call on the Government to adopt the Review’s recommendations to:

- ♦ Limit penalties to a **maximum of eight weeks**. The current 26 weeks is unjustifiably harsh.
- ♦ Ensure that any **penalty is removed** if a person complies (meets their obligations) within four weeks.
- ♦ Ensure that **14 days notice** is given before any penalty takes effect

“These are the three critical recommendations and we back them fully,” Mr Raper said.

The Review also recommended a tough increase in penalty from an 18% reduction in payment each week to a 25% reduction (but only if the eight week limit, 14 day notice and full recoverability on compliance are introduced). On this basis the Minister need have no fear as this would still be an incredibly harsh system although the overall impact of a first breach penalty would be reduced from \$851 to \$364.

penalties remain too harsh

“We all have a major problem on our hands with too many harsh penalties. We see the consequences every day with shattered people coming to us for help. The penalties don’t help them or teach them a lesson, they just make the task of attending meetings at Centrelink and interviews for jobs impossible” Mr Raper said.

The current penalties are more harsh than Magistrate fines for drink driving and crimes threatening violence. The Review provides a balanced alternative that the Government should embrace before extending these same harsh penalties to parents and mature age unemployed people in the next few months.

other problems

The Independent Review also identified significant problems in the way breaches are imposed. Many of the problems arise when Centrelink or Job Network members fail to communicate effectively or investigate jobseekers, circumstances thoroughly. Other problems arise through Centrelink failing to observe due process and to apply the relevant legal criteria before deciding to impose penalties.

The Report stated that “Some of these failings appear to result from staff being exposed to excessive pressure or incentives to impose penalties. On other occasions, the particular obligations imposed on jobseekers by Centrelink or Job Network members have been unreasonable and thus make non-compliance more likely.”

wide-ranging and detailed recommendations

In addition to the recommendations for fairer and more effective penalties, the Independent Review makes 30 other detailed recommendations aimed at achieving:

- ♦ better processes for interviewing, assessing and communicating with jobseekers;
- ♦ better decision-making when imposing obligations on individual jobseekers and referring them for assistance;
- ♦ stricter procedures for investigating potential breaches and ensuring that breaches are not imposed unlawfully;
- ♦ more help for jobseekers who are trying to comply with their obligations;
- ♦ removal of excessive pressures and incentives to impose breaches and penalties;
- ♦ making greater use of social workers and other specialist officers to assist especially vulnerable jobseekers;
- ♦ adopting a Privacy Code to facilitate sharing of information that can improve assistance for jobseekers;
- ♦ improving access for jobseekers to independent expert advice about their rights and obligations;
- ♦ sending in “special support teams” to improve Centrelink practices in areas with high breach rates;
- ♦ expanding grounds for exemption from activity tests and penalties; and
- ♦ conducting annual Parliamentary reviews of the system with assistance from the Ombudsman. ▲

mutual obligation not quite mutual

A recent study has found that Australia failed to make substantial inroads into long-term unemployment during the 1990s. The study also questioned the effectiveness of present employment assistance programs and the Work for the Dole scheme.

The study, conducted by the Australian Council of Social Services (ACOSS) was released in February this year. The report, *"The Obligation is Mutual: New Directions for Employment Assistance in Australia"*, looked at how to reduce long-term unemployment by improving employment assistance services in the Job Network.

sluggish economy

Of great concern was the fact that the number of people receiving unemployment payments for over 12 months in December 2001 was the same as it was six years ago (385,000 people). The report debunked the general myth that a "culture of welfare dependency" is the main cause of long-term unemployment.

ACOSS's research found that the main causes of this persistence of long-term unemployment are "sluggish employment growth and a lack of relevant work experience and skills". Put simply, there are just fewer full-time permanent jobs on offer. At the same time there exists a "mismatch" between what employers now require of employees and the skills and experience of many unemployed people.

Flaws in the Work for the Dole Program were also identified, as only 27 per cent of participants get a job. This proves that the Work for the Dole Program is not an adequate alternative to mainstream work experience and training.

funding reductions

Reductions in funding to employment assistance programs were also seen as a factor contributing to long-term unemployment. Funding cuts to these programs make a mockery of

the present system of Mutual Obligation, which places strict requirements on unemployed people, but does not require the Federal Government to provide adequate employment assistance.

Although the study lauds the flexibility of the Intensive Assistance programs offered by the Job Network, it also questions how these programs can meet the needs of long-term unemployed people where:

- ♦ 25 per cent of long-term

unemployed people are denied immediate access to Intensive Assistance; and

- ♦ only five per cent of participants received work experience and only 14 per cent received vocational training in 2000.

We can only hope that the Government takes note of the findings in this paper and begins to take its own obligations as seriously as long-term unemployed people are required to take theirs. ▲

Illness separates couple

Early last year, Maureen made the difficult decision to place her 60 year old husband Frank in a nursing home.

His Alzheimer's disease had reached such an advanced state that she was no longer able to care for him adequately at the same time as holding down her part-time job. However, it soon became obvious that Maureen just could not afford to keep Frank in the nursing home. Frank was in receipt of a Disability Support Pension, but only received a reduced rate as Maureen's part-time earnings were taken into account in assessing his pension rate. Due to high nursing home fees, the costs associated with Maureen travelling to and from work, and Maureen's own household expenses, Frank's pension and Maureen's earnings did not even cover their basic living expenses.

Centrelink decided to treat Maureen and Frank as an "illness-separated couple" rather than as completely "single" people. Being treated as an "illness-separated couple" means that although a person who is a "member of a couple" is subject to the

more favourable income test applied to a single person their partner's earnings are still taken into account.

The Welfare Rights Centre sought a review (by an Authorised Review Officer) of this situation in favour of having Maureen and Frank treated as completely single people instead. We argued that, in line with several recent Federal Court decisions, two "members of a couple" ought to be treated as single when it is impossible for them to pool their resources. Instead of being better off financially, Maureen and Frank were worse off for choosing not to separate, as their living costs had increased due to no fault of their own. The Authorised Review Officer decided to exercise her discretion to pay Frank at the single rate. This increased the couple's fortnightly income by \$100-enough to allow Frank to stay in the nursing home and Maureen to keep her part-time job. ▲

special benefit denied to most full-time students

A stated policy aim of the Federal Government is to encourage people to undertake studies so that the workforce is able to meet the demands of a modern economy. Given this policy, it is ironic that current Social Security legislation specifically operates to prevent such an outcome.

Historically, a person could not receive Special Benefit and study full-time. This led to many people not being able to complete their studies. Recently the law was changed so that Special Benefit is payable to full-time students aged 16 or 17. However, in a strange anomaly, it is not payable to full-time students who are between 5 and 15 or are over 17.

financial hardship

Many young and mature-age students, who are otherwise qualified for Special Benefit, are receiving no income support from any source and either struggle through their studies in severe financial hardship or withdraw altogether.

The implication of the legislation as presently stands is that the only way in which young people between 16 and 17, or above 17, can receive Social Security payments is if they cease their school studies (for students of school age), or study part-time (for students 18 or over). The only exemption to the current legislation is for full-time students below 15 who are classified as "homeless".

centre lobbies

The Welfare Rights Centre recently met with the Department of Family and Community Services and proposed that the legislation be amended so that school children and students over 17 not be prevented from receiving Special Benefit by virtue of the fact that they are studying. The Department has indicated that it is intending to amend the legislation so that the situation will be remedied for people over 17, however the



is likely to remain the same.

lola's case exposes anomaly

Lola, 19, arrived in Australia in May 2001 as the holder of a Permanent Residence Visa, and commenced full-time study for her Higher School Certificate. She arrived in Australia with her mother and step-father but, soon after her step-father began sexually assaulting her and asked that she not tell anyone. The family's next door neighbour began to notice signs that she was in a state of stress and anxiety and encouraged her to talk about her past history of abuse.

Lola has no relatives in Australia with the exception of her mother and step-father, from both of whom she is now estranged. When she contacted the

social worker about staying with this next-door neighbour, but only on a temporary basis.

As Lola is a newly arrived resident, she is subject to the two-year waiting period for Social Security payments, which prevents her from receiving Youth Allowance. Lola would qualify for Special Benefit, as she has had a "substantial change of circumstances" since arriving in Australia, except for the fact that she is a full-time student. The implication of the legislation as it presently stands is that the only way in which she can receive Special Benefit is if she drops out of high school and ceases her HSC studies. Fortunately for Lola, her next-door neighbour is supporting her while she completes her studies. But how many others are in Lola's position and have to withdraw from studies? ▲

social security changes

what's happening when in 2002

personal support advisers

- ◆ Personal Advisers to be provided by Centrelink to: older workers (ie people over 50 years) who are unemployed, parents, Indigenous Australians, released prisoners and people exempted from the activity test.

Date of commencement: 1 July 2002

treatment of private trusts and companies

- ◆ These changes mean that where a person controls or has contributed to a trust or private company, the income and assets of that company or trust may be taken into account in assessing their eligibility for Social Security and, where qualified, their rate of payment. Concessions will apply by way of discretionary provisions where this measure would have an unfair or unintended result or where farmers control a family farm through a trust. Special rules will apply for testamentary or protective trusts.

Date of commencement: April 2002

portability changes

- ◆ The working life residency requirements for determining a person's full rate of pension whilst overseas will be increased from 25 years to 30 years.

Date of commencement: 1 July 2002, subject to the passage of legislation

working credit

- ◆ A person will be able to build up a "working credit" of \$48 in each fortnight that they have no earned income. The "working credit" will accumulate to a maximum of \$1,000. (see separate article, page 13)

Date of commencement: 20 September 2002, subject to the passage of legislation

widow allowance

- ◆ A person on Widow Allowance who claims payment after 1 July 2003 will be required to attend an annual "participation planning interview" and will be required to enter into a Participation Plan.
- ◆ Penalties will be applied to Widow Allowance recipients who fail to attend the participation planning interviews or fulfil the requirements of any Participation Plan.

Date of commencement: 1 July 2003, subject to the passage of legislation

newstart allowance

- ◆ People receiving Newstart Allowance who are 50 or older will be required to attend ongoing "participation planning interviews" and to enter into a Participation Plan and Participation Agreement.
- ◆ Penalties will also be extended to older Newstart Allowance recipients who fail to attend the participation planning interviews or fulfil the requirements of any Participation Agreement.

Date of commencement: 1 July 2003, subject to passage of legislation

mature age allowance and partner allowance to go

- ◆ No new entrants to Mature Age Allowance or Partner Allowance, all new claimants for these payments will be required to claim Newstart Allowance.

Date of commencement: 1 July 2003 subject to passage of legislation

new participation requirements for parents

- ◆ Annual "participation planning interview" for parents with youngest child six or over will be introduced in two stages:

-from September 2002—for those with youngest child aged 11 or over; and

-from July 2003—for those with youngest child aged 6 or over.

- ◆ No legislation required
- ◆ No breach provisions or breach penalties to apply to "participation planning interviews".

Date of commencement: September 2002 and July 2003.

- ◆ Parenting Payment recipients (both single and partnered) whose youngest child is between 13 and 16 will be required to attend annual "participation planning interviews" and to enter into a "Participation Agreement" requiring part-time participation in an approved activity of up to 150 hours over six months.

- ◆ Failure to attend an interview, sign an Agreement or meet the requirements will attract penalties although there are to be "waiver rules that allow penalties to be waived where a person subsequently complies with their Agreement within 13 weeks".

Date of commencement: 1 July 2003, subject to the passage of legislation.

temporary protection visa holders

- ◆ Temporary Protection Visa holders are to be activity tested for Special Benefit purposes. They will also be required to negotiate and sign a Preparing for Work Agreement.

Proposed date of commencement: subject to passage of legislation ▲

special benefit

Special Benefit is the Social Security payment of last resort. It is paid where a person is unable to earn a sufficient livelihood and is not able to receive any other Commonwealth or state income support.

qualification

The basic qualification requirements for Special Benefit are:

- ◆ it can only be paid where a person is an Australian resident or holds a temporary visa of a particular subclass (mainly spouse and temporary protection visa's);
- ◆ there is no age limit;
- ◆ it will not be paid to full-time students over 18. For students below 16, Special Benefit will only be paid where they are considered to be "homeless". Students who are 16 and 17 are not affected by this and can be paid Special Benefit; and
- ◆ a person can not receive Special Benefit where they would otherwise qualify for another payment but are presently in a deferment, non-payment, waiting or penalty period.

Once it is determined that a person cannot receive any other payment, Centrelink will determine whether they are "unable to earn a sufficient livelihood" and whether they are in "financial hardship", whether they can obtain support from any other source and whether they have caused their own hardship.

income tests

Centrelink applies either a short-term or long-term available funds test. This is based on whether Centrelink thinks the person will be in receipt of Special Benefit for less or more than 13 weeks.

short-term

Common situations where Special Benefit is paid under the short-term available funds test include where a person:

- ◆ is subject to a Newly Arrived Residents Waiting Period;
- ◆ is a victim of a natural disaster;
- ◆ is waiting for a decision on another payment; or
- ◆ is dependant on someone who is in prison or has been stood down due to industrial action

Under the short-term available funds test, Special Benefit is paid where a person has available funds of less than one fortnight's Social Security payment.

long-term

Common situations where Special Benefit is paid under the long-term available funds test include where a person;

- ◆ is an Australian citizen child in the care of a non-resident adult;
- ◆ is caring for a baby;
- ◆ does not qualify for payment as they have not resided in Australia long enough;
- ◆ is the holder of a temporary protection visa;
- ◆ is caring for an incapacitated person, and
 - does not qualify for Carer Payment; and
 - cannot get Youth Allowance or Newstart Allowance activity test exemption

Under the long-term available funds test, Special Benefit will not be paid where a person has available funds of \$5,000 or more.

rate

The rate of Special Benefit is discretionary, however it cannot

exceed the maximum rate of Youth Allowance, Newstart Allowance or Austudy Payment if they are payable. A discretionary rate means that Centrelink can look at an individual's circumstances and determine what rate it thinks is applicable which may result in a lower rate of payment. Any income earned or received or the value of any "in kind" support is generally deducted at the rate of \$1 for every \$1 received. Where a person in receipt of Special Benefit is receiving free board, Centrelink will only pay two-thirds of the maximum rate.

newly arrived residents

Newly arrived residents are generally subject to a two-year waiting period. Where a person is in financial hardship during this two years and has "suffered a substantial change in circumstances beyond their control," Special Benefit may be payable.

There are a number of exemptions from the waiting period where people may be paid Special Benefit - ie if they are the family member of an Australian citizen. (Family member is generally only accepted as a partner or dependant.)

When all other options for Social Security payment have been exhausted and a person is without support, a claim for Special Benefit should be lodged. It is important to remember that most of the rules about the granting of Special Benefit and the rate at which it is paid are only Centrelink policy rather than law. Any decision therefore to reject a claim for Special Benefit or to pay a low rate where a person is in hardship can be appealed. ▲

debt numbers reveal big problems

Data recently obtained by the Centre through a Freedom of Information (FOI) application has revealed that the \$748m in debts raised by Centrelink last year came from a staggering 1,374,293 separate debts affecting 1,108,217 debtors. These debts were spread over all payment types but were disproportionately concentrated on Newstart and Youth Allowance and on Family Tax Benefit.

The FOI data obtained by the Centre also showed that in the period 1 July 2000 to 30 June 2001, there were:

- ◆ 594,916 Youth Allowance and Newstart Allowance debts. However, at least 102,999 of these (17.30%), were attributable to Advance Payments;
- ◆ 202,163 Family Allowance and Family Tax Benefit debts were raised;
- ◆ 123,507 Age Pension debtors; and
- ◆ 123,801 Youth Allowance debtors.

Many of these debts however are from Advance Payments. That the Department includes Advance Payments in its reporting of debt figures with little qualification or explanation is very sloppy and misleading.

Advance Payments were introduced by the previous Labor Government, and extended by this Government to enable unemployed people and families to get some of their future entitlements up front, in a lump sum. The Government refers to them, when it suits, as "good debt" because they help jobseekers to get work through, for example, being able to buy or register a car. They enable families to buy important white goods which often can't be done from regular fortnightly payments.

Advance Payments are authorised by Centrelink and are recovered by reducing a person's Social Security payment. Whilst they technically become a debt to Centrelink once paid, there can be no suggestion that a person has done anything wrong in such cases.

systemic failures

That there are such significant numbers of Age Pension, Family Tax Benefit and Youth Allowance recipients with debts appears to indicate that there are a number of systemic issues that must be contributing to Centrelink debts. The experience of the Welfare Rights Centre is that the complexity of the Social Security system is a major cause of many debts (and this conclusion is supported by the fact that so few people are prosecuted for fraud). For instance, many people incurred Family Allowance debts due to the difficulty in precisely estimating in advance their family income for the coming financial year. In the highly charged political environment prior to the election last November, the Government recognised this difficulty in relation to the new Family Tax Benefit (FTB) and reduced all FTB debts by \$1,000 thus acknowledging that FTB debts were mostly incurred through honest mistakes by clients.

changes needed

One of the most significant concerns raised by the debt figures is the alarming number of Centrelink debts

amongst young, homeless people. A staggering 57% of people under 18 who receive Youth Allowance (YA) "independent rate" incurred a debt (see Table A). By way of comparison, only 11% of people under 18 who were still dependent on their parent(s) incurred a debt. What could account for such a difference? Could it be that young people in receipt of the "independent rate" of YA (usually because they are homeless) are in such dire financial circumstances (the weekly rate is just over \$150) that they do what they can to survive. Or is it that they find the system too confusing and have minimal support to help guide them through the system during a time when they are dealing with issues such as no family support, homelessness and possible abuse?

To help reduce the large number of debts, Centrelink should concentrate more of its resources on debt prevention. More resources in Centrelink for proper interviews, for more thorough checking of information and for better explanation of obligations is likely to be far more beneficial by preventing debt in the first place. ▲

**Table A: Youth Allowance debts as at November 2001
(not including Advance Payments)**

	Number of recipients	Number of debts raised	% of debts per category
Under 18 independent	15,824	9,041	57 %
Under 18 dependent	116,429	13,091	11 %
18-20 independent	68,240	46,294	68 %
18-20 dependent	107,546	38,892	36 %

special benefit rate doubled!

Jenny contacted the Welfare Rights Centre to enquire if she and her family may be entitled to a Social Security payment. Jenny had been living and working in Australia for 10 years, however, she did not have permanent residency. She had recently been placed on a temporary visa that did not give her permission to work. Jenny has four children in her care, the eldest being 12.

As she was no longer able to work, Jenny could not continue paying rent and was evicted. She and her children were staying with friends and relying on charities for food and other basic necessities.

As Jenny was on a temporary visa she was not entitled to a Social Security payment. Her eldest child Kate was a permanent resident, as she was born in Australia and had resided here for 12 years. She was the only person in the family of five who could claim a payment.

We advised Jenny to claim Special Benefit in Kate's name. Centrelink granted Kate Special Benefit but, at the "at home" rate of Youth Allowance, ie \$158.80 per fortnight, in line with its policy guidelines. The Welfare Rights Centre appealed to the Authorised Review Officer on Kate's behalf requesting that the rate be reviewed and that Kate be paid at the higher Newstart Allowance rate. The appeal was successful and Kate now receives Special Benefit at the rate of \$394.30 per fortnight. ▲

centrelink errs on "independence"

Fadi, aged 19, is an Australian who returned to Australia after a period residing in Lebanon. He had left Lebanon as his parents had insisted that he join the army, whereas he wanted to study.

Soon after arriving in Australia, he claimed Youth Allowance and Centrelink sought details from his parents about their income to assess the rate at which Youth Allowance was payable. Centrelink also made a decision that Fadi was not "independent" of his parents, despite the fact that he was living in Australia as an Australian citizen, permanently. It decided that it was not unreasonable for him to live at home with his parents - even if that home was in Lebanon.

Fadi appealed to the Social Security Appeals Tribunal, which found, not only that it was unreasonable for him to live at home in view of his exceptional circumstances, but also that because he had left home for the purposes of engaging in study, he was qualified for the independent rate of Youth Allowance. He was backpaid from the date of his claim, which, given that he had been living in Australia on very limited funds since his arrival, was sorely needed. ▲

faulty breach in the system

When Dave contacted the Welfare Rights Centre his Newstart Allowance (NSA) had been cancelled and he was subject to an eight week non-payment period on the basis that he had incurred a third breach over a two-year period. We sought details from Centrelink about the dates the breaches had been incurred. Surprisingly, even though his NSA was cancelled and he was serving an eight week non-payment period, Dave had only incurred two breaches in the last two years.

The law requires that for a non-payment period of eight weeks to be imposed, a person must have incurred three breaches in a two year period.

An appeal was lodged to an Authorised Review Officer and Dave's NSA was restored, and a second breach penalty (24% reduction to his NSA for 26 weeks) was imposed instead of the cancellation. Apparently the mistake was made because Centrelink's computer system did not identify a number of people affected by a change in the law a few years ago!! We are left wondering how many other client's are in Dave's position. ▲

“welfare reforms” heading for Parliament

Substantial Social Security changes are soon to be introduced into Parliament through the Government’s “Australians Working Together” package of “welfare reforms”.

Essentially the changes, to be brought in over the next few years, will see the introduction of new activity testing requirements for older jobseekers and parents; with the accompanying extension of the breach and penalty system to them as well, and changes to Social Security income tests.

Some of the key changes that are being proposed in the legislation include:

older unemployed people

Older jobseekers will no longer have different payment types depending on their age, and there will be participation requirements for many more Social Security recipients. After 1 July 2003:

- ◆ there will be no new grants of Partner Allowance and Mature Age Allowance;
- ◆ all people over 50 will be required to enter into “participation plans”; and
- ◆ there will be participation requirements for Widow Allowance claimants.

parenting payment

“Participation planning interviews” will be held for people on Parenting Payment (single and partnered) whose youngest child is six or over. The purpose of these interviews will be to identify activities to assist the person to enter the workforce or to undertake training as a preliminary step. A “Participation Plan” may be developed. Penalties will apply to people who fail to attend such interviews.

working credit

A “Working Credit” of up to \$1000 is to be introduced in order to encourage



people to take up part-time and casual work by allowing them to keep more of their income support payment while working (see article page 13 for more information.)

personal support program

The Personal Support Program (an expanded form of the current Community Support Program) aims to assist people with severe workforce participation barriers or disadvantages, to address these barriers so as to be able to return to job search activity and obtain employment (see article page 13 for further information).

real danger in extension of penalties

At this stage the Government’s language about the extension of the current breaches and penalties system to these new older jobseekers and parent groups for failure to meet “participation plans” is all very soft. The language of the information packages attempts to assure us that penalties will be a “last resort” and that there will be many “safeguards”

to protect vulnerable individuals. Unfortunately we have heard these assurances many times in relation to the current system that applies to unemployed people, yet the evidence is that there has been a significant increase in the number of breaches in the last few years. It is also clear that more often than not, it is the most disadvantaged people who are subject to the incredibly harsh penalties in the Australian Social Security system.

The reality is that whenever the Social Security system is “simplified”, there is a tightening of the administration of rules. The reality is that those least likely to cope with the tightened rules are the ones who will be penalised.

While new training opportunities will bring rewards for many parents and older workers, this could no doubt be achieved simply through the provision of extra opportunities and supports without the need for penalties. The extension of participation rules and penalties to parents and older workers will produce many casualties and there is a real chance that for many vulnerable people in these categories, the damage done will far outweigh the benefits. ▲

new “working credit” income test

New income test arrangements for people on pensions and benefits are due to take effect from 20 September, 2002 (subject to the passage of legislation) through the introduction of a “Working Credit”. The “Working Credit” aims to reduce the severity of the Social Security income test for people who take up casual or part-time work. It will apply to all people of workforce age on a Social Security income support payment.

At present, if an unemployed person on an income support payment earns more than \$62 in a fortnight, (or \$106 in the case of a single pensioner) his or her payments are immediately reduced. This means that a person who manages to obtain casual work and earns \$200 in the fortnight would have their allowance for that fortnight reduced by \$80.60c. However, if a person goes for ten fortnights without earning any money and then gets a full week's work at \$500, they would lose all their Social Security payment for that fortnight. The proposed “Working Credit” aims to correct this inequitable outcome by allowing people to “bank” up to \$48 on their free area each fortnight when they don't earn. This is designed to encourage people to take up casual work opportunities where they arise as it enables people to keep more of their income support payment while working.

how it will work

The proposed arrangements will allow a person to accumulate a “Working Credit” of up to \$1000. A person on an income support payment will be able to accrue up to \$48 of “Working Credit” in any fortnight where they earn less than \$48. So, when a person gets work, their income support payment will not be reduced in any fortnight until their income reaches their relevant free area plus the amount they have built up in their “Working Credit”.

For example, where a person has built up a “Working Credit” of \$500 and earns income of \$600 in the fortnight, the income free area of \$62 (or \$106 in the case of a single pensioner) is deducted from their gross earnings, leaving \$538 (\$494

for pensioner) of affecting income. But only \$38 (nil for pensioner) of these earnings will be applied to their Social Security income test once the “Working Credit” is taken into account.

This initiative is welcome in that it is aimed at partially offsetting the effect of a person's earnings from employment on that person's income

support payments. Whether it will adequately cover the costs associated with taking up work is another matter. In any case, it is a long-awaited response to the problems faced by many recipients of income support payments who may be discouraged from accepting casual or part-time work because of the application of harsh income test rules. ▲

new program for most vulnerable jobseekers

The new Personal Support Program (PSP) commences in July 2002. The program is essentially an expansion of the current Community Support Program. The PSP will be administered by the Department of Family and Community Services and provided by a variety of community based and private providers.

The program is designed to “bridge the gap between short term crisis assistance and employment related assistance” for people who, due to their life circumstances, face multiple barriers to employment and are not considered to be “job ready”. The aim of the program is to prepare participants for employment. In theory, providers will identify outcomes or “goals” with clients and develop an “action plan” of what the participant will do in order to move towards them. The program is intended to be flexible and to meet the specific needs of each individual participant taking into consideration their circumstances and abilities. Providers may either deliver services themselves or act as a broker to buy other community services such as counselling, drug and alcohol programs, and accommodation services. People can remain in the program for up to two years.

will PSP participants be breached?

People will be assessed and referred to the program by Centrelink's new Personal Advisers. People can be referred to the program or they can volunteer to participate. As we understand it at this stage participants in the personal support program will not be subject to the breach penalty regime whilst in the program. This means that participants will not be breached if they fail to either attend appointments or partake in any activity agreed to in the plan. Participants can however be excluded from the program where they repeatedly and “wilfully” fail to participate without sufficient reason. Presumably though these people would then return to the Newstart/Youth Allowance activity testing regime where they would be exposed to breach penalties. ▲

social security for new zealanders - centrelink confused

Social Security laws for New Zealanders residing in Australia have changed constantly over the last few years, leaving many people confused about the current status of the law. That confusion still reigns.

An emerging problem now is that Centrelink staff, who are themselves confused - quite understandably - by the complex policies in place, are often convinced that New Zealanders arriving from New Zealand after 26 May 2001 to take up residence in Australia, cannot qualify for Australian Social Security income support until they acquire a permanent visa. This is not strictly correct.

Whilst the **general rule** is that New Zealanders arriving in Australia after 26 May 2001 to reside here will not be eligible for most Social Security payments, *including Special Benefit*, unless or until they have been granted a permanent visa, New Zealand citizens living in Australia without an Australian permanent visa **can still be paid** Australian Social Security payments if they are eligible under the International Agreement between Australia and New Zealand. Alternatively, they may satisfy one of the exemptions from the general rule (see the September 2001 "rights review" article [p14] for further information regarding the exemptions.

This means that a New Zealand citizen residing in Australia may be eligible for payment under the New Zealand Agreement irrespective of when they arrived in Australia.

It is also important to remember that, despite the general rule, New Zealanders taking up residence in Australia without a permanent visa are still eligible for Family Tax Benefit, Maternity Immunisation Allowance,

Double Orphan Pension and Child Care Benefit.

a new NZ agreement

A new International Agreement with New Zealand comes into force on **1 July 2002**. Anyone on an Australian pension under the pre-July Agreement (ie, the current Agreement), will continue to be paid under current Agreement conditions, unless they return to NZ permanently (generally after 26 weeks in NZ).

The new NZ Agreement covers:

- ◆ Age Pension
- ◆ Disability Support Pension (for "severely disabled" people only); and
- ◆ Carer Payment (for "partners" only)

The new New Zealand Agreement **will NOT cover Parenting Payment (single)**.

The new Agreement has entirely different arrangements regarding deemed residence. Whilst the current Agreement requires a full ten years residence in New Zealand for the Agreement to apply for pension purposes, the new Agreement will allow for periods in both countries to be totalised. Effectively, New Zealand will pay its citizens pensions in Australia at a rate proportional to the period the person resided in New Zealand (while "working age", ie between twenty and 65 years), and Australia will top up the amount paid by New

Zealand to the rate otherwise payable to an Australian.

rates payable

The rate payable under the new Agreement will be the maximum rate payable under the pensions income or assets test, with the proportion of pension paid by Australia and New Zealand depending on the number of years of "working age residence" in each country. If the person has no "working age residence" in New Zealand (eg, if their residence in New Zealand was all post 65 years of age), and they have, for example five years residence in Australia and five in New Zealand, the maximum rate of Age Pension will still be payable (with no contribution made by New Zealand).

still confused?

Welfare Rights is keen to help. Call us on our advice line, or visit our website www.welfarerights.org.au The Department of Family and Community Services' website, at www.facs.gov.au is also useful.▲

carers disadvantaged

A recent Administrative Appeals Tribunal (AAT) decision about Carer Allowance (CA) has again highlighted the deficiencies in Social Security legislation that purportedly aims to assist carers.

The AAT case concerned Mr Jackson who was caring for his 86-year-old mother who suffered from dementia. He was refused CA on the grounds that he was not residing at the same residence as his mother. To qualify for CA, Centrelink's supplement payment for those caring for people, the care must be provided in a private home that is the residence of the carer and the care recipient.

Mr Jackson provided his mother with a hot meal each day and visited her about four times daily. His mother lived in a flat adjoining his house. A connecting gate and a buzzer had been installed. Mr Jackson owned both properties, but they were on separate titles. Centrelink rejected the claim for CA because the two properties were on separate titles. The Tribunal supported Centrelink's decision on the grounds that Mr Jackson and his mother were not living at the same residence.

centrelink policy

Centrelink's policy provides that two people are residing in the same residence for CA purposes where:

- ◆ there is an adjoining door that allows unhindered access between the two homes; or
- ◆ the two homes are within the same property boundary and within the immediate vicinity of each other (a granny flat situation); or
- ◆ the carer resides with the care receiver or the care receiver resides with the carer, even though they each maintain separate residences, and the carer and care receiver typically spend each night together and have at least one meal each day together under the same roof.

At present, the law is so strict with regard to the issue of "same residence" that many people are denied CA even though they are



caring for another person. In our experience many people who are providing care for someone on a daily basis do not qualify for CA purely because they do not live in the same house as the person they are caring for. The current law, for example, does not allow people who live in adjacent units to qualify for CA. In most cases the carers continue to

provide care even after their CA claim has been rejected. This effectively means that these carers are providing unsubsidised care for those in need.

The current legislation should be changed to remove the requirement that the care be provided in a home that is the residence of both the carer and the care recipient.

helen denied CA despite care

Linda and her sister, Helen, each live in their own unit. Linda's health has declined to the point where Helen provides daily care and attention to Linda. This is sometimes at Linda's unit and, at other times, at Helen's unit and the length of time at each unit varies from one night to several weeks. Helen qualifies for Carer Payment in respect of Linda because she provides "daily care

and attention", however, as she is not typically spending the night and sharing one meal in the same unit as the care receiver each day, they do not satisfy the requirement of "living in the same residence" and hence Helen does not qualify for Carer Allowance. Helen who feels obligated to look after her sister, continues to care for her while only receiving Carer Payment. ▲

welfare rights website

In the last edition of "rights review", we advised of the launch of the National Welfare Rights Network website. The website has proved to be very successful and the Centre has received a great deal of positive feedback from users.

The website is an important resource for community workers who deal with Social Security matters. It includes over 30 Factsheets on key and current Social Security payments and topics, two chapters of the 4th edition of the Independent Social Security Handbook; the Welfare Rights Centre "rates chart" with all the latest Social Security

payment rates (previously issued with "rights review". There are also two self-help booklets for appealing to both the Social Security Appeals Tribunal (SSAT) and the Administrative Appeals Tribunal (AAT).

The website address is www.welfarerights.org.au▲



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