

QUARTERLY WELFARE RIGHTS NEWSLETTER
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rights review

NEWS & COMMENT ON SOCIAL SECURITY ISSUES

breaches extended to refugees

The harsh breach penalty regime, which can result in a person being fined \$1200 or denied Social Security for eight weeks (\$1500), has been extended to refugees on temporary protection visas (TPV) who qualify for Special Benefit. This is the first time that breach penalties have been applied to people on payments other than Newstart Allowance (NSA) and Youth Allowance (YA).

The TPV activity testing legislation was passed in December 2002, to take effect from 1 January 2003. The original Bill put to Parliament contained much harsher measures than the Bill that was eventually passed. Amendments to the original Bill to some extent take into account the difficulty with compliance for TPV holders and that the most pressing need for most of them is to recover from trauma, learn English and adjust to living with an uncertain future in the Australian community. Most importantly, TPV holders will be given a three-month exemption from activity testing following release from detention. Fortunately, the amended legislation also provides that the "activity" for TPV holders without functional English will generally be to undertake English classes.

However, the positive aspects of the legislation are countered by the fact that it was passed with the harsh penalty regime intact, as well as a 26-week non-payment period for reducing one's employment prospects by moving. TPV holders will now be subject to the same penalties that people on NSA and YA are subject to should they fail the activity test. These penalties result in an 18% reduction in allowance for 26 weeks for a first breach, 24% reduction for 26 weeks for a second breach and an eight-week non-payment period for a third breach. These penalties are harsh enough when imposed on people who may have the support of family and friends. They will have a devastating impact when imposed on people who have just been granted temporary refugee status and who will, in all likelihood, be isolated from community support networks and without the support of family or friends.

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issues for Centrelink

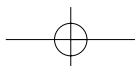
However responsive Centrelink is to the issues faced by refugees in negotiating activity agreements, it is inevitable that many refugee claimants will not understand their responsibilities and rights in relation to their agreement.



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Available at www.welfarerights.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.welfare-rights.org.au

Adelaide

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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: welfare-rights@welfare-rights.org.au

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breaches extended to refugees

Community organisations that work directly with TPV holders believe that once breached, a TPV holder is unlikely to understand appeal rights and is likely to fear "making trouble" due to perceived ramifications this may have for further visa applications for themselves or family members.

More immediate than these potential issues, are the difficulties that Centrelink will have in applying the legislation. In its desire to distinguish between Permanent and Temporary Protection Visa holders, and between TPV holders applying before 1 January 2003 and those applying after, Parliament has passed a very confusing piece of legislation.

changes - in brief

Outlined below is our understanding of significant aspects of the new legislation:

- > TPV holders are exempt from the activity test for a period of three months following release from detention;
- > Following three months release from detention, Special Benefit claimants or recipients who claimed after 1 January 2003, or who have been receiving Special Benefit since prior to January 2003 but who turn "Youth Allowance age" (generally 16) after 1 January 2003, must negotiate an "Activity Agreement" unless exempt. (Recipients of Special Benefit holding other classes of visa, temporary or permanent, cannot be required to enter into an "Activity Agreement" - any "activity testing" is informal, with no penalties applying for non-compliance);
- > A TPV holder is not required to satisfy the activity test if they have a dependent child in their care, have other caring responsibilities, would be eligible for Disability Support Pension (if not for TPV status), or if they are temporarily incapacitated for work. Exemptions can also be granted in other "special circumstances";
- > A TPV holder's activity test should only include requirements to undertake vocational education or a literacy, language or numeracy program, unless Centrelink is "satisfied that the person could reasonably be expected to undertake" another activity;
- > Breaches and penalties can be imposed for failure to enter an "Activity Agreement" or for non-compliance. Penalties identical to the rate reduction and eight-week non-payment penalties for Youth and Newstart Allowance will apply, unless the reason for non-compliance was not "within the person's control" or was not "reasonably foreseeable by the person".
- > TPV holder Special Beneficiaries will be subject to the six-month non-payment penalty if found guilty of reducing their employment prospects by moving, which also applies to Newstart Allowance and Youth Allowance.

the bottom line

The question now is how Centrelink will be able to implement all this while taking into account the particular vulnerability of traumatised people whose right to remain in Australia extends for three years at most, whose access to government funded services is extremely limited and whose primary concerns are for the welfare of family members they may never see again. We do not envy the policy staff in FACS and Centrelink whose job it is to develop these guidelines.▲

welfare advocates on "illegal substances"

The second stage of the Government's "welfare reform" agenda recently got underway with the release of a discussion paper entitled *Building a simpler system to help jobless families and individuals* in November 2002.

One of the main issues on the "welfare reform" agenda is the notion of one single Social Security payment for people of workforce age, with additional "top-up" payments in certain situations, such as where a person has a disability or has costs associated with training. The heart of the "single workforce age payment" debate has always been the issue at what level such a payment would be struck. In the context of a single workforce age payment, welfare groups have been lobbying for years for an increase in the rate of Social Security allowances (eg Newstart Allowance) to the pension rate. Given that a single person in receipt of a pension receives \$54.50 per fortnight more than a person in receipt of an allowance, community welfare groups are keen to ensure that the "single workforce age payment" debate doesn't get used to push rates down rather than move them up as we believe is needed.

In the joint media release announcing the release of the "consultation paper" the Minister for Family and Community Services, Senator Amanda Vanstone and the Minister for Employment and Workplace Relations, Tony Abbott, stated that "The route we want to take will involve a thorough and inclusive consultation process".

from "thorough and inclusive" to "thoroughly exclusive"

Regrettably, it didn't take long for that "thorough and inclusive consultation process" to become



very "unthorough and very exclusive", in fact it seemed to end before it even started.

Speaking on the night of the paper's release, Sen Vanstone told the 7.30 Report

"I think that if anyone believes that we can get uniformity in the welfare system by shifting everybody up to the maximum payment, then they're on some sort of substance that is probably illegal to import".

To emphasise the point the Minister continued

"And in any event, there are differing people on differing levels of need, and you wouldn't necessarily want them all to have the same".

Such dismissive statements run counter to the Government's claim that it wants open, frank and constructive discussion on options for reforming Australia's welfare system.

unfair system

The discussion paper is supposed to "help us build a consensus for a simpler and more responsive income support system", however, it appears that Minister Vanstone may be coming to the table with her "consensus" already developed. Such a position seems to expect others to give all the ground in pursuit of a fairer system of income support.

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youth

government increase disingenuous

In his press release of 20 December 2002, the Minister for Children and Youth Affairs, Larry Anthony, stated:

"Around 440,000 Australian students and young people will receive an increase in their Youth Allowance and Austudy payments from 1 January 2003."

He went on to say that:

"This increase to youth and student payments demonstrates this Government's commitment to support young people and students."

This statement leaves the reader with the impression that the Government made a discretionary decision to increase the rate of Social Security paid to young people. However, no such discretionary decision was made. The increase in the payment rates was due solely to the changes to the compulsory requirement for the Government to increase these payments in line with the Consumer Price Increases (CPI) changes.

disingenuous

It is disingenuous for the Minister to trumpet on about the Government awarding an increase

(cont from page 3)

welfare advocates...

On one point, though, the Ministers are absolutely right in our view. "Leaving the system the same could be unfair to many people" they advise, and in our experience we would have to agree. And although we are not on illegal substances, a way to make the system fairer is to increase the allowance rate so that it is equal to the pension rate. If this is not done then it is up to the Ministers and the Government to show how people are expected to live with dignity on such low rates of

to young people, when in fact it is a legislative requirement. Further, the increase was only between \$4.60 and \$11.10 per fortnight, hardly enough to ensure that "young Australians will continue to maximise their potential through further education, training and preparation for employment," as the Minister claims.

Youth Allowance, Austudy payment and ABSTUDY (under 21 years) rates are indexed on 1 January each year. The rate of indexation is the annual CPI increase to June of the previous year. However, pension and Newstart Allowance rates for those over 21 or with children are indexed in March and September each year. These increases take place from the first payday after the 20th of the month.

fairness?

The practical implication of all this is that allowances for young people are indexed only once a year, leaving these people much worse off than if their payments were indexed twice annually, which occurs for pensions and most other

allowance payments.

Timely indexation of pensions and allowances for people over 21 at least helps to maintain a person's purchasing power, particularly in times when prices (the CPI) are rising steeply.

People whose allowances are indexed only on an annual basis face what is known as an "indexation lag", whereby they have to wait a long time for their payments to be increased to compensate for cost of living increases that may have occurred up to eighteen months previously. Basically, they have to just absorb these costs within their budgets and receive no compensation for higher costs of living during this time.

double disadvantage

Young people receiving Youth Allowance are doubly disadvantaged - not only are their payments indexed to the CPI only once a year, but their payments (like other allowances) are only indexed to the CPI, and not to Male Total Average Weekly Earnings (MTAWE). The link between pensions and MTAWE has resulted in pension rates increasing above the CPI in almost every indexation period since 1996. As a consequence, the gap between pension rates and allowance rates has grown significantly since that time.

It is time for the Government to get serious about addressing the growing inequity between allowances and pensions. It is time for the Government to *really* show its commitment to support young people and students by bringing allowance rates up to pension rates, and to index all payments to MTAWE. ▲

minister gets it right

In a major victory for a small, but severely disadvantaged group of people, the Federal Government has substantially increased the rate of Special Benefit paid to the children of non-residents. The rate has increased from \$169.70 per fortnight to \$405.40 per fortnight, plus Rent Assistance.

Although the Government policy change is warmly welcomed, it was a long time coming.

In April 2002, the Welfare Rights Centre wrote to Senator Vanstone, Minister for Family and Community Services, to highlight the inequity of the Government's

position on this issue. We pointed out that over many years, numerous Tribunals made decisions that resulted in Special Benefit being paid at a substantially higher rate than what Government guidelines recommended. In one Administrative Appeals Tribunal

(AAT) case, in August 2001, the advocate for Centrelink even conceded that the Government's policy had been updated to reflect Tribunal decisions. However, until the Centre received a reply to our letter of April 2002 from the Minister in December 2002, the policy remained unchanged.

government pre-empts legislation

Late last year the Federal Government tabled its "Welfare Reform" Bill in Parliament. Contained in this Bill were provisions which would have required sole parents to attend an interview with a Personal Support Officer and negotiate activities such as training or volunteering. However, after many hours of debate and proposed overhaul in the Senate, the Bill remained "un-passed" when the Parliament rose for Christmas. It is likely to be debated again in coming weeks.

Despite the Bill being not being passed, Parenting Payment recipients have for some time now been sent letters telling them that they must attend an interview to discuss the possibility of undertaking activities. Failure to attend, the letters say, may result in payments being "suspended". However, while Centrelink can require a sole parent to attend an interview, it cannot require them to undertake any activities, as Parenting Payment is not an activity tested payment. Nevertheless, sole parents are being put under pressure to agree to activities and are not being informed that these interviews cannot compel anyone to do anything. One Adelaide client was told: "Do you expect taxpayers to give you money for doing nothing?" Another client was required to attend the

interview even though she was studying full-time as well as parenting.

It is disturbing that the Government is attempting to force its proposals onto individual sole parents without the approval of Parliament. It is also of concern that many sole parents are being misled into believing they are required to comply with something that has no basis in the law. Until legislation is passed requiring people in receipt of Parenting Payment to undertake certain activities, then the Government should refrain from using a backdoor method to achieve its so-called "welfare reforms". If participation is so valuable, then it should be achieved honestly, transparently and on an entirely voluntary basis. Dishonest force is no basis for positive outcomes. ▲

This issue first came to light in the early 1990s when the AAT decided that children of non-resident parents were entitled to Special Benefit. Until the Minister's announcement of the change in policy in December 2002, various federal governments had decided to restrict payment to the minimum rate payable. Governments were able to do this as Social Security legislation provides that the rate of Special Benefit is at the discretion of the Secretary. The reason for this steadfast approach by various governments is not clear, as there are only about 50 people at a given time across Australia in this situation. An increase in the rate would have negligible impact on the Federal Budget.

The change in policy means that the youngest child in the care of a non-resident parent will be paid the Newstart Allowance single with child rate and if there are other siblings they will be paid the at-home rate of Youth Allowance. This decision not only directly impacts on the families who have been surviving on meagre amounts of money, but will also have flow on effects to charities who have been supporting people in this situation.

The National Welfare Rights Network has written to the Minister to thank her for her policy decision in this matter. ▲

gambling

winners lose

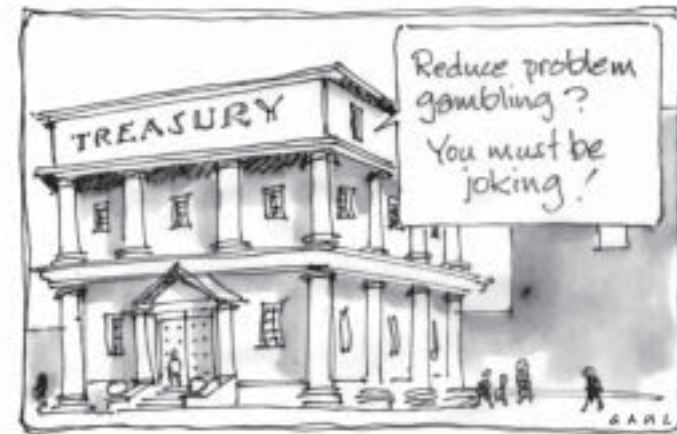
Two reports within the National Welfare Rights Network have highlighted the link between, on the one hand, people losing their lump sum workers compensation payments and on the other hand, gambling addictions. A report from Sydney Welfare Rights Centre, "Losing What You Win" and one from the Adelaide Welfare Rights Centre, "Gambling With Their Lives", have shown that many people who are subject to compensation preclusion periods find themselves in dire poverty because they suffer from gambling problems.

The Sydney report found that large numbers of people surveyed who were suffering chronic gambling problems were receiving Social Security payments. 38% were receiving Newstart and 29% were receiving DSP. It also found that 11.7% were suffering severe depression, 9% had mental illnesses, 7.2% suffered from severe anxiety and 9% had suicidal thoughts.

These findings were mirrored by the Adelaide report, which examined its compensation preclusion cases for the last six years. It showed that there was a steady increase in the number of compensation preclusion cases where gambling was an issue. Over a six-year period, the Centre represented 151 people who had run out of money during a compensation preclusion period. 114 involved gambling as the reason for the person losing their money.

The statistics reveal a disturbing snapshot of this issue:

- > 95.5% of problem gamblers were single and lived alone;
- > 100% gambled on electronic gambling machines;
- > 99% had never gambled before and only started gambling after their compensation pay-out;
- > 86.4% said they started gambling as a result of going into a hotel for company;
- > 76.5% were suffering depression at the time of their decision to embark upon gambling;
- > 81% said that their depression became worse as a result of having no income;



- > 100% relied on charities and emergency financial assistance for several months;
- > 90% used a counsellor/psychologist to assist them overcome their gambling problem;
- > 72% required some form of medical intervention as a result of illnesses that were directly related to the compensation preclusion period;
- > 11% lost their homes either through eviction or being unable to maintain mortgage repayments;
- > 85% owed significant debts to utilities;
- > 54% had one or more utilities cut-off;
- > 5.4% became homeless;
- > 91.5% sold possessions in order to survive;
- > 53% said they seriously considered suicide during the period where they had no money;
- > 4.5% had attempted to commit suicide at least once during the compensation preclusion period; and
- > 4.5% experienced a marriage-break-up, or a split with their family, as a result of psychological factors and mental stress.

With state governments relying more and more on revenue from gambling, these reports highlight what is becoming a serious issue. Both reports make a series of recommendations, including:

- > better education and information for people receiving compensation;
- > the use of structured payouts rather than one-off lump sums;
- > the provision of ongoing counselling as part of the settlement process; and
- > greater community education on the issue from Centrelink.

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alternative ways to receive family tax benefit

The Government has recently introduced new measures to allow families to choose how they receive their Family Tax Benefit. A person who receives Family Tax Benefit on a fortnightly basis may choose to defer the payment of some or all of their entitlements until the end of the financial year. A number of options for such a deferral are now available to Family Tax Benefit recipients.

where a child is earning

A person receiving Family Tax Benefit Part A for an older child who is earning income, may choose to defer their Family Tax Benefit entitlements for that child until the end of the financial year. This option would assist in situations where a person is not sure if their child will earn more than the "cut-out" amount of income allowed for dependent children each year. Remember that a debt may be raised by Centrelink if a child ends up earning more than \$8,347 in the year in which a parent received Family Tax Benefit for that child. A person can defer payment for such

older children who are earning, while still receiving regular payments of Family Tax Benefit for their younger children.

where a person gets a pay rise

Payments of more than the minimum rate of Family Tax Benefit Part A may also be deferred. At any time during the financial year, a person may choose to receive their Family Tax Benefit Part A at the minimum rate and to defer any remaining entitlement until the end of the financial year. This may be an appropriate option for a person whose income may have

increased, but who is nevertheless sure that they will be entitled to at least the minimum rate of Family Tax Benefit during the relevant financial year. Any additional entitlements will be paid to the person after a reconciliation at the end of the year. A person may also elect to receive fortnightly payments of Rent Assistance together with their minimum rate of Family Tax Benefit Part A payments.

taking a lump sum

Additionally, families are now able to defer payment of their entire Family Tax Benefit Part A and/or Part B entitlements until the end of the financial year. For example, a family where a primary earner's income fluctuates, but the other person's income does not, may choose to receive fortnightly installments of Family Tax Benefit Part B, while deferring their entitlement to Family Tax Benefit Part A until the end of the financial year. This could minimise the risk of an overpayment of Family Tax Benefit in single income families, as a person's rate of Family Tax Benefit Part B does not depend on the income earned by the primary income earner of the family.

The flexibility of these new measures is welcome. However, they do not address the problems faced by families who are confused by the Family Tax Benefit system, wish to avoid Family Tax Benefit debts but just cannot afford to defer any of their entitlements to the end of the financial year. These people will still be required to estimate their income for the current financial year. We continue to urge the Government to tackle this fundamental issue promptly.▲

(cont from page 6)

winners ...

Given that state governments rely so heavily on taxes raised from gambling, it is appropriate that they become more actively involved in preventing further escalation of

gambling problems in the community, rather than just turning a blind eye while simultaneously sticking out their hands for the revenue raised from gambling.

no win situation

Beverley, 38, received a compensation lump sum payment of \$46 000. She suffered chronic pain and took pain-killers on a constant basis. She said she turned to gambling as a source of relief from her daily pain and depression. She enjoyed the company of other people in the hotel and they offered cheap meals and coffee. However, the losses built up and

she started going in more frequently in the hope she would have a winning streak and recoup her losses. Soon she was addicted and was withdrawing \$500 from her account in regular intervals. She gambled all of her money, sold her possessions and ended up being evicted. She eventually went to a counsellor and has managed to stop gambling. ▲

social security changes

social security changes

what's happening when in 2003

“AUSTRALIANS WORKING TOGETHER” INITIATIVES

These changes require the passage of legislation that has been referred back to the House of Representatives by 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.
- > Any existing Activity Test penalty is to be waived once a person commences participation 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 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 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, Special Benefit, Parenting Payment, Mature Age Allowance, Widow Allowance, Partner Allowance and Disability Support Pension.

newstart allowance and youth allowance

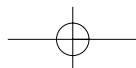
- > Jobseekers receiving Newstart Allowance or Youth Allowance who are temporarily incapacitated for work but who are considered by Centrelink officers to be capable of participating in other activities, will be subject to an activity test.

The proposed date of commencement is 20 September 2003.

OTHER INITIATIVES

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 depart Australia again.

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

- > The Government proposes to tighten the eligibility criteria for Disability Support Pension. People who are assessed as being able to work at least 15 hours a week at award wages within the next two years would no longer be eligible (the current test is 30 hours per week). The change would apply to new Disability Support Pension claimants.
- > Assessment of Disability Support Pension eligibility for people over 55 would no longer take into account local labour market conditions.
- > Centrelink staff would assess the work capacity of Disability Support Pension claimants (Health Services Australia currently makes this assessment.)

This change requires the passage of legislation which is being strongly opposed. The date of commencement depends on if, and when, the legislation is passed.

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 an Activity

social security changes

Agreement.

Date of commencement: 1 January 2003 (subject to Ministerial declaration regarding affected visa classes)

Social Security Agreement with Germany

- > Introduction of International Agreement on Social Security with Germany.
- Date of commencement: 1 January 2003. ▲*

breaching flaws exposed - again!

A recent report undertaken by an Honours student at the University of New South Wales into the impact of breaching uncovered some alarming results. The study involved in-depth interviews with 16 participants who had been breached, about their understanding of the Social Security system and their experiences of breaching.

All but one of the participants found the Social Security system complicated and inaccessible. Participants felt they were not listened to by Centrelink staff and found dealing with Centrelink very frustrating. This frustration and the feeling they would not be listened to led them to shun the formal appeals process even when they believed the breaches had been applied incorrectly.

The most alarming findings were the serious impact of the breach penalties on the lives of the participants. The major findings included that:

- > two participants became homeless as they were unable to pay rent, with one other possibly about to lose accommodation;
- > half had difficulty buying enough food;
- > half were unable to afford transport. Some travelled without tickets risking heavy fines but felt no alternative;
- > more than half experienced emotional or psychological ill-health during the breach period. Participants described experiencing fear, anxiety and

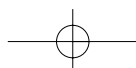
stress.

- > five participants had existing health problems that were exacerbated during the breach period; and
- > four participants reported having to resort to illegal activities to survive.

changes required

The report found that those participants who were able to seek assistance from family or friends fared better than those that did not have such support. Participants with support were less likely to undertake illegal activities and less likely to suffer emotional and psychological ill-health.

Interestingly, all but one of the participants agreed that recipients of unemployment payments should have to undertake training or other activities in return for receiving payments. However, all participants felt the current mutual obligation and penalty regime was too harsh and the system was too inflexible to accommodate difficulties people may face when trying to seek work. Participants felt the system as it is can make it even more difficult for people to seek work. ▲



debts and overpayments

what is a debt?

A Social Security "overpayment" occurs when a person receives more money than they were entitled to. A debt is when the overpayment is legally recoverable by Centrelink. Due to changes to the law in October 1997, almost all overpayments of any Social Security money are debts.

waiver and "write off" of debts

However, just because a person has been overpaid and there is a debt, does not necessarily mean that the debt has to be repaid to Centrelink. There are several grounds for either "waiver" or "write off" of a debt.

Where Centrelink waives all or part of a debt it never has to be repaid. The most common **grounds for waiver** are:

- > the overpayment arose solely due to Centrelink's error and the person received the payments in good faith, and the debt was not raised within six weeks of the commencement of the overpayment;
- > there are "special circumstances" other than financial hardship alone and the debt did not arise through the person or another person knowingly making a false statement or failing to comply with Social Security law. Special circumstances can be anything that are unusual to a particular person and make recovery of a debt "unfair and unjust".

Centrelink can also "**write off**" a debt. This means the debt does

not have to be repaid immediately and Centrelink will agree to suspend repayment for a period of time. A person's ability to repay the debt will be reviewed at the end of the period of time. Debts are most commonly written off where repayment would cause "severe financial hardship".

recovery of debts

There are a number of ways in which Centrelink is able to recover a debt. These are:

- > where a person is in receipt of a Social Security payment, Centrelink will automatically "withhold" an amount from each payment. The standard rate of withholding is 14%. Withholding of Family Tax Benefit can be up to 95%. These rates are guidelines only and can be reduced where a person is in financial hardship. To establish financial hardship it is important to provide Centrelink with as much financial information as possible to establish the person's financial situation. If Centrelink agrees to reduce a person's withholdings, it will generally review this every three months;
- > Centrelink can recover money through issuing a garnishee notice. Garnishees can be made from a person's wages, bank account or tax return;
- > Centrelink can take legal action to recover an overpayment. This can involve the forced sale of a person's home to repay the overpayment. Generally Centrelink will only take such action where a person has not made any repayments or arrangements to repay or the

debt is very large.

debts and prosecution

Where Centrelink determines that an overpayment has arisen due to a person deliberately providing Centrelink with false information or failing to provide information, the matter can be referred to the Director of Public Prosecutions (DPP) for consideration of prosecution action. Where the DPP determines there is a case, the DPP staff will issue a summons for the person to appear in court.

appealing decisions

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

- > the raising of the overpayment;
- > the amount of the overpayment; and
- > the rate of recovery of the debt.

Where a person is not happy with a decision made in relation to the raising or recovery of a debt, they should appeal that decision to an Authorised Review Officer. If they are not happy with this decision they can appeal further to the Social Security Appeals Tribunal.

For more information on debts and overpayments and appeal rights please check out the Welfare Rights website at www.welfarerights.org.au ▲

rehabilitation not retribution!

Billy was sentenced to a long gaol sentence when he was a teenager. His crime was a violent one. However, what the trial judge and Billy's advocate did not know at the time of the trial was that Billy suffered from schizophrenia and severe depression. Billy was not diagnosed with these debilitating illnesses until after he had served most of his gaol sentence.

Due to the serious nature of his illnesses, he was transferred from gaol to a psychiatric hospital in the last year of his non-parole period. A specialised team of psychiatrists, nurses, psychologists and occupational therapists at the hospital assessed Billy as a suitable candidate for a special course of rehabilitation. However, this course required him to be able to pay for his board and lodging at the hospital. Billy did not have money of his own, having spent his entire adult life in custody, so he claimed Disability Support Pension from Centrelink. Centrelink refused his claim, on the basis that a person cannot receive a Social Security payment whilst "in gaol". Billy's social worker contacted the Welfare Rights Centre after his appeal to an Authorised Review Officer was unsuccessful.

The Welfare Rights Centre represented Billy at the Social Security Appeals Tribunal. The Centre argued that Billy was not in fact "in gaol", as he was not undergoing treatment at the hospital in connection with his conviction. Given the serious nature of his illnesses, Billy, unfortunately, would have been committed to institutional confinement even if he were not serving a gaol sentence. His confinement at the hospital therefore had nothing to do with his conviction.

Billy was successful at the Social Security Appeals Tribunal and is now being paid Disability Support Pension. He is now able to fully participate in the hospital's rehabilitation program and receive the treatment he requires to overcome his illnesses.▲

centrelink double dip

Fran received a notice from Centrelink demanding payment of a \$1200 debt. This came as a surprise and a shock to her as she was sure that she did not have an outstanding debt. Fran is employed full-time and has not received any Social Security payments for a number of years.

The Centrelink notice did not explain why she owed the money, or for what period. When she contacted Centrelink about the debt the mistake was identified. She was told that the debt was from six years ago. Fran did not believe she owed Centrelink any money, so she went to her local Federal Member who helped her appeal against the debt. It was then discovered that the money related to an old AUSTUDY overpayment that she had paid off years ago. Whilst Centrelink has

now stopped pursuing the debt, Fran has never received an apology.

Fran wanted her story to be told as a warning to other people who receive a debt notice without any explanation – always query the debt before agreeing to repay it. Fran is also concerned because if she had still been on Social Security payments, Centrelink would have automatically started deducting amounts from her payment to recover the debt - a debt she has already repaid. ▲

debt waived

Josie suffers from a bi-polar mood disorder. She recently had to apply for Social Security after the death of her husband. Usually she received help in completing Social Security forms but this time she did not have any assistance, despite her serious mental illness, and she did not accurately declare her fortnightly payments from her late husband's superannuation fund.

Two years after Josie re-claimed a Centrelink payment, Centrelink raised a debt of almost \$7000. Centrelink argued that she had not declared her superannuation payments properly, and therefore had an overpayment. Centrelink did not consider whether there was anything in her case that would warrant that the debt be waived.

Josie initially contacted the Welfare Rights Centre to ask for assistance in having the rate of her debt repayments reduced. After talking to Josie, however, it soon became apparent that Josie had lived through some very troubling times, including the death of her husband

at an early age, bankruptcy, coping with a mental illness and adjusting to some very potent medication. After receiving some information from her doctors, the Centre appealed to an Authorised Review Officer to request waiver of the debt.

The ARO decided in Josie's favour, deciding that she had not in fact "knowingly" failed to advise Centrelink of her superannuation payments. Indeed, her illnesses rendered her incapable of knowingly doing such a thing. The ARO also accepted that Josie had ample "special circumstances" to warrant waiving the debt.▲

courts

landmark federal court decision

A recent decision by the full Federal Court means that people confined in a psychiatric institution (because they have been charged with an offence) while undertaking a course of rehabilitation are not precluded from receiving a Social Security payment.

For years, tribunals and courts have grappled with the question as to whether people in psychiatric confinement are entitled to Social Security. Whilst Social Security law provides a bar on people in goal or psychiatric confinement from receiving Social Security, the Federal Court was called on to consider whether a person could be excluded from the general rule. If an exception did operate, the Court was also asked to rule on what a "course of rehabilitation" meant.

As reported in the September 2002 edition of "rights review", decision makers had largely proceeded to consider this matter on the basis of whether people in psychiatric confinement could be said to be undertaking a "course of rehabilitation". Centrelink had given a narrow interpretation to the term and this had provided the basis for several appeals to review tribunals.

history of case

The case that had proceeded to the Federal Court had been appealed on the basis that the Department argued that the Administrative Appeals Tribunal (AAT) had erred in its interpretation of what constituted a "course of rehabilitation". The Department had argued that a "course of rehabilitation" must have a structure and must progress through stages to reach a goal.

When the matter had come before the Federal Court it was decided that the previous decision makers, by focusing on whether the activities in which our client had engaged amounted to a "course of rehabilitation" had asked itself the wrong question. Initially a single judge of the Federal Court held

that Social Security payments were not payable to a person confined in a psychiatric institution because the person had been charged with an offence, regardless of whether the person was undertaking a course of rehabilitation. This decision represented a significant departure from what was understood to be the legal position concerning a person's entitlement to a pension or benefit in such circumstances.

primary decision overturned

As a result, the full Court was then asked to sort out this issue. Fortunately for our client, the Court held that the primary judge had been incorrect in his approach and that an exception did exist to the general rule if the person was undertaking a "course of rehabilitation". The Court also held that there was no justification for construing a "course of rehabilitation" narrowly. The Court held that a "course of rehabilitation" was not required to have a precise duration nor did it require rehabilitation activities to be structured by reference to identified

milestones towards achieving a precise goal. The Court concluded that, in the circumstances of the particular case the boundaries of the activities capable of constituting a "course of rehabilitation" were wide.

implications of decision

This decision has significant implications for people confined in psychiatric institutions. For instance, people held in psychiatric confinement while their mental fitness to stand trial is being assessed or where a person has been found unfit to stand trial due to mental impairment, may now be entitled to a Social Security payment.

While Centrelink is to be commended for taking swift action to amend its guidelines to give effect to this decision, a premature change in their guidelines after the primary judge decision means that there is a pool of people who have been adversely affected by a case that was wrongly decided. We call on Centrelink to detect all people in this group and take immediate action to rectify their situation.▲



saving money on medications

The following article is written by the Australian Consumers' Association and provides information on how people can save money when purchasing medications.

The Australian Consumers' Association has recently undertaken a study looking at how people can save money on their medications by switching to a less expensive brand. Nicola Ballenden, a policy officer with the Association said that many consumers did not understand that they could save money with a generic medication.

"Sometimes people think that the generic brand is inferior to the brand name product. This is not true. Under government regulations, generics must use the same active ingredients in exactly the same amounts and be as safe and effective as the brand name products."

The study interviewed one couple who were saving around \$270 each year by switching to less expensive brand medications. Ms Ballenden said the study had a number of tips for consumers who wanted to save money on their medicines.

tips for consumers

- > Your doctor and pharmacist won't be upset if you ask about a lower priced medicine. In most cases they will appreciate why you are asking and will be willing to discuss less expensive medicine options with you.
- > Always remember that if you switch from a brand to a generic form of medication, you are replacing the brand with the generic. You must not take both the generic and the brand name medication at the same time.
- > The "brand premium" you pay on more expensive medicines doesn't count towards meeting the government safety net. Even once you have reached the safety net you will still have to pay a brand premium. (If you are a pensioner or have a Health Care Concession Card your

medication will cost you less once you have spent \$187.20 on medication. If you are a general patient your prescription costs will reduce to the concessional rate (\$3.60 once you have spent \$686.40 on medication.)

- > If you need a lot of medicines you should keep good records. This will help you keep track of your medications and also help you to work out when you reach the safety net. Your pharmacist can give you a

Prescription Record Form that they will fill in each time you get a prescription.

- > You can find out more about less expensive generic medications by phoning the Medicines Line on 1300 888 763 or by visiting the Australian Consumers' Association website at www.choice.com.au.
- > You should always discuss any concerns you have with your medications with your pharmacist or doctor. ▲

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. ▲

social security

proposed changes to concessions

The following article is written by the NSW Ministry of Energy and Utilities and provides an update on the different concessions which are available to people in receipt of pensions and allowances.

energy and water concessions

In a recent review of Hunter Water Corporation's operating licence, the Independent Pricing and Regulatory Tribunal (IPART) suggested the corporation establish a Payment Assistance Scheme (PAS) similar to that run by Sydney Water to provide assistance to low income customers. Under the scheme, Sydney Water issues \$25 vouchers to a range of community welfare agencies which then assess the needs of people who are unable to pay their water bills and provide them with vouchers as part or full payment of the account.

Sydney Water and Hunter Water bill property owners for water services and so pensioners who are tenants are not eligible for pensioner water concessions. However, Sydney Water's Payment Assistance Policy states that limited access to PAS vouchers may apply in cases where tenants have a private lease arrangement to pay for water usage. Extension of the PAS to the Hunter region has been strongly supported by community groups and it has now been approved by the NSW Government to start 1 July 2003.

extension of the pensioner energy rebate

The NSW Minister for Energy is considering extension of the eligibility criteria for the energy rebate to include all war widow/ers and Extreme Disability Adjustment (EDA) war veterans. There are a significant number of war widow/ers and EDAs who currently do not receive energy rebates and will benefit from the scheme if approved. The combined electricity

and gas rebate of \$112 per year was introduced from 1 January 2002 to replace the separate electricity and gas rebates previously paid to pensioners.

changes to life support rebates

There's some good news for those who suffer from sleep apnoea and who cannot tolerate constant positive airways pressure (C-PAP) devices. The NSW Ministry of Energy and Utilities has revised the life support equipment list to include higher order models Bi-PAP (two levels) and V-PAP (variable) pressure support devices to maintain breathing while asleep. The rebate can be claimed through Government-owned electricity retailers.

a new rebate for LPG users?

The NSW Ministry of Energy and Utilities (MEU) is currently investigating the possibility of introducing a new rebate for pensioners who are not connected to electricity and who rely on bottled liquefied petroleum gas (LPG) for major energy needs such as water heating and cooking. As 99.6% of NSW households are connected to electricity and only 45.7% use gas, payment of the pensioner energy rebate is made through Government owned electricity businesses. It is difficult to identify and locate pensioners not connected to electricity and to design a rebate scheme for the few in that position. If you are among those few, or if you know someone else who is, please let the MEU know.

For further information contact Diana Covell: 9901 8510 or Dennis Fardy: 9901 8770 at the Ministry of Energy and Utilities.▲

newcastle welfare rights

In September 2002 a Welfare Rights service began operating in

Newcastle. This was made possible by a few committed individuals and the generous support of the Sydney Welfare Rights Centre and Newcastle Trades Hall, both providing a variety of infrastructure and resources.

The service presently operates two days per week on Monday and Thursday between 10am & 2pm with voluntary caseworkers and a Coordinator. The service provides telephone information, assistance and referral to people with Social Security problems.

Extensive promotion of the service within Newcastle and the Hunter region has been ongoing through community service organisations, leaflet distribution and media, with future plans for community education sessions in the region as well.

In December 2002, the Service became incorporated as an association and has a strong governing committee with representatives from the Hunter Community Legal Centre, the Tenants Advisory Council, Newcastle TAFE and the Services Volunteer.

The past few months have been spent on developing policies for the association, broadening community contacts, establishing further infrastructure needs and providing volunteer training. The Welfare Rights service is presently formulating a strategy for fund raising and aims to eventually extend the hours of operation and service provision.

Contact details of the Welfare Rights service are: (02) 4929 5477 Fax: 02 4929 5235.▲

Welfare Rights Centre Adelaide

There will be some staffing changes at the Centre in late February. Christian Goldsworthy, our Administrative Appeals Tribunal (AAT) Co-ordinator has been offered a six-month contract with Centrelink's Administrative Law Section. He will be taking six months leave without pay and Chris and Mark will be working an extra day to cover his job. Christian's skills will be missed (and will now be used to the benefit of the opposition!). The Centre will be reducing its AAT service and closing two phone advice shifts as a way of coping with having only two full-time advocacy workers on deck.

Other news: a delegation met with the Minister for Human Services to seek the reinstatement of State funding, which was lost in 1996. The initial meeting was positive, with the Minister indicating both she and her Department highly valued the work the Centre does, and giving her commitment to investigate possible ways Welfare Rights could have access to extra resources.

The Centre has begun to collect more detailed statistics regarding its client phone work with each call in and out being recorded. In the first month we have recorded 454 calls in and 390 calls out which, if typical, would give us a total of over 10,000 calls for the year.

Welfare Rights Centre Brisbane

The Welfare Rights Centre, Brisbane is participating in an expo

highlighting services to young people. The expo "Burdekin to Brisneyland" is an opportunity to reflect on the issues that currently confront disadvantaged young people, and any changes that have occurred since the Burdekin Report was published (some 13 years ago) and the more recent "Welcome to Brisneyland" report which looked at various issues confronting young homeless people in Brisbane.

A variety of services will be presenting information at the expo which will focus on issues including health, housing, justice, education and income.

Brisbane Welfare Rights Centre will be presenting information about the services provided by the Centre, and issues that confront young people requiring information and support regarding social security payments.

The project is being organised through the Queensland Youth Housing Coalition along with other key organisations. The expo is being held on 9 April 2003 during Youth Week at Brisbane City Hall and is just before the National Homelessness Conference "beyond the divide" being organised by the Australian Federation of Homeless (AFHO).

Welfare Rights Centre Sydney

The Director of the Sydney Welfare Rights Centre and Immediate Past President of ACOSS, Michael Raper was recently honoured by being awarded the prestigious 2002 Human Rights Medal.

Michael has been Director of the Welfare Rights Centre, Sydney since 1990 and was President of the Australian Council of Social

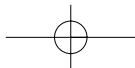
Service (ACOSS) from 1997 to 2001. He has been an active member of the ACOSS Board since 1995 and served on several important ACOSS working parties and government advisory groups. He was National President of the Mandela Foundation of Australia from 1990 to 1997 and National Convenor of Australians for Democracy in South Africa from 1993 to 1994. He is currently Treasurer of the International Council on Social Welfare (ICSW) as well as Treasurer of the South East Asian chapter of ICSW and President of the National Welfare Rights Network in Australia.

Michael has worked tirelessly in these and other roles to improve the lives of people affected by poverty and inequality.

As ACOSS President, Michael was highly regarded for his passionate commitment, unflinching energy and public advocacy for systemic change to reduce poverty, inequality and hardship in Australia. In taking on this exacting and high profile voluntary role he also maintained his full-time position at the Welfare Rights Centre.

At the end of his term as ACOSS President, tributes flowed from people from all corners of Australian society, many from people whom Michael had never met. Amongst them, Sir William Deane said "Michael Raper has worked tirelessly and most effectively for vulnerable and disadvantaged Australians. Our community is very much in his debt".

The Centre takes this opportunity to publicly congratulate Michael on his tireless efforts to assist disadvantaged people and congratulates him on being awarded the 2002 Human Rights Medal. ▲



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