

rights review

NEWS & COMMENT ON SOCIAL SECURITY ISSUES

refugees to face breach penalties!

Refugees on Temporary Protection Visas (TPV holders) could be forced to keep jobseeker diaries in English, to sign Activity Agreements and contact up to 10 employers each fortnight to qualify for Special Benefit from 1 January 2003. If legislation proposed by the Government is passed, failure to satisfy these requirements will result in the imposition of a breach and rate reduction or cancellation of the person's Special Benefit.

The legislative proposals, which came before a Senate Legislation Committee in November 2002, were roundly criticised by a wide section of community and church organisations, along with refugee advocacy groups.

In introducing this legislation to the House of Representatives, the Acting Minister for Family and Community Services, the Hon. Larry Anthony, stressed the need to treat TPV holders who are of workforce age "in a similar way to Australian nationals of workforce age". None of the organisations making submissions to the Senate Inquiry believe that the proposed legislation does anything of the sort - each of the submissions proposed that extending the harsh penalty regime to TPV holders while at the same time denying access to basic services, would only serve to further disadvantage people who are already among the most marginalised in Australia.

no access to services

The proposed legislation provides that although TPV holders would be exposed to the same breach and penalty regime as Newstart and Youth Allowance recipients, they will still not be able to access a range of services and programs available to recipients of other Social Security payments. There are also a number of important differences



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Available at www.welfarerights.org.au
Guide to social security payments!

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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

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Brisbane

Welfare Rights Centre
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Sydney

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refugees to face breach penalties!

between Special Benefit and Newstart Allowance (NSA) or Youth Allowance (YA). Unlike NSA and YA, the rate of Special Benefit is discretionary (and is invariably reduced where a person receives "free" board and lodging) and has a harsh dollar for dollar income test.

In addition to being denied settlement services provided by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) to Permanent Protection Visa holders, TPV holders are barred from accessing the English language courses funded by the DIMIA which are specifically targeted to the needs of refugees and migrants. The Government is proposing that activity tested TPV holders would be eligible for English classes run by the Department of Employment, Science and Training rather than the more appropriate DIMIA-funded programs. TPV holders who are exempt from activity testing would not be eligible - nor would the TPV holders who have not claimed Special Benefit because their minimal earnings preclude payment under the harsh dollar for dollar income test (there are currently approximately 4,000 people - half the total of TPV holders - in this situation, and who would thereby continue to be barred from Commonwealth-funded English programs.)

Community groups are concerned that English courses that do not fit the needs of refugees are being made available to a limited group of TPV holders in an effort to get the proposed legislation passed. We are also concerned that the full range of help from Centrelink, such as Intensive Assistance and individualised support from Job Network will still not be available to TPV holders under the proposed legislation.

breaches policy extended

What the proposed legislation will do is impose onerous activity testing requirements on a group of people who have been granted refugee status in Australia. While these people are finding their feet in a new country, without the support of many services, they will be required to satisfy an Activity Test or be subject to the harsh breach rules which result in rate reductions of up to 24% for 26 weeks, or an eight week non-payment period. An eight week non-payment period imposes great hardship on people who have no savings nor the support of family and friends. For TPV holders, eight weeks without income would cause immeasurable hardship as generally these people have no one to assist them unless they have made contact with an organisation providing support on a voluntary basis.

It is for these reasons that National Welfare Rights Network (NWRN) and other organisations strongly oppose the proposed legislation. Community groups fear that TPV holders will be unable to effectively negotiate the Social Security and Centrelink systems and will be at great risk of being breached and will have difficulty in exercising their appeal rights.

The NWRN has called for the bill to be rejected and for the legislation to be amended to allow TPV holders access to Newstart and Youth Allowance. This is the only way to provide TPV holders with access to the full range of support services from DIMIA, Centrelink and the Job Network that the Government wisely deems appropriate for other refugees.▲

new zealanders harshly treated

A recent decision by the Administrative Appeals Tribunal (AAT) exposes a harsh anomaly in Social Security legislation, whereby New Zealander citizens entering Australia are no longer eligible for most Social Security payments, regardless of the period of time they reside in Australia, unless they obtain a permanent residence visa.

New Zealand citizens are able to live and work in Australia for as long as they like, without having to acquire a "permanent residence visa". However, changes to Social Security legislation mean that most New Zealand citizens are no longer eligible for the majority of Social Security payments (including Special Benefit) unless they are a "protected special category visa holder", or the holder of a "permanent residence visa".

The changes mean that New Zealanders citizens who were resident in Australia on 26 February 2001, or who were temporarily absent from Australia on 26 February 2001 but had lived in Australia for a total period of at least twelve months in the two years prior to that date, are regarded as "protected special category visa holders". People in this category may still be able to access a range of Social Security payments, including Special Benefit (subject to certain conditions).

magical date

However, New Zealanders who have lived for significant periods of time in Australia but who do not satisfy the above criteria will have to obtain a "permanent visa" to receive most Social Security payments. Notwithstanding the fact that a New Zealander may have spent their formative years in Australia and maintained close connections to Australia, if they happened to be outside of Australia on the magical date, they may well find that in the event of a return to Australia, their position with respect to entitlement to Social Security payments has not been preserved. Such a harsh outcome cannot be justified.

Even if their circumstances change such that they face destitution, New Zealanders who are subject to the



new rules will not even be eligible for Special Benefit, unlike other newly arrived residents. This means that a New Zealander who arrives in Australia after the changes, is employed and pays tax here, and is later retrenched due to a downturn in the economy, will not be able to obtain Special Benefit.

aat decision

In noting this situation, the Administrative Appeals Tribunal (AAT) in the decision of Filipovski and Secretary, Department of Family and Community Services, was of the view that it was harsh and hard to understand why New Zealanders are precluded from obtaining Special Benefit even if there has been a "substantial change of circumstances beyond their control" but that the Social Security law provides relief to other newly arrived residents in those same circumstances. The AAT expressed concern about the complexity of the legislation and that no provision existed in the law that gave any discretion to provide relief

to New Zealand citizens affected by the changes, and directed that copies of the decision be sent to the Secretary of the Department of Family and Community Services and the Chief Executive Officer of Centrelink and to the Ombudsman.

The National Welfare Rights Network calls on the Federal Government to review its position with regard to New Zealand citizens with the view to extending the category of "protected special category visa holder" to those who have lived in Australia for a cumulative period of at least three years prior to 26 February 2001 and who return to Australia to reside before 26 February 2006. Further, there is the need to amend the law to enable New Zealand citizens who would otherwise not be eligible, to have access to Special Benefit where they have experienced a "substantial change in circumstances beyond their control". These changes would go some way towards ameliorating the harsh and inequitable impact of the 2001 changes.▲

independent social security handbook now available online!

The Independent Social Security Handbook is now available ONLINE. This much valued resource for community and government workers is now available in an electronic form on the Internet in addition to the hardback version.

The ONLINE EDITION has updated and expanded the latest 4th edition to include among others, recent Social Security and Centrelink changes affecting breaches and Family Tax Benefit rules.

The Handbook covers all Social Security payments paid by Centrelink and provides a commonsense approach on how to best help people with Social Security problems. The Independent Social Security Handbook is a must for all community and government workers who need to know about Social Security rights and obligations, rules and short-cuts.

The ONLINE EDITION of the Handbook will be updated four times a year. As new Social Security policy and legislation is introduced, we will update the Handbook to take into account these changes and to advise community workers how best to help their clients.

ONLINE EDITION features:

- ◆ Updated - four times a year to incorporate the latest changes to Social Security policy and legislation as they take effect
- ◆ Email notification - alerts ONLINE EDITION subscribers to the updates when released and to major changes to Social Security provisions and Centrelink practices
- ◆ Fully updated 4th edition - the ONLINE EDITION fully updates the latest 4th edition of the hardcopy, including recent Social Security and Centrelink changes affecting breaches, Family Tax Benefit rules, residency and International Agreements



- ◆ Easy and fast to use - with internal hyperlinks, easy navigation and comprehensive search facility - all at the click of a mouse
- ◆ CD-ROM and intranet versions - in the near future for people/organisations who would prefer it in that form

Subscription

To subscribe to the ONLINE EDITION of the Handbook please complete and return the subscription form on the back page of this edition of "rights review" or email welfarerights@welfarerights.org.au for a seven day free trial.

what the ONLINE version can do for you

The ONLINE version has a very simple, comprehensive, contents list on the left hand side of every screen to help you click immediately to any chapter or section or sub-section of the Handbook. Powerful hyperlinks also help to guide you through the information in the Handbook.

- ◆ Simply click on a chapter in the contents page to go to that

chapter;

- ◆ Click on a sub-heading in each chapter's contents page to go to that section of the chapter; and
- ◆ You can print out pages and copy and paste material from the online Handbook into your own documents—an ideal facility when preparing submissions.▲

centre adds millions to state economy

In a recent cost benefit analysis, the Welfare Rights Centre has estimated that it makes a financial contribution to the NSW state economy of at least \$23.8 m per annum. The Centre's work has a direct and substantial impact on the income levels of the most disadvantaged people of NSW, thereby making a significant contribution to the size of the NSW economy. Through advocating directly for our clients and achieving positive reforms to Social Security law and policy, NSW residents benefit by gaining access to Commonwealth Social Security funds, which significantly expands the state's economy and reduces people's need to rely on State Government funded services.

Each year in NSW, Centrelink makes 800,000 adverse decisions affecting NSW residents concerning Social Security entitlements. Although not every adverse Centrelink decision is incorrect, statistics show that 35% of client appeals to an Authorised Review Officer and again to the Social Security Appeals Tribunal are successful (see case study page 10).

casework service

The Centre estimates that in the 2001-2002 financial year, **\$6.5m** in Commonwealth Social Security income was paid to the residents of NSW that would otherwise not have been paid, if not for the individual casework service provided by the Centre. For instance, where the Centre successfully advocates for a person who is appealing a decision to deny them Social Security, the result is an extra \$12,000 per annum of Commonwealth funds coming into the state economy.

Assisting people to obtain their correct Social Security entitlement means that people are better able to support themselves and are less reliant on other services, such as those obtained through the Department of Housing, the Legal Aid Commission, refuges, hospitals, prisons and numerous state funded welfare services. For example, where the Centre represents a client and obtains Social Security for him or her, this may mean that the person need not have to turn to a charity for assistance; may not require representation by the Legal Aid Commission; may not need to reside in a state funded refuge; and if a

health bill soars

When the Social Worker at a state hospital contacted the Welfare Rights Centre, Steve had been a patient at the hospital for nearly three months. At the cost of \$330 per day, Steve was costing the hospital about \$10,000 per month, or the amount that Steve would have received for the year if he was in receipt of Social Security.

Steve was not receiving Social Security as he suffers from dementia and he had no Proof of Identity (POI) on him when he was taken to the hospital. Hospital staff were reluctant to let Steve leave the hospital given his health problems and that he was not in receipt of Social Security. The Social Worker at the hospital had also found suitable accommodation for Steve, but he was unable to move into it until he was granted Social Security. A claim for Disability Support Pension was

lodged, but Centrelink refused to grant the claim, on the basis that Steve had no POI.

Despite the involvement of the Protective Commissioner, who commenced to handle Steve's affairs, Centrelink refused to grant Steve Social Security. The Welfare Rights Centre contacted the local Centrelink office to discuss ways of solving the problem. It was agreed that instead of Centrelink simply demanding that Steve produce some POI (which he didn't have) the local office should contact the privacy branch in Centrelink for further advice. Steve was subsequently granted a pension, allowing him to be moved to more suitable accommodation. The hospital, which had spent about \$30,000 on accommodating Steve, could finally use the bed for another patient.▲

Department of Housing tenant, may be able to continue to afford to pay rent.

campaign work

In addition, the Centre conservatively estimates that our campaign and policy work resulted in an extra **\$10.2m per annum** in Social Security funds to NSW residents. This contribution mainly resulted from the Centre's lobbying work around breaches. Over the last few years, the Centre in conjunction with ACOSS and other peak welfare groups, has highlighted the severity of the breach penalties as well as the massive

increase in number of penalties that had been imposed.

The Centre published a number of research papers highlighting the severity of breaches and the impact they have on individuals. That our campaign to reduce breach levels has had a substantial impact can be seen in the recent rate of Centrelink penalties. From a peak in 2000-2001 of 386,946 breaches, this rate has fallen by 30% to 270,000 Australia-wide in 2001-2002. This represents an **increase of \$32 m in Social Security income paid to NSW residents alone in 2001-2002 compared to 2000-2001.**

(cont on page 14)

senate rejects plan to extend penalties

A vigorous campaign by welfare organisations has seen the Senate hold off two controversial bills that would place parents, mature age jobseekers and people with disabilities at risk of being breached by harsh and unfair Social Security penalties.

On the eve of the Senate debate over the bill to extend "mutual obligations" and penalties, the National Welfare Rights Network (NWRN) publicly warned that 1.2 million Australians would be at risk of being breached if the existing Social Security penalties were extended further to vulnerable groups in the community.

The Labor Party and the minor parties combined to split the bill, so that beneficial measures such as the \$900 million working credits, Personal Support Program and the literacy and numeracy supplement of \$20.80 per fortnight could be passed immediately.

The Senate reaffirmed its view that "mutual obligations" that could result in breaches for sole parents, partners and older unemployed people should not be introduced unless the current regime of tough Social Security penalties was overhauled.

Labor, Greens and the Democrats have called for the Government to accept the recommendations of the Independent Review of Penalties and Breaches in the Social Security System (the Pearce Report).

The NWRN will continue to hold discussions in December with the Government and the Opposition and the minor parties over the fate of the legislation. While very supportive of the positive aspects of the legislation, such as the "working credit" and literacy supplement, the NWRN will not support any extension of "mutual obligations" and breaching unless the recommendations of the Pearce Report are adopted by the Federal Government.

The ball is now in the Government's court. The Minister for Family and Community Services, Senator Amanda Vanstone told the Senate



on 15 November 2002 that the House of Representatives would not accept any changes to split the legislation, so at present, the proposed legislation is idle.

disability support pension

Plans to tighten eligibility for the Disability Support Pension (DSP) so that a person with a significant level of impairment would only qualify if they were unable to work more than 15 hours a week were also dealt a blow by the Senate with the defeat of the Federal Government's proposal to halve the current work provisions from 30 hours a week. In an effort to get the legislation passed, the Government announced that the new provisions would only apply to those who qualified for a Disability Support

Pension after 1 July 2003.

This would have left many people with similar levels of disability receiving different rates of income support payments. Some groups would receive Newstart Allowance which is \$54.50 a fortnight less than the pension rate, provides no access to pensioner concession cards and has a much less generous income and assets test.

Worse still, this group would be brought under the tough and now discredited Centrelink penalties system, be activity tested, have to sign Preparing for Work Agreements and fill in a Jobseeker Diary with names of 10 employers each fortnight. At present the Government has not stated its intention with regard to this legislation since being blocked in the Senate.▲

push for fairer transport concessions

A new coalition has formed in NSW to put the issue of unfair and discriminatory transport concession card policies on the agenda for the next NSW State election. The Welfare Rights Centre is also seeking changes to NSW Government rules where a person who has been breached by Centrelink loses their transport concession card, which makes it harder for them to seek work and meet their other activity test requirements.

Welfare, pensioner and youth groups have commenced a campaign for fair and equitable transport concessions in the lead up to the NSW State election. The groups have endorsed a statement outlining a set of principles for fair transport concessions in NSW.

double penalty

Centrelink policies of breaching young people are having negative and unintended consequences for many young people in NSW who are being denied eligibility for state transport concessions. The NSW rules regarding eligibility for a half fare transport concession card were introduced over twenty years ago, at a time when Social Security

legislation did not provide for breaches. The massive increase in breach rates in the last few years has meant that thousands of people who have had their Newstart/ Youth Allowance rate reduced for 26 weeks are still required to seek work but have to do so without having access to a half fare transport concession card.

The Welfare Rights Centre has written to the NSW Minister for Transport, Carl Scully, seeking an overhaul of rules that only entitle a person to a Half Fare Transport Concession Card if they are in receipt of the maximum rate of Social Security payment.

Organisations wishing to endorse the document "An Affordable and Fair

System for All: Principles for Fair Transport Concessions in NSW", can go to the NCOSS website: www.ncoss.org.au

Some examples of people who are currently ineligible for concession cards are:

- young people on youth wages, who may earn as little as \$190 a week;
- unemployed people who have been breached by Centrelink;
- unemployed people under the age of 21 whose parents have a combined income of over \$30,442; and
- older women who receive a Widow Allowance and who are not registered as job seekers.▲

centrelink breaches policy

I imagine this scenario: you're homeless, except for the bench in the park, you've just withdrawn the last of your money from the ATM and you get rolled. You go to Centrelink and apply for an urgent payment (which is no more than an advance on part of your next Social Security payment) only to be handed a form (with no Centrelink logo on it) stating that:

"You may be able to receive an urgent payment if you are in severe financial hardship due to exceptional and unforeseen circumstances.

These circumstances do not include expenses such as:

Lost or stolen money or goods"

(the form lists 12 other situations where an urgent payment will not be made).

On being handed this form you still try your luck and apply for an urgent payment only to be told "haven't you read the form?"

Well our client had read the form, but fortunately for him, he'd also read somewhere that he had some rights. On contacting the Welfare Rights Centre and telling us his story we obtained a copy of the above

mentioned form and we also checked the official Social Security Guide to the Act (available at www.facs.gov.au). The official Guide tells a different story to this locally produced form that is handed out by six Centrelink offices in the inner city.

Section 8.4.2.10 of the Guide provides that an urgent payment can be made where a person is in severe financial hardship and can show that there are special or unusual circumstances. The guide then provides examples of special and unusual circumstances and the first example is:

"Money or goods stolen".

On pointing out to the local Centrelink office that the locally produced form contains policy which is contrary to

the official Guide, our client was granted an urgent payment. The Centre has subsequently had one further client in a similar situation to the client who first contacted the Centre. She was also issued the locally produced form and initially denied an urgent payment (that decision was reversed after the Centre advocated on her behalf).

We feel that the two clients we assisted are just the tip of the iceberg. No doubt there are many other people who have been denied their right to an urgent payment due to Centrelink offices producing a local policy which runs counter to a more beneficial national policy. Centrelink should monitor more closely the operations of its local offices so that Centrelink clients are treated equally, regardless of whether they might be homeless.▲

social security changes

what's happening when in 2002

"AUSTRALIANS WORKING TOGETHER" INITIATIVES

These changes require the passage of legislation that has been referred back to the House of Representatives by the Senate (see article page 6, "senate rejects plan to extend penalties"). 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 is participating in the 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 penalties. A penalty may be waived where a person subsequently complies with their Agreement within 13 weeks.

newstart allowance

- ◆ Newstart Allowance recipients who are 50 years 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 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 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 but who are considered to be capable of participating in other activities, will be subject to an activity test.

The proposed date of commencement is 20 September 2003.

OTHER INITIATIVES

carer payment for children

(cont on page 9)

(cont from page 8)

- ◆ Carer Payment eligibility rules to change where the child being cared for is terminally ill. The change represents an easing of the rules for carers of terminally ill children to establish eligibility for Carer Payment.

Date of commencement: 10 November 2002.

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 will 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 thirty 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. The date of commencement depends on when the legislation is passed.

gifting of assets

- ◆ "Disposition" or gifting provisions to be extended. The financial year is now the period over which the 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 State Seniors Cards 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. 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 January 2003. ▲

debt decision overturned

Anna received a Centrelink debt notice of \$7,255.06 on the grounds that she had received rental income for a period of two years while in receipt of Newstart Allowance and she failed to declare that income. Anna contested the Centrelink decision claiming that it had misunderstood the facts of the case.

The real estate agent that Anna had used to lease the property confirmed that for 18 months of the two-year period that Centrelink alleged that Anna was receiving income from leasing the property, she was actually residing in the property. Anna had rented the property out for six months in the two-year period

covered by the debt, but the income received was insufficient for it to reduce the rate of Anna's Newstart Allowance.

Given this evidence Centrelink reversed its decision to raise the debt and repaid Anna the money it had recovered from her. ▲

age pension debt waived

Aged in her late eighties, Elsie left her family home and moved into a nursing home. She suffered from dementia and left the job of contacting Centrelink to advise of her change of circumstances to the nursing home. Following standard procedure, the nursing home faxed details about Elsie taking up residence at the nursing home to the Department of Health and Aged Care. That Department promptly replied to the fax by sending a letter to the nursing home in which it detailed the fees payable by Elsie and whether a government subsidy would be available.

Meanwhile, Elise's son, who was in receipt of the Disability Support Pension, continued to reside in his mother's home. Three years after Elsie moved into the nursing home, she received a letter saying that she had an Age Pension debt of \$13,000 and that her Age Pension had been cancelled as her assets (her family home) was above the allowable limits (the Social Security Act provides that for the first two years after a person moved into a nursing home their family home is not an asset).

The Centre contacted the Director of Nursing at the nursing home, who advised of the correspondence between the nursing home and the Department of Health and Aged Care. The Director of Nursing also advised that the policy manual of the Department of Health and Aged Care provides that information that it receives from nursing homes is electronically passed to Centrelink to enable data matching to occur.

That the manual contained this advice was sufficient grounds to request waiver of the debt under the "administrative error and good faith" provisions of the Social Security Act.

An appeal was lodged to an Authorised Review Officer stating that an error by the Commonwealth had been the cause of the debt. It was not in question that the nursing home had followed established procedure and contacted the Department of Health and Aged Care and advised of Elise's entry into the nursing home. It was not clear as to whether that Department had electronically passed on the information to Centrelink. Either way there had been an error by the Commonwealth that had led to the debt. Centrelink did not question that Elsie had received the money in good faith, thus the debt was waived.▲

prosecution action dropped

Karen contacted the Welfare Rights Centre when she received a summons requiring her to attend court in relation to alleged Social Security fraud. Karen had a Youth Allowance debt of \$7,000, which had been raised as she had stopped studying full-time, but had continued to receive Youth Allowance. Initially, Centrelink had not sought Karen's explanation as to why she had stopped studying full-time. The Centre interviewed Karen at length and found that Karen had sound medical reasons for changing to part-time studies.

The reasons that Karen changed to part-time studies was that she suffered from an anxiety disorder and agoraphobia. We obtained a report from her Clinical Psychologist at the time, which supported Karen's claim that she was not well enough to study full-time.

With this evidence we appealed to an Authorised Review Officer (ARO). The ARO promptly waived the debt on the grounds that Karen had special circumstances, which had prevented her from studying full-time.

As a result of the ARO's decision, prosecution action by the Director of Public Prosecutions was dropped and Karen was repaid

the money that Centrelink had recovered from her.

This case is a reminder that even where prosecution action is pending, it may be advisable for a person to appeal the original Centrelink decision, as a successful appeal may result in prosecution action being discontinued.▲

an indecent preclusion

Social Security rules about compensation preclusion periods have changed countless times. One of the most significant changes in the last five years occurred in March 1997. Before that date, the partner of a person who received a lump sum compensation payment was also precluded from most Social Security payments for the duration of the preclusion period. Thankfully, this draconian rule has been changed, and partners are no longer affected where compensation is received after March 1997. However, unfortunately this provision still rears its head on occasion.

Ken received a considerable compensation payment in 1995, following a devastating car accident. At that time his preclusion period was calculated to run until 2008.

Ken met Stacey in 1998. They married at the end of that year. As well as looking after Ken, Stacey was also looking after her four young children from a previous relationship. Stacey applied to Centrelink for Parenting Payment. Her claim was rejected, purportedly because Ken's preclusion period also applied to her. Stacey was told that it was not worth

appealing this decision, as there was no way in the world that she would qualify for one of these payments before 2008 - the end of Ken's preclusion period.

On contacting the Welfare Rights Centre we lodged an appeal to an Authorised Review Officer. We argued that there was no basis in law for Stacey to be denied Social Security. Even though Ken received his compensation at a time when partners were subject to preclusion periods, Ken and Stacey were not living as members of a couple at that

time.

The Welfare Rights Centre's submission went first to an Authorised Review Officer and then to Centrelink's Area Office. In the end it was sent to the Department of Family and Community Service's offices in Canberra, where a decision was made. The verdict was that Stacey was not precluded from a Social Security income support payment and that Centrelink had made a mistake in applying a preclusion period to her.▲

trust income causes debt

In August 2002, Dominique received a letter from Centrelink saying he owed \$1000. He had no idea how he incurred the debt. Centrelink told Dominique that he was named as the beneficiary of an investment trust fund that his brother had set up.

Dominique has a learning disability, so he did not understand that his brother had set up a trust fund using his name and the effect this would have on his Newstart Allowance. He just signed the trust documents that his brother had asked him to sign. Even though Dominique had never received money from the trust, a Social Security debt was raised. Given that Dominique's name was on the trust documents, it was very difficult to argue that the debt should be waived. The Authorised Review Officer decided that even though Dominique did not know about the trust this could not be considered a special circumstance and would not waive the debt.

Luckily Dominique's brother ended up offering to pay the debt to Centrelink.

This case demonstrates the problems that can arise with trust arrangements. Many people use trusts as a way of managing or protecting the property of vulnerable or dependent people. However, if trusts are not managed properly, they can have a negative effect on Social Security payments.

Trusts that may be treated as assets for Social Security purposes include equity trusts, property trusts, mortgage trusts and bond trusts. Income from trusts will also reduce Social Security payments, as it is

treated in the same way that ordinary income is treated. Social Security recipients should tell Centrelink about any interests they have in trusts and income from trusts to avoid overpayments.

Dominique's case also demonstrates the danger in signing documents when you don't know what they are for! To be safe, it is wise to be certain of the intention, object, and subject matter of the trust before signing on. If in doubt, seek professional advice.▲

australia compares poorly

The Adelaide Welfare Rights recently had a student from Norway on a placement which afforded us the opportunity to compare our countries' different approaches to the provision of Social Security benefits.

There are considerable differences between the two schemes. The first being the way in which the schemes are financed. In Australia, the system of Social Security payments is funded through general taxation. In Norway, payments are administered through a combination of employee, employer and Government contributions. Employees pay an extra 7.8% tax, which goes directly to the National Insurance Scheme. Employers pay a percentage based on a series of factors such as profit base, level of economic development and what geographical region they are based in, ranging from 5.1% to 14%. Employers can receive a lower rate of tax if they invest in geographical regions with high levels of unemployment. The State contributes 30% through general taxation revenue. Overall, the scheme represents 12.6% of GDP.

levels of assistance

Of course there are positives and negatives to both the Australian and Norwegian schemes, however some key differences highlight flaws in our system. Firstly, there is the level of assistance to the unemployed. In Australia, employment assistance is provided through the privatised Job Network. In Norway, employment assistance is funded through the Government-run Directorate of Labour, which has national, county, district and local offices, allowing it to respond to broader national trends as well as local and regional employment issues.

The student remarked: "I was surprised at how little you do for unemployed people. We have a much more supportive system which encourages people. We offer them loads of training, support services and educational opportunities. Your system seems to offer only a few things and leaves a lot of people with

hardly any support at all." (Nina, for example, had been a dental technician, but had to stop work because of arthritis in the fingers. She was put on rehabilitation benefits and funded to completely retrain herself at University for three years.)

unemployment levels

Numerous evaluations of the Australian Job Network would seem to support Nina's view. The recent Productivity Commission Report into the Job Network found that Job Network providers don't have the resources or the incentives to invest in helping the most disadvantaged unemployed people. Resourcing of unemployment services in Australia is low when compared with other countries. In fact Australia spends around 43% less than the OECD average on such services. Australia spends 0.39% of GDP on Jobs Assistance, compared with 0.79% in Norway. The fact that Norway spends twice as much on employment assistance than Australia means that it can offer more services and can also be more flexible in its approaches.

In Australia, the Government recently rejoiced at low levels of unemployment (6%); it did not mention, however, the high rate of long-term unemployment (24.7% of unemployed people had been unemployed for a year or more; 57% had been unemployed for over two years.) Compare this to Norway, where the overall unemployment rate is 3.6% and the long-term unemployment rate is 1.9% of the total labour force. In Australia, the average length of unemployment is two years and nine months; in Norway it is nine months.

Even the definition of long-term unemployment in both countries indicates a difference in attitude. In Norway, a long-term unemployed person is where a person has been unemployed for six months; in Australia it is for a year or more.

investment vs punishment

While there are, no doubt, numerous factors which explain these differences, the greater level of resourcing of unemployment services must be one of the major reasons for lower comparative levels of unemployment. Clearly a person who receives individualised support, who is offered a range of retraining options and labour market support, is going to have a greater chance of employment than someone offered a minimalist service with few options and little support. The lack of success in the Job Network (only 5% received Intensive Assistance, 14% received vocational training and only 25.6% obtained work) would appear to indicate that Australia has much to learn from the Norwegian system of supporting unemployed people.

Nina was also shocked by our breaching system and by the lack of opportunities offered to unemployed people in Australia: "You do hardly anything for unemployed people, provide hardly any incentives but spend a lot of time punishing people for minor things. In Norway you can only have your benefits suspended if you are refusing to look for work." Investment and encouragement rather than policing and punishment are the major differences between the two systems. Perhaps the best lesson from a comparison between the two countries is that greater investment in resourcing services for unemployed people is more likely to lead to lower levels of unemployment and fewer people suffering entrenched, long-term unemployment. ▲

disability support pension

Disability Support Pension (DSP) is a Social Security payment for people who have a medical condition or disability that prevents them from working.

To be eligible for DSP a person must;

- ◆ be 16 or over;
- ◆ have an "impairment rating" of at least 20 points;
- ◆ have a "continuing inability" to work; and
- ◆ be an Australian resident and have been an "Australian resident" for 10 years (or have a "qualifying residence exemption" ie holders of refugee visas).

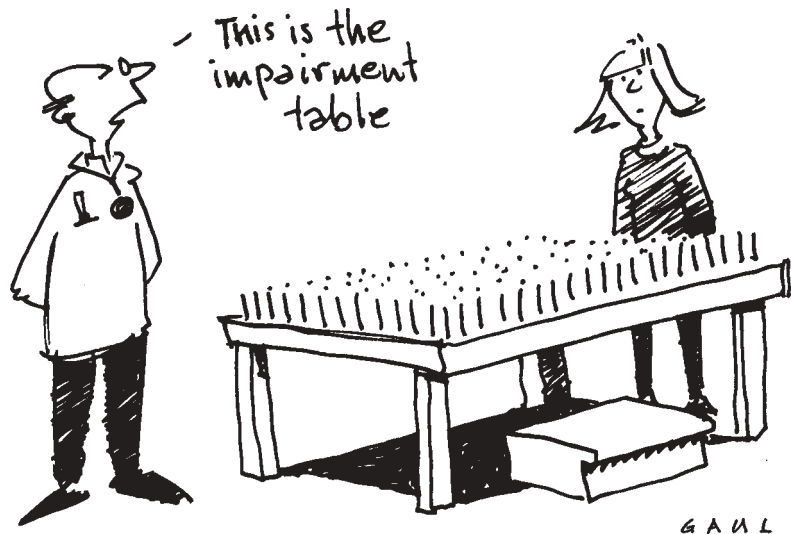
The "impairment rating" is used to determine how a person's disability or medical condition affects them and their ability to work. The level of impairment is determined using a series of "Impairment Tables" contained in the Social Security Act.

To satisfy the "continuing inability" to work, a person must demonstrate that the impairment by itself is sufficient to prevent them doing work (for at least 30 hours per week) for which they are currently skilled for at least two years. The impairment must also prevent the person from undertaking training or rehabilitation that would equip them for work for which they are not currently skilled. Centrelink generally does not take into consideration the actual availability of work or training unless the person is over 55 nor do they consider non-medical factors such as work history or language skills.

medical reports

When a person claims DSP they will be required to submit a treating doctor's report. Where Centrelink is unable to determine a person's eligibility based on this information alone, it will require the person to see a Commonwealth doctor for further assessment.

Where a person's claim for DSP has been rejected, or their payment cancelled, an appeal can be lodged with an Authorised Review Officer. If this is not successful, a person can



appeal further to the Social Security Appeals Tribunal and further to the Administrative Appeals Tribunal.

Where a person is appealing the cancellation of a DSP they can request that the DSP continue to be paid pending the outcome of the review. If Centrelink will not continue the payment, or where a person's initial claim for DSP has been rejected, they should claim an alternative payment, as the determination of a DSP appeal or claim can take a long time. Generally the most appropriate alternative payment will be Newstart Allowance (NSA). Where a person claims NSA they can request that they should be exempt from the activity test whilst the DSP matter is being decided.

tips on appealing

Where the appeal relates to the impairment rating it is very important to obtain specific medical evidence from a person's treating doctor or doctors. It is helpful if doctors can;

- ◆ directly address the issue of impairment, referring to the Impairment Tables. Copies of these can be obtained from Centrelink; and
- ◆ provide an opinion on the person's ability to work or undertake training or rehabilitation that may equip

them for work.

It is important to ensure that all of a person's medical conditions are considered. Each medical condition a person has can be assigned an impairment rating which will then be combined to determine the total impairment rating.

Generally the weight of medical evidence will be what determines the success of any appeal. Expert or specialist reports can sometimes be more convincing than reports of a GP. However, if a GP has been treating a person for a long time and has an understanding of their conditions and work ability this may be more convincing.

Where an appeal is at the Administrative Appeals Tribunal a person can ask for Centrelink to meet the cost of medical reports if they are unable to do so. Centrelink may refer the person to see a Commonwealth doctor or specialist to obtain further clarification about their condition.

For further information see also the Centre's website www.welfarerights.org.au which has factsheets on DSP and appealing Centrelink decisions as well as booklets on appealing to the SSAT and AAT. ▲

bankruptcy and social security debts

Many people contact the Welfare Rights Centre to inquire about the rules regarding the recovery of a Social Security debt by Centrelink during, and after, a period of bankruptcy. This article explains those rules.

Generally, as most people are aware, where a person is unable to pay their debts and is in financial hardship, they may enter into bankruptcy. During bankruptcy, any debt incurred before the person became bankrupt becomes irrecoverable. The debt still exists, however, it cannot be recovered for the duration of the bankruptcy period. This includes Social Security debts.

If Centrelink continues to recover a Social Security debt during bankruptcy, the person should contact Centrelink to obtain a refund.

After discharge from bankruptcy, a person is released from most debts that occurred before bankruptcy. However, Social Security debts that arose through fraud can still be recovered. Once a person is discharged from bankruptcy, if

Centrelink believes the debt was incurred through fraud, it will recommence action to recover the debt. Social Security fraud involves considerations of whether the person made a false statement or omitted to declare certain information to Centrelink, with deliberate dishonesty or recklessness, without regard to whether it is true or false.

If Centrelink declares that a person incurred a debt because of fraud then the onus is on that person to prove that the debt did not arise from fraud. This can be done by lodging an appeal with a Centrelink Authorised Review Officer. If it is proven that the Social Security debt did not come about through fraud, then the debt cannot be recovered by Centrelink after the expiry of the bankruptcy period.▲

(cont from page 5)

centre adds \$ to state economy

The value and reach of the Centre's casework is extended significantly through the multiplier effect of community education and training programs and through the Centre's extensive range of publications including the "Independent Social Security Handbook". The value of this work has been estimated at between **\$1m and \$2m per annum.**

expansion of centre

At present the Centre has eight caseworkers, all of whom juggle other jobs at the Centre. As the Centre provides a statewide service, we effectively have eight caseworkers to assist the people of NSW with their Social Security matters. This requires us to limit the ongoing assistance we can give to people, unless they have a very compelling case (such as they

are not in receipt of Social Security). Given the contribution the Centre makes to the NSW state economy we recently held a meeting with Carmel Tebbitt, NSW Minister for Community Services, Ageing, Disability Services, Juvenile Justice, and Minister Assisting the Premier for Youth, to seek additional funds for the expansion of Welfare Rights services in NSW. If successful with the funding application, the Centre would establish Welfare Rights Centres in Newcastle and Western Sydney, as well as providing additional Welfare Rights workers in Wollongong. The Centre would also make available to community organisations and NSW Government Department's free access to the online edition of The Independent Social Security Handbook.▲

Welfare Rights Centre, Adelaide

The Welfare Rights Centre has completed its Annual Report for 2001-2002 and presented it to the Annual General meeting.

It was interesting to reflect on a number of areas; the Chairperson, Michael de Rohan gave a very encouraging speech and reminded us why we do what we do. Michael was in the group who first started WRC in South Australia with the assistance of Don Dunstan. Back then, "Welfare Rights" was a major plank in the Labour Party platform. Michael reflected how in the mid 1980's he was sitting around a table with like minded people passing around a cheque for \$500 which was the seminal grant of the South Australian Welfare Rights Centre.

The idea back then was that a Welfare Rights Centre was to be a "centre of excellence where those who were forced to reply upon those meagre, fragile rights would find the help that they needed, by way of advocacy, support and understanding and also where they might find out more about their rights and how to enforce them".

After a few years absence from the Centre, on Michael's return to the Management of the Centre it was with some trepidation. He thought that the "fire in the belly" might have gone out. He said, "I am happy to say that the energy that came together in that room in Pirie Street in our first collective is now part of the essential driving force of this Centre and is manifested in many ways. For example, the way that the Centre is accepted as having the energy and expertise to act as a spokesperson for unemployed people; for those facing the nightmare of breaching; the stoppage of crucial income on an allegation that one is being supported by somebody else; or the Kafkaesque income tests applied to the Family Tax Benefit."

It is good for all of us to reflect on these thoughts and be encouraged

around the centres

that we are standing on the shoulders of those that came before us and we are making the foundations for the future. However, a check on our past funding confirms why Michael feels that the Council is still trying to operate off the initial donation of \$500. We presently receive \$134,400 less than we did in 1992/93, \$110,340 less than 1993/94, \$98,380 less than 94/95, and \$104,560 less than 95/96! Our current funding is \$162,000.

The complexity of the Social Security law has not reduced, the numbers of decisions requiring review and appeal have not reduced, the number of people requiring our assistance is not reducing. Luckily, our resolve to assist the marginalised people in our society and remain committed to strengthening the social fabric of our nation is not reducing. If the forces of economic rationalism think that they can defeat us by financial means, they have failed.

Welfare Rights Centre, Brisbane

Welfare Rights Centre in Brisbane currently operates an outreach service for young homeless people at an inner city youth service.

The service has been running for three years now. Over this period a good relationship has been developed with the local Centrelink Office that has enabled (in most cases) a quick resolution to some of the problems that young homeless people encounter with their payments. Due to the success of this service WRC Brisbane is looking to explore the options for extending its current outreach service.

WRC has identified some geographical areas near Brisbane where there are indicators that such a service may be beneficial. WRC has commenced some initial consultations through inter-agency meetings that have been well

received. At these consultations WRC has outlined its work and what kind of help can be offered to both clients and service providers. A number of service providers have indicated that they would find training helpful, others have indicated a willingness to further explore the outreach service option.

Further meetings to identify some of the opportunities, barriers and resource requirements with service providers about these proposals are scheduled for the coming months.

For more information about the outreach service please contact the Brisbane WRC.

Welfare Rights Centre, Sydney

The Welfare Rights Centre recently nominated its Director, Michael Raper and one of our casework volunteers and volunteer Board member Estelle Adamek, for awards at the Law and Justice Foundation 2002 Justice Awards.

The awards aim to honour the achievement of individuals working to improve access to justice in NSW. Michael was nominated for the Justice Medal, presented to an individual who has demonstrated outstanding achievement in improving access to justice in NSW, particularly for socially and economically disadvantaged people. Welfare Rights Centre Board Member Liz Biok, a Legal Aid lawyer and human rights activist was also nominated for this award by the NSW Legal Aid Commission. Unfortunately neither Michael nor Liz won the award, which was won by Mr Hal Wootten for his work in establishing the first Aboriginal Legal Service in NSW. Mr Wootten was also the Royal Commissioner investigating Aboriginal deaths in custody.

Estelle was nominated for the Law and Justice Volunteer award which is an award for an individual who has

in a voluntary capacity demonstrated a commitment to improving access to justice. In addition to her voluntary work at the Centre, Estelle is a founding member of Family Drug Support and was active in the establishment of its help line service. She also does voluntary work at the Asylum Seekers Centre and the Sydney Jewish Museum and has done so for 10 years.

Estelle unfortunately missed out on the award which went to Jeanette Moss who has been a volunteer for 25 years with the NSW Council for Intellectual Disability and Western Sydney Intellectual Disability Support Group.

The Welfare Rights Centre takes this opportunity to congratulate Mr Wootten and Ms Moss for winning the awards. They were certainly well deserved winners and both have made a significant contribution to assisting disadvantaged people in NSW. While not winning an award, it was an achievement for the Centre and for both Michael and Estelle that they were nominated in their respective categories for an award.

new staff

The Centre has recently employed two new staff members. Gerard Thomas, who has extensive community sector experience, particularly with the Combined Pensioners and Superannuants Association, is the Centre's new Policy Officer. He has already made a significant contribution to the Centre's policy work and we hope he will continue to be a valuable asset for years to come. If anyone has any specific Social Security policy issues that they would like to discuss with Gerard, don't hesitate to call him.

The Centre has also employed a locum caseworker, Leanne Ho, who previously worked at the Centre as a volunteer caseworker. Leanne has already made her presence felt and her commitment to her clients and her background in legal publishing are of great benefit to the Centre. ▲

Publications Order Form

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