



C/- PO Box 337
Civic Square, ACT, 2608
Ph: (02) 6257 2931
Fax: (02) 6257 4801
www.welfarerights.org.au

5 August 2009

AFTS Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Email: AFTS@treasury.gov.au

Dear Sir/Madam,

Please find attached our further submission to the Tax and Transfer Review relating to the further Treasury questions posed by Centrelink in relation to the Compliance Costs and Complexity of the Transfer System. Thank you for the opportunity to provide this additional submission on behalf of the National Welfare Rights Network. Our recent paper relating to debt prevention, *Redressing the Balance of risk and responsibility through active debt prevention strategies* referred to in our submission is also attached.

If you require any additional information in relation to our submission or debt prevention paper please do not hesitate to contact either myself on (08) 9328 7151 or Genevieve Bolton on (02) 6257 2931.

Yours faithfully

A handwritten signature in black ink, appearing to read "Kate Beaumont".

Kate Beaumont
President
National Welfare Rights Network Inc.

The NWRN is a network of services throughout Australia that provide free and independent information, advice and representation to individuals about Social Security law and its administration through Centrelink. For member details, services and information visit:
www.welfarerights.org.au

Compliance costs, confusion and complexity: lifting the lid on our Social Security system

by the National Welfare Rights Network

August 2009

The National Welfare Rights Network (NWRN) appreciates this opportunity to provide feedback to the examination of tax and transfers (Australia's Future Tax System) as the Review enters a critical period of its deliberations.

NWRN meets regularly with Centrelink to discuss a wide range of issues which pertain to Australia's Social Security system. At a recent meeting in July 2009 we had a lengthy discussion about how client's engage with and communicate with Centrelink. In discussing a number of matters we noted that income support recipients are increasingly being expected to bear the costs of meeting compliance and reporting costs. The discussion focused on the lack of access to landlines and the widespread use of mobile telephones by clients and the associated costs of accessing Centrelink using 1800 and 13 numbers.

Centrelink asked NWRN to provide further feedback on issues about the costs of compliance and meeting requirements and the areas where our clients encounter high levels of complexity. In an email we were specifically asked to consider the following issues.

What areas of the transfer system do people present as complex? For example, where they have problems understanding or navigating the system.

What data/information appears to take a disproportionately high amount of time for transfer recipients to provide to meet their reporting requirements? For example, what evidence or information might be difficult to attain?

During the wide-ranging discussions we raised numerous matters. The overarching point we made to Centrelink was that:

The Government is so busy looking at the "big picture"; it overlooks the small details of people's lives where the impacts of its service delivery really hits home. The real costs of complying does not appear to enter into their considerations.

The failure to pay attention to issues such as those we raise below means that Government service delivery can inadvertently but disastrously place people at risk of losing benefits. The timeframe for this paper does not allow for a detailed examination of the matters. Nevertheless, we offer the following feedback for consideration by the Taskforce. We would welcome the opportunity for further dialogue on these matters as appropriate.

1. Research into compliance and reporting costs required

There appears to have been little practical research to identify what could loosely be termed the “costs” of meeting participation, reporting and compliance requirements. There is a great deal of diversity amongst individuals in terms of their capacity and ability to comply, the nature of their obligations and requirements and the time taken and actual costs of meeting compliance and reporting requirements.

Accordingly, we recommend that the Tax Review Taskforce undertake a scoping/mapping exercise into the costs (measured by a range of indicators, including both time and money) of meeting participation and reporting requirements experienced by different categories of income support recipients. A properly designed random survey to inform the Review’s deliberations could be undertaken by an academic or research institution, such as the Social Policy Research Centre at the University of NSW. This would require research looking at income support recipients in a range of circumstances, for instance: job seekers, including people with partial capacity to work due to disability or caring responsibilities, retirees, carers, people with disabilities, people involved in education or training. Additionally the study should explore income support recipients with reference to locational factors such as metropolitan, rural and remote settings. The costs and availability of transport and communication are obvious factors which would be included, as would childcare and disability.

A clear example of a cost borne by Indigenous people subject to Income Management is that where the Basics Card is used for payment of a taxi fare that a 10 per cent taxi surcharge is applied. The amount of the surcharge can be a substantial charge due to the long distances travelled by Indigenous people to access shopping, medical and other facilities. The difficulty is that clients relying on Income Managed funds to cover these costs do not have the choice of using cash to pay the fare but must use the Basics Card for the payment of the fare. Although Centrelink could arrange a cheque payment of income managed funds it is administratively cumbersome and is not responsive to the need to travel sometimes with little or no notice. This highlights the additional costs associated for this group of income support recipients because of the manner in which Government has decided that income managed funds will be delivered by an EFTPOS type card.

As noted above the costs of meeting reporting and participation requirements can vary significantly. Two of the most frequent costs that are mentioned by our clients which are relevant to this discussion are transport or travel costs and the costs of telephones.

Transport: The costs of transport and travel to appointments at Centrelink or Job Services Australia, can be prohibitive, particularly for people living in areas where there is no public transport readily available. Additionally the availability of public transport concessions varies considerably and whilst pensioners and seniors receive concessional transport costs in most states, the availability of concessional fares for job seekers is inconsistent across Australian jurisdictions.

In some states there are waiting periods for a transport concession card, for example, in NSW a person is not generally eligible for a half-fare transport concession card until they have been in receipt of income support for 12 weeks. In New South Wales and Queensland half-fare public transport concession cards are means tested. A person who is in receipt of a part rate of Newstart Allowance does not qualify for the card. On a practical level this applies to anyone who earns just \$31 per week which can lead to extreme work disincentives for those affected.

Telephones: Governments have seemingly overlooked the real costs of meeting obligations for those on income support payments which have become increasingly contingent on meeting specific requirements for continued payments. The costs of meeting these obligations can be significant and those required to have regular contact with Centrelink and Job Services Australia have increased in line with changes to workforce participation requirements under the Welfare to Work regime. Unfortunately as a result the costs have been shifted to those who can least afford it, namely those on income support.

There has over a number of years been an increased emphasis on income support recipients contact with Centrelink being conducted by telephone rather than attendance at Centrelink Customer Service Centres. This has happened in an environment where significant numbers of income support recipients rely on mobile phones and may not have any or limited access to landlines. Lack of access to a landline is not uncommon amongst Centrelink clients. This can occur due to a range of issues including personal preference of particular populations such as young people toward mobile telephones but also due to an inability to afford the costs of both land and mobile phone connection, those barred from making outgoing calls due to past poor credit history with telecommunication companies, Indigenous people and others who live in remote and rural locations with limited landline access.

NWRN acknowledges that the Government provides access to their services via the use of both 1800 and 13 numbers which provides for either free call or the cost of a local call for access from a landline. The recent provision of a 1800 number to access Basics Card balances is also a welcome improvement. However a considerable difficulty still remains because a substantial number of unemployed people have mobile phones and are required to call 13 numbers to do their Centrelink business. These calls are charged at a higher rate from mobile phones.

When NWRN met with Centrelink on 23 July 2009 we proposed that Centrelink consider instituting a call back system so that the costs for telephone access by mobile telephone is borne by the Government rather than the income support recipient. People who call Centrelink can have lengthy conversations and also wait times which add to the call costs incurred. In the past Centrelink has addressed specific issues relating to call wait times for the Participation Solutions Teams by providing the option of a call back facility, or some way of allowing a person to leave a message on the system for Centrelink to call them back.

At our member Welfare Rights Centres clients requiring assistance regularly use the telephone to access our services. It is routine practice within Welfare Rights Centres to inquire as to whether the call is being made from a local landline, mobile or STD. If contact is made via the latter two modes a call-back is arranged to reduce the cost of accessing our services. This practice is designed to increase accessibility to Welfare Rights services and recognises from an organisational perspective that our Member Organisations are better placed to bear the telephone costs than the client. NWRN questions why Government cannot be more pro active in its recognition of the increased costs for telephone access by responsive strategies to minimise the cost for those who do not have access to a landline.

Welfare Rights workers in the NT report a high level of frustration and dissatisfaction amongst Indigenous clients and communities at having to call expensive 1800 numbers to check on balances for the Basics Card. This issue is examined in greater detail later in the submission.

The issue of the costs of calling Centrelink and being charged at a higher mobile phone rate is a clear example where the use of technology is leading to social exclusion. The costs of meeting obligations are an issue that has until now not appeared on the Government's radar but is an issue of extreme significance for hundreds of thousands of Australians. The charging of the taxi surcharge on electronic debits on the Basics Card and the unavoidable high telephony costs associated with contacting Centrelink and other Government services are just two examples which highlight in a practical sense the growing disconnect between social policy and service delivery at present.

2. Other costs associated with compliance and reporting requirements

The issue of the financial costs associated with meeting participation requirements and meeting reporting requirements is poorly recognised in the current Social Security system. NWRN provide the following examples for the information of the Taskforce:

- Poor literacy and numeracy skills can cause problems. It is widely recognised that large numbers of parents have had limited opportunities for formal education, with 60% of Parenting Payment recipients not having completed year 10. That most information relating to the Social Security system by way of information sheets, claim forms, letters and notices are in written form provides particular barriers to compliance.
- Where a self employed person needs to prove business income and provide "profit and loss" statements for Centrelink they can find this difficult if they do not possess the skills to prepare such financial documentation. This can also leave them with additional costs where they have to seek professional and often costly assistance to

provide the requisite financial documentation. It can also lead to lengthy delays wherein payment is denied until the financial paperwork is provided.

- Growing numbers of people are making a living out of contract labour but they find dealing with the paper work and meeting tax and Centrelink requirements onerous.
- Increased financial complexity and the diversity of various investment products for retirees are such that many older people need to pay for the services of a financial adviser, even though they can ill afford it. Notwithstanding the tremendous work that is done by Centrelink's Financial Information Service and FaHCSIA funding for the National Information Centre on Retirement Investments (NICRI) many older people find the system so complex and overwhelming that they feel compelled to pay to have a professional do their tax and pay financial advisers to assist them to make a claim for the Age Pension.
- A further area and cost to older people is where they pay for a company to lodge a claim for an overseas pension that they may be entitled to. The Government requires a person to make a claim for a comparable foreign payment if they may be entitled to it, but the complexity of the process can be such that people feel they have no option but to pay for someone to make the claim on their behalf.
- It is not just increased complexity of taxation and superannuation rules which add to the costs for people seeking to obtain their entitlements, the growing use of family trusts is another area where we see a system which older people struggle to comprehend. The growing wealth of many older people also brings with it a greater risk of various forms of elder and financial abuse, which requires a considered response by Government agencies, including Centrelink and FaHCSIA.
- There is considerable and widespread confusion over the different definition and treatment of income used by ATO to determine tax obligations and Centrelink to determine entitlement to income support payments.
- Getting valuations on rural properties is reportedly a problem in some areas – especially when no one is buying property locally.
- Getting estranged spouses to sign or complete forms or provide information can be particularly problematic. Centrelink has wide powers to gather information but it tends not to use these powers to compel third parties to provide information to assist clients who may be fearful of contacting their ex-partner due to the history of domestic, family or psychological violence.
- Many people including young people and particularly young Indigenous people can face difficulties with Proof of Identity requirements for income support payments. Centrelink could be more pro-active in its use of alternative proof of identity procedures and of assisting the client to obtain the documentation from the Registrar

of Births, Death and Marriages agencies through the provision of financial assistance for this purpose.

The High Price of Doing Business with Centrelink: Voices from one Community

A Community Centre in the Illawarra area of NSW which has a very high proportion of young unemployed people in its area had provided useful information which is of interest to the general issue of compliance costs for young people, in particular. They advised:

- residents in the southern suburbs of Wollongong have high costs with travelling from southern suburbs (Warrawong and Port Kembla) to Wollongong Centrelink as the local office in Warrawong is a shop front only;
- the community centre provides \$500 worth of travel vouchers to local residents per month and an estimated 90% of the vouchers are provided to people who need to travel to Wollongong for appointments with Centrelink and Job Network Providers;
- people who do not access travel vouchers may travel on train without tickets with the risk of incurring fines that can lead to further problems;
- by not attending appointments those on participation payments risk the loss of payments under the compliance regime;
- the community centre also provides telephone cards of approximately \$100 per month. Community organisations estimate that 80% are for people who need to contact Centrelink and Job Network Providers; and
- many people attending the community centre use the telephone to contact Job Services Australia or Centrelink. The community centre is not funded for this work and is struggling financially and yet has to incur these costs. The result is that there is a cost to non-government organisations that facilitate contact with Centrelink and Job Services Australia.

3. Problems with the NT Basics Card: cost and inconvenience

There are a number of practical difficulties with the Basics Card which has been used as a payment mechanism in the rollout of NT and National Income Management categories.

The following is drawn from the experiences gained through NWRN's involvement in the Welfare Rights Outreach project in the NT related to the intervention. These issues are drawn to the attention of the Taskforce as they highlight in a most significant way the difficulties, and extra costs, that can be a direct result of how access to income support payments are structured. The experiences also reveal how intrusive and complex these arrangements can be.

The policy underpinning the Income Management regime together with Centrelink's implementation of the system has had implications on a range of issues such as burying loved ones to whether a family can enjoy an annual celebration at the Darwin or Katherine Show.¹ While some of the problems relate specifically to the parameters around the income management scheme, others clearly highlight an area where high financial costs have arisen for recipients. Other difficulties which are harder to measure include inconvenience, anxiety and distress to those affected.

We draw the Taskforce's attention to the following specific problems arising out of the Income Management regime.

Basic Card issues: People continue to report significant problems in accessing the balances on their Basics Card due to the limited range of options available. Currently a person can obtain their Basics Card balance by enquiring in person at a Centrelink office or agent, using the "hot linked" phones that have been installed in remote stores (currently just under 40 phones have been rolled out and a further roll out of 50 phones is currently under way), using the on site card readers that are being trialled in some stores or contacting Centrelink through the Basics Card hotline.

Whilst a free call number to the Basics Card hotline has recently been released with a self service application, this free facility is not available for calls made from mobiles. This measure falls well short of addressing the concerns raised because it fails to recognise many Basics Card customers rely on mobile telephones because of the limited number of fixed telephone lines and public payphones in remote communities. Because free call numbers are not available from mobile telephones and Income Management requires increased communication with Centrelink, those subject to this quarantining regime bear additional costs not borne by other Centrelink recipients. In practice this results in reduced payments for people subject to Income Management. We understand that currently 15,155 clients are now subject to Income Management as part of the NTER, 45 people are currently being income managed through the Child Protection Income Management category in Western Australia and 59 clients are being income managed through the Cape York Trial.

¹ The information in this section is derived from the Welfare Rights Outreach Project, which under the auspices of the North Australian Aboriginal Justice Agency (NAAJA) and the Central Australian Aboriginal Legal Aid Service (CAALAS) is funded by the Attorney General's Department to provide legal advice and assistance to people about the NTER. Additional information obtained from discussions between Centrelink and NWRN on 23 July, 2009.

Clients in the Northern Territory who telephone Centrelink continue to report considerable wait times. Also changes to allocations usually take a considerable amount of time (up to half an hour) to complete. These long delays result in people running out of credit or hanging up. A person may be able to call from an agent to get their balance, but there can be long queues and a lack of privacy is a reported problem.

We also draw the attention of the Taskforce to the following problems arising out of Income Management and note that these additional costs associated with the scheme acts as a strong disincentive for the voluntary uptake of this option, should this be seen as a useful method of managing their limited budgets in the future.

Delays in transfers of IM funds: Although Centrelink has put in place further measures to streamline the process, it continues to be obliged to retrieve the money from the original store before the balance is credited to the new Income Management account except in limited circumstances, for example, where the error was caused by Centrelink or in cases of severe financial hardship. Nonetheless these delays have caused hardship to recipients who must wait for their funds to be transferred before the money can be accessed.

Deceased Estates: The issue here is that relatives can only access residual balances of over \$500 from a deceased person's Income Management account if they can satisfy Centrelink that they are the legal personal representative of the deceased person. This involves an application to a Court for letters of administration which is costly and time consuming. This issue is compounded by the extremely limited number of services to assist people in relation to deceased estates, particularly in remote communities. As a consequence people have been unable to access any remaining Income Management funds of deceased persons to assist with much needed and immediate funeral costs. Centrelink confirmed that recent policy changes to its guidelines had been made in the interim which are designed to allow direct costs of funeral expenses to be paid. We also understand that a proposal for legislative change is also being considered by FaHCSIA but we are not aware of the details.

Restrictive access continues and availability of list of Basics Card merchants: There is an ongoing problem for income support recipients who are subject to Income Management as there are limited merchants interstate from the Northern Territory or the various trial sites for the National Income Management Categories.

Fines and Income Management: As fines are not legislated priority needs, people have experienced considerable difficulties setting up regular deductions from their Income Managed funds to pay fines. Whilst Centrelink has now acknowledged that regular repayments can be made out of the Income Managed funds to repay fines where their other priority needs have been met, as a matter of practice this is a clumsy process which needs to be done manually by Centrelink. As a result the adoption of this system is inconsistent. NWRN supports the recent recommendation that Centrelink has made to FaHCSIA for the legislation to be amended to include fines as a priority expense.

Basics Card 10% taxi surcharge: The use of the Basics Card for a taxi fare incurs a significant surcharge in the Katherine region and Alice Springs. This greatly increases taxi fares, in particular for those travelling from remote communities who can spend hundreds of dollars on taxi fares and those people who live in town camps where there is no regular public transport. Getting to town for shopping, medical appointments or cultural and family business is already a problem for Indigenous people living in remote areas. The imposition of this additional charge can make those trips unaffordable for clients and place them in great hardship.

It is Government policy that has mandated that 50 per cent of a person's income in these communities is quarantined on the Basics Card so it is only fair that the Government should cover the costs of complying with the requirements imposed under the intervention. Before the intervention in the NT Indigenous people would have been able to pay the taxi fares in cash.

4. Tackling Centrelink overpayments

Social Security overpayments (and the prosecutions which can be a result of a debt) are the main source of complaint and dissatisfaction that most Australians have with our system of income support. Any comprehensive examination of Australia's tax and transfer system would be remiss if it failed to explore the incidence and impacts of Social Security overpayments, on individual and community living standards, and considered ways to mitigate against its negative and deleterious consequences. Any steps to a simpler, clearer and more consistent and understandable system of income support arrangements would bring tangible benefits and result in a fairer, effective and more efficient system supporting Australian families and individuals.

The former Minister for Human Services in his listed expectations of Centrelink has nominated that the first priority for the agency is to 'make further improvements in the area of compliance, reducing fraud, errors, debts and overpayments to customers.'² As a result of this priority being identified over many years the funding for Centrelink's compliance and business integrity areas has increased. The increased concentration on compliance activity has occurred as Government has consistently placed more obligations and responsibilities on individuals; with severe consequences for error or failure, even if caused by lack of knowledge of a very complex system. Concomitantly this has occurred whilst Government has increasingly reduced its own responsibilities and risks.

As a result, individuals now carry a disproportionate level of risk and Centrelink is encouraged to be less efficient and fair than it should be. This disproportionate balance of responsibility and risk is also extremely inefficient as it encourages too much of a "no responsibility, no care" administrative environment for Centrelink to operate in. Mistakes are

² *Centrelink Annual Report 2007-2008*, p. 17

therefore far more prevalent than they should be. NWRN and their member centres have long argued that there needs to be an additional concentration by Government on utilising a proactive approach in the area of debt prevention rather than remedial compliance activities as has occurred over many years.

To assist the Taskforce in considering this issue we attach a copy of a paper that was recently provided by NWRN to a range of Government departments and agencies on this subject. The Department of Human Services has agreed to the establishment of a debt prevention working party, which will include Centrelink, the Department of Families, Housing, Community Services and Indigenous Affairs and the Department of Education, Employment and Workplace Relations and the National Welfare Rights Network.³

Hundreds of thousands of Australians incur a Centrelink debt each year which, in many cases, are largely avoidable. The system is so complex that income support recipients face considerable difficulties meeting or knowing how to comply with their reporting requirements. The increased casualisation of labour has resulted in situations where a person may be employed by a number of employers. It is rare for someone to be paid in cash and if they are not provided with regular payslips the amount put into the bank for many is regarded as the amount to be declared to Centrelink.

In addition, as the attached paper highlights, Centrelink systems are poorly coordinated and data matching activities are insufficiently resourced to permit for the finalisation of these reviews within the time frame permitted under law. Finalisation of a review without calculation and notification of a debt regularly allows the quantum of Social Security debt to accrue for many years whilst the income support recipient is unaware that there are issues with their ongoing entitlement. Whilst the Government messaging provided to income support recipients would suggest that all government records are matched on a regular basis this can provide a false belief that notification to one government department is sufficient to ensure correct ongoing payments. Additionally, debt raising is too often seen as a discreet activity somehow disconnected from ongoing entitlement and the opportunity afforded to ensure that correct entitlement is paid into the future.

There is an alarming level of “churn” in the system, and increased levels of financial hardship associated with lower weekly incomes and additional workforce disincentives as the formula used by Centrelink in recovering income above the income free areas is excessive, and can be as high as 55 cents in the dollar above \$31 a week. For people on an income support payment, the standard rate of debt recovery is 14% and will increase to 15% from 1 January 2010.

There are significant community and efficiency gains to be derived from a consistent and concerted attempt to minimise, avoid and prevent debts and overpayments in the system. One area where we suggest major inroads could be made in relation to reducing the levels

³ National Welfare Rights Network, *Redressing the Balance of risk and responsibility through active debt prevention strategies*, May 2009.

of debt would be embedding the concept of a person's "notional entitlement" to a payment in the Social Security system and addressing the "knowingly" problem with the interpretation of debts.

5. Looking ahead: towards a system of individual income support entitlements

NWRN takes this opportunity to raise one key matter for consideration of the Taskforce. It may have been raised in a tangential way in some submissions but thinking about how the nation is developing over the next few decades, and the opportunities for major reform comes only a few times in a generation, it is worth placing it on the agenda for discussion and debate. The current system of income support is based largely upon a model which assumes financial dependency and financial interdependency and financial behaviour which needs to be tested and changed if they are found to be outdated or not reflective of modern society, or where our society is heading.

Recent changes which have seen significant reforms to many aspects of policy and legislation has been the recognition of same sex reforms which has prompted NWRN to reconsider this fundamental approach, and its relevance – both now and into the future

Many people affected by the recent Centrelink same-sex changes have spoken to our Member Centres about their relationships and how the relationships are, in the main, not based on notions of financial dependence on the other person, or on the basis of an expectation of financial interdependence. It is against this backdrop that we wish to pose the need for a fundamental rethinking of the nature of our system of income support – that all Australians be treated on an individual basis, rather than as a member of a couple.

People from all generations and all walks of life, from young people starting in their first jobs to mature age people coming out of a first or subsequent relationship, are reporting that old notions of dependence and financial interrelationships are changing and have changed, and will continue to do so. With an eye to societal changes over the next few decades this is an extremely important issue for the Taskforce to consider.

The risks of ignoring this issue are significant, just as the problems associated with acknowledging the reality of societal changes and fundamental changes to the way we relate to people as individuals, is great.

6. Expand independent advice and advocacy services

From submissions to the Review and its own assessment of the tax and transfer system the Taskforce would be acutely aware of the significant level of complexity that has accelerated considerably over recent years so that our income support arrangements can only be

understood by relatively very few people. Complexity adds to administration and compliance costs and saps community support for the current arrangements.

Unfortunately, complexity is unavoidable in a system such as ours which is highly targeted, in terms of providing the most assistance to those most in need.

However, Government's should pay serious attention to what measures it can take to ensure that all Australians, especially those who are disadvantaged or otherwise vulnerable, are in a position to exercise their rights and meet their responsibilities. One way to allow this to occur is to properly resource broad community access to independent information about our Social Security system.

The Government needs to build the capacity of disadvantaged communities and individuals to understand the increasingly complex Social Security obligations and responsibilities and to access their full Social Security entitlements. Additionally it is a priority to improve the accountability of Centrelink and the capacity for the Government and Centrelink to get informed, expert feedback on Centrelink performance. This is best achieved by expanding the network of specialist Social Security advice and advocacy services throughout Australia and making them more efficient by improving their coordination.

Such assistance is particularly relevant to promote the Government's actions to reduce homelessness and advance its social inclusion agenda. It is also particularly timely as the Government embarks on its current reform agenda and the challenges which will occur as a result of the passage of legislation relating to the Compliance Framework, School Enrolment and Attendance Measures, Same Sex Equal Treatment and existing programs, such as CDEP, the Northern Territory Emergency Response, the Cape York Trial and Child Protection Income Management.

The alarming increase in the numbers of appeals and complaints about Centrelink services reported in the 2007/2008 Annual Reports of the Commonwealth Ombudsman, Centrelink and the Social Security Appeals Tribunal has increased the need for additional assistance to those impacted by Centrelink and Family Assistance decisions. Centrelink practices could be significantly improved by an expansion of independent Social Security advice and advocacy services enabling pensioners, parents, carers, people with disabilities, students and unemployed people to receive independent advice and to challenge Centrelink where necessary. Due to current resourcing too few people can get this assistance which enables Centrelink to be careless and far less accountable than it should be.

Yet, as Social Security law has become increasingly more complex and as workforce age payments have increasingly required higher levels of activity and participation, with greater risks through increased numbers of no payment penalties, the availability of independent advice on Social Security and Centrelink matters has diminished. Many cities, towns and communities throughout Australia have no access to independent advice or assistance on Social Security and Family Assistance law.

Currently there are just over 27,000 Centrelink staff making millions of decisions each day and only 24 Commonwealth funded specialist Welfare Rights workers throughout Australia to provide independent assistance. All of these positions receive less funding than other Community Legal Centre positions and consequently many are only part-time. With the increasing complexity of Centrelink matters, the number of other independent advisors in Community Legal Centres and community welfare and pensioner groups has declined.

Welfare Rights Centres in some locations received a small, but welcome one-off grants in 2009/10 to assist them to meet the increased demand and complexity arising in advice and casework activities. This is very positive but does little to meet the overall unmet need for access to legal assistance, information and advice about Social Security and Family Assistance Law. An additional initial investment of \$3 million in recurrent funding would enable a significant increase in the capacity of Welfare Rights services to both assist greater numbers of clients and to hold Centrelink more accountable for the services it provides and the decisions it makes. An investment of \$3 million, allocated as recommended by the National Welfare Rights Network, would mean that an additional 9,000 to 15,000 Centrelink customers throughout Australia would be able to gain independent Social Security and Family Assistance advice each year.

**NATIONAL WELFARE RIGHTS
NETWORK**

**REDRESSING THE BALANCE OF RISK
AND RESPONSIBILITY THROUGH
ACTIVE DEBT PREVENTION
STRATEGIES**

MAY 2009

1. EXECUTIVE SUMMARY	3
2. BACKGROUND	3
3. CURRENT APPROACHES.....	6
4. DEBT PREVENTION STRATEGIES.....	6
4.1 Regular review built into the system.....	6
4.2 Earnings Declaration.....	7
4.2.1 New Claim Interview	7
4.2.2 Changing Payment Period	8
4.2.3 Payslip verification and Earnings Reviews	9
4.2.4 Earnings declaration for those where English is a second language and use of interpreters	10
4.2.5 Applying updated Income Information to All Payments	10
4.2.6 Centrelink client notices	10
4.2.7 Training of Centrelink staff	11
4.3 Service Profiles.....	12
4.3.1 Improving their effectiveness	12
4.4 Data Match	12
4.4.1 Timeliness of and Resourcing of Data Matching	12
4.4.2 Review interview to ensure current eligibility	13
4.4.3 Automatic Data Matching with ATO	13
4.5 Debt Raising and the link with current and future entitlement.....	13
4.5.1 Debt raising not a finite activity	13
5. PROPOSED LEGISLATIVE CHANGES	14
5.1 Reform Debt Waiver provisions.....	14
5.1.1 Remove 'solely' from Section 1237A of the Social Security Act (SSA)	14
5.1.2 Replace 'received in good faith' with 'acted in good faith' in section 1237A of SSA	16
5.1.3 Fix Family Tax Benefit (FTB) debt waiver anomaly	16
5.2 Recognising the disempowering effects of 'battered women's syndrome'	16
5.2.1 Redraft Section 24 of the SSA to recognise disempowerment of women in abusive relationships ...	16
5.2.2 Redraft SSA section 4(3) to recognise the need for consent in 'member of a couple' relationships..	17
5.2.3 Remove of words 'or another person' from section 1237AAD of the SSA	18
5.3 Replace Youth Allowance with Newstart Allowance and Austudy	19
5.4 Strengthen the Notional Entitlement rules to combat debt	20
5.4.1 Legislative overview	20
5.4.2 Utilising Section 12 of the Social Security (Administration) Act 1999 to combat debt.....	21
5.4.3 Suggested changes	23

1. Executive Summary

During 2007-08 Centrelink gave its support to the National Welfare Rights Network's (NWRN) proposal to establish a debt prevention working group which would be designed to support a comprehensive debt prevention strategy across all relevant Government Departments, propose ways to reduce the incidence of debts, promote fairer debt recovery methods and ensure that Centrelink debts were not unfairly raised. Subsequent to this commitment, the Department of Education, Employment and Workplace Relations (DEEWR) and the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) have also given its support to the proposal with FaHCSIA agreeing in April 2009 to facilitate the convening of a meeting to establish the debt prevention working group, the membership of which would include Centrelink, DEEWR, FaHCSIA, the Department of Human Services (DHS) and NWRN.

With the aim of developing a broad framework for the first meeting, NWRN has produced this background paper to detail some of the key problems with administration of the current system and the policy design which has led to too much of the risk being shifted to individuals within the Social Security system and as a consequence an unacceptably high level of Social Security debt. The paper also includes suggestions for possible remedies where problems have been identified in the system. This paper draws on the daily casework experiences of NWRN member organisations.

2. Background

Centrelink is responsible for the distribution of Social Security entitlements to eligible customers in accordance with Social Security legislation and the policy parameters set by the relevant Government Departments. In 2007-2008 Centrelink administered \$70.5 billion dollars in program payments.¹ The Minister for Human Services in his listed expectations of Centrelink has nominated the first priority for the agency is to 'make further improvements in the area of compliance, reducing fraud, errors, debts and overpayments to customers.'² As a result of this priority being identified over many years the funding for Centrelink's compliance and business integrity areas has increased. The increased concentration on compliance activity has occurred as Government has consistently placed more obligations and responsibilities on individuals; with

¹ *Centrelink Annual Report 2007-2008*, p. 11, p. 16

² *Centrelink Annual Report 2007-2008*, p. 17

severe consequences for error or failure, even if caused by lack of knowledge of a very complex system. Concomitantly this has occurred whilst Government has increasingly reduced its own responsibilities and risks.

As a result, individuals now carry a disproportionate level of risk and Centrelink is encouraged to be less efficient and fair than it should be. This disproportionate balance of responsibility and risk is also extremely inefficient as it encourages too much of a “no responsibility, no care” administrative environment for Centrelink to operate in. Mistakes are therefore far more prevalent than they should be. NWRN and their member centres have long argued that there should have been additional concentration by Government on utilising a proactive approach in the area of debt prevention rather than remedial compliance activities as has occurred over many years.³

The Australian National Audit Office (ANAO) conducted an Audit in relation to Centrelink Management of Customer Debt in 2004.⁴ In relation to Debt Prevention the specific recommendations made by the ANAO were:

Recommendation No.4

4.48 The ANAO *recommends* that Centrelink review the implementation, including funding arrangements, of debt prevention activities across its network, and determine whether this implementation supports effective leadership and coordination of debt prevention and management initiatives by Centrelink’s Debt Services Team.

Recommendation No.5

4.82 The ANAO *recommends* that, to help support debt prevention initiatives, Centrelink develop a set of internal performance indicators that accurately measure, and/or assess, the effectiveness of debt prevention activities.

Additionally it was noted in the ANAO Audit Report that there was a need for improved communication between Centrelink and FaCS in relation to debt prevention.⁵

³ Welfare Rights Centre Sydney for National Association of Community Legal Centres, October 1999, *Dealing with government: Centrelink – A Snapshot of Client Needs*; National Welfare Rights Network, October 2002, *Runaway youth debt – no allowance for youth – an analysis of the causes and impact of extensive debt in the Youth Allowance system*; National Welfare Rights Network Briefing paper, June 2004, *Measures to address debt prevention and recovery in the Social Security system*; National Welfare Rights Network, 2007, *Rebalancing risks and responsibilities in our Social Security system - NWRN Budget Priorities Submission 2008*

⁴ Australian National Audit Office, *Audit Report No. 4 2004-2005, Management of Customer Debt*

⁵ Australian National Audit Office, *Audit Report No. 4 2004-2005, Management of Customer Debt*. p. 46.

A subsequent inquiry conducted by the Joint Committee of Public Accounts and Audit (JCPAA) into Management of Customer Debt – Centrelink was tabled on 7 November 2005. The chief recommendation made concerning debt prevention related to the need to prioritise the continued implementation of Centrelink’s payment integrity strategy, concentrating on getting the payment right in the first instance rather than reactive processes.⁶ The JCPAA commended Centrelink particularly in relation to some of their debt prevention actions which targeted younger Centrelink clients through the use of the internet but found that these may not be as useful with other client groups ‘who are accumulating the largest debts - Age Pensioners, those on Sickness Allowance, and others on long-term payments that do not require regular customer contact with Centrelink.’⁷ Additionally there was a requirement for Centrelink to report to the JCPAA in relation to their progress in acting on this recommendation.

The ANAO conducted a further audit in 2007-2008 to examine Centrelink’s progress in implementing the recommendations of both the 2004-2005 ANAO Audit and the subsequent JCPAA Inquiry.⁸ Both audits made recommendations to Centrelink and its purchaser Departments in relation to debt prevention which were agreed to by all parties.⁹ The findings of the follow up audit were that the agreed recommendations had been implemented ‘(h)owever, the ANAO noted that further improvements were required by Centrelink to allow the full impact of the Recommendations to be realised’.¹⁰

The ANAO cited that Centrelink’s *Debt Servicing Strategy 2007-2010* was the chief approach in relation to debt prevention was to ‘minimise customer debt by building it (debt prevention) into standard customer service delivery so that debt prevention operates as part of mainstream customer service’ and ‘restructured its internal operations to allow the integration of debt prevention into the Business Integrity business line’.¹¹ Unfortunately despite these actions ‘the ANAO found little evidence of a nationally integrated approach to debt prevention with the fragmentation particularly evident in the areas of resourcing and coordination of debt prevention activities.’¹²

⁶ Joint Committee of Public Accounts and Audit, Report No. 404 Review of Auditor General’s Reports 2003-2004 Third and Fourth Quarters; and First and Second Quarters of 2004-2005, October 2005, p. 111.

⁷ Ibid, p 114.

⁸ Australian National Audit Office, *Audit Report No.42 2007-2008, Management of Customer Debt – Follow-up Audit*.

⁹ Ibid, p. 16.

¹⁰ Ibid, p. 21.

¹¹ Ibid, p 22.

¹² Ibid, p. 22.

3. Current Approaches

It is worrying that the ANAO in their 2008 follow up audit did not find evidence that Centrelink had taken up the opportunities for debt prevention provided by the recommendations of the ANAO and JCPAA Reports which were broadly supported by the Policy Departments.

NWRN have been assured by Centrelink over the last twelve months of the focus they place on getting it right in the first instance in line with the priority of both the Minister of Human Services and the JCPAA Report.¹³ According to the Centrelink Annual Report in 2007-2008 there was a 95.32% payment correctness rate¹⁴ which is measured in terms of the correctness of Centrelink's decision making and is reflective of the impact of Centrelink error on program outlays rather than the proportion of Centrelink clients being paid correctly. NWRN questions the narrowness in which payment correctness is measured as this seems inconsistent with the increasing debt base.

To date, NWRN has not seen evidence of this change of focus toward active and co-ordinated debt prevention activities. Rather the focus has remained on funding increased compliance at the back end of the process. The Commonwealth Government has a clear opportunity to implement a number of straight forward measures set out in this paper including specific debt prevention actions and legislative measures that are designed to both rebalance the risk and responsibility equation and achieve both greater efficiency and fairness in the process.

4. Debt Prevention Strategies

4.1 Regular review built into the system

Over recent years Centrelink has moved away from the annual review forms which were so much a part of the system of checks and balances in place to ensure correct payments were being made. The focus on increased profiling for review activity has resulted in a reduction in regular review of the income and assets of lower risk cohorts such as those on Age and Disability Support Pensions.

¹³ *Centrelink Annual Report 2007-2008*, p. 17; Joint Committee of Public Accounts and Audit, Report No. 404 Review of Auditor General's Reports 2003-2004 Third and Fourth Quarters; and First and Second Quarters of 2004-2005, October 2005, p. 114,

¹⁴ *Centrelink Annual Report 2007-2008*, p. 24

This is in contrast to the JCPAA Inquiry which highlighted that it was those who Centrelink did not have regular contact with that ended up with larger debts citing Age Pensioners as one such group.¹⁵ In NWRN's experience significant numbers of overpayments are discovered when people correctly complete an income and assets review form often after several years of minimal contact from Centrelink about their rate of payment.

Review forms provide the recipient with an opportunity to properly complete an update of their income and asset details and in a form which is often more comprehensible than the information contained on Centrelink notices. Regular review of entitlements in this manner provides an opportunity for remedial action to ensure people are receiving their correct entitlement at the earliest opportunity. Compliance activities associated with the review of income and assets can result in the raising of debts but can also result in rate increases. Unlike debt actions the application of favourable determinations provided for in s110 of *Social Security (Administration) Act 1999* effectively bars the payment of arrears beyond 13 weeks. If Centrelink is trying to get it right in the first instance then regular opportunities to update income and asset information is an ideal opportunity to continue to get it right whilst someone receives Centrelink payments.

4.2 Earnings Declaration

4.2.1 New Claim Interview

It must be recognised that the life circumstances which lead a person to claim income support can be stressful and that as such it can be difficult for a person to take in all of the obligations to receive such payments. This makes these initial interactions at the new claim stage an ideal opportunity for early intervention actions to prevent future debts arising.

Whilst cognisant that much of the new claim interview is taken up with establishing eligibility for payment it is also an ideal opportunity to provide additional information necessary to ensure that Centrelink clients are able to avoid future problems. At a minimum Centrelink should ensure that all new claimants for payment are provided with additional information in relation to:

- income declaration (including aligning pay codes, distinguishing between gross earnings and net earnings, risk of estimating earnings);

¹⁵ Joint Committee of Public Accounts and Audit, Report No. 404 Review of Auditor General's Reports 2003-2004 Third and Fourth Quarters; and First and Second Quarters of 2004-2005, October 2005. p. 113-114.

- notification obligations;
- how to understand/interpret Centrelink notices and the information provided on Centrelink letters; and
- dispelling assumptions pertaining to the regular sharing of information between Government Departments, including the Australian Taxation Office, Child Support Agency and Department of Immigration.

Assumptions should not be made in relation to someone who has been a past recipient of Centrelink payments to exclude them from this process. This is particularly critical due to the complexity of the rules and the rapid pace of change which occurs in relation to payment eligibility. A follow up telephone interview could occur one month after grant to reinforce the information provided at the initial new claim interview.

4.2.2 Changing Payment Period

NWRN has found significant numbers of debts arise because of the difficulty which can arise when the declaration period for payment does not align with the pay period for employment. In such instances there can be a reduced capacity for correct declaration of earnings. There are particular difficulties for those who have variable levels of earnings which include differential rates of pay, including penalty rates. These difficulties can be further compounded for Centrelink clients who have limited literacy or numeracy or where English is a second language. Messaging from Centrelink workers which encourage clients to estimate their earnings rather than realigning payday codes can result in the unwitting accrual of debts.

Centrelink have advised of a project currently operating which adopts active strategies to align the pay periods to employment periods as a debt prevention measure. NWRN members continue to have high numbers of clients presenting for assistance with debts which have arisen as a result of under declared earnings. When questioned in relation to the difficulties and or lack of understanding of reporting requirements these clients have indicated that they have never been told by Centrelink about the potential to align pay periods to reduce the risk of further overpayment.

4.2.3 Payslip verification and Earnings Reviews

The regular provision of payslips to Centrelink can be a protection for clients who have had problems with the declaration of earnings which have resulted in overpayments. NWRN members have long advised clients who have experienced difficulties with the reporting of earnings to provide their payslips to Centrelink on a fortnightly basis to avoid future problems. Difficulties arise from time to time where Centrelink actively discourage clients adopting this active debt prevention strategy which is designed to avoid the accrual of further debts.

It is imperative where payslips have been provided to Centrelink that the information provided is accurately recorded. Whilst recognising that the information contained on payslips can be complex and difficult to interpret, if sufficient care is taken of all information on payslips including the period of the payslip (to ensure coincides with pay period, year to date figures and salary sacrificing arrangements) debts may be able to be identified at an earlier juncture. Unfortunately despite the provision of payslips overpayments can still arise. NWRN see it is a priority that additional training is provided for Centrelink staff in relation to interpreting payslips with a debt prevention focus.

The provision of payslips is an aspect of earnings reviews undertaken by Centrelink currently. These types of review require the recipient to provide their payslips to Centrelink for a particular period of time. These reviews provide an opportunity to identify where earnings have been declared incorrectly. Due to the short time frame of the review period it is only in instances which result in the raising of overpayments which include further action by Centrelink. NWRN believe the period for the provision of payslips should be a longer period.

It is of concern that Centrelink takes no further action to investigate or remedy the problem in instances where there are only minor discrepancies of earnings declaration. Whilst the discrepancy over a short period of time may not result in a debt if this continues over an extended period of time there is significant risk of a larger debt accruing and in some instances the risk of criminal prosecution. This can be further compounded if a person has several earnings reviews over a number of years none of which result in the raising of a debt. No further contact is interpreted by the Centrelink client that all is in order and prevents early remedial action on the part of the client. It should be a requirement as part of the finalisation of the review that Centrelink contact the client by telephone to explain correct earnings declaration and strategies to avoid debts.

4.2.4 Earnings declaration for those where English is a second language and use of interpreters

Correct earnings declaration can be particularly difficult for those for whom English is a second language. Significant numbers of those presenting for assistance at NWRN member centres in relation to overpayments and also prosecutions are from culturally and linguistically diverse backgrounds where English is a second language and who have limited English literacy and numeracy and little or no understanding of their reporting obligations.

NWRN has long argued for the need for notices and forms to be translated into other languages. In the case of Indigenous clients, consideration should also be given to the use of non text based communication aids. Too often clients report that they are not provided with access to interpreters even when it is clear that they do not understand the interaction and this lack of understanding is detailed in Centrelink on line documents. These interactions and the use of interpreters is a critical debt prevention measure as this clientele are perhaps the most vulnerable to incorrect payment.

4.2.5 Applying updated Income Information to All Payments

Systems must be put in place so that when a client notifies an update in their Family Tax Benefit estimate, they are also prompted by an automatic flag to be asked if they are on a Centrelink income support payment, and a proper consideration undertaken as to whether their income details need to be updated in relation to that payment too and vice versa. It is imperative that such systems are put in place for all servicing channels including in office, on line, telephone and by correspondence to ensure that those who choose to use the various methods available for contact with Centrelink are provided with similar protections from overpayment. This has been a long standing issue for the NWRN over many years. NWRN remains unconvinced that effective systems have been put in place to remedy this problem.

4.2.6 Centrelink client notices

The adequacy of Centrelink client notices has been a long standing issue of concern to NWRN. We raise it again because clients often do not understand the initial correspondence from Centrelink about their rights and responsibilities which increases the likelihood of the client incurring debt.

There should be a minimum standard for the preparation of notices and other information products for clients requiring a font size of not less than 12 points and that notices are understandable to non-expert users tested perhaps through focus groups as with claim forms.

NWRN agrees that the notices have a vast amount of information that is presented in a manner not easily comprehensible to clients, especially income details. NWRN recommends that recorded income details should be placed centrally on the front of a notice. In addition, the notice should clearly explain the significance of the income figure and how the figure is used to calculate the rate of payment, the possibility that it could be recorded incorrectly and that incorrect recording could cause a debt.

Consideration should be given to the first notification letter prepared in a different format from the usual one page pro forma letter. The first notification should detail all of the client's rights and responsibilities., the importance of the letter when dealing with Centrelink officers and a comprehensive explanation of the income and assets that are being assessed as affecting the client's and his or her family member's payments.

Recently Centrelink conducted an internal review of their client notices, which resulted in changes to the templates. However, most of the notices still contain the same problems raised by NWRN over many years.

4.2.7 Training of Centrelink staff

At the core of an active debt prevention strategy it is incumbent on Centrelink to ensure that this focus is communicated through the entire organisation. For too long the focus has been on compliance with little consistent effort to prevent debt. In order for debt prevention to be at the forefront of service delivery it must be a key element within an overall communications campaign for the organisation. Such a communications campaign must be supported by ongoing training for Centrelink officers to highlight the triggers for debt and the steps that can be taken to minimise debt occurring. It is also essential that a training strategy provides effective education around the technical aspects of the delivery of Social Security payments so that Centrelink officers are better placed to offer practical and user-friendly options to clients to assist them meet their Social Security and Family Assistance obligations.

4.3 Service Profiles

4.3.1 Improving their effectiveness

NWRN supports the use of service profiling as a debt prevention strategy. However, through its members, NWRN is aware of cases where the service profiles have not succeeded in identifying changes in a person's circumstances. This has meant that clients have later had debts raised against them even though they have been subject to a service profile, or in some cases a couple of service profile interviews. This appears at least in part to be attributable to the narrowness of the questions asked during these interviews which can be directed to obtaining specific information rather than conducting a comprehensive review of a recipient's entire financial circumstances. This has led for instance to interests in family trusts and companies not being identified through the service profile interview system.

NWRN believes that the service profiling interviews could be improved by expanding the questions asked during this process.

4.4 Data Match

4.4.1 Timeliness of and Resourcing of Data Matching

It is pleasing some additional resources have been provided to Centrelink in the previous budget to assist with its Data Matching Program. NWRN has long expressed its concern regarding Centrelink's administration of its Data Matching Program which can result in significant delays in the processing of information. Centrelink's response to date has been that the delays arise because there is insufficient funding to support the program. However, these delays can result in increasing levels of debts which could have been minimised through prompt action on the part of Centrelink. With higher amounts of debt there is also an increased risk of prosecution for criminal offences.

Whilst cognisant of the strict time limit for the completion of the raising of debts, as part of the Data Match Program too often NWRN members see instances where debts are not raised within the statutory time frame and are finalised without any action by Centrelink. Although as part of the program the Centrelink recipient is in the first instance provided with some limited information about

the discrepancy, not surprisingly they often take the view that if a problem does exist it will be addressed by Centrelink through the process. If the review is finalised without a debt being raised or action taken to reduce the rate of payment then it may indicate to the recipient that they are complying with their obligations. As a result debts can continue to accrue and an opportunity to minimise debt is lost. The overpayment may not be detected until many years later when a further data match occurs.

4.4.2 Review interview to ensure current eligibility

As part of the review associated with Data Match activities it would be appropriate to arrange for a separate review interview to ensure that the current entitlement is correct. This would ensure that information provided as part of the review which relates to current entitlement is acted upon. If the Data Match legislation prevents the use of information provided to correct payment then it could be used as a trigger for a service profile interview to ensure current entitlement.

4.4.3 Automatic Data Matching with ATO

Automatic data-matching would relieve some of the reporting burden of the client and assist Centrelink to prevent client debt. Automatic cross-matching of data between the ATO and Centrelink would be assisted by a box to tick on a Tax File Declaration form when a person starts work declaring that they receive a Centrelink payment. A similar system of automatic data matching with educational institutions at the beginning and end of each semester would confirm the enrolment of a student receiving Youth Allowance.

4.5 Debt Raising and the link with current and future entitlement

4.5.1 Debt raising not a finite activity

Current Centrelink compliance activity treats debt raising and debt recovery as the end of the process rather than examining its interaction with current and future Centrelink entitlements. NWRN members regularly through their casework see debts raised for discreet periods with no action taken to ensure that the current entitlement is correct. This is so, even when the information provided from employers indicates continuing employment. Additionally the opportunity for

remedial action to ensure that clients are aware of their reporting obligations and of minimising the risk of future overpayment is reduced. NWRN consider that as part of the debt raising process an interview should be arranged for one month after the raising of the debt to ensure that the client is aware of their notification obligations and that strategies are put in place to prevent future debts.

5. Proposed Legislative Changes

5.1 Reform Debt Waiver provisions

Over the last fifteen years, Governments have tightened the Social Security legislative provisions relating to the raising and recovery of debts. Whereas fifteen years ago, not all overpayments were actually recoverable as debts, now regardless of the cause almost all are recoverable debts.

This has been part of the massive shift in the balance of risks and responsibilities in the Social Security system as previously highlighted. Such an approach has not been conducive to good public administration because it has also encouraged Centrelink to be less efficient and far more careless than it should be.

NWRN proposes three suggestions for legislative reform in this area which are designed to shift the emphasis from “debt collection” to a stronger focus within Centrelink on “debt prevention”.

5.1.1 Remove ‘solely’ from Section 1237A of the Social Security Act (SSA)

Section 1237A of the SSA requires a client to prove that the debt was ‘solely’ caused by administrative error in order to have it waived. This means that Centrelink can be 99% responsible for the debt but it will not be waived because of the 1% contributory error of the client. The result of which has been even when Centrelink acknowledges it has erred, the balance of risk rests almost entirely with the client because any slight contributory error on their part makes them liable to repay the debt. Invariably Centrelink will rely on the small print on the backs of notices to argue that the client has also contributed to the debt.

The following case studies are illustrative of the unfairness and inequity of taking such an approach:

Centrelink error caused large debt for Mr B

Mr B claimed PP (Parenting Payment) and Family Tax Benefit (FTB) on 10 March 2003. He lodged claim forms for both payments on that day. On the claim form for PP, Mr B advised that he had separated from his ex-partner and that he worked full time earning \$560 per week. He advised on the FTB claim form that he expected his income to be about \$28,000 for this year.

Despite providing information about his income and being employed full time, Centrelink granted PP to Mr B at the maximum rate from the date of his claim. The first Centrelink review form Mr B received was about 28 months after he applied for PP. He had no interviews with Centrelink in the interim. When he lodged the review form he again advised Centrelink of his income. This led to Centrelink raising the debt and referring the matter to the DPP. As noted above, the DPP did not proceed with prosecution action, presumably because Mr B had always notified Centrelink of his income and Centrelink error was the cause of the debt.

However, it is highly unlikely that the debt itself will be waived as Centrelink will maintain that the debt was not solely due to Centrelink error (as Mr B did not contact Centrelink to advise it that the information it had on the back of the Centrelink notices about his income was incorrect) and he probably does not have sufficient 'special circumstances' to warrant waiving of the debt under that provision.

Centrelink failed to transfer income

Ms Z was in receipt of Parenting Payment (PP) and Family Tax Benefit (FTB). She was recently advised that she has a PP debt of just over \$17,000 as Centrelink did not take into account her income from employment. During the debt period, Ms Z advised Centrelink of her income. Centrelink does not dispute this. However, Centrelink's Original Decision Maker did not waive the debt on the basis that Ms Z advised the FTB section of her income but not the PP section. Centrelink's view was that Ms Z contributed to the debt.

The best way to improve the quality of administration within Centrelink is to once again make Centrelink at least partially responsible for its own errors. This could be achieved through removing 'solely' from s1237A(1) and requiring Centrelink to waive any debt which was caused 'substantially' by administrative error. Alternatively, 'solely' could be replaced with 'wholly or predominantly'.

5.1.2 Replace ‘received in good faith’ with ‘acted in good faith’ in section 1237A of SSA

For a debt to be waived, it is also necessary for any overpayment to have been ‘received in good faith’. Where a client is on the record as having contacted Centrelink to query their payment or to check that it is correct, Centrelink will not accept that any subsequent overpayment was ‘received in good faith’ even though, at the time of the inquiry, Centrelink had checked the payment and categorically assured the person that they were receiving the correct amount. Again, this provision shifts all responsibility to the customer and simply condones a ‘no responsibility, no care’ approach by Centrelink which is contrary to sound administrative practice. If the provision was changed to ‘acted in good faith’ clients would not have to carry unfair debt burden and Centrelink would be held accountable.

5.1.3 Fix Family Tax Benefit (FTB) debt waiver anomaly

For FTB debts to be waived on the grounds of sole administrative error, there can be an additional requirement that the person must also prove that they are in ‘severe financial hardship’.

Numerous FTB debts occur each year through Centrelink’s sole administrative error. However in some circumstances, ‘severe financial hardship’ for which the Government has set a very high threshold test, has also to be proved. Even a family that only receives Social Security income does not qualify as being in ‘severe financial hardship’. Again, why should Centrelink bother to get it right when it can simply raise a debt with no care or responsibility if it gets it wrong. To achieve greater care, accuracy and efficiency and to shift the emphasis to debt prevention rather than debt recovery where it is now, this provision needs to be amended so that Centrelink must waive such debts for any family on income support or where “severe financial hardship” exists.

5.2 Recognising the disempowering effects of ‘battered women’s syndrome’

5.2.1 Redraft Section 24 of the SSA to recognise disempowerment of women in abusive relationships

It is now well recognised in criminal law that serious domestic violence can induce what has been called 'battered women's syndrome' – a condition which robs women of the ability to make decisions for themselves due to 'learned helplessness' (see Patricia Easteal, Kate Hughes and J Easter: 'The Reasonable Battered Woman and Duress': Educating the Judiciary (1993) 18(2) *Alternative Law Journal*, p.139). Acceptance of the concept within social security law has been slow and made against vigorous opposition by Centrelink, but in a recent Administrative Appeals Tribunal decision (*Rolton v DEEWR – AAT No 2008/3542*) the Tribunal found that the Applicant's circumstances ('being in an abusive and controlling relationship, coupled with the nature and severity of the Applicant's mental condition') amounted to a 'special reason' within the meaning of SSA section 24.

We believe that section 24 may not require amendment itself, but that Departmental guidelines should be developed which require recognition by the decision-maker of the disempowering effects of 'battered women's syndrome'.

5.2.2 Redraft SSA section 4(3) to recognise the need for consent in 'member of a couple' relationships

We believe that while the liberalising of the Secretary's discretion in section 24 of the SSA by the making of appropriate guidelines would be welcome, it would only be a band-aid solution to the problem. The real problem arises from the fact that women suffering battered women's syndrome are unable to consent to a member of a couple relationship in the first place. The reality in these cases is that the relationships are not marriage-like but are master/slave relationships, where the battered woman does not consent to what is happening but has no power – in fact no will – to change or even challenge the circumstances in which she finds herself.

Case Study – Anthea

Anthea suffered from disabling agoraphobia, panic attacks and depression. A man moved in with her, fathered a child (her second child), and then, for almost four years, proceeded to exploit her domestically, sexually and financially. Though the man received a reasonably good salary, he insisted that Anthea continue to claim and accept parenting payment at the single rate so that he could use the extra money to support his drug habit, gambling and addiction to alcohol. Centrelink accepted as a fact that Anthea did everything asked of her because of her fear of violence; because of her need for a relationship due to her fragile mental health; and because she needed

money for her children. Finally, her abuser was arrested for a knife attack on Anthea, convicted, and sentenced to a term of imprisonment. Despite Centrelink's acceptance that Anthea had acted under what in criminal law would clearly be regarded as duress, Centrelink found that she was responsible for approximately \$30,000 overpayment of parenting payment.

We believe that the SSA needs to be amended to require that before couples are determined to be in a member of a couple relationship, the decision-maker must be satisfied that both members have a reasonable equality of power in the partnership, or that if it is a dominant/submissive partnership the submissive member retains the capacity to validly consent to the partnership.

5.2.3 Remove of words 'or another person' from section 1237AAD of the SSA

Section 12377AAD provides circumstances in which a debt can be waived in special circumstances. However, waiver is precluded if the debt resulted wholly or partly from the debtor or another person knowingly making a false statement or knowingly omitting to comply with the Act. This means that the discretion cannot be used where a debt is attributable, even in part, to knowingly false statements or failures to comply by a third party.

In battered wives syndrome cases, the false statements and/or failures to comply are almost always attributable to the abusing male. An example of this would be when he insists that his partner not to report his true income or employment circumstances.

An Example – Watson v Secretary, Department of Family and Community Services [2002] AATA 311 (6 May 2002)

Mrs Watson was subjected to horrendous verbal and physical abuse from her partner. She was assaulted repeatedly to 'keep her in line', on several occasions ending up in hospital with bruising and broken bones. When she attempted to leave her partner, he told her that 'If you leave I will kill you and your children.' The marriage broke up only when Mr Watson was imprisoned for social security fraud. His offence had been to claim social security benefits without declaring that he was employed.

Mrs Watson had been receiving social security benefits of her own. These benefits were higher than they should have been because of her husband's undeclared income, and when Mr Watson's

fraud became known a substantial overpayment debt was raised against her. Mrs Watson sought waiver under section 1237AAD but this was refused because of Mr Watson's knowingly false statements.

We believe that paragraph section 1237AAD of the SSA should be amended to read: 'The Secretary may waive the right to recover all or part of a debt if the Secretary is satisfied that (a) the debt did not result wholly or partly from the debtor or another person acting as an agent for the debtor knowingly...etc' (Change underlined). Such an amendment would cover the situation where the debtor was instrumental in procuring the false statement or representation or the failure or omission to comply with the relevant legislation, but would not capture a wife or partner who was acting under duress.

5.3 Replace Youth Allowance with Newstart Allowance and Austudy

Youth Allowance (YA) was created as a means to simplify payments for young people, regardless of whether they are students or looking for work.

Instead the creation of one single payment for young people has led to confusion and debt as many young people regularly change circumstances and do not understand the technical differences between YA "student" and YA "other" (job search).

Many young people who cease study altogether or reduce their load to part time study do not appreciate the need to notify Centrelink of this change. They understand they are still entitled to YA as a job seeker or because they are a young person. Failing to notify Centrelink, as the following case studies illustrate, all too often leads to a debt for a period in which, in all likelihood, the young person would have otherwise been eligible for Youth Allowance.

Jack ceased studying full time and became a part time student as he wanted to gain employment and save some money. Jack looked for jobs regularly and attended a number of interviews. He was unsuccessful in his job search and returned to full time study the next semester. Centrelink raised a debt for the semester Jack was a part time student, despite the fact that his part time study and job search would have otherwise qualified him for Youth Allowance as a job seeker.

Mary ceased full time study due to ill health. She failed to notify Centrelink as she understood she was entitled to receive YA as a young person. Centrelink detected one year later that Mary was no longer a student and raised a debt for the whole year. Had Mary notified Centrelink she could have continued to receive YA with a medical exemption or with reduced activity requirements given her ill health.

Abolishing YA and creating two separate payments, Austudy and Newstart Allowance would make it clear to young people the requirements for each payment, ie to support study or to support job search. This change would remove confusion and reduce the number of debts for young people. It would rebalance the risks inherent in a confusing system which achieves nothing by calling payments for both purposes Youth Allowance.

5.4 Strengthen the Notional Entitlement rules to combat debt

5.4.1 Legislative overview

Section 1223 in Part 5 of the SSA provides:

1223 Debts arising from lack of qualification, overpayment etc.

1223(1) [Payments made to a person] Subject to this section, if:

(a) a social security payment is made; and

(b) a person who obtains the benefit of the payment was not entitled for any reason to obtain that benefit;

the amount of the payment is a debt

As the waiver provisions now stand, recovery can generally only be waived if the debt was solely caused by “administrative error” and received in “good faith” (section 1237A of the SSA); or there are “special circumstances” to warrant waiving recovery, AND the debt did not result from the debtor or another person, “knowingly” making a false statement or representation (section 1237AAD of the SSA).

Additionally section 1237AAC provides circumstances where the Secretary must waive the right to recover a debt to the extent set out in the section. However this is limited to a few very specific payments (some of which no longer exist in the prescribed form, for example, family payment and

family allowance) and are subject to additional restrictive requirements. It is usually time limited to a period of three years prior to the overpayment ending and in some cases subject to the 'knowingly' requirement.

As a consequence, many people are left with intrinsically unfair debts despite the fact that they would clearly have been entitled to an alternative payment over the period had they claimed it, and despite the fact that recovery of the debt effectively leaves them without income support for the entire debt period. Once again, we have transferred too much of the risk onto individuals who were unaware or unable – due to disability, circumstance or ignorance – to contact Centrelink and arrange to claim another payment.

5.4.2 Utilising Section 12 of the Social Security (Administration) Act 1999 to combat debt

Prior to 1 January 2008, section 12 of the *Social Security (Administration) Act 1999* (SS Admin Act) allowed for a person to be retrospectively transferred from one Social Security entitlement to another, for a period prior to the date the claim for their current payment was lodged. This meant that where a person, was for example, transferring from Newstart Allowance to Carer Payment, in respect of a recently lodged claim for Carer Payment, they could be backdated Carer Payment to the date they first qualified for Carer Payment while in receipt of Newstart Allowance. Until 1 January 2008, there was no restriction on the backdating period, and the person was effectively put in the position, financially, that they would have been had they lodged the Carer Payment claim earlier.

Therefore, section 12 in the past could be utilised to reduce or eliminate a person's debt where the debt was due to the person either ceasing to be eligible for the payment they formerly received, or where the payment ceased to be payable due to their income and assets. At the time of the change, NWRN opposed the move arguing before the Senate Standing Committee on Employment, Workplace Relations and Education that such an application in no way circumvents Parliament's intentions regarding section 12 or the waiver provisions. Rather the use of this provision to relieve a person of a debt that they would not have incurred had they claimed an alternative payment earlier was merely a useful application of beneficial legislation. The advantage of the provision was that it put the person back in the position they would have been in if not for their lack of knowledge or other circumstances without the Commonwealth being out of pocket.

The beneficial nature of such an approach is demonstrated through the following case studies.

Case study - Bob

Bob contacted a Welfare Rights Centre for advice in respect of an Austudy debt over \$5,000 and explained to the Centre that the debt was due to his failure to maintain full time study. He explained that he was “sick” at the time. With some reluctance, he finally disclosed his “sickness” was major depression. After discussions with his treating health professionals, a claim for Disability Support Pension (DSP) was lodged and payment granted promptly, there being no doubt as to the severity of his psychiatric disability. As the medical evidence supported the view that Bob would have been eligible for DSP during the Austudy debt period had he lodged a claim, the Centre successfully argued that section 12 should be applied so as to transfer Bob from Austudy to DSP from just prior to the beginning of the debt period. This effectively relieved him of the Austudy debt because it was recovered from DSP arrears payable to him. As such, the public purse was in no way out of pocket and a man with a severe disability was relieved of a debt that would not have occurred had he been able to claim DSP earlier.

Case study: Annie

Annie is a sole parent with a long-term severe psychiatric disability. She has little insight into her condition, and due to this has been resistant to seeking treatment. She has had periods of homelessness and lost the custody of her child, as her child was considered to be at risk by the state welfare authority. Annie failed to advise Centrelink that her child had left her care and she continued to be paid Parenting Payment (single) for four months after her child had left her care.

Annie’s reasons for failing to advise Centrelink that her child had left her care were complex. Although it could have potentially been argued that given the severity of her psychiatric disability the debt was not ‘knowingly’ incurred and recovery waived, establishing this would have been fraught with difficulty because Anne was mentally ill and emotionally unstable – both during the debt period and at the time she was represented.

Instead of seeking waiver, the Centre argued that under section 12 of the Act. Annie’s Disability Support Pension claim should be backdated.

As with Bob, Annie was relieved of the debt – the debt she would not have incurred had she had the insight, knowledge and social support to transfer from one pension type to another when she lost the care of the child.

However, given the thirteen week limitation date that the section now imposes prior to the date of determination, the utility of this section to combat debt is unduly restricted.

5.4.3 Suggested changes

We believe that legislative changes outlined would not undermine the payment integrity of the SSA and could be made to address the current unacceptable situation whereby a person's notional entitlement to another payment is not recognised thus leaving a person burdened with debt.

This could be achieved by adopting a two fold approach by redrafting section 1237AAC to impose a mandatory offsetting requirement where it can be demonstrated that a person had a notional entitlement to another payment and reversing the changes to section 12 of the SS Admin Act through abolishing the 13 week limitation period.