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**NATIONAL WELFARE RIGHTS  
NETWORK**

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

**MAY 2009**

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## 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.<sup>1</sup> 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.'<sup>2</sup> 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

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<sup>1</sup> *Centrelink Annual Report 2007-2008*, p. 11, p. 16

<sup>2</sup> *Centrelink Annual Report 2007-2008*, p. 17

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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.<sup>3</sup>

The Australian National Audit Office (ANAO) conducted an Audit in relation to Centrelink Management of Customer Debt in 2004.<sup>4</sup> 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.<sup>5</sup>

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<sup>3</sup> 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*

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

<sup>5</sup> 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.<sup>6</sup> 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.'<sup>7</sup> 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.<sup>8</sup> Both audits made recommendations to Centrelink and its purchaser Departments in relation to debt prevention which were agreed to by all parties.<sup>9</sup> 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'.<sup>10</sup>

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'.<sup>11</sup> 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.'<sup>12</sup>

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<sup>6</sup> 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.

<sup>7</sup> Ibid, p 114.

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

<sup>9</sup> Ibid, p. 16.

<sup>10</sup> Ibid, p. 21.

<sup>11</sup> Ibid, p 22.

<sup>12</sup> Ibid, p. 22.

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### **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.<sup>13</sup> According to the Centrelink Annual Report in 2007-2008 there was a 95.32% payment correctness rate<sup>14</sup> 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.

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<sup>13</sup> *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,

<sup>14</sup> *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.~~

<sup>15</sup> 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);

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<sup>15</sup> 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.

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- 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.

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#### **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.

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#### **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.

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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.

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## **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

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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.

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

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### **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'.

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### **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**

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~~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 1237AAD 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.

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**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).

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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

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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 if not for their lack of knowledge or other circumstances without the Commonwealth being out of pocket.

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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.

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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.

The first of these is the fact that the system is not a simple one, and that it is not possible to describe it in terms of a few simple parameters.

The second is the fact that the system is not a simple one, and that it is not possible to describe it in terms of a few simple parameters.

### 3. The third of these is the fact that the system is not a simple one, and that it is not possible to describe it in terms of a few simple parameters.

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