

QUARTERLY WELFARE RIGHTS NEWSLETTER
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rights review

NEWS & COMMENT ON SOCIAL SECURITY ISSUES

"welfare reform" should stop until brutal penalties fixed

The Senate should not pass the Government's "welfare reform" legislation until the Government first reforms the harsh and discredited penalty system at the heart of its flawed proposals.

This was the clear message from the National Welfare Rights Network (NWRN) delivered to the Senate's welfare reform inquiry in Sydney recently. The NWRN advised the Senate Inquiry that, in the experience of Welfare Rights Centres throughout Australia, the brutal penalty regime, which currently only affects unemployed people, should not be extended to parents and mature age unemployed people as proposed under the Government's legislation.

Fines of \$850, already too harsh and "counter-productive" when applied to unemployed people, would become a crippling \$987 if applied to parents under the Government's proposals.

children affected

Cutting a families' income for six months (a fine of \$987) or stopping it completely for eight weeks (a fine of \$1687) just cannot be justified. Under these penalties, the Prime Minister would be fined \$23,000 (18% of salary for six months) for a first offence.

This legislation will simply extend to families the massive breaching and penalty problems that already affect unemployed people. However, the proposed penalties would be higher and would also affect children.

The NWRN submission advised the Senate Committee that until the penalties at the heart of the legislation are dropped, the Network would oppose the legislation and would continue to urge the Opposition parties to block all the welfare reform legislation.

The recent Independent Review of Penalties in the Social Security System, led by former Commonwealth Ombudsman Prof. Dennis Pearce, found the present system to be "excessively harsh and counter-productive". The system needs to be restructured for unemployed people, along the lines recommended by the Review, before it is extended to parents or mature age unemployed people.

penalties counter-productive

Welfare Rights Centres throughout Australia deal
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Available at www.welfarights.org.au
Guide to social security payments!

Contact details for Welfare Rights

The contact details of the Welfare Rights Centres involved in the publication of the "rights review" are contained below. For contact details of all member organisations of the National Welfare Rights Network please refer to the website www.welfarerights.org.au

Adelaide

Welfare Rights Centre
Street address: Torrens Building,
220 Victoria Square, Adelaide,
SA 5000
Postal address: As above
Telephone contact number:
(08) 8226 4123, 1800 246 287
Fax: (08) 8226 4124
TTY: None
Email: wrcsa@wrcsa.org.au

Brisbane

Welfare Rights Centre
Street address: Suite 3, 28 Old
Cleveland Rd, Stones Corner,
QLD 4120
Postal address: As above
Telephone contact number: (07)
3847 5532, 1800 358 511
Fax: (07) 3421 2500
TTY: (07) 3847 5533
Email: wrcqld@uq.net.au

Sydney

Welfare Rights Centre
Street address: Level 5b, 414
Elizabeth St, Surry Hills,
NSW 2010
Postal address: As above
Telephone: (02) 9211 5300 and
1800 226 028 for people calling
from outside the Sydney
metropolitan area
Fax: (02) 9211 5268
TTY: (02) 9211 0238
Email: welfarerights@welfarerights.org.au

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"welfare reform" should stop...

with unemployed people who have been breached under the current penalty regime on a daily basis. We see the reality of how breaches and penalties are applied and the impact they have on people, often the most vulnerable people in the Social Security system. We see how the penalties are so harsh, with little parallel in the civil or criminal justice systems, that they are generally counter-productive in that they diminish the capacity of an unemployed person to continue to meet their activity test /participation requirements.

punitive system

The primary reason for reaching this conclusion is that, despite some significant improvements in the **breaches** regime proposed in the AWT legislation compared with the system that currently applies to unemployed people and students on Newstart Allowance (NSA) and Youth Allowance (YA), the proposal nevertheless retains the same unjustifiably harsh and damaging level of **penalties** that are causing so much harm. This is not just for breached NSA and YA recipients, but also for the community generally and the community welfare organisations that attempt to pick up the pieces.

This penalty regime has been

examined, and rejected by the "Independent Review of Breaches and Penalties in the Social Security System" (the Review) as "unfair and counter-productive" with "failings in the design and implementation of the system which cause many unemployed people to suffer arbitrary, unfair or excessively harsh penalties". The Review also found that the system "often diminishes people's capacity to seek and gain work and thus become less dependent on Social Security".

The extension of such a poorly structured and punitive system of penalties to even one parent with child caring responsibilities, or one mature age unemployed person, let alone the tens of thousands that could be anticipated on the current record of Centrelink, cannot possibly be justified by the Senate.

Any legislation which seeks to extend activity or participation requirements to parents and older unemployed people should not be passed unless and until it is modified, in relation to any accompanying penalty regime, to accord fully with the recommendations of the Independent Review of Breaches and Penalties in the Social Security System. We do not believe that welfare reform can proceed in Australia until this matter of harsh, counter-productive penalties is remedied. ▲

Level of penalties proposed for Parenting Payment (single) recipients			
	Weekly reduction in payment (Parenting Payment single @ weekly rate of \$210.90)-not including FTB	Total reduction amount-over 26 weeks (or 8 week non payment period)-not including FTB	Cumulative reduction amount-not including FTB
Activity Test			
First breach - 18% reduction for 26 weeks	\$37.90	\$987	\$987
Second breach - 24% reduction for 26 weeks	\$50.60	\$1,316	\$2,303
Third breach - no payment for 8 weeks	\$210.90	\$1,687.20	\$3,990

government reneges on commitment: but no breach imposed

Karen was born in Kenya and arrived in Australia in 1997 on a student visa. She has been in Australia since arriving and is currently the holder of a bridging visa. She does not have permission to work. In 1998 she entered into a defacto relationship with an Australian resident and commenced living with him in October 2000. They had a son who was born in early April 2001. Her son is an Australian citizen by virtue of the fact that his father is an Australian citizen.

In mid-2001, Karen separated from her defacto partner due to domestic violence. She was in a women's refuge with her son, when a worker at the refuge contacted the Welfare Rights Centre. Karen is not eligible for a Social Security payment as she is on a bridging visa, so we advised that her son should claim Special Benefit. Her son was granted Special Benefit (as he is an Australian resident) at a minimal rate, due to Centrelink "policy guidelines".

So what are these guidelines?

Centrelink policy guidelines regarding the rate of Special Benefit paid to the children of non-residents were developed in the early 1990's and remain unchanged, despite numerous tribunal decisions paying Special Benefit at a rate substantially higher than that provided by the guidelines.

Centrelink guidelines provide that the total rate of Special Benefit should:

"not exceed the 'at-home' rate of Youth Allowance".

The explanation given for this is that:

"This rate is comparable with the level of assistance available for the support of other Australian children of the same age".

The at-home rate of Youth Allowance is \$165.10 per fortnight. How many children do you know whose level of assistance is \$165.10 per fortnight where their sole parent is unable to work and has no other income?

tribunal decisions

The Centre and various tribunals have been dealing with such cases for over a decade. Since 1997 the



Social Security Appeals Tribunal (SSAT) has made numerous decisions in cases similar to Karen's. It has regularly changed Centrelink's decision to restrict payment of Special Benefit to the "at home" rate of Youth Allowance and increased it to the "independent" rate of Youth Allowance. The fortnightly "independent" rate of Youth Allowance is \$301.70.

Appeals by the Federal Government against SSAT decisions in this matter have been rare. Appeals that were lodged were withdrawn at the last minute, meaning that the SSAT decision to pay Special Benefit at the "independent" rate stood. However, in 2001 the Federal Government appealed a SSAT decision on this issue to the Administrative Appeals Tribunal (AAT). In that case, Sarah and her child's circumstances were very similar to Karen's.

aat misled

Sarah was in Australia on a temporary visa and entered into a defacto relationship with an Australian resident. They had a son, who by

virtue of his father's residency status, is an Australian citizen. Sarah was subjected to domestic violence and fled with her son to a refuge. Special Benefit was granted to her son at the Youth Allowance "at home" rate. The SSAT changed this decision and said that Special Benefit should be paid at Youth Allowance "single with child" rate (\$395.40 pf).

The Federal Government lost its appeal to the AAT. In fact the AAT stated that the rate of Special Benefit should be the rate of Newstart Allowance for a single person, 21 years or over, with children (\$395.10 pf) or for a person who is single, aged 60 or over, after nine months (\$399 pf).

In its written decision, the AAT noted that the Centrelink advocate had submitted that Centrelink's current policy is that:

"infants of non-resident parents should be paid at the maximum 'independent' rate of youth allowance. This has changed from the policy

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legislation

"australians working together" legislation

In the 2001/02 Federal Budget the Government announced a number of measures under its "Australians Working Together" package. These measures included: the extension of "mutual obligations" to parents and mature age job seekers, the introduction of the Personal Support Programme, Working Credit, and a Literacy and Numeracy Supplement.

Legislation to enact these measures was introduced into Parliament on 16 May 2002. On 19 June 2002, the Senate referred the legislation to the Senate Community Affairs Reference Committee. This Committee is currently conducting an Inquiry into participation requirements and penalties, looking at both the proposed requirements for parents and mature age job seekers, and the recommendations in the report of the Independent Review of Breaches and

(cont from page 3)

government reneges...

applied in the original decision by Centrelink. That policy was that such infants should be paid Special Benefit at the youth allowance 'at home' rate."

The AAT decision was handed down on 10 August 2001. Despite the Government informing the AAT that the policy had been "changed" so that children of non-resident parents should be paid the maximum "independent" rate of Youth Allowance, no such policy change has been introduced, even though it has been over one year since the AAT decision. Centrelink policy guidelines still stipulate that the rate of payment of Special Benefit in such cases should not exceed the "at home" rate of Youth Allowance.

The Centre has written to the Minister and raised the matter of the Government apparently misleading the AAT about the rate of Special Benefit payable in such cases and to find out what its actual policy is. We await a response, as do the people currently supporting themselves and their children on \$165.10 per fortnight.▲

Penalties in the Social Security System. The National Welfare Rights Centre prepared a submission and appeared before the Committee (see article at page 1 of newsletter).

The Committee is due to report back to the Senate on 13 September 2002.

disability support pension

On 16 May 2002, the Federal Government introduced legislation into Parliament to enact the changes to Disability Support Pension announced in the 2002/03 Federal

Budget. The main change would be that a person would only qualify for Disability Support Pension if they had a significant level of impairment and as a result of their disability, they could not work more than 15 hours per week. Currently the hours of work provision is 30 hours per week.

Given the widespread opposition to the proposals, the Government has introduced an amended bill that contains a number of "savings" provisions. These are meant to reduce the opposition by proposing that the changes would only apply to new claimants.▲

changes to rights review

welcome to the new version of "rights review"!

"rights review" was previously produced solely by the Sydney Welfare Rights Centre. From this edition, "rights review" will be a joint production of the Sydney Welfare Rights Centre, Adelaide Welfare Rights Centre and Brisbane Welfare Rights Centre.

As a result "rights review" now has a slightly different look. No longer will specific details of Sydney Welfare Rights Centre be included on the second page. As you can see we will now provide contact details for each member organisation of the National Welfare Rights Network (NWRN) involved in the production of "rights review". On page 15 we shall also have an update about recent events/cases from each Centre involved in producing "rights review".

The decision to make "rights review" a joint production with

other member organisations of the NWRN was made on the basis that as the Network deals with federal legislation (ie Social Security legislation) and given that the Network has a member in each capital city plus some regional areas (see our website www.welfare-rights.org.au for more details about the NWRN), a national newsletter is more appropriate. This new form of "rights review" provides us with an exciting opportunity to better advocate for people with Social Security problems across Australia and to raise issues of regional concern. Enjoy the reading!▲

minister wrong about public opinion

Around 95 per cent of the Australian community thinks that the current breaching regime is too harsh, according to a recent survey. This result calls into question statements by Senator Amanda Vanstone, Minister for Family and Community Services, that the current breaching regime is a proper reflection of the community's expectations. The Minister has been shown to be out of touch with public opinion.

In May of this year, the Brotherhood of St Laurence undertook a survey of community attitudes to the current level of penalties for breaching. The researchers surveyed 1,200 Australians of various ages and backgrounds. The respondents were asked to propose their own penalty system for Social Security recipients. They were also asked to comment on the fairness, or unfairness, of the current breaching system. The report that examined the survey results, *"The Community Expects - public opinion about breach penalties for unemployed people"*, found that a majority of those surveyed thought that the current penalties for activity test breaches were unfair.

98% say too harsh

Under the present breaching system, a Newstart Allowance recipient who has just one activity test breach loses an average of \$863 from their Allowance over a 26 week period. The Brotherhood's report found that a staggering 98 per cent of respondents nominated a "penalty" amount less than the current rate as being appropriate. Moreover, 97 per cent of the respondents nominated an amount less than the current penalty of \$1,151 that applies to a second breach, and 90 per cent nominated an amount substantially lower than the \$1,476 penalty that applies to a third breach.

Following such findings, it is difficult, if not impossible, to see how Minister Vanstone can continue to maintain that the community wholeheartedly supports the current breaching regime. How could her attitude

towards the crushing impact of the current breaching regime on the most vulnerable people in our community remain fixed, despite the findings of this and other surveys?

Last year, the Salvation Army found that one-quarter of its emergency relief clients had been breached. The Independent Review of Breaches and Penalties reported in May of this year that the current system

diminishes job-seekers' capacity and opportunity to seek work and to get off Social Security. It is now clear, following the Brotherhood's report, that the Minister must no longer assume that the community does not support a less harsh approach. The Minister's insistence on the continuation of the current penalty regime is thus insupportable in all respects. ▲

red's victory

Red has spent the past two years of his life living in hostels. His Newstart Allowance is too meagre for him to be able to pay private rent in Sydney. He has no family or friends on whom he can rely. Some hostels only allow boarders to stay for a maximum of three months at a time. Red is forced to change his address regularly as a consequence. He notifies Centrelink every time he changes his address, although sometimes he takes a couple of days after each move to his new Centrelink office.

Red was breached as he did not attend a Centrelink interview. A letter was in fact sent to Red, but he did not receive it as he had recently moved. Red's payments were reduced by over \$65 a fortnight as a consequence of the breach. A friend told Red about the Welfare Rights Centre, so he decided to call. The Centre contacted Centrelink on Red's behalf, and we managed to have the breach overturned, on the basis that it was proved that Red did not get the letter as he had just moved. Arrears were paid and Red's payment was

restored to full rate.

Red's story is not unique. Rather, it is an example of how the current breaching regime impacts on disadvantaged members of the community who need to rely on income support payments. If Red had not contacted the Welfare Rights Centre, he may not have managed to have the breach removed and his arrears paid. To add to the complexity of the appeals system, Red may not have had his arrears paid at all, if he had not appealed the decision to impose the breach within 13 weeks. ▲

federal court

when is gaol not gaol?

Later this year, the full Federal Court will hear a case involving whether a person, who was found “not fit to stand trial” and was subsequently detained as a restricted patient under the Queensland Mental Health Act, is qualified for a Disability Support Pension (DSP).

The Social Security Act provides that a pension is not payable to a person who is in goal or is undergoing psychiatric confinement because the person has been charged with an offence. The term “psychiatric confinement” is defined in the Act as including confinement in a psychiatric section of a hospital. However, the Act also provides that the confinement of a person in a psychiatric institution during a period when the person is undertaking a course of rehabilitation is not to be deemed “psychiatric confinement”.

So, if you are confused about whether a person can receive Social Security while in psychiatric confinement, don't worry, you're in good company, as this is the issue the Federal Court is trying to sort out.

various decisions

Over recent years, there have been several tribunal and court decisions that have tried to work out the answer to this issue. The most recent decision of a single judge of the Federal Court found that the question to be asked in these cases was whether a person is undergoing psychiatric confinement because he or she has been charged with committing an offence. If the answer to the question was yes, the Court held that the fact that a person may have received treatment by undertaking a course of rehabilitation during the period of psychiatric confinement did not change the reason for, or character of, the confinement. According to the Court, a person could not receive Social Security merely because they were undertaking a course of rehabilitation.

That decision by a single judge of the Federal Court is a significant departure from the approach that had been adopted by the Administrative Appeals Tribunal (AAT). Apart from one decision, the AAT has generally taken a broad



approach to the meaning of “rehabilitation” and found that it must entail training that is structured to take a person through a series of stages or goals so that, at the end of the training a person has been trained to enable him or her to participate at some level in normal life in the community. On the basis of the AAT reasoning, people involved in structured programs within such a psychiatric institution could qualify for a Social Security payment.

health worsens

In some of the AAT cases, it has been noted that the patient's mental health was being adversely affected, and hence their ability to participate in rehabilitation activities compromised because of the nature of their confinement. Having no income they are often deprived of the

basic necessities of life. Unlike a person detained in prison, people in psychiatric confinement are not entitled to a weekly allowance and are often liable (if not for having signed a statement of hardship) to pay for board and lodgings. Nor are they permitted to work, unlike people detained in a prison. This means that they cannot, unlike a prisoner, earn any wages.

Clearly the approach by the single judge of the Federal Court is at odds with the previous reasoning of a series of AAT cases.

The way the Full Court rules on these provisions will have significant implications for people being held in psychiatric confinement. “rights review” will advise readers of the outcome of the Federal Court decision when it is handed down. ▲

debt reform needed

It goes without saying that the Social Security system is confusing. Centrelink administers an extraordinary number of payment types to millions of people of multifarious backgrounds. It is hardly surprising, then, that there are people in the community who are not receiving the most appropriate payment for their particular circumstances. These are people who are entitled to a Social Security payment, but may not be strictly entitled to the payment they are actually receiving.

So, what happens when Centrelink finds out that a person is receiving the wrong payment? Centrelink will usually transfer the person to the appropriate payment. However, Centrelink will also raise a debt for the period during which the person was receiving the wrong payment. Now, most people in the community would expect that Centrelink would deduct from the debt the amount of payment that the person would have in any case been entitled to from the other payment during the debt period.

government not out of pocket

This, however, does not happen. Centrelink will usually raise the entire amount paid to the person as a debt, even though the person would have been entitled to another Social Security payment during that period, often paid at the same rate. This means that the Government is, in effect, recovering money it would have had to pay if the person had been on the correct payment type. The Government is recovering money when it is not even out of pocket!

Social Security legislation limits the circumstances in which the Commonwealth's right to recover debts can be "waived" on the basis of a person's "notional entitlement to another payment" during the period in which the debt was incurred. The Social Security Act allows for waiver where a person, or their partner, had an unclaimed right to Family Payment, Family Allowance, Parenting Allowance or Parenting Payment during the debt period.

The Act is of no assistance to people who may have had a notional

entitlement to payments other than the four payments mentioned above. The only avenue for taking into account notional entitlements to other payments is to ask that recovery of the debt be waived because of any "special circumstances" in that person's case. However, to use the "special circumstances" provision, the person needs to prove that the debt was not incurred "knowingly", that his or her overall situation constitutes "special circumstances" and that it is more appropriate to "waive" rather than "write off" the debt.

unfairness

However, those who cannot satisfy the "special circumstances" criteria (and very few people can) are still left with a debt.

"Surely a decision maker's priority when raising a Social Security debt ought to be whether or not the Commonwealth is in fact out of pocket as a result of the person's 'non-compliance' with the Act."

Take for example the case of John. He is an ABSTUDY recipient, who has ceased studying, and is looking for work. He did not advise Centrelink that he was no longer in full-time

study but had notified the welfare worker at TAFE that he had stopped studying. Even though he would have been entitled to Youth Allowance after he ceased studies, this was not taken into account when an ABSTUDY debt was raised from the date he stopped studying. John's debt won't be waived under "special circumstances", even if his overall circumstances were "special", because he had failed to advise Centrelink of the cessation of his studies, and this is regarded as "knowingly" failing to comply with the Act.

reform needed

The Commonwealth is not out of pocket in these circumstances, yet John must still pay back the entire debt. And therein lies the unfairness in John's case, as in many other cases - the Commonwealth is asking to be paid back money it would have in any case been obliged to pay to John, had he just made a claim for Youth Allowance. John, on the other hand, is in effect *without any income support at all* during the relevant period.

Surely a decision maker's priority when raising a Social Security debt ought to be whether or not the Commonwealth is in fact out of pocket as a result of the person's "non-compliance" with the Act. If the Commonwealth is not out of pocket, then there is little justification for applying additional criteria to determine whether regard can be had to the person's notional entitlements to another Social Security payment. ▲

social security changes

social security changes what's happening when in 2002

“AUSTRALIANS WORKING TOGETHER” INITIATIVES

- ◆ These changes require the passage of legislation that is now in the Senate. Unless a specific date of commencement is noted, the date of commencement of each initiative will depend on when the legislation is passed.

personal support programme

- ◆ The Personal Support Programme will replace and expand on the Community Support Program. The Programme will target people who face barriers to social as well as economic participation, such as homelessness, drug or alcohol problems, mental illness or domestic violence.
- ◆ Activity Test penalties are to be waived once a person commences a Personal Support Programme.

new participation requirements for parents

- ◆ 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 “Participation Agreements” requiring “participation” of up to 150 hours over six months.
- ◆ Participation requirements will include one or more activities such as job search, education,

training or community work for up to 150 hours in a six month period. The new participation requirement will not apply to parents caring for a child with a serious disability.

- ◆ Failure to comply with requirements will attract the same penalties as currently apply to Newstart Allowance. A penalty may be waived where a person subsequently complies with their Agreement within 13 weeks.

newstart allowance

- ◆ Newstart Allowance recipients who are 50 or over will be required to attend ongoing “participation planning interviews”, and to enter into a Participation Plan and a Participation Agreement. Penalties will be imposed for non-compliance.

mature age allowance and partner allowance

- ◆ Mature Age Allowance and Partner Allowance to be abolished, with no new grants from 1 July 2003. People in receipt of Mature Age Allowance or Partner Allowance at 1 July 2002 will remain eligible.

The proposed date of commencement is 1 July 2003.

widow allowance

- ◆ Widow Allowance recipients will be required to attend an annual “participation planning interview” and will be required to enter into a Participation Plan. Penalties will be imposed for non-compliance.

The proposed date of commencement is 1 July 2003.

working credit

- ◆ Workforce age pensioners and allowees 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. Employment income will then only affect a person’s Social Security entitlement once their income free area is exceeded and their working credit balances are zero.

The proposed date of commencement is 28 April 2003.

language, literacy and numeracy supplement

- ◆ A supplementary payment of \$20.80 per fortnight will be introduced for people receiving certain Social Security payments who are undertaking approved language, literacy and numeracy training programs. The payments attracting the supplement will be Newstart Allowance, Youth Allowance, Parenting Payment, Mature Age Allowance, Widow Allowance, Partner Allowance and Disability Support Pension.

newstart allowance and youth allowance

- ◆ Jobseekers receiving Newstart Allowance or Youth Allowance who are temporarily incapacitated for work and who would therefore

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be eligible for an exemption from the activity test will be subject to an activity test if they are considered to be capable of participating in other activities.

The proposed date of commencement is 20 September 2003.

OTHER INITIATIVES

payment of pension overseas

- ◆ The formula for calculating the rate at which a fully portable pension is payable after a pensioner has been absent from Australia for more than six months will change. The new formula will affect people whose Australian "working life residence" is less than 30 years. (The formula currently affects people who have less than 25 years "working life residence".)
- ◆ The change will only apply to pensioners who leave Australia after the date of commencement of the new rule. Pensioners receiving a portable pension under the current rules who are overseas on the commencement day will only be subject to the new rule if they return to Australia for a continuous period of 26 weeks or more and then again depart Australia.

This change requires the passage of legislation that is now in the Senate. The date of commencement depends on when the legislation is passed.

disability support pension

- ◆ Disability Support Pension eligibility criteria to be tightened. People who are assessed as being able to work at least 15

hours a week at award wages will no longer be eligible (the current test is 30 hours per week). The change will apply to new Disability Support Pension claimants.

- ◆ Assessment of Disability Support Pension eligibility for people over 55 will no longer take into account local labour market conditions.
- ◆ Centrelink staff will assess the work capacity of Disability Support Pension applicants (Health Services Australia currently makes this assessment).

This change requires the passage of legislation that is now in the Senate. The date of commencement depends on when the legislation is passed.

gifting of assets

- ◆ "Disposition" or gifting provisions to be changed. The financial year is now the period over which disposal amounts are calculated. In addition to the \$10,000 single year disposal free area now in operation, where a person disposes of further assets of more than \$30,000 in a "rolling" 5-year period, the excess will be assessed against the person for five years from the date of the gift.

Date of commencement: 1 July 2002

state seniors card

- ◆ Holders of a State Seniors Card to be eligible for concessional public transport fares while travelling interstate.

The date of commencement is subject to negotiations between Federal and state/territory governments.

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.

This change requires the passage of legislation that is now in the Senate. The date of commencement depends on when the legislation is passed.

social security agreement with germany

- ◆ Introduction of International Agreement on Social Security with Germany.

The proposed date of commencement is 1 October 2002, subject to passage of legislation in both Australia and Germany. ▲

practitioner's guide

newstart and youth allowance: rights and obligations

To receive Newstart Allowance (NSA) or Youth Allowance (YA) a person must, among other things, satisfy the activity test and undertake all administrative requirements set out in Social Security law. If a person fails to satisfy these requirements a breach may be imposed.

A breach penalty will result in a rate reduction of a person's NSA/YA for 26 weeks or the imposition of an eight week non-payment period.

The purpose of this practitioner's guide is to advise people of their rights and obligations when in receipt of NSA/YA and how to avoid being breached.

requirements

In order to remain qualified for NSA/YA a person must satisfy the activity test unless they are given a temporary exemption. They must also sign a "Preparing for Work Agreement" that sets out their activity test requirements.

The terms of a "Preparing for Work Agreement" may contain any of the following:

- ◆ a requirement to apply for a certain number of jobs each fortnight;
- ◆ a requirement to attend a Job Network provider;
- ◆ a requirement to undertake study or training;
- ◆ a requirement to complete a Job Seeker Diary;
- ◆ a requirement to participate in a "Work for the Dole" program.

Social Security law also sets out a number of administrative requirements including:

- ◆ a requirement to respond to correspondence;
- ◆ a requirement to attend an information seminar;
- ◆ a requirement to attend an interview at Centrelink or a Job Network provider;
- ◆ a requirement to provide information when requested by Centrelink or a Job Network provider.

Activity test breaches			
Number of breaches in two year period	1st breach	2nd breach	3rd breach
% of maximum basic benefit cut	18%	24%	No payment for 8 weeks
Duration of penalty	26 weeks	26 weeks	8 weeks
Administrative breaches result in a 16% rate reduction for 13 weeks regardless of the number of previous breaches			

breaches

If a person fails to meet any of their requirements Centrelink can impose a penalty – a breach. There are two types of breach, "administrative" and "activity test".

Administrative breaches apply where a person has failed to attend an interview at Centrelink or a Job Network agency or failed to respond to correspondence or failed to provide information when asked for it by Centrelink or a Job Network agency.

Activity test breaches apply where a person has failed to satisfy the requirements set out in their Preparing for Work Agreements.

breach penalties

The severity of the penalty will depend on whether it is an "activity test" or "administrative" breach. See the table for details.

appeals

Where a person in receipt of NSA/YA is breached and they disagree with the decision they should appeal. Breaches are often applied where Centrelink has not fulfilled all the notice requirements or the breach has been imposed unreasonably. Before the breach is imposed Centrelink should notify the person that a penalty is to be imposed and the date the breach occurred.

A person can appeal to an Authorised Review Officer (ARO). The appeal

can be lodged in writing or by telephone or by attending a Centrelink office. Once an appeal has been lodged the Original Decision Maker (ODM) will probably review their decision. However, a person does have the right to have the matter directly reviewed by an ARO, and bypass the process of the ODM "reviewing" the matter again. If the ODM does not change the decision the person should insist that an ARO reviews the decision.

It is important to establish the reason for the breach. For example, if a person was ill and unable to attend an interview, no breach should be imposed. If the main reason for the failure was outside the person's control, or the circumstances that led to the failure were not reasonably foreseeable, then it may be possible to have the breach decision reversed.

It is also important to collect any evidence that may support a person's case. For example if a person was unable to attend an interview due to illness, a medical certificate should be supplied if possible.

If a person is not happy with the decision of the ARO they have the right to appeal to the Social Security Appeals Tribunal.

If a person's NSA/YA is cancelled due to the imposition of a third activity test breach they should request continuation of payment pending the outcome of the review. ▲

special benefit policy not special

Flora and Maxim arrived in Australia from Eastern Europe nine years ago. Flora is 87 years old, and Maxim recently turned 88. They are both permanent residents of Australia. Flora is in ill health, after having battled cancer and various heart and bone diseases. Maxim receives Carer Payment as he looks after her on a full-time basis. Flora does not qualify for Age Pension, as she has not resided in Australia for more than 10 years. For various reasons, the only payment for which she may qualify until she has been in Australia for 10 years is Special Benefit.

Flora's claim for Special Benefit was rejected on the basis that her "available funds" were over the level set by the Department of Family and Community Service's policy. The guidelines provide that a couple claiming Special Benefit may only have up to \$5,000 in available funds to qualify for any Special Benefit at all. The Department's policy does not even take into account a person's circumstances when applying the Special Benefit "available funds" test. However, a couple who do not own their own home can have up to \$311,000 worth of assets and still receive the maximum rate of a pension.

Flora and Maxim had approximately \$13,000 in savings when Flora

applied for Special Benefit. They needed this money as Flora is in such ill health. The sad truth is, that, since they are well into their eighties, they are also saving for their own funerals. The couple appealed to the Social Security Appeals Tribunal where it was argued that the Department's policy was unduly inflexible and created an unnecessary injustice in Flora's case. The Tribunal accepted these arguments, and changed Centrelink's decision to reject Flora's Special Benefit claim. Flora's case is a clear example of how important it is for claimants to pursue their appeal rights in cases where Centrelink is slavishly applying its guidelines without regard to the claimant's circumstances and the discretion allowed in the law. ▲

centrelink...acts quickly

As a result of the receipt of a compensation lump sum, Juan was precluded from Social Security income support payments for another three years. Juan had spent all his compensation money, much of it on gambling due to a chronic addiction. His wife was now in her seventh month of pregnancy and severely ill. Juan was devastated with guilt. He had sought a review of the decision to impose the compensation preclusion period but was worried that he had not had a decision.

When Juan contacted the Centre he was highly anxious. The Centre set out to assist Juan in his appeal, anticipating arduous work preparing submissions, culminating possibly in an appeal to the Administrative Appeals Tribunal. The first step was to establish who in Centrelink was reviewing Juan's case so that we could ask for some time to gather evidence of Juan's expenditure of the entire lump sum, together with evidence of his gambling addiction,

his wife's pregnancy complications and of their imminent eviction.

Centrelink called back to advise that Centrelink had in fact obtained all of this evidence and that Juan's preclusion period had been set aside the day before!

Cases like Juan's remind us how effective Centrelink can be in taking swift action to correct mistakes, and in exercising discretionary powers appropriately. ▲

\$22,000 error fixed by ARO

Centrelink notified Mr Wiseman that he had a Parenting Payment debt of \$21,194.26. The debt was raised as Centrelink stated that Mr Wiseman had been paid Parenting Payment for a period where all his children had been overseas. The inference was that Mr Wiseman and his wife had not kept Centrelink up-to-date with details of the family's travels overseas.

Nothing could be further from the truth.

Whoever raised the debt ignored the fact that Mr Wiseman and his wife had, at all times, advised Centrelink about their departures from, and returns to Australia, as well as the fact that their children were overseas.

Mr Wiseman appealed to an Authorised Review Officer (ARO) about the raising and recovery of the debt. If the original decision to raise the debt stood, Mr Wiseman would most likely have been prosecuted for committing fraud against the Commonwealth, and the range of penalties that can be applied by the courts in such cases include a gaol sentence.

Fortunately for Mr Wiseman, the ARO made a thorough examination of his file, which contained detailed records to support his claim that he and his wife kept Centrelink advised about their family's departures and returns to Australia. The ARO waived the debt on the grounds that the debt arose solely through administrative error and the payments were received in "good faith". So not only did Mr Wiseman have his name cleared but any chance of prosecution action was dropped. ▲

case studies

foi faulty

David's wife Wendy received a compensation payment for injuries sustained at work. Wendy advised Centrelink of receipt of the compensation as required by Social Security law. Centrelink recorded her notification.

Some time later Wendy passed away. Soon after David received a notice from Centrelink advising him that an overpayment of \$10,000 had been raised in Wendy's name and that he was required to repay the debt. The overpayment was allegedly the result of a non-declaration of the compensation received by Wendy.

An application for Wendy's file under the Freedom Of Information legislation was lodged to establish grounds for appeal on the basis of an administrative error made by Centrelink. On return of the file, there was no apparent evidence of Wendy having told Centrelink of the compensation.

Despite this setback, David lodged an appeal with an Authorised Review Officer (ARO) requesting that the debt be waived. After several months the ARO contacted David to let him know that, information had "become available" and there was a post-settlement advice on the Centrelink file that is, he had found evidence of the notification by his deceased wife Wendy of the receipt of the compensation.

The entire overpayment was waived due to administrative error and the payments being received in good faith.

This case demonstrates the need for procedural fairness always. It is of concern that despite a request to see a Centrelink file, the necessary information is not always provided or made available. Where a person has doubts as to the contents of a requested file, they should immediately contact the FOI officer at Centrelink or alternatively, inquire about the right to appeal. ▲

preclusion period reduced

In May 2001, Roma received \$81,000 as settlement of her Worker's Compensation claim for a work-related injury suffered in 1993. Roma's injuries were the result of falling down some stairs when she worked as a secretary. She suffered neck, knee and spinal injuries.

As a result of the injuries, Roma was left with chronic pain in her knee, back and arms (from the neck operation). She suffers weekly migraine headaches and has a very low tolerance for sitting and standing, thus severely limiting her employment opportunities. Before her accident, she enjoyed a very active sporting and social life playing netball, water skiing and ballroom dancing.

As a result of receiving the lump sum compensation payment, Roma was precluded from receiving any "compensation affected" Social Security payment until October 2002.

Unfortunately, as is often the case in these drawn out compensation matters, Roma suffered from depression and had developed a gambling habit. Before she knew it, she was spending a lot of time and money on the pokies. Her

bank statements show that she would gamble at various locations on the same day, spending as much as \$600.

The Welfare Rights Centre in Adelaide represented Roma at the Social Security Appeals Tribunal (SSAT) and provided the Tribunal with a doctor's report about her depression and gambling addiction. The SSAT considered the combined impact of her numerous and extensive injuries, her depression and low self-esteem and gambling addiction which resulted in her spending money inappropriately, to be sufficiently "special" in that they were unusual and uncommon. As a result her preclusion period was reduced and she was granted Social Security immediately. ▲

better late than never

In May 2000, Ricky received a letter from Centrelink saying he owed it \$13,476.76 as he had been receiving periodic Worker's Compensation in addition to his Newstart Allowance. As he had notified Centrelink on numerous occasions about the receipt of the Worker's Compensation money, he promptly appealed the decision to raise and recover the debt. Ricky set out the reasons for his appeal in a two page typed letter addressed to "Review Officer". The first line of his letter said "I am asking for a review..."

The Original Decision Maker reviewed the decision and stood by the original decision. Not understanding that he could proceed to an Authorised Review Officer (ARO) Ricky commenced paying back the debt. However, in June 2002 he contacted the Centre as he knew that he had told Centrelink about the receipt of the Workers Compensation and did not think that he should be penalised for Centrelink's mistake. We obtained his file under Freedom of Information which is where we discovered his detailed and well written request for a "review" that he had lodged in May 2000.

Given that Ricky had presented his arguments very well in his request for a review, we simply asked for an ARO to review his case, which is what should have been done in August 2000. The ARO promptly changed the decision to recover the debt, acknowledging that Centrelink error was the reason for the debt and that Ricky received the payments in good faith. Ricky is also to be paid all the money Centrelink has recovered from him over the last two years. ▲

rent assistance denied

In a harsh new measure, the Department of Family and Community Services has changed its policies so that people residing in accommodation owned by their religious institution are no longer eligible for Rent Assistance.

Prior to the change in rules, people who live in accommodation owned by their religious institution and who contribute their pension to the religious order in return were eligible for Rent Assistance. Generally these people are required to pay all their private income (ie, for pensioners, their whole pension) to the church or congregation. The Department of Family and Community Services policy previously provided that Rent Assistance was payable in this situation. It was accepted that the amount paid for lodging constituted "rent" for the purpose of establishing Rent Assistance entitlement.

However, a religious order recently contacted the Sydney Welfare Rights Centre to ask whether we were aware of a recent change in Rent Assistance policy affecting members of religious orders. The accommodation provided by religious orders to members is now not considered to be conditional on members paying an amount for lodging, so these pensioners are not regarded as paying "rent" and many of these pensioners have had their Rent Assistance cancelled.

Whether such residents of accommodation provided by religious orders should be regarded as paying "rent" may be debatable, however the primary issue is one of consistency. Many pensioner residents of nursing homes are in a similar situation, in that their whole pension (less a percentage for personal expenses) is generally paid to the nursing home, with the fee balance met by the Commonwealth. These pensioners continue to be eligible for Rent Assistance.

The confused state of this policy means that a pensioner who moves from religious accommodation to a nursing home owned and operated by the same church will be



immediately eligible for Rent Assistance – despite the fact that their situation in terms of contributing their pension is no different.

special benefit

A further anomaly in Social Security policy is where a person is in receipt of Special Benefit and is provided with accommodation by a religious body. In such situations, when the person is first provided with the accommodation, they are invariably impoverished (and often homeless) and unable to meet fortnightly rental payments. The religious body assists these people by providing free accommodation (generally until the people can financially support themselves).

However, a person in this situation is often paid only one third of the full rate of Special Benefit, on the grounds that they are considered to be receiving "free" board and lodging and that the rate of Special Benefit is

discretionary. This means that these people have barely sufficient income to purchase food, let alone seek work and look for stable accommodation. The policy simply serves to entrench disadvantage.

This inconsistency means that a person in receipt of the maximum rate of pension, contributing the bulk of their pension for board and lodging to a nursing home, is paid \$512.40 per fortnight, whilst a person in receipt of Special Benefit who has nowhere to live other than in crisis accommodation provided by their church, mosque or synagogue, is paid just \$123 per fortnight!!

These policy inconsistencies have no rational basis, and Welfare Rights will be seeking policy reform. If you are aware of further inequities, or would like assistance appealing an individual decision, please contact your local Welfare Rights Centre advocate. ▲

network news

posters available around the centres

The Welfare Rights Centre Sydney has two new posters available for community workers.

The poster "**Drowning in Centrelink problems?**" highlights the services provided by the Centre and has all the contact details of the Centre.

The poster "**Is your client: homeless? breached? underpaid? – A guide to getting it sorted**" provides detailed information on breach penalties, how to avoid being breached and what to do if a breach is imposed. This poster was produced in conjunction with the Australian Federation of Homeless

Organisations with funding provided by the Department of Family and Community Services.

Both posters were designed to provide information to community workers who come across Social Security matters in the course of their work.

Only limited copies are available of each poster. If you would like copies for your organisation please call the Sydney Welfare Rights Centre's Publications Officer, Danny Shaw on (02) 9211 5300. ▲

Adelaide

Welfare Rights in South Australia is a specialist Community Legal Centre covering the entire state and Broken Hill. The Centre has four permanent staff and approximately 30 volunteers and students on placement, who staff the telephone advisory service, represent clients at the Social Security Appeals Tribunal (SSAT) and, in some instances, at the Administrative Appeals Tribunal. Recently, the Centre has undertaken community legal education in remote rural areas of South Australia, including Cooper Pedy and Berri. It has also played an active role in lobbying campaigns (particularly in the area of breaching) and has built up productive working relationships with other community agencies in South Australia.

The Centre has long-term placements for Social Work students. We currently have a social work student from Norway. Below are some thoughts about the SSAT process from one of our recent students:

ssat...variable

"My first placement as a social worker student at the Welfare Rights Centre in Adelaide between February and July this year proved to be an enlightening experience. It provided many opportunities to 'test' my skills in translating clients' dilemmas to Centrelink staff,

(cont on page 15)

What are the legal needs of older people in NSW?

As part of the Law and Justice Foundation's *Legal Needs and Access to Justice* project we are conducting a study of the "Legal Needs of Older People". We will be publishing a report that reflects the legal needs of older people.

If you are an older person you can participate by:

❖ Writing to us about your legal problems

Have you had trouble getting legal information, advice or a lawyer to represent you? How could legal services be improved for you? What sort of legal problems are you experiencing. Please write to us at the address below as we are interested in your views.

❖ Attending a group meeting

We are interested in setting up group meetings with older people so that we can find out about your experiences. If you would like to know more, see the contact information below.

If you work with older people we are also interested in your experiences of the legal needs of your clients.

If you want to participate in this study please contact Julia Perry:

Phone: (02) 9221 3900.

Post: Law and Justice Foundation
GPO Box 4264
SYDNEY NSW 2001

E-mail: jperry@lawfoundation.net.au

Fax: (02) 9221 6280

If you want to find out more about this study go to: <http://www.lawfoundation.net.au/access> or telephone the Foundation and we will post you a background paper.

The closing date for submissions is 11 October 2002.

around the centres

(cont from page 14)

Authorised Review Officers and the Social Security Appeals Tribunal (SSAT) through the advocacy process. Regrettably though, I found the process in the SSAT is not always what it should be.

In my first two experiences of representing clients at the SSAT, as in the cases I had observed beforehand in preparation, the conduct of the Tribunal members allowed the applicants to fully and accurately present their views, giving them the opportunity to contribute toward a fair and just outcome for themselves. The Members were open to my contributions, providing opportunities to speak and there was no difficulty expressing my client's concerns on their behalf.

Unfortunately, quite the reverse occurred at my third SSAT hearing. On this occasion, the Presiding Member's perfunctory approach and unsmiling manner progressively deepened my clients' discomfort, whilst my initial attempts to advocate for them were met with the clear indication that I should not intervene. The situation was exacerbated by the Member's attempt at humour – a joke was made at my client's expense and I found myself counting the minutes until the end of the hearing. Having participated in this distressing experience, I did not feel that I could honestly describe the SSAT hearing process as always fair, informal and just given that the process seemed to depend too much on the style of the Presiding Member.

Despite this testing experience, my placement at WRC (SA) was rewarding, instructive and worthwhile in every sense". ▲

Brisbane

The Brisbane Welfare Rights Centre recently said goodbye to Suzanne Varghese who has gone on one year maternity leave. We wish her and her family all the best and look forward to her return.

We welcome on board as locum co-ordinator Simon Dilly. The Centre has recently represented a number of clients at the Administrative Appeals Tribunal about matters

ranging from a person's eligibility for Carer Allowance to whether people in psychiatric confinement are eligible for Social Security (see page 6).

We have also conducted training seminars for community workers in the Brisbane area. Brisbane Welfare Rights Centre continues to operate its outreach service at Brisbane Youth Service targeting young homeless people. ▲

Sydney

Since the last edition of "rights review", two senior staff at the Centre have moved from Sydney back to their home states. Both have taken up exciting new positions closer to families after long stints in Sydney.

"Super-Carla-fragile-mystic-extreme-policy-tragic"

Policy Officer Carla Mullins, who came to the Welfare Rights Centre in Sydney from Welfare Rights Brisbane in 1995, has returned to Brisbane to open a Pilates Health Studio!! Ever versatile and adventurous, Carla who has been a Pilates student herself for a number of years at some considerable expense, thought it time to start raking it in rather than only forking it out. To keep her policy hand in, she has also accepted the part-time position of Deputy Director of the Queensland Community Housing Coalition.

Carla's enthusiastic contribution to the Centre, and to the National Welfare Rights Network, will be sorely missed. Over 10 years of active employment in the field, she developed an encyclopaedic knowledge of the Social Security Act (and all the related Acts) which we all learnt to rely on heavily. Her ability to

quickly assemble facts, figures and reports on any aspect of the Social Security system, including everything from Youth Allowance (where she developed a particular expertise) through to Family Payments, enabled her to make an outstanding contribution on all the key issues during her time.

Sandy Clark escapes the rat race.

Principal Solicitor Sandy Clark, whose family hails from Adelaide, recently accepted the "irresistible" position of Principal Solicitor at the Community Legal Centre in Mt Gambier, in her home state of South Australia. "It's a life-style choice" she says, "out of the Sydney rat race and close to the coast". That's not much consolation for us however, for although she had only been at the Centre for two years, her quiet competence and enormous achievements in that time mean that she too will be sorely missed.

The Board and staff at the Centre have congratulated and thanked both Carla and Sandy very sincerely for the work they did and the contribution they made to the Centre. We wish them all the best in their future endeavours. ▲



"rights review" a joint publication of the Welfare Rights Centres

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- **Brisbane**
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