

rights review

NEWS & COMMENT ON SOCIAL SECURITY ISSUES

mental health and social security

More than one in three Social Security recipients has a diagnosable mental illness within any 12 month period, according to new research undertaken for the Department of Family and Community Services (FaCS).

The research was the first attempt to quantify the extent of common mental health problems among Australian Social Security recipients. Common mental health disorders include anxiety, depression and substance abuse, which affect around 18 per cent of the population.

The research found that all mental health disorders were much more prevalent among Social Security recipients than non-recipients.

Key findings include:

- ♦ almost one in three Social Security recipients has a diagnosable mental health disorder in any 12 month period. This is 66 per cent more than the incidence of mental disorders among Australian adults not receiving Social Security (18.6 per cent);
- ♦ substance abuse disorders are more common among people receiving unemployment payments, and students. These groups also experience higher levels of anxiety and depression; and
- ♦ the incidence of clinical anxiety and depressive disorders among sole mothers is between three and four times the national average, with 45 per cent of sole mothers experiencing a diagnosable mental health disorder.

Poor mental health is a key factor likely to have an impact on many income support recipients, and may reduce their ability to achieve "social and economic goals", according to the research.

welfare reform

Organisations and their staff that provide services, such as Centrelink, or that decide policy, such as FaCS, need to recognise and understand the higher incidence of mental health problems among their client population. The very



(continued page 2)

inside

centrelink's \$24,000 error	p. 3
debt issues	p. 6
case studies	p.10
youth allowance	p.14

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

(continued from p. 1)

mental health and social security

high level of distress amongst sole parents needs to be matched by specific policies and services directed to this group.

These high levels of mental illness mean that many people in receipt of Social Security are not in a position to benefit from the changes championed in the welfare reform process. A poor understanding of mental health issues, and the misapprehensions of Centrelink staff, may lead to serious injustices for clients — from a client with a mental illness being seen as a serial complainant rather than someone with a serious health problem, to being labelled as a trouble-maker. Lack of knowledge and understanding may also lead to extremely vulnerable people being breached and left with limited or no means of support.

policy issues

There are also some clear implications for policy approaches, which must be carefully considered by FaCS. For instance, how are enough

resources and programs to be found for people requiring the intensive assistance provided through the Personal Support Program?

The high incidence of mental illness also presents challenges for the Job Network, as more and more Social Security recipients are brought within the "active participation model". There are some niche players within the Job Network who have developed considerable skill and expertise in assisting clients with mental health problems, but exactly how the Job Network as a whole will effectively meet the needs of a group with a high level of mental disorder, remains a question to be answered.

Source: Department of Family and Community Services, Policy Research Paper Number 21, *Estimating the prevalence of mental disorders among income support recipients* by Peter Butterworth, Centre for Mental Health Research, Australian National University, 2003.▲

housing boom could slash 6000 pensions

Social Security payments are assets tested, which means that a person's assets (excluding their family home if they are a homeowner and residing in it) are taken into account when determining their Social Security payment.

The assets test for allowances is much more severe than the assets test for pensions. Where a person in receipt of an allowance has assets above a certain level, their allowance is no longer payable. In the case of pensions, once this level is reached, a person's pension is reduced by \$3 per fortnight for every \$1,000 of assets above the allowance limits.

Assets include most possessions

owned by a person, from their CD and stamp collection to investment properties. People are required under Social Security law to advise Centrelink of the value of their assets.

At present Centrelink is conducting a means test crackdown on pensioners who have investment properties. It is expected that about 6,000

(continued page 4)

\$24,000 debt falsely raised

In one of the most alarming cases to come to the attention of the Welfare Rights Centre (Sydney) in the last few years, Centrelink has admitted that there was no basis for it to raise a \$24,000 Austudy Payment/Youth Allowance (YA) debt.

Centrelink's debt notices advised Linda that she was overpaid Austudy Payment and YA to the amount of \$24,000 on the basis that as she had not:

"supplied Centrelink with the information requested regarding disposition of your late father's estate, Centrelink was unable to ascertain your entitlement to receive payment."

Linda was 21 when she received the debt notices and the debts were for the entire amount of Austudy Payment/YA that she had received from the age of 15 to 21.

review sought

Linda was 15 when her father passed away. Her mother had passed away two years earlier. She has two siblings. The estate of their father was valued at just above \$600,000 with the main asset of the estate being the family home in which Linda lived for the period of the debt.

When Linda first contacted the Centre she had been trying to have Centrelink review the decision to raise the debt for a number of months. We obtained her Centrelink file under Freedom of Information (FOI) to assess Centrelink's reasons for raising the debt. A cursory glance at her file showed that Centrelink's claim that Linda had not provided information about her late father's estate was manifestly false.

Her Centrelink file showed that prior to the debt notices being issued she had provided Centrelink with the following documents:

- ♦ a copy of her father's will;
- ♦ a letter from her solicitor, which noted that Linda was living in the family home, the contact details for the executor of the will and details as to how the funds were to be distributed; and



- ♦ a letter written by Linda providing Centrelink with details about the inheritance as requested.

The Centre could not understand the basis for the debt, as the family home, in which Linda resided for the period of the debt, was disregarded under the assets test. The remaining \$200,000 of the estate was to be equally divided among the three children, therefore Linda's assets could not have been above the allowable limits for her to receive Austudy Payment or YA. The Centre lodged an appeal on her behalf.

administrative delay

Despite Centrelink having the necessary information to determine whether a debt existed, another four months passed from the date that we lodged our written request for an Authorised Review Officer (ARO) review before Centrelink admitted its error and advised Linda that no debt existed. In that four month period, the case did not go to an ARO - it simply sat on the desk of the Original Decision Maker (ODM). Centrelink's claims that Linda had

failed to provide information as requested was false and in our view raises serious concerns about Centrelink's debt raising practices.

Of further concern is the fact that Centrelink took approximately four months to review the case after Linda had sought review of the original decision through the Welfare Rights Centre.

The Centre was so concerned about this case that it lodged a complaint with Centrelink's Customer Relations Unit and we wrote to the CEO of Centrelink. The main concerns we had were that Centrelink staff are often more concerned about raising a debt than examining the facts of a case and that the ODM took approximately four months to review the case.

Linda was lucky in that she took action to complain about Centrelink's decision. One wonders however how many debts have been raised by Centrelink which have no legal basis and which people are quietly paying back.▲

federal court decision benefits many

Social Security law provides that if a person wants to receive a Social Security payment, they must lodge a claim for payment with Centrelink. Generally they can only be paid from the date of the claim.

However, there is a provision in Social Security law - section 12 of the *Social Security Administration Act* - that allows Centrelink to transfer a person on a payment to another payment without the need for the person to have made a claim for the second payment. For example, if a person is receiving Newstart Allowance and while receiving that payment they become qualified for Parenting Payment (because they begin caring for a dependent child), Centrelink can transfer the person to Parenting Payment from the date they first qualified, even if they did not lodge a claim for Parenting Payment on that date.

In a recent Federal Court decision, the Court considered that section 12 allowed Centrelink to backdate a person's claim for another payment.

This provision may be of assistance in two ways. Firstly, it may allow a person to be paid arrears if they are transferred to a payment with a higher rate of payment, as indicated by the Federal Court. Secondly, it can be used to reduce the amount of debt that may accrue. For example, if a person is in receipt of Carer Payment and they lose qualification for that payment (because they no longer care for someone) and they continue to receive Carer Payment, then a debt will accrue from the date that they ceased to provide care. However, under section 12, the person could be transferred to Newstart Allowance (if they satisfied the qualifications for the payment) from the same date that they ceased caring for the caree. In this way, no debt would exist.

Case studies: use of section 12

Case study 1

Beth had a Youth Allowance (YA) debt of \$6,000 as she ceased full-time studies and failed to tell Centrelink. Beth ceased studies as she was suffering from depression for which she received medication. As Beth had a young son, if she had advised Centrelink she was no longer studying, she would have been transferred to Parenting Payment.

In this case, Beth became qualified for Parenting Payment during the period she was on YA and was eventually transferred to Parenting Payment, through use of section 12 of the Act.

Case study 2

Dean, who has an intellectual disability, was in receipt of Newstart Allowance (NSA) from 2000. Three years later he applied for, and was granted, Disability Support Pension (DSP). Dean contacted Centrelink to request consideration of whether he was qualified for DSP during the period he was on Newstart Allowance. An appeal was lodged to the Social Security Appeals Tribunal (SSAT) which found that he qualified for DSP from the date he first claimed NSA. Dean received an arrears payment equal to the difference between the rate of NSA and the higher rate of DSP that he was entitled to over the three-year period.

(continued from p. 2)

housing boom could slash 6000 pensions

pensioners will have their pensions cut as a result of the crackdown. The review is primarily a result of the increase in property prices throughout Australia. Centrelink intends to target the most expensive properties first. To ensure that people with investment properties don't incur debts, it is best if they notify Centrelink if they believe their property value has increased, as well as any changes to income

they may receive from their property. Of concern are cases where people have a second home in which a relative resides and where they are reluctant to charge rent or ask them to move. In such cases the person may wish to request Centrelink to disregard the value of the property under the assets test hardship provisions. ▲

centrelink: room for improvement

If you mention Social Security debt, odds on you will hear assumptions being made about people “fleecing the system” or being lazy in relation to their obligations. If you then start throwing around figures like the 600,000 Social Security recipients who received more than their correct entitlements last year, or the nearly one billion dollars of Social Security debt owing as at 30 June 2003, then the assumptions are likely to turn into hysteria.

The recent report by the Australian National Audit Office (ANAO) *Management of Customer Debt – Centrelink*, has put these figures into perspective and confirmed what the National Welfare Rights Network has been aware of all along - debts arising from fraud comprise only a minuscule fraction of the total number of debts raised. In fact, the overall incidence of customer debt in Centrelink is relatively low. Outstanding customer debt as of 30 June 2003 represented approximately one third of one per cent of relevant Centrelink payments made since Centrelink came into being in 1997. The report also recognises that this level of debt is partly attributable to Centrelink’s administrative errors.

recommendations

The ANAO made findings and recommendations in seven key areas relating to the management of Social Security debt, including debt recovery and debt prevention. Of particular concern to the National Welfare Rights Network was the ANAO’s finding that Centrelink did not in any way measure or monitor the experiences of the person paying back a Centrelink debt. That is, Centrelink was unable to demonstrate that its debt recovery procedures were not placing Social Security recipients in real financial hardship. It also found that, up until recently, Centrelink was accepting repayment of debts via credit cards. This is not the type of recovery procedure that would indicate a real concern for the financial well-being of Social Security recipients.



Also of concern were the ANAO’s findings in relation to Centrelink’s debt raising mechanisms. The ANAO found, after talking to Centrelink staff, that Centrelink Customer Service Officers are often reluctant to waive debts. This means that proper regard to a person’s circumstances and the possibility of waiver are not given at the time the debt is raised. Debts that should have been waived from the outset are being raised. The ANAO pointed to such things as the lack of training received by debt raising staff about debt waivers, and the belief that the downstream appeal processes would correct any incorrect decision not to waive. Given that Social Security recipients are often confused about their rights to review, and that the

appeals process can often be a long and drawn-out affair, this is clearly an inadequate attitude towards accountable decision-making.

The good news is that Centrelink has undertaken to implement most of the ANAO’s recommendations in relation to debt identification, raising and recovery, and is already undertaking some steps to retrain staff in these areas. Centrelink has also confirmed that it no longer accepts repayments of Social Security debts by credit card. The National Welfare Rights Network would like to see Centrelink’s next ANAO performance audit report finding that these recommendations have been implemented. ▲

debt changes required

Ongoing community dissatisfaction with the conduct of Centrelink Debt Recovery Officers and recognition by Centrelink itself that its treatment of clients with debts was far from perfect led recently to an announcement by the Minister for Children and Youth Services, Larry Anthony, that Centrelink would overhaul its debt recovery teams into "Centres of Excellence".

From November 2004, Centrelink will introduce three main changes in an attempt to address problems within Debt Recovery:

- ✦ amalgamation of the existing 13 Debt Recovery Units into five Units. Centrelink is proposing that this will provide greater control and consistency over debt recovery practices;
- ✦ a new Key Performance Indicator has been negotiated with the Department of Family and Community Services and the focus will now be on the percentage of debts under management rather than the dollar value of debts recovered; and
- ✦ new certified training packages for debt recovery staff.

These changes confirm the Australian National Audit Office's recent finding (see article page 5) that Social Security debts are partly due to Centrelink administrative errors.

In addition to the above initiatives, a number of other legislative and administrative amendments proposed would substantially reduce the number of Social Security debts which are incurred.

ftb debts

For instance, reform of the Family Tax Benefit (FTB) system is required to reduce the number of debts that people in receipt of FTB incur, through no fault of their own. Since 2000 there have been almost 2.2 million Family Tax Benefit debts raised (with the average being \$900). This means that one in three Australian families receiving FTB has had an FTB debt.

The current FTB rules mean that many people are required to estimate their taxable income for the upcoming financial year. Where a person receives an unexpected salary increase, or works overtime, or changes jobs, it is inevitable that in many cases their original estimate will be inaccurate. However, as the rate of FTB was paid on the basis of the original estimate, a debt ensues. More regular reviews of FTB with regard to reporting of income would lead to a reduction in the amount and number of FTB debts.

Another area that Centrelink must address is the quality of its notices (letters) to its clients. Simply issuing a person with a notice (often on an irregular basis) with the important information about income and reporting procedures on the back of the notice in fine print, is not necessarily the best way to ensure that people understand their obligations. Furthermore, Centrelink uses client reciprocal obligation notices almost as if they were a disclaimer of responsibility and ignores implementing other procedures to reduce debts.

The notices should be changed so that the income Centrelink has recorded for a person is placed centrally on the *front of the letter*, in plain English. The notices should clearly explain the possibility that the income could be recorded incorrectly, and that incorrect recording may cause a debt.

review forms

Another administrative area which needs some fine tuning is the use of review forms for pensions and

allowances. A lot of debts are discovered by Centrelink when people correctly complete an income review form, often after several years of little or no contact from Centrelink about their rate of payment. While there are legitimate concerns about the overuse of review forms, better targeting of these forms is required as a means to reduce debts.

Another area of confusion is the relationship between Centrelink and the Taxation Office. Many people mistakenly assume that they have fulfilled their Centrelink income notification obligations by providing it with a copy of their tax return each year. Many people fail to realise that Social Security law still requires that people notify Centrelink within a fortnight of changes to their income. Failure to do so may lead to a debt, even where the person has notified the Taxation Office of their income and supplied Centrelink with a copy of their tax return.

There is a widespread belief that there is automatic swapping of information between Centrelink and the ATO. This is not the case – except of course where Centrelink uses its data matching powers to identify, rather than prevent debts.

The National Welfare Rights Network (NWRN) welcomes the focus that Centrelink and FaCS are putting on the debt issue, in particular on measures which can be introduced so that people may avoid debts. ▲

new zealanders' uncertain life in australia

In the last few years there has been a multitude of changes in relation to Social Security laws which affect New Zealand citizens who decide to live in Australia. The current laws are very complex, causing confusion among welfare workers, Centrelink staff and clients affected by the rules.

In early 2001, the introduction of the new rules meant that New Zealanders who decided to move to Australia could still live and work here indefinitely, but generally had only limited Social Security entitlements unless they acquired Australian residence.

destitution

These changes mean that some New Zealand citizens find themselves in desperate situations in Australia with no income support. A common thread in these cases is that the clients, generally women with children, have fled New Zealand and are convinced that returning to New Zealand is not an option. Unlike many New Zealanders who can return to New Zealand if they lose a job here or cannot find work, or if their marriage breaks down, others - such as women who have fled domestic violence - cannot contemplate returning. For some particularly vulnerable people, and for highly personal reasons, homelessness in Australia is preferable to returning to the situation they fled.

The Centre will continue to seek reform so that New Zealanders living in Australia are at the very least given access to Special Benefit.

certificates of residence

A further group of New Zealand citizens has been severely disadvantaged by the maladministration of the policy regarding the issuing of "certificates of residence" (the Certificate allows for eventual eligibility for the full range of Social Security payments, and for Australian citizenship).

The typical situation is that the

factsheet on new zealanders and social security

Welfare Rights has developed a new factsheet - "Social Security payments for New Zealanders living in Australia" to explain all the rules. It's available on our website, www.welfarerights.org.au or by calling your local Welfare Rights Centre. The factsheet will be a useful resource for community organisations and for the many refuges that accommodate destitute New Zealand citizens living in Australia.

New Zealand citizen was in Australia in early 2001, and applied for a Certificate of Australian Residence before 26 May 2001, but had their application rejected on the grounds that they failed to establish that they were residing in Australia.

However, the Centrelink notices sent to these clients in 2001 refusing the Certificates advised, **incorrectly**, that they could reapply for a Certificate if they returned to Australia to live before 26 February 2004. Relying on this

advice, many people took time tying up their affairs in New Zealand, then moved their families here - ensuring that they did so before 26 February 2004 - only to find that the advice was wrong and that they remained ineligible for Certificates as they did not settle here before 26 May 2001.

We believe that these people were misled and the refusal of Certificates to these people is unconscionable. We shall be seeking that people who relied on the flawed letters be issued certificates as an Act of Grace.▲

australia lean on social security

A recent report has found that Australia spends considerably less on Social Security than that budgeted by other comparable countries.

The research, conducted by ACOSS found that:

- ✦ of 16 Organisation for Economic Co-operation and Development (OECD) nations surveyed, Australia spent less on Social Security payments in proportion to Gross Domestic Product than all countries except Japan, Ireland and the USA;
- ✦ the proportion of people relying on Social Security payments in Australia is fourth lowest of 16 OECD countries surveyed; and

- ✦ of 16 OECD countries surveyed, the average level of payment for an unemployed Australian was 3rd lowest (a maximum of \$242 per week.) Only the US and Italy have lower rates.

As the ACOSS President Andrew McCallum said: "It's time we dispensed with the fiction of Australia as 'overrun with welfare dependants' and instead reform the system to make payments fairer and provide more help for people to find work." ▲

social security changes

what's happening when in 2004

ftb end-of-year lump sums

The rate of FTB part A for each child has increased by \$600 per year. The \$600 increase will be made available as a lump sum following the end of each financial year at the time that reconciliation of entitlement to FTB for the previous year occurs. The \$600 payment will be used to offset any FTB overpayment for the previous year.

Date of effect: 1 July 2004

changes to ftb income tests

The FTB income tests have been relaxed from 1 July 2004, with affecting income now reducing FTB part A by 20 cents in the dollar. The income test for FTB part B has been similarly relaxed. In addition, the income test threshold, that is, the rate at which income starts to affect the rate of FTB part B, has been increased from \$1,825 a year to \$4,000 a year. This means that a second earner in a family with a child under the age of five will be entitled to FTB part B at a reduced rate, until their income reaches \$18,947 per year. If the family's youngest child is over 5, the income cut-out figure increases from \$8,614 per year to \$14,421 per year.

Date of effect: 1 July 2004

missed one-off payments

Most of the three one-off payments (bonus payments of Family Tax Benefit part A, Carer Payment and Carer Allowance), announced in the Budget were made in June 2004 and were paid automatically by Centrelink into the bank accounts of people who were entitled to FTB part A, Carer

Payment or Carer Allowance on Budget day.

The Government has said that a number of people who missed out on the lump sum, (for example, someone who had just transferred from Carer Payment to Age Pension), are also to get a one-off lump sum payment. The Government intends to define which groups will be eligible.

Date of effect subject to passage of legislation

new maternity payment (new baby bonus)

Maternity Payment is a new single, lump sum, non-taxable and non-income tested payment paid for each child who is born or adopted after 30 June 2004. It is commonly being referred to as the "new baby bonus". It replaces Maternity Allowance and the old Baby Bonus administered by the Australian Tax Office.

Date of effect: 1 July 2004

ftb and child care benefit top-up payments

The time allowed for making claims for the FTB and Child Care Benefit for past periods has been extended from one year to two years. The time frame for making claims for payment of top-ups of FTB as a result of Income Tax assessment reconciliation, has also been extended from one year to two years.

Date of effect: 1 July 2004

changes to the portability rules

Payments which were previously payable for up to 26 weeks of a temporary or indefinite absence from Australia, are only 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 was overseas on 1 July 2004, their portability up to that date continues, unless they return to Australia and resume residence in Australia.

Date of effect: 1 July 2004

supplementary payments now compensation affected

Supplementary payments will be "compensation affected" where a person must receive an existing compensation affected payment in order to qualify for the supplementary payment. The relevant supplementary payments are: Advance Pharmaceutical Allowance, Telephone Allowance (other than Telephone Allowance payable to the holder of a Seniors Health Card), Education Entry Payment, Pensioner Education Supplement, Fares Allowance, and CDEP Scheme Participation Supplement. These supplementary payments will be recoverable from people who also receive an economic loss compensation payment.

Date of effect: 1 July 2004

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.

assurance of support changes

Centrelink is now responsible for assessing Australian residents' eligibility to provide Assurances of Support for prospective migrants. The Department of Immigration,

(continued page 10)

exemptions from the activity test due to incapacity

Generally, where a person is in receipt of Newstart Allowance (NSA) or Youth Allowance (YA) they are required to satisfy the activity test.

Under the activity test, NSA and YA (unemployed) recipients must look for suitable work, and be willing to accept any reasonable job offer or training opportunity which could improve their job prospects. Failure to do so may lead to a breach being imposed. Social Security legislation provides that where a person is "temporarily incapacitated" for work (or study, as may be the case with YA) they can be exempt from the NSA or YA activity test for a period. The key term here is "temporarily incapacitated". In order to be exempt from the activity test, the incapacity must prevent the person from doing more than eight hours work a week.

Where a person requests an exemption from the activity test on medical grounds, they will be required to provide a medical certificate to Centrelink. Despite the provision of a medical certificate (from a registered medical practitioner) Centrelink may still make an assessment of the person's medical condition and work capacity. Centrelink will look at the types of activities or work that the person could do within the restrictions of their medical condition. Based on this assessment, Centrelink may determine that the exemption should not be granted, despite the person's doctor declaring them unfit for work.

permanent vs temporary

Often people in receipt of NSA apply for Disability Support Pension (DSP) and have their claim rejected on the basis that their injury or illness does not

mean they have a "continuing inability to work". To have a "continuing inability to work" their impairment must prevent them, during the next two years, from undertaking their usual work or work for which they are currently skilled (work means employment of more than 30 hours per week, or educational or vocational training which would equip them to do work for which they are currently unskilled).

Therefore, to be granted DSP, a person's illness or injury must have an impact on their ability to work/study for the next two years. Where their DSP claim is rejected on the grounds that their incapacity allows them to work in the next two years, often a person seeks an exemption from the NSA or YA activity test on the basis that they have an incapacity.

herein lies the problem

An exemption from the NSA or YA activity test requires that the person has a "temporary incapacity". Where a person applies for DSP and their doctor has indicated that their incapacity will impact on their ability to undertake work or training for the next two years, then Centrelink will, in most cases, consider that the person has a "permanent" not "temporary" incapacity.

This can be very distressing as the person may feel that they will be required to undertake activities of which they are not capable. It may also be very confusing for the person as in most cases they have an incapacity (such as a permanent injury to their back) but if it is not a "temporary incapacity" they are, in most cases, required to satisfy the activity test.

what can a person do in such a situation?

Most people on NSA or YA (unemployed) who have an incapacity that is not temporary will be required to satisfy the activity test. However, if the incapacity worsens or "flares up" for a short period, so that the person is temporarily incapacitated for work, then they may be granted an exemption from the activity test provided the medical certificate states that the person's incapacity is of a temporary nature.

Where a person has applied for DSP they are exempt from the NSA activity test pending determination of the DSP claim.

appeal rights

Where Centrelink has made an adverse decision about a person's Social Security payment they have the right to appeal that decision. The first stage of appeal is to lodge an appeal to a Centrelink Authorised Review Officer (ARO). An appeal to an ARO should be lodged in writing and should set out the reasons for their appeal. Should a person not be happy with the ARO decision they have right of appeal to the Social Security Appeals Tribunal (SSAT). It costs nothing to appeal to the ARO and SSAT. ▲

ssat victory

Simon migrated to Australia as an adult. After a few years working in low-paying jobs to get himself through English courses, he decided to do something he had always wanted to do - study at university. As his English was still far from perfect, Simon gave up work after enrolling at University and claimed Austudy Payment, so that he could concentrate on his studies.

Due to his difficulties with English, Simon failed one of his three subjects in his first semester. Not deterred, he continued to study two subjects in his second semester at the same time as enrolling in some TAFE subjects, that would help him pass his failed subject second time around. This turned out to be the case - he undertook and passed the failed subject the next time it was offered.

Simon mistakenly did not inform Centrelink of the changes to his enrolment, as he still considered himself a full-time student. A year later, Centrelink discovered, through a data-match with the University, that Simon was only formally enrolled as a part-time student in his second semester of study. Centrelink then raised the entire amount of Austudy Payment paid to Simon in that semester as a debt - an amount of \$5,000. Simon was devastated. He was finding it hard enough to manage on Austudy Payment without having to pay back a debt. Simon appealed to an Authorised Review Officer, who did not change the original decision to recover the debt.

This is the kind of case the Centre would like to see given proper consideration by Centrelink at the time the debt is raised, rather than only when a person appeals.

At this point, Simon contacted the Welfare Rights Centre. The Centre encouraged Simon to appeal to the Social Security Appeals Tribunal, and wrote a submission for the Tribunal's consideration. The Tribunal

accepted the Centre's argument, that the recovery of the debt should be waived as Simon did not intentionally hide anything from Centrelink, and he had "special circumstances" to warrant waiver of the debt. These circumstances included the undeniable fact that, even though Simon did not technically fit into the definition of a full-time student, he was nevertheless undertaking an amount of study comparable to a full-time load.

Most importantly, Simon was in a

position where his Austudy Payment was his only means of support, and where he quite possibly would have been entitled to another payment during the debt period. The Commonwealth was not "out of pocket" by paying Simon Austudy Payment during the time he was not technically a full-time student. This is the kind of case the Centre would like to see given proper consideration by Centrelink at the time the debt is raised, rather than only when a person appeals. ▲

(continued from p. 8)

social security changes what's happening when in 2004

Multicultural and Indigenous Affairs (DIMIA) will still determine when an Assurance of Support is required but Centrelink will assess potential assurers' applications, and notify DIMIA directly when an Assurance of Support is approved.

Date of effect: 1 July 2004

income streams

Fifty per cent of the value of income streams purchased after 20 September 2004 will be exempt from assets test assessment under the assets test (there is currently a 100% exemption.) The assets test exemption will cover new market-linked income streams.

Date of effect: 20 September 2004

exempt lump sums

Lump sum foreign pension payments for past periods to be treated as if periodical payments were made for the past period, and the amount by which the recipient's

Social Security payment would have been reduced will be a recoverable debt.

Date of effect: 1 July 2004

new agreements

Two new International Social Security Agreements have come into effect - with Croatia and with Chile.

Date of effect: 1 July 2004

carer allowance adult

The co-residency requirement for Carer Allowance adult is to be removed, provided that the carer provides care for at least 20 hours per week, satisfies the Adult Disability Assessment Tool, and the care relates to the "the care receiver's bodily functions or to sustaining the life of the care receiver" ..

Date of effect subject to passage of legislation ▲

nsa suspended as client “presents well”

Centrelink suspended Dustin's Newstart Allowance (NSA) as it was of the opinion that, at some stage in the past, he may have been working. However, Dustin advised that he had not worked since the date of suspension (and there was no evidence that he had worked at all while in receipt of NSA).

Dustin provided the Welfare Rights Centre with a number of documents covering the last few years which indicated very clearly that in addition to Social Security he had been reliant on charities to get by. He had received food vouchers, food and travel fares from charities. He had also resided in crisis accommodation and had been evicted from a number of places due to not paying his rent. These documents

indicated that for a considerable period Dustin had been in severe financial difficulties.

At the time of the suspension Dustin owed a substantial rent arrears.

The “evidence”, (if that is what it is to be called), on which Centrelink based its decision to suspend Dustin's NSA was that he “presented well” and that his appearance suggested that he

may have undisclosed income. As there was no section of Social Security legislation which covered such a decision, and given that there was no evidence that Dustin had income other than NSA, we lodged an appeal for his payment to be restored.

Commonsense prevailed and Dustin's NSA was restored with full arrears.▲

mollie and desmond

People live together for a range of reasons, such as convenience, financial purposes and for company. Living together does not necessarily mean that two people of the opposite sex are members of a couple, as the following case demonstrates.

Centrelink decided that Mollie and Desmond were living in a marriage-like relationship, despite the fact that they had no financial commitments or sexual relationship, and did not present as a couple. The decision was based on the fact that housework was divided as it would be in a marriage, that they shared the cost of two small appliances and household insurance, that Desmond's grandchildren referred to Mollie as “Aunty” and that she provided some care to him when he was ill.

Noting this friendship, and that there was no sexual relationship, no financial commitment, and that her family and friends saw her as separate, Mollie disputed the Centrelink decision and after an unsuccessful Authorised Review Officer appeal lodged an appeal to the Social Security Appeals Tribunal (SSAT).

The SSAT found Mollie and Desmond were good friends who found it financially beneficial to

share. It considered that their situation was typical of people of an older generation, where gender decided certain household

tasks. The SSAT overturned the decision and Mollie was paid Social Security at the single rate.▲

preclusion period reduced

Bobby had a compensation preclusion period until late September 2004. He lodged a claim for Newstart Allowance (NSA) as he had been retrenched from his job. He supplied Centrelink with an Employment Separation Certificate confirming that he was retrenched.

Section 1184 of the Social Security Act provides that in “special circumstances” a person's compensation preclusion period can be reduced. The term “special circumstances” is not defined in Social Security legislation. Tribunals and the Federal Court generally take a broad meaning of the term and look at many aspects of a person's life, such as their health,

the health of their dependants, their financial situation and outstanding debts.

In Bobby's case the Original Decision Maker decided that as his retrenchment was beyond his control and as it led to him being in a straitened financial situation, it would be unjust not to reduce the preclusion period.

Bobby was therefore granted NSA from the date of claim.▲

ONLINE Handbook available free!!

The ONLINE edition of the Independent Social Security Handbook is now available to most community welfare workers and to many state government employees in NSW, South Australia and Western Australia. This arrangement has been brought about due to agreements being reached between the Sydney Welfare Rights Centre (WRC) and the various state government departments in each state.

The Independent Social Security Handbook is produced primarily for community workers so that they can help clients with their Social Security problems.

The ONLINE edition is updated each quarter to take into account recent changes to Social Security law and its administration.

NSW

In NSW, the ONLINE edition is available free as the Sydney Welfare Rights Centre (WRC) has entered into a partnership with the NSW Government's Better Service Delivery Program (BSDP). All organisations that provide human services in NSW are eligible to join the Program. Members of the Program receive access to the HSNet website (which is where the ONLINE edition of the Handbook is located).

To join the BSDP simply go to www.bsdp.hsn.net.nsw.gov.au and after filling in some basic information (which takes about one minute to provide) you will be instantly issued a password providing you with access to HSNet.

Once you have been issued a password to gain access to HSNet just click on the "Independent Social Security Handbook" and you will go the homepage of the ONLINE edition.

South Australia

In South Australia free access to the ONLINE edition is provided to community organisations who receive funding from the South Australian Department for

Families and Communities as well as its employees as a result of an arrangement between the Department and the Welfare Rights Centre.

Western Australia

In Western Australia free access to the ONLINE edition is provided to community organisations who receive funding from the Western Australian Department of Community Development as well as its employees as a result of an arrangement between the Department and the Welfare Rights Centre.

If you work in a community organisation in either Western Australia or South Australia and

receive funding from the relevant government department and wish to access the ONLINE edition please contact the Welfare Rights Centre (WRC) on 1800 226 028 to be issued with a password.

other states?

The provision of the ONLINE edition of the Handbook to community workers across Australia is one of the major aims of the Welfare Rights Centre as it will help community workers to assist their clients. With this in mind the Centre is to open negotiations with the state governments who as yet are not part of this arrangement. ▲

5th edition of the Independent Social Security Handbook

The Welfare Rights Centre (WRC) still has a limited number of copies available of the 5th edition of our invaluable resource for community and legal workers, "The Independent Social Security Handbook".

The 5th edition hard copy of the Handbook covers all significant Social Security law as at February 2004.

The 5th edition includes information on:

- ◆ the breaches regime which extends to Parenting Payment and Special Benefit;
- ◆ the activity testing arrangements for Parenting Payment;
- ◆ the changes brought about by "Welfare Reform"; and
- ◆ Working Credit and how it operates.

online edition

The handbook is also available ONLINE for people who prefer to access their information this way. The online edition of the Handbook has been available for two years and has proven to be very popular with people taking advantage of its quarterly updates to keep up to date with all the changes to Social Security law.

To purchase the Handbook complete the form on the back cover of "rights review" and return the form with a cheque payable to the Welfare Rights Centre, Level 5, 414 Elizabeth St, Surry Hills, NSW 2010. ▲

student prosecutions unjust

It should come as no surprise that a young person facing criminal charges for something like stealing a car will generally understand what it is that they have allegedly done "wrong". If they did not steal a car, they will say to their solicitor, "I didn't steal the car". For young people facing charges regarding Youth Allowance, Austudy Payment or ABSTUDY debts it is not so straightforward, as issues such as whether they were studying full-time or part-time can make matters unclear.

In the experience of Welfare Rights workers, most people seeking assistance regarding Social Security offences have no understanding of the nature of the offence they have been charged with, and they may not even understand how the debt to which the charges relate accrued.

This problem is compounded by widespread misconceptions regarding Social Security criminal offences - even amongst solicitors. Many criminal law solicitors believe that Social Security offences relating to debts are strict liability offences and that there is no need to establish whether the client intentionally set out to be overpaid, or whether their failure to recognise that they were being overpaid was due to recklessness. This results in solicitors often inappropriately advising clients to plead guilty, even when the person did not intentionally intend to obtain Social Security to which they were not entitled. Criminal law solicitors may not also understand that the criminal matter could be adjourned pending an administrative review.

debts waived

Welfare Rights has had many discussions with Centrelink about the particular vulnerabilities of young people facing Social Security criminal charges for Youth Allowance, Austudy Payment and ABSTUDY debts. Despite this, Centrelink persists with its policy of referring debts over \$5,000 to its Prosecutions Units, thence to the Director of Public Prosecutions, without due consideration of whether there are prima facie grounds to cancel or waive recovery of the debt, or of whether the client recklessly



made the false statement (as is required for an offence to have occurred). This often results in charges being laid where the person has "admitted" that they "did the wrong thing" - when their "admission" is really that they **now** understand that they may have completed a form incorrectly and received Social Security monies in excess of their entitlement.

Given these subtleties, people with Social Security debts can easily be led to conclude, inappropriately, that they have no choice but to plead guilty when finally charged.

care required

Despite many meetings with Centrelink where we have pointed out the particular need to encourage young people to appeal student debts before prosecution action is initiated, we have recently assisted:

- ♦ a pharmacy student and a nursing student who would not

have been able to practise their professions with criminal convictions (their debts were waived and prosecution was dropped); and

- ♦ a teenager with a Youth Allowance debt due to failing to meet the study requirement for Youth Allowance. He pleaded guilty when charged in respect of the debt. At the time the debt was incurred, he was without parental support and was known by State authorities to be the sole carer of a younger sibling. We shall be seeking that the debt be cancelled.

We again call on Centrelink to take more care with these cases and put the resources that are currently put into compliance and prosecution activities into encouraging appeals. Without such care, young people are needlessly ending up with criminal records. ▲

victory for students

In order to receive Youth Allowance (YA) as a full-time student, or to receive Austudy Payment, a person must be undertaking at least three quarters of a full-time study load. Determining whether someone has a full-time study load sounds relatively easy. However, Social Security law states they must be undertaking at least three quarters of a full-time load in a "particular study period". The Department of Family & Community Services' policy, that Centrelink applies, states that a student's workload must be assessed for each semester rather than over any longer period.

The application of the Department's policy has resulted in debts being raised against many students who were studying a full-time load over a full year, but who may not have had a full-time load for each semester. For example, where a student undertakes extra subjects in semester one, so they can have a lighter load in semester two, the result can be that the person no longer has three quarters of a full-time load in semester two and Centrelink will raise a debt of Youth Allowance or Austudy Payment for that period. Centrelink does not take into account that the person's light workload for semester two is balanced by a heavy workload in semester one.

This clearly brings about ridiculous results, with students being asked to repay all the YA or Austudy Payment paid during the second semester studies.

federal court

In the recent Full Federal Court decision of *Secretary, Department of Family & Community Services and Matheson* [2004] FCAFC 53 (10 March 2004) the Court considered that the phrase "particular study period" need not always be a semester. The Court determined that in some cases it may be appropriate to choose a different study period, such as an entire year. The judges endorsed the approach of the Administrative Appeals Tribunal (AAT) in that matter, which was to focus on the entire course, and not just the study period in which a student is enrolled in a particular subject.

Unfortunately, the Department of

Family & Community Services' guidelines have not yet been changed to reflect the Full Federal Court's decision.

It is important that if Centrelink raises a debt against a student in this situation that they lodge an

appeal against the decision to raise the debt. The student should pursue their appeal rights to the Social Security Appeals Tribunal and the Administrative Appeals Tribunal if necessary. ▲

assurance of support changes

From 1 July 2004 the Assurance of Support Scheme affecting most migrants and potential migrants to Australia is being administered by Centrelink, on behalf of the Department of Family and Community Services (DFaCS).

An Assurance of Support is an agreement between the assesor or assessors (the person or people who sign the assurance) and the Commonwealth Government that the assesor or assessors will support a newly arrived resident (the assuree) for a specified period. The period is usually two years. The assesor effectively gives an undertaking that they will repay the value of any Social Security payment specified in the agreement that is provided by the Commonwealth Government during the period of the assurance.

Up until 1 July 2004, the Assurance of Support Scheme was administered by the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) under the *Migration Regulations* 1994. DIMIA was responsible for making the decision as to whether a potential migrant was required to enter into an Assurance of Support agreement with an assesor, and

whether a proposed assesor was acceptable.

From 1 July 2004, although DIMIA retains the function of deciding whether or not a person needs to provide an assesor, in order to be granted a visa, the task of assessing the suitability of a potential assesor, now lies with Centrelink. Centrelink is obliged to notify DIMIA, where an assesor has been approved.

Centrelink will continue to administer the raising, recovery and waiver processes for assurance of support debts.

The Social Security payments recoverable from an assesor are found in the Social Security (Assurances of Support) Determination 2004. The policy supporting the Assurance of Support Scheme, as now administered by Centrelink, may be viewed on the DFaCS website at: <http://www.facs.gov.au/guide/ssguide/94.htm>. ▲

initiatives for newly arrived residents and refugees

In the 2004/05 Budget, the Government announced the expansion of existing Reconnect and Job Placement, Employment and Training (JPET) programs, and increased funding for family relationship services. These initiatives were presented as “whole of government” strategies to address issues highlighted in the recently released *Report of the Review of Settlement Services for Migrants and Humanitarian Entrants*.

- ✦ **Reconnect** targets children and young people from 12 to 18 who are homeless or at risk of homelessness, to assist them to reconnect with family, training, education and employment.
- ✦ **JPET** assists young people from 15 to 21 who are homeless; at risk of homelessness; refugees; in care or leaving care; or geographically isolated.

This service expansion to target young migrants is commendable but a fundamental point has somehow been missed - **young people in such programs need money for food, accommodation and transport!** Whilst refugees are eligible for either Youth Allowance or Special Benefit, young migrants and their families are generally denied income support during the two year newly arrived resident's waiting period. Adequate income support is crucial to a young migrant's capacity to study or search for work while dealing with the pressure placed on their whole family while trying to settle into the Australian community. The fact is that many of the young people to whom these expanded youth programs are targeted will not be able to participate while they and their family have no or inadequate means of support.

We applaud the initiatives, however, fundamental to effective

settlement amongst migrant families and the prevention of long-term disadvantage amongst young migrants, is income security. Such

laudable programs will only be effective if the two year waiting period for Youth Allowance and Special Benefit is abolished. ▲

alert on overseas pension claims

Age pensioners should be alert to a new scam where private companies “assist” people to obtain an overseas pension to which they are entitled and then charge them hefty fees.

With Australia having a large number of immigrants, many older people are entitled to a pension from their country of origin. Centrelink can help these people to make their claim for an overseas pension, free of charge.

Recently, however, a number of private companies have been charging fees for the service that Centrelink offers free. Many of the clients who use these services are older and many are not fluent in English, so they may not be aware that Centrelink can help them for no charge.

These private companies are finding clients from “cold calling” through the phone book, or advertising in pensioners' and seniors' newspapers. The companies then take their fee by taking 50% of the overseas pension arrears that the person is entitled

to. In some cases the fees add up to many thousands of dollars. Given that it can take up to a year or even more from claim to grant of pension, the amount that is paid to the private company can end up being a considerable sum.

The companies obtain an authorisation agreement from the client which allows the money to be paid directly to the firm, once the claim has been finalised.

Centrelink is aware of the problems that can arise for some people who use these services to claim a pension from a country they have worked in, and has published some fact sheets that may be of assistance. For further information, contact Centrelink International Services on 13 1671 or go to Centrelink's website www.centrelink.gov.au ▲

Publications Order Form

To receive a yearly subscription to "rights review" or to order the 5th edition of the Independent Social Security Handbook and/or the ONLINE EDITION, please complete the form below and send it with a cheque made out to "Welfare Rights Centre". Alternatively, just complete and sign the credit card payment authority. Prices are inclusive of GST. ABN 76 002 708 714

1. **The hardcopy of the 5th edition of the Independent Social Security Handbook** \$99 (plus postage and handling)

2. **The ONLINE EDITION of the Handbook;**
1-5 users – annual subscription: \$99

5-10 users – annual subscription: \$20 for each additional user \$198 for 10 users.
More than 10 users or multiple site usage: please contact the Welfare Rights Centre (WRC) on (02) 9211 5389 or 1800 226 028 (outside Sydney metro area) to negotiate applicable annual subscription.

3. **Special offer:** Purchase the 5th edition of the Independent Social Security Handbook plus the ONLINE EDITION \$169 (plus postage and handling)

4. **Special offer Handbook ONLINE EDITION and "rights review"** \$110 (plus postage and handling)
(For bulk subscription rates please contact the Centre) **(ring for rates)**

5. **"rights review"** \$33 annual subscription
(For bulk subscription rates, please contact the Centre)

6. **"Welfare Rights in black and white"** \$15.00 each
additional copies \$10 each

Name Position

Organisation

Address Postcode

Email

I enclose a cheque for \$ payable to the Welfare Rights Centre

Or by Credit Card MasterCard Visa Bankcard

Card Number:

Valid to ___/___

Name on Card

Signature of Cardholder

Send to:

**Welfare Rights Centre
5B 414 Elizabeth Street
Surry Hills NSW 2010**

Please detach or photocopy this page and send with your cheque/money order/credit card details