

rights review

NEWS & COMMENT ON SOCIAL SECURITY ISSUES

fundamental protections needed to counter centrelink errors

"The Australian" newspaper recently discovered, and exposed, what Welfare Rights services throughout Australia deal with every day – massive levels of Centrelink error. Our experience representing thousands of clients with Centrelink problems each year supports the DBM Consultants report that Centrelink is constantly getting it wrong. Whatever the statistics, whenever Centrelink does get it wrong, a low income, disadvantaged person gets harmed. Most commonly, they are denied payment, get a debt or get breached and fined in the order of \$850!

The attitude displayed by Centrelink spokesperson Hank Jongen that Centrelink nearly always gets it right is typical and is in fact a large part of the problem. One of our clients at present has not received his Newstart Allowance for four weeks despite being qualified in every respect and going to Centrelink four times. Centrelink suspended him because it says he went overseas last October. He did not, but he has no passport, so in Centrelink's eyes he can't prove that he didn't! Centrelink will not restore him to payment until he provides proof. Centrelink has no right to deny payment to this man, but the "Centrelink is right" attitude is deeply embedded at the local office and has placed a young man on the brink; he can't pay the rent, he can't buy food.



shock in the mail telling them they have been overpaid and owe a debt to Centrelink which should be repaid within 28 days. Of course, clients make mistakes in a complex system, but again our experience demonstrates that far too often the debt results solely from Centrelink's administrative error. A client who had worked for

"These debts not only expose too much Centrelink error, but they also expose the error of politicians and Ministers who constantly use the term 'overpayment and fraud' when referring to such debt issues."

debt errors

Each year hundreds of thousands of Australians know about Centrelink error when they receive a

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

Contact details for Welfare Rights

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

Adelaide

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

Brisbane

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

Sydney

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

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fundamental protections needed to counter centrelink errors

many years had been underpaid \$10,000 by his employer. Some years later, when he was unemployed on Newstart, his union recovered the money. Centrelink immediately recovered his "\$2,800 debt". This was wrong as the money came from a period when he was not receiving a Social Security payment. Only after two formal appeals did Centrelink change its decision and return the money.

Another client recently had a debt for \$1,400 raised against him. Soon after another debt containing the original \$1,400 was raised. Only by chance did we discover this double count when examining the papers in depth for an appeal.

political error too

These debts not only expose too much Centrelink error, but they also expose the error of politicians and Ministers who constantly use the term "overpayment and fraud" when referring to such debt issues.

Despite this political posturing, the vast majority of debt cases involve no fraud and the innocent majority bitterly resent this hurtful point scoring at the expense of the victim rather than Centrelink.

The third major area of Centrelink error has been in the handing out of over 1.4 million breaches since 1996 to people with an average fine in the order of \$850! Over many years, these unnecessarily harsh penalties have been handed out with little attention to the law. They have cost unemployed people over \$1 billion and caused devastation in the lives of so many – including homelessness and an inability to look for work. After a major community campaign and an embarrassing independent external inquiry [Pearce Report], the number of these breaches has been halved and halved again in the last two

years. What's changed? The evidence suggests that it is not client behaviour but Centrelink practice that has been brought into line with the law.

Our Social Security system is very tight, very targeted and as a result, very complex. Centrelink needs to lift its game and staff numbers and build in far more checking of each and every payment-related decision. Double checking just 3% just isn't good enough.

safeguards needed

But errors will always occur, so we need structural safeguards built in to ensure that those whom the system is meant to help, don't suffer the consequences. First, Centrelink must stop blocking access to the review and appeal system and always advise every person of their rights. It should actively assist people rather than hinder them in this process.

Second, the absurd severity of breach penalties must be addressed. Perhaps if Centrelink was fined \$850 for every error, it too would support a reduction to at least the Pearce Report level of \$300 – still higher than many fines for drink driving!

Third, we will always need an independent watchdog to help clients challenge Centrelink decisions which they believe are wrong. At present, there are just 30 funded Welfare Rights workers throughout Australia to help six million "Centrelink customers" check the decisions of over 22,000 Centrelink staff. The odds remain very much stacked against the average pensioner, carer, disabled or unemployed person or low income family who, for the time being, needs to rely on Centrelink for at least some of their weekly income support. ♦

optical surveillance: an illusion of icing, but no cake

A number of recent Social Security Appeals Tribunal (SSAT) decisions in South Australia have raised serious questions about the efficacy and ethics of Centrelink's use of private detectives to investigate allegations of people being in a marriage-like relationship. Despite initially being told that optical surveillance would only be used in cases where there was already significant evidence of a marriage-like relationship, Centrelink appears to be relying on optical surveillance more and more when making decisions.

Two key SSAT cases have recently overturned decisions to cancel payments based on optical surveillance. In one case, a woman's Parenting Payment (single) was cancelled on the basis of a dob-in. Gemma was accused of being in a relationship with Jim and optical surveillance was used to support the decision. Gemma's Parenting Payment was cancelled without a written notice of that decision and without being asked to fill in a "Review of Living Arrangements" form, thereby denying her the opportunity to put forward her side of the story. The matter was also sent to the Director of Public Prosecutions (DPP) but prosecution action was not pursued on the grounds that there was insufficient evidence to support the allegation and, indeed, substantial evidence to support Gemma's case. The SSAT restored Gemma's Parenting Payment and was highly critical of the decision-making processes Centrelink undertook.

sarah's case

In another case, Sarah was accused of being involved in a marriage-like relationship with her ex-husband. For a variety of reasons, her ex-partner often looked after the children overnight during the week. Sarah would come to pick them up in the early hours of the morning and the private detectives would arrive shortly after. They would film her leaving the house and made the assumption that she had been staying overnight. This highlights the limitations of optical surveillance when assessing marriage-like relationships; indeed, it shows how such evidence can be misleading.



The SSAT, in its decision, expressed its concerns that surveillance was only undertaken in the mornings. They also noted that Centrelink had made significant presumptions of guilt based on unreliable video evidence.

A number of cases at the SSAT, in which decisions have been overturned, have remarked on the over-reliance on unreliable video evidence, the lack of more comprehensive investigations and the fact that investigating officers ignored evidence which supported the client's case.

selective reporting

One of the main problems with using optical surveillance is that private investigators are hired to achieve an outcome and so there is a tendency to view the client as guilty. We have come across cases where evidence has been

reported selectively. We have also had numerous complaints from clients that investigating officers treat them as guilty until proven innocent. One client remarked: "It wouldn't matter what evidence we showed to prove our innocence, they act like hanging judges who have already made up their mind."

The fact that Tribunals are beginning to strongly question video evidence suggests that there are serious flaws with optical surveillance and the investigation of allegations of marriage-like relationships. Optical surveillance often provides a misleading and untrustworthy view of the facts and results in people being cut off who are completely innocent. As one Tribunal member remarked in a recent case: "The optical surveillance report was the icing on the cake. A pity there was no cake." ♦

5th edition Independent Social Security Handbook now available

The 5th edition of the Independent Social Security Handbook, produced by the Welfare Rights Centre, Sydney has recently been published and is now available. The Handbook is available in both hardcopy and ONLINE versions.

This rewritten 5th edition not only covers all the significant Social Security law and policy changes of the last two years, but also has a number of new chapters and sections.

The major changes and additions include:

- ◆ the massive changes brought about by “Welfare Reform” legislation and introduced in September 2003
- ◆ the new breaches regime which extends to Parenting Payment and Special Benefit
- ◆ the new activity testing arrangements for Parenting Payment
- ◆ “Working Credit” and how it operates
- ◆ a new chapter on the Job Network under the latest Government contract
- ◆ a completely revised chapter on Centrelink debts

This expanded Handbook continues to cover all the Social Security payments paid by Centrelink – including ABSTUDY, income and assets tests, the Social Security appeals system, Special Benefit, Family Tax Benefit, debts and compensation issues with a number of chapters rearranged for easier access.

The 5th edition also retains the detailed and highly acclaimed cross-referencing system with an expanded index.

Drawn from the ongoing casework

experience of the Welfare Rights Centre in Sydney, the 5th edition of the Handbook provides straightforward information combined with practical, helpful advice about how to handle each Social Security and Centrelink problem.

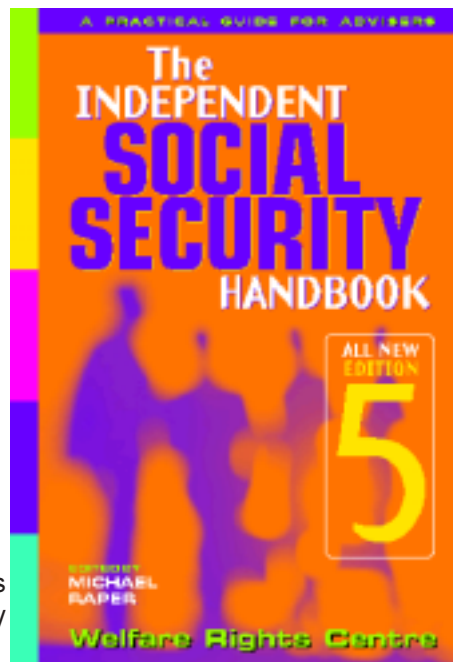
what people are saying

“This essential handbook untangles the complex web of Social Security law. It provides clear understanding of rights, entitlements and obligations. It covers all areas of Social Security law and policy and is an invaluable resource for anyone working in the area of Social Security law.”

**Bill Gerogiannis, Solicitor,
Legal Aid Commission of NSW**

“Every local community organisation needs to be able to provide information to their clients or members on the Social Security System. This Handbook provides valuable information in an accessible form which allows Social Security recipients and their advocates to understand their rights and entitlements. The South Australian Government believes that this resource is vital to people on low incomes and therefore has provided a free subscription to every funded community organisation in the State.”

**Hon. Stephanie Key MP
Minister for Social Justice,
Minister for Housing, Minister
for Youth, Minister for the Status
of Women, South Australia**



how to purchase the Handbook

To purchase the Handbook complete the details below and return the form on the back of “rights review” with a cheque payable to the Welfare Rights Centre, 5 B, 414 Elizabeth St, Surry Hills, NSW 2010.

The 5th edition of the Independent Social Security Handbook : \$90 plus GST and postage and handling. Total \$105.

The ONLINE EDITION of the Handbook, updated every three months: \$90 plus GST. Total \$99 annual subscription.

Purchase the Independent Social Security Handbook hardcopy and get the ONLINE EDITION for HALF PRICE.

The ONLINE EDITION plus the 5th edition hardcopy: \$149 plus GST and postage and handling. Total \$169. ◆

new minister must confront debt mountain

The number one issue that the relatively new Minister for Family and Community Services, Senator Kay Patterson needs to confront is the increasing number and size of debts in the Social Security system. This was the clear message delivered by the National Welfare Rights Network (NWRN) in a recent meeting with the Minister in Melbourne.

The delegation, headed by NWRN President Michael Raper, along with Secretary Genevieve Boulton (Canberra), Treasurer Peter Horbury (Melbourne) and Committee Member Julia Priest (Illawarra), urged the Minister to go beyond just the current FTB debt issue and examine the whole debt disaster being presided over by Centrelink.

New NWRN research has revealed that between 1998 and 2003, there has been a staggering 75% increase in the number of debts being raised by Centrelink (up from 1.4m to nearly 2.5m) and an even more amazing 98% increase in the value of the debts being raised (up from \$869m to \$1,720m). In this same period, the size of the average debt has increased from \$618 to \$698 – up by only 13%.

This gives an indication of the magnitude of the problem confronting the Minister and explains why the NWRN pressed the Minister to address the structural causes of this mountain of debt, including getting Centrelink to shift its whole mind-set and activity from debt recovery to debt prevention.

FTB debt – political priority

It was clear however from the meeting that the Minister's first priority is the issue of FTB debt and she floated an idea she has since run up the media flag pole. She indicated that she was keen to explore creative solutions such as a Christmas club type of account in which families could squirrel away a little of their FTB entitlement each week to hedge against any FTB overpayment should they get their annual income estimate wrong. The meeting also explored other solutions to the main structural

problems which the NWRN believes are the major causes of FTB debt (see separate article).

NWRN welcomes Patterson

The National Welfare Rights Network delegation also welcomed the Minister to this very important portfolio noting that it accounted for about 40% of all Commonwealth Government budget outlays each year and affected the lives of 6.3 million people who received

payments through Centrelink.

The NWRN looks forward to establishing a healthy working relationship with Senator Patterson, who is also the Minister Assisting the Prime Minister for the Status of Women. We hope that she actively represents, and advocates for the needs of disadvantaged people in the income support system – particularly in Cabinet where such a voice is needed the most but is often quite alone. ♦

suicide risk for jobless

A recent report by the Smith Family has found that young unemployed males were nearly nine times more likely to commit suicide than their working peers. This finding should bring about an immediate policy response from the Federal Government in relation to Social Security.

It is well known that there are high unemployment rates among young people. Without a job, people often lose their self-esteem and their confidence and their future looks much bleaker than for those who have a job. Despondency and depression often set in. For people without a job, a Social Security safety net is required to ensure they don't slip further down the ladder. However, too often, in the case of young people, that safety net is pulled out from under their feet, leaving them with no adequate means of support.

For instance, in 2001-2002, 50% of breaches were imposed on people below the age of 25. The fortnightly rate of Youth Allowance (YA), already below the rate of other Social Security payments and substantially below the Poverty Line, is cut further when a breach is imposed.

A third breach in a two-year period results in an eight-week non-payment period. That's eight weeks

without any income. Unless the person has substantial savings (and what 20-year-old does?) or has the support of their family, they'll most likely find themselves on the street, struggling for survival. A sure way to slip further down the ladder. Placing people in such a predicament may well be the last straw.

Many community organisations have strongly lobbied for an easing of the severity of the breaches regime to ensure that at all times, people have access to income support which allows them to at least buy the basic necessities of life and to live with a bit of dignity. This is one of the key issues to be examined by the Breaches and Penalties Taskforce established by the Government as a requirement of the agreement with the Democrats which allowed the "welfare reform" legislation through the Senate. ♦

little help for the prosecuted

Most people who are under consideration for criminal prosecution for Social Security offences are unable to obtain adequate legal advice and assistance. Despite this being a very complex area of law, there is very limited legal assistance available. As a result, the Welfare Rights Centre is concerned that some people who are charged with a Social Security criminal offence are inappropriately pleading guilty to the charges as they are unable to secure adequate legal advice and assistance.

Late last year, the Federal Government's Senate Legal and Constitutional References Committee held an "Inquiry into Current Legal Aid and Justice Arrangements". The Inquiry examined the capacity of current Legal Aid and access to justice arrangements, including access in rural, remote and regional areas and the impact on Community Legal Centre and pro bono services, courts and tribunals and levels of self-representation.

The Welfare Rights Centre felt this was an ideal opportunity to raise our concerns in relation to access

to legal advice and representation for people being prosecuted for a Social Security offence. The Centre wrote a submission, and gave evidence to the Senate Committee, focusing on this issue. Some of the deficiencies highlighted in the submission included:

- ◆ lack of private practice criminal lawyers who are prepared (or equipped) to handle Social Security cases. Many solicitors incorrectly believe that if the person was overpaid Social Security they are guilty of an offence;
- ◆ lack of resources within the

NSW Legal Aid Commission for handling Social Security cases outside the Sydney metropolitan area; and

- ◆ lack of access to Legal Aid because the NSW Legal Aid Commission's means test prevents a person with a home worth more than \$195,200 from obtaining assistance in criminal prosecutions.

The Centre looks forward to receiving the Committee's report, and any recommendations for improved access to legal assistance that may result. ◆

legal advice at the aat

The Administrative Appeals Tribunal and Legal Aid Commission of NSW recently commenced a joint pilot advice scheme at the Tribunal's Sydney registry. A person who has a Social Security case at the Tribunal can obtain free legal advice, and in some cases may qualify for representation by a legal aid lawyer. This will mainly depend on whether the case has reasonable prospects of success and if the person's means are within the Legal Aid means test. Even if the Legal Aid Commission cannot provide representation, the solicitor will be able to give information about what evidence the person might need to improve their case.

People can call the Tribunal (ph: 9391 2400) and ask to make an appointment for the Legal Aid advice scheme. Advice sessions are held every Tuesday morning, but attendance is by appointment only. An interpreter will be provided free if required.

Appointments can be made for telephone advice if a person lives in a remote area or there are other reasons why a person cannot get to the Tribunal. The pilot is running for six months, finishing at the end of June 2004.

People can also contact their local Legal Aid office directly for appointments for advice about Social Security cases. The Head Office number to call for an appointment is 02 9219 5790.

The Welfare Rights Centre (Sydney) also provides representation on some Social Security cases at the Tribunal. The Centre can be

contacted on 02 9211 5300 or 1800 226 028 for people calling from outside the Sydney metropolitan area. ◆

deeming rates to increase

Social Security deeming rates will increase from 20 March 2004. Deeming rates will increase from 2.5% to 3% for the first \$35,000 for a single person's financial investments and \$59,000 for a couple.

The rates will increase from 4% to 5% for investments above these levels.

An increase in deeming rates will mean that many Social Security recipients will receive a lower rate of Social Security as, from 20 March 2004, the income they receive from their investments will be considered to be higher under the new deeming rates. ◆

strengthening the safety net

The National Welfare Rights Network (NWRN) has called for a significant overhaul of the Social Security payment and administration system to improve the living conditions of people relying on Social Security.

The NWRN, in its 2004-05 Federal Budget Submission, has recommended that a Job Network Ombudsman be introduced to deal with complaints about current Job Network providers, as well as an increase in the rate of Newstart Allowance (NSA) so that eventually it would be paid at the same rate as pensions.

Major recommendations in the NWRN submission include:

- ◆ The establishment of a common claim form so that people don't apply for the "wrong" payment;
- ◆ Amendments to Social Security debt waiver legislation to allow for the waiver of the amount of any debt equivalent to any notional or other entitlement a person may have had to another payment during the time an overpayment occurred;
- ◆ The establishment of 250 additional Personal Advisers to assist young people with the transition from school to work, training or study, as well as providing more help to long term unemployed young people;
- ◆ An increase in the rate of Newstart Allowance (NSA) - up to the rate of the pension. As a start the rate of NSA should be increased by \$5 per week from January 2005;
- ◆ An immediate increase of \$10 in the rate of Youth Allowance, ABSTUDY and Austudy Payment. In addition these payments should be indexed twice a year, in line with all other income support payments;
- ◆ Recovery of Youth Allowance (YA) debts at the rate of 10% of payment, not the standard 14%, to reflect the lower rates of
 - Youth Allowance payments;
- ◆ A reduction in the "age of independence" for Youth Allowance, from 25 to 18 for all young people. As a first step, the age of independence should be reduced from 25 to 21;
- ◆ The establishment of new age-based benchmarks for family assistance payments that are based on the actual costs of raising a child in a low-income family;
- ◆ The abolition of the dollar for dollar Special Benefit income test and the introduction of the allowance income test for Special Benefit recipients;
- ◆ An overhaul the New Zealand Social Security Agreement and access to Special Benefit for New Zealand citizens living in Australia on a Special Category Visa, whatever the date they took up residence here;
- ◆ An overhaul of the breaches regime so that:
 - breach penalties don't escalate for a second or third breach,
 - the length of breaches is no more than eight weeks in duration, and
 - upon compliance, Newstart and Youth Allowance recipients receive full arrears of payment;
- ◆ A review of the routine rejection of medical certificates by Centrelink staff in relation to people on Newstart and Youth Allowance who are temporarily incapacitated for work;
- ◆ Extensive research being undertaken into the levels of
 - Rent Assistance required to better meet the affordability problems faced by renters in capital cities such as Melbourne and Sydney and in certain regional centres where high rents prevail;
- ◆ A \$5 a week increase in Rent Assistance, a rescission of the lower rate of Rent Assistance for people who share, and an extension of Rent Assistance to Austudy Payment;
- ◆ A review of Carer Payment and Carer Allowance qualification criteria, including the Disability Assessment Tools;
- ◆ An increase in the rate of Crisis Payment so that it is equal to two weeks payment; and
- ◆ An extension in the eligibility for Crisis Payment to refugees (both temporary and permanent protection visa holders) released from detention centres.

While these recommendations require the Federal Government to loosen its purse strings, its commitment to the plight of the disadvantaged will be measured by its willingness to implement many of the recommendations. If the Government considers that the 2004-05 Federal Budget won't stretch far enough to strengthen the safety net, maybe it should consider redirecting the savings made on the proposed changes to the politician's superannuation scheme into the Social Security budget. ◆

social security changes

what's happening when in 2004

overseas payment changes

changes to working life residence

- 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

changes to the portability rules

- Payments which were previously payable for up to 26 weeks of a temporary or indefinite absence from Australia, will only be payable for 13 weeks, with the exception of Age Pension, Wife Pension and Widow B Pension. Disability Support Pension can also be paid indefinitely where the person is terminally ill.
- Where a person is overseas on 1 July 2004, their portability up to that date continues, unless

they return to Australia and resume residence in Australia.

This change comes into effect on 1 July 2004

disability support pension

- Disability Support Pension eligibility criteria may be tightened. People who are assessed as being able to work at least 15 hours a week at award wages 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 work capacity of Disability Support Pension claimants. (Health Services Australia currently makes this assessment.)

This change requires the passage of legislation which has been blocked in the Senate by all non-Government parties

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

student financial supplement scheme

- The Student Financial Supplement Scheme effectively ended on 1 January 2004. This change does not affect repayment arrangements for Supplement Loans that have already been received. Voluntary repayments will continue to be accepted and to attract a bonus.

This change came into effect on 1 January 2004

family tax benefit top-ups

- The time allowed for making claims for the payment of Family Tax Benefit and Child Care Benefit for past periods is to be extended to allow at least another year. The time frame for making claims for payment of top-ups of FTB as a result of FTB reconciliation is also to be extended.

This change is subject to the passage of legislation ♦

welfare rights in black and white

The Welfare Rights Centre recently marked the 20th year of its establishment with the publication of the book "Welfare Rights in Black and White". The book covers the key issues in Social Security advocacy since the inception of the Centre and each of the 77 articles is accompanied by a cartoon which captures the issue at hand. Copies of the book are now available for sale. Please see the order form at the back of "rights review" if you wish to purchase a copy. ♦

dealing with the new job network

what is the “Job Network”?

The Department of Workplace Relations contracts a variety of organisations to assist people to find employment. These organisations are a combination of private, government and community based organisations and are paid to a large extent on employment outcomes. That is, they receive a small up-front payment when a person is referred to them and the bulk of their money when and if they assist a person to obtain employment. They also get further payment when a person has been in employment for some months.

getting Job Network provider services

People in receipt of Newstart and Youth Allowance (unless they have an exemption or are full-time students) are required to register with a Job Network provider for employment assistance. Job seekers who are not receiving a Social Security payment are able to register for job matching services with a Job Network provider.

referrals

Job Network providers provide a range of employment assistance services dependent on a person's assessed level of expected difficulty in finding employment. The assessment considers a person's personal circumstances, job skills and/or barriers to employment. This assessment is undertaken by Centrelink when a person registers with Centrelink as a job seeker. The assessment is made using the Job Seeker Classification Instrument (JSCI). Based on the outcome of the JSCI, a person will then be referred to an appropriate level of assistance.

Centrelink should provide people with information about Job Network

providers in their area allowing the person to choose which provider they would like to attend. Where a person's preferred Job Network agency has no vacancies, they will be asked to choose another provider. If a person does not choose a provider they will be randomly allocated to a provider in the local area.

A person's initial interview with the Job Network provider will be arranged by Centrelink, generally at the first interview with Centrelink. If a person does not attend this interview their payment can be suspended. If they do not have a reasonable excuse for not attending a rescheduled interview, a breach penalty can be imposed. Before imposing a breach, however, both the Job Network provider and Centrelink should make at least two attempts to contact the person to ascertain if they knew about the interview and, if so, why they did not attend.

The Job Network provider will then offer “job search support” which includes the creation of a vocational profile and matching to potentially suitable jobs. After a person had been unemployed for three months they will be eligible for “intensive support”, which may include job search training, development of a job search plan and referral to other programs.

changing Job Network providers

Once a person has registered with an Job Network provider they will be attached to that provider for the duration of their unemployment. If a person obtains employment and subsequently becomes unemployed again they will be required to go back to the same provider.

There are very limited circumstances under which a

person can change to a different provider. These are:

- ◆ where there has been an irretrievable breakdown in the relationship with a Job Network provider;
- ◆ where the job seeker changes address and can no longer reasonably access the original provider (or an alternative site of the same provider); or
- ◆ where agreement is reached between the previous provider and a subsequent provider.

dealing with problems

All Job Network providers must provide service that is consistent with the general “Service Guarantee”. Where a person believes they are not receiving the service specified in the Service Guarantee they have the right to complain. All Job Network providers are required to have an internal complaints mechanism. Where a problem cannot be resolved with the provider the Job Network Customer Service line can be contacted on 1800 805 260 for further assistance.

Breaches cannot be imposed by Job Network providers. But Job Network providers can recommend a breach to Centrelink in a “participation report” where they believe a person has not maintained sufficient contact or job search effort. Centrelink must then attempt to contact the person on at least two occasions to get the jobseeker's view of events. A breach should only be imposed where a person has failed to attend their Job Network provider or met another requirement “without reasonable excuse or explanation”. Any breach imposed where a person does have a reasonable excuse should be appealed to an Authorised Review Officer. ◆

mistaken identity

Javid's Newstart Allowance (NSA) was recently suspended as Centrelink stated that at "sometime" in 2003 he had travelled overseas.

Centrelink decided to suspend Javid's NSA in January 2004 until he could prove that he had not travelled overseas in 2003. Javid adamantly maintained that he had not left Australia but as he had lost his passport he could not present this evidence to Centrelink. Centrelink's information was that Javid (or as it later turned out, someone using his passport) had left Australia in June 2003. However, Centrelink initially could not advise when the person returned to Australia, or if in fact they had.

In order to prove his identity and to confirm that he was in Australia, Javid attended a Centrelink office on a number of occasions and provided photo ID such as his driver's licence and student card, as well as his birth certificate. Centrelink did not dispute Javid's identity. However, until he proved that he did not travel overseas in 2003, Centrelink refused to restore his NSA even though it was only supposed to be suspended, not cancelled..

Centrelink eventually gave ground accepting that, since the time of his NSA suspension in January 2004, Javid had been in Australia and qualified for NSA. Payment was finally restored three weeks after it was suspended. Subsequent to Centrelink restoring his payment, Welfare Rights has been advised that the person who is travelling overseas and most probably using Javid's passport has not returned to Australia. The relevant Government departments can now investigate the issue of someone using Javid's passport, but the real concern in this matter is that Centrelink has wrongly "suspended" a person's payment when they stood, qualified for payment, in front of Centrelink staff. How much longer would this have gone on without Welfare Rights Centre intervention?

aat "special circumstances" victory

Sinead felt like her life had almost ended when she could not return to work following a car accident. The accident left her with barely any use of one arm, and little movement in the other. Her former employer would not take her back on board, and most doctors were of the opinion that she could not be retrained for other types of work, given her injuries and illiteracy. She was understandably depressed to find herself in the position of having to rely on compensation payments and Social Security for the rest of her life.

Eventually, Sinead won a lump sum of compensation for the injuries she had suffered in the accident. Based on the amount of compensation she received, Centrelink decided that she could not receive any Social Security payments until the end of 2004. However, she used most of the money to pay off her debts and her money ran out early in 2003. After a long period of waiting for the lump sum and borrowing to get by, she found herself owing debts to many of her friends, family and a lending agency. These debts were paid out from her compensation payment, so that they did not increase even further with interest.

As Sinead had no other means of support, she turned to Centrelink. Her adult children all had financial burdens of their own and she had no assets. She was behind in her

Department of Housing rent, and was being threatened with eviction. Centrelink rejected her appeals to have the preclusion period shortened, saying that her financial predicament was "of her own doing". With the help of the Welfare Rights Centre, Sinead appealed to the Administrative Appeals Tribunal, arguing that her misfortune had more to do with unforeseeable events than any folly on her own part. The Administrative Appeals Tribunal decided that in their totality, the circumstances of Sinead's case were sufficiently special to warrant reducing the preclusion period. So, although her life is not as satisfying as it was when she was working, Sinead is at least now receiving Social Security and has avoided eviction. ♦

error must be knowing or reckless

Susie, who had been looking for work for six months since finishing studies, had her Youth Allowance (YA) reduced by 18% for a period of 26 weeks as she had been breached for "allegedly" not declaring her part-time income correctly.

She had found some casual work and was very keen to do her best after looking for so long. She didn't want to harass her employer about how much she would be paid for the previous few days work so when it came time to put in her Centrelink form, she wrote that she had done some work but didn't know how much she was to be paid.

Some weeks later Susie received a payslip and took it to Centrelink. Centrelink raised a debt for the fortnight in which she had actually worked and breached her for not telling them the correct amount of income from the employment. However, Social Security legislation

requires that, to impose a breach for non-declaration of income, a person must have acted "knowingly" or "recklessly" in not declaring the income. As this was clearly not the case, an appeal was lodged and the breach was removed.

However, in Welfare Rights Centre experience, many people in cases like this don't lodge an appeal because they are not aware that they can. In addition to having their payment cut by 18% for 26 weeks when they should not have, they also attract a much harsher penalty if they subsequently get breached again within a two-year period. ♦

dangerous relocations and Centrelink interventions

Two recent Welfare Rights Centre cases point to some oddities in the way that a paternalist approach to relationships is directing women's lives. Most affected are women who are financially vulnerable and those at risk of abuse.

In the first case, Vida was found by the AAT to have fairly recently stepped over the line into a marriage-like relationship. Due to her personal history, Vida has a fear of being alone at night. Over several years, she has shared residences with a male friend. She receives a Disability Support Pension and requires help with mobility, cooking and cleaning.

Faced with a finding by the AAT that they were in a marriage-like relationship, Vida's male friend was unhappy that he would be supporting her indefinitely. So Vida decided to live on her own. However, she did want to stay in touch with her friend.

One day, while having a cup of tea at her former home, Vida answered the phone and, to her surprise, was recognized and chastised by a Centrelink officer for simply being there. She was told by Centrelink that she had not moved far enough away and another town was named as more appropriate. She was also informed that she must "do something" about those few remaining items of property being looked after by the man, including her cat and that she was not to make a habit of visiting him! The Centrelink officer also said that Vida should think about moving back in with the man and going onto the married rate of payment and that it would consider reviewing the decision to place her on single rate of payment. After intervention by Welfare Rights, this has so far not proceeded.

two MLR's at once

Ina's treatment by Centrelink is equally odd. With police help, she took out a court order in an attempt to prevent further domestic violence and she moved to the home of a



male friend, Tom. She and Tom had had a child together.

Centrelink soon decided that there was a marriage-like relationship, cancelled her Sole Parent Pension and raised an overpayment. Even after that, Ina preferred to stay in the safety of the house and rely on her mother and friends for support rather than risk an attack.

Ina's alleged partner, Tom, is actually in a relationship with another woman who lives in the same house. When Tom's partner lost her job, she claimed and received married rate Newstart Allowance as Tom's partner. This means Centrelink decided that Tom was involved in two marriage-like relationships, and at the same time, Ina remained unpaid. At this point, Ina contacted the Welfare Rights Centre.

As we go to press, Centrelink has agreed, for now, to place Ina on single rate of payment, but on condition that Ina and her two children move away from Tom into other accommodation and that this happens within a timeframe set by

Centrelink. It says this is necessary even while acknowledging Tom's marriage-like relationship with another person!

Marry and save money

Married rates of payment exist because the Government considers that two people can live cheaper than one. It seems that some Centrelink officers feel a need to become self-appointed moral and social arbiters. Such decisions may be appropriate with children but to dictate to adults how and where they should live is completely unacceptable if for no other reason than it is demeaning and focuses on appearance rather than substance. It is also outside the ambit of the Social Security Act and certainly outside Centrelink's brief.

For Vida and Ina, this inappropriate intervention of Centrelink officers has caused a great deal of confusion and stress as well as having created real risk to the mental health of both women and the physical safety of at least one. ♦

proposed maintenance increases opposed

The National Welfare Rights Network (NWRN) has recently determined to oppose the proposed doubling of the minimum child support obligations of people on Social Security on the grounds that Social Security payments are already inadequate and need to be increased. Whilst applauding the need for increased child support for many children in low income families, the NWRN believes this must come from increased family payment support, not from the proposed increase.

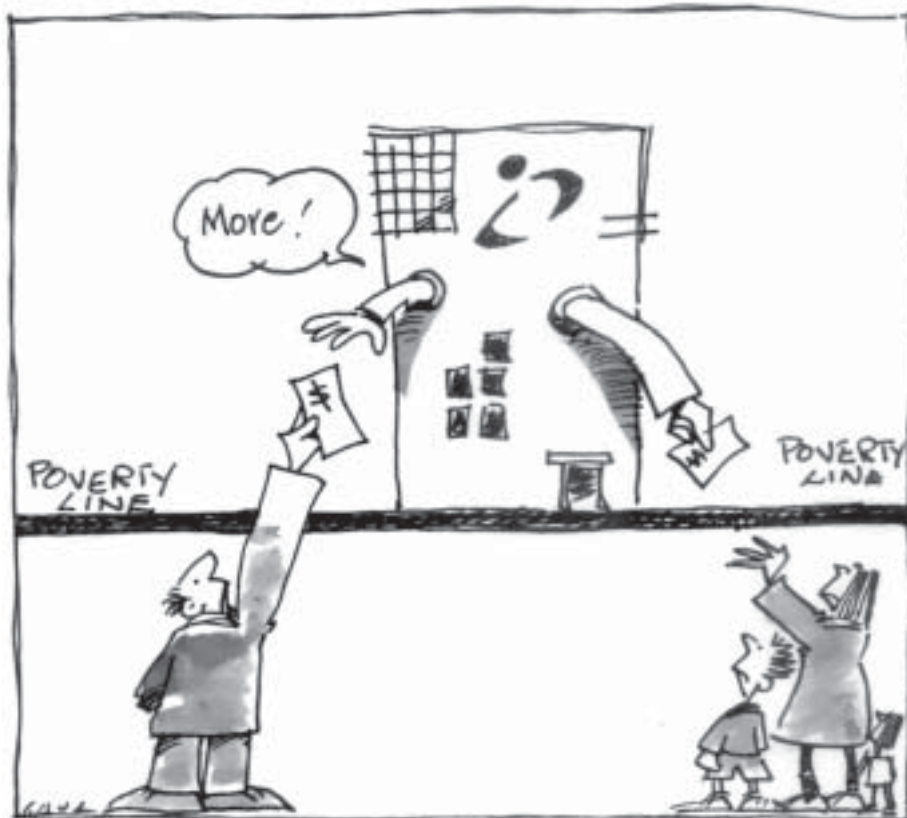
A recent review of child custody arrangements between separated parents has gained significant media attention. Working out how parents share their responsibilities for their children after separation is a difficult emotional and financial exercise. Even in cases where both parents are willing to do whatever it takes to promote their child's best interests, complications can arise where a parent's sole means of financial support is Social Security.

committee recommends increase

The House of Representative's Standing Committee on Family and Community Affairs recently published its report into child custody arrangements in December 2003. The report, called "Every Picture Tells a Story", comprehensively worked through most issues relating to child custody arrangements, including the relationship between child support payments and Social Security.

At present, a paying parent's minimum child support payment is \$5 per fortnight. This minimum rate applies to most paying parents who rely exclusively on Social Security for their income. The minimum payment is automatically deducted from their income support payment and paid to the residential parent. This minimum amount applies regardless of the number of children involved.

The Committee recommended that this minimum amount be doubled to \$10 per week. This is based on the Committee's



strongly held belief that a person's responsibility to support their children takes priority over other financial obligations. Of course, it is difficult to argue against the proposition that a child's needs should be given paramount consideration, however, the Committee failed to take into account the below Poverty Line level of most Social Security payments. Just because the Committee felt that children should get more support does not mean that this should come out of the already inadequate Social Security payment of the non-residential parent. To insist on this would be to place such people in further poverty and further reduce their capacity to play a role in the lives of their children. It would also

reduce their capacity to fulfill their own Social Security obligations and place them at greater risk of being breached.

In such a situation, a paying parent who is breached by Centrelink would have to continue to pay their minimum child support payment, while also having 18% or 24% of their Social Security payment cut for six months. An increase of \$5 per week in their child support would have a particularly devastating impact.

Although the Committee's prioritisation of children's needs is to be applauded, and is supported by the NWRN, the question of how this is to be funded clearly needs further consideration. ♦

portability slashed to 13 weeks

From 1 July 2004, the period a Social Security payment can be paid while overseas for most people below Age Pension age is to be reduced from 26 weeks to 13 weeks.

People receiving Age Pension, Wife Pension or Widow B Pension are not affected by the change, and can still receive their pension payments while overseas for an unlimited period of time.

The unlimited portability period previously available to people receiving Disability Support Pensions who are severely disabled is also reduced to 13 weeks. An exception is to be made where the person is terminally ill, the person's absence from Australia is or will be permanent, and the purpose of the absence is to be with or near a family member, or to return to the person's country of origin. In these cases, the period of portability is unlimited while the person satisfies these criteria.

People who are overseas on 1 July 2004 will be unaffected by these changes and current portability rules will apply to them until they return to Australia.



Any person receiving a Social Security payment must notify Centrelink before leaving Australia, even if they are only leaving for a few days. It is important for people to find out how their payment is likely to be affected while they are overseas, especially people who are planning to go overseas from 1 July 2004.

If possible, Centrelink should be notified at least six weeks before leaving Australia, especially if a person is planning to be absent for more than 13 weeks. This allows time for Centrelink to go through the necessary processes to ensure that payment continues without any problems arising. ♦

student loan scheme scrapped

The Federal Government recently announced the scrapping of the Student Financial Supplement Loan Scheme as of 1 January 2004.

The loan scheme involved people "trading in" some of their Youth Allowance or ABSTUDY entitlement in order to access the loan. For every dollar traded in, a student could gain \$2, but as a loan which had to be repaid. This resulted in people leaving tertiary studies with not only a HECS debt but a hefty loan to repay also. It appears that the Government's main motivation to end the scheme was that as many as 50% of these loans were

never repaid as many did not reach the income level necessary before repayments became necessary, thus leaving past students in debt and the Government out of pocket.

While the scrapping of an overly complicated loan scheme resulting in higher levels of debt for students is welcome, the issue of inadequacy of Youth Allowance or lack of other financial support for students remains. The limitations of Youth Allowance are discussed

in a report recently released by Monash University. This report found that only 20% of full-time students commencing university studies in 2004 would be eligible for Youth Allowance. The report found that in 1998, 33% of full-time students under 19 received Youth Allowance. In 2001 this had dropped to 21% with a quarter of these on less than the maximum rate due to the Parental Income Test. ♦

bigger changes needed for ftb debt trap

With over one in three families receiving a Family Tax Benefit (FTB) debt during the last financial year, the Government is proposing some modest steps to address at least part of the problem. *The Family Assistance Legislation Amendment (Extension of Time Limits) Bill 2003*, which is currently before Parliament, aims to make the Family Tax Benefit (FTB) system both fairer and more responsive to the needs of Australian families and has the potential to reduce some of the pain families are feeling.

The general thrust of this legislation is to extend the time limits for making past period (lump sum) claims for Family Tax Benefit and Child Care Benefit, and to extend the time frame for payment of top-ups of FTB as a result of FTB reconciliation.

A number of amendments to this legislation have been moved in the Senate, but have not been agreed to as "rights review" goes to press.

severe financial hardship

One proposal from the Democrats would see FTB debts waived automatically where they arise solely as a result of Centrelink error and are received in good faith. The Welfare Rights movement has long been opposed to the current requirement that FTB debtors must be experiencing "severe financial hardship" for any FTB debt to be waived even where Centrelink error was the sole cause of the debt. The test of "severe financial hardship" only applies in the case of FTB debts, not other Social Security debts, and in our view this rule unfairly penalises families who are made to suffer financially because Centrelink has made an error.

FTB debts are now a major driver of increased appeals to the Social Security Appeals Tribunal (SSAT).

FTB appeals now account for 21% of all appeals to the SSAT. Our experience is that many parents feel terribly aggrieved over debts which come about through no fault of their own, thus resulting in large numbers of appeals to the Tribunal.

cohesive strategy

A further area where change has been recommended is in relation to

FTB errors abound

Since 2000:

More than 50% of Australian families who have received FTB have been paid the wrong amount;

- ◆ **On average, only 44% of payments have been correct;**
- ◆ **Over 3 million families have received incorrect family payments; and**
- ◆ **Almost \$2.5 billion has been paid incorrectly; \$1.5 billion in overpayments and \$1 billion in underpayments.**

the recovery of debts from tax returns. The Centrelink practice of garnisheeing tax returns to pay for FTB debts has been a long standing community concern. It is grossly unfair to recover debts in this fashion, where a person waiting for their tax return only finds out about their debt when they receive their diminished tax assessment notice. We endorse measures that would end the practice of automatically recovering FTB debts from tax refunds.

There is also the need for fair debt repayment options for those families who are unfortunate enough to have an FTB debt raised against them.

Given the significant concerns in the community over FTB debts, with close to 35% of families having accrued a debt in the last financial year, more will need to be done to reduce the likelihood of debts occurring in the first instance. The problem is that at the moment, debts are inevitable no matter what many families do. If income fluctuates during the year, then a debt is virtually impossible to avoid, even where a family advises Centrelink instantly every time there is a change. The Government's ideological insistence that family assistance

be in the form of a tax benefit, necessitating the use of the current tax year for calculations, demands that it takes a pragmatic approach to solutions. For instance, it must be prepared to forgive some debt each year either by allowing a 10% margin for error each year or by allowing quarterly updates of income estimates with no retrospective debt adjustment.

benefits undermined by debt

The FTB system provides significant and essential benefits for Australian families in helping them meet the costs of raising children. Unfortunately, many of the intended beneficiaries of the system currently feel jaded and are in need of relief.

According to the Minister for Family and Community Services, Senator Patterson, 14% fewer families have incurred an overpayment, and the average debt has fallen from \$803 to \$770, compared with the same period last year. Certainly, fewer overpayments and smaller debts are good news for struggling families, but a cohesive strategy and a comprehensive set of policies are needed to reduce the Family Tax Benefit debt trap. ◆

NWRN undertakes debt project

The National Welfare Rights Network (NWRN) has recently commenced a research project on Social Security debt issues. The purpose of this project is to gather and analyse debt information to suggest ways in which debt numbers can be reduced and to make recommendations about how the current debt management system can be improved.

The project will cover:

- ◆ the number of debts Centrelink raises for each payment type;
- ◆ the main reasons for the debts;
- ◆ reasons for waiver of debts;
- ◆ the recovery methods of Centrelink; and
- ◆ the number of referrals and convictions by the Director of Public Prosecutions.

The NWRN has lodged a Freedom of Information request with the Department of Family and Community Services to obtain information about the debts. The project came about as a result of the substantial increase in debts raised by Centrelink in the last few years.

Between 1998 and 2003, there has been a 75% increase in the number of debts being raised by Centrelink (up from 1.4m to nearly 2.5m) and an even more amazing 98% increase in the value of the debts being raised (up from \$869m to \$1,720m). In this same period, the size of the average debt has increased from \$618 to \$698 – up by only 13%.

In the experience of many Welfare Rights workers few debts are caused by fraud, with the clear majority of debts arising due to Centrelink error or clients misunderstanding their obligations.

If you have any issues you would like to raise in relation to this project please contact Gerard Thomas, Policy Officer at the Sydney Welfare Rights Centre (WRC) on telephone 9211 5300 or 1800 226 028 for people calling from outside the Sydney metropolitan area. ◆



debt reduced from \$10k to \$1k

Shaun was informed by Centrelink that he had a \$10,000 Parenting Payment debt for incorrect reporting of his casual earnings! He was adamant that in fact he regularly advised Centrelink of his earnings and could not understand how such a large debt could have arisen.

In addition to raising the debt, the letter to Shaun stated that Centrelink was considering referring the matter to the Director of Public Prosecutions to consider criminal charges.

Shaun was so distressed by the raising of the debt and the possibility of prosecution that he suffered anxiety attacks and needed to undertake counselling. As a result, he was prescribed antidepressants and had to stop his part-time work for two months.

On Shaun's behalf, the Welfare Rights Centre obtained his Centrelink file and discovered in fact that on many occasions, Shaun had provided information

about his income and that Centrelink had failed to record it properly.

The Centre made representations to Centrelink requesting that the matter not be referred to the DPP for prosecution as there was no indication of any intent to commit fraud by Shaun. Centrelink agreed and the matter was not referred.

We then assisted Shaun to appeal the debt itself to an Authorised Review Officer (ARO). The ARO agreed that due to many Centrelink errors and the impact of the debt on Shaun's health, the debt was reduced to just under \$1,000. A big difference to \$10,000 and the possibility of criminal prosecution. ◆

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