



Australian Government

Department of Families, Housing,  
Community Services and Indigenous Affairs

10 November 2010

Ms J Dennett  
Committee Secretary  
Legal and Constitutional Affairs References Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

Dear Ms Dennett

**Departmental response to the Welfare Rights Centre (Sydney) submission to the  
Legal and Constitutional Affairs References Committee  
Review of government compensation payments**

I am replying to your request of 4 November 2010 seeking a written response to the Legal and Constitutional Affairs References Committee (the Committee) on each of the issues raised in the submission from the Welfare Rights Centre, Sydney (Welfare Rights).

By way of background, debts arise for a variety of reasons, including because a customer did not report a change in their circumstances or an administrative error has occurred. Over the past two financial years there were over 2 million debts raised by Centrelink. At the beginning of the financial year 2009-10, there were approximately 485,000 debts relating to customers in receipt of FaHCSIA payments. Approximately 975,000 new debts were raised and the balance, at the end of the year, had dropped to approximately 439,000. Of these debts, approximately 40 per cent overall were for amounts of less than \$50 and were automatically waived.

The Committee would also be aware of the National Welfare Rights Network (NWRN) report entitled, 'Redressing the Balance of Risk and Responsibility Through Active Debt Prevention Strategies', released in May 2009. The NWRN also provided a copy of its report to the Hon. Jenny Macklin MP, the Minister for Families, Housing, Community Services and Indigenous Affairs. The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) notes that the Welfare Rights Centre submission to the Committee restates some of the issues raised in the NWRN report.

In December 2009, FaHCSIA met with representatives from the National Welfare Rights bodies and other Commonwealth agencies responsible for the policy, legislation and delivery of social security and family assistance payments to commence discussion on the issues contained in the paper.

Discussions were suspended following the decision on 4 February 2010 for the Legal and Constitution Affairs References Committee to enquire and report on compensation matters, including “waiver of debt” schemes. FaHCSIA and NWRN agreed it would be best to defer any further discussions on the content of the NWRN paper until after the Committee presents its report. FaHCSIA intends to provide the Minister with advice on the “waiver of debt” provisions, following tabling of the Committee’s report.

FaHCSIA’s response to the Welfare Rights submission to the Committee is at **Attachment A**.

The Welfare Rights contribution to the issues around the provisions is welcomed by FaHCSIA. FaHCSIA looks forward to progressing discussions once the report of the Committee is released.

Yours sincerely

*Signed*

Mr Ty Emerson  
Branch Manager  
Social Security Policy Branch

## Response to NWRN proposals

### **Proposal 1**

#### **Remove “solely” from Section 1237A of the Social Security Act 1991**

*Section 1237A of the Social Security Act 1991 (“SSA) requires a person to prove that their debt was ‘solely’ caused by administrative error in order to have it waived [for that reason].*

FaHCSIA notes that this is a debt provision of long standing, and its purpose is explained in the Explanatory Memorandum to the Social Security Legislation Amendment (Carer Pension and other Measures) Bill 1995 (Act 143 of 1995) at page 22 (see Attachment B).

### **Proposal 2**

#### **Replace ‘received in good faith’ with ‘acted in good faith’ in section 1237A of the SSA**

FaHCSIA notes that this is the second requirement of the longstanding section 1237A waiver provision, and its purpose is explained in the Explanatory Memorandum to the Social Security Legislation Amendment (Carer Pension and other Measures) Bill 1995 (Act 143 of 1995) at page 22 (see Attachment B).

### **Proposal 3**

#### **Remove 6 week rule in section 1237A of the SSA**

FaHCSIA notes that this was a Senate amendment enacted in 1997.

Under this provision, the proportion of a debt attributable solely to an administrative error made by the Commonwealth must be waived if the debtor received in good faith the payment or payments that gave rise to that proportion of the debt. This provision only applies if the debt is not raised within a period of six weeks from the first payment that caused the debt or, in circumstances where the debt arose because a person has complied with a notification obligation, six weeks from the end of the notification period.

### **Proposal 4**

#### **Remove inconsistent provisions for Family Tax Benefit debt waiver**

FaHCSIA acknowledges that there is an additional requirement under family assistance law that requires a debtor to prove that they “would suffer severe financial hardship” if the debt is not waived. This provision has existed since the introduction of the Family Tax Benefit on 1 July 2000.

### **Proposal 5**

#### **Remove words “or other person” from section 1237AAD of the SSA**

FaHCSIA notes the Welfare Rights commentary on the proposed amendment to section 1237AAD.

***Debt recovery policy – increase of recovery rate to 15 percent***

The increase of withholding by deduction of payment from 14 per cent to 15 per cent was a decision taken by Government and announced in Budget 2009-10. It was implemented on 1 January 2010. Safeguards were incorporated into this measure to ensure that people experiencing financial hardship could negotiate a lower rate of deduction for up to 12 months. Currently approximately 60 per cent of debts are being recovered at less than the standard rate.

***Response to the terms of reference on the scheme for Compensation for Detriment caused by Defective Administration (CDDA)***

FaHCSIA confirms the advice set out in its earlier submission to the Committee that the Department of Finance and Deregulation provides advice and guidance on administering the CDDA scheme, and is responsible for implementing the recommendations made by the Commonwealth Ombudsman in the report *Putting Things Right: Compensation for Defective Administration*, released in August 2009.

**Social Security Legislation Amendment (Carer Pension and other Measures) Bill 1995 – Act 143 of 1995 – Explanatory Memorandum (extract)**

**Item 2** inserts new section 1237. Previously section 1237 provided that the Secretary must waive the whole of a debt referred to in section 1237. The repealed section 1237 required the whole of a debt to be waived in some situations where there was administrative error (subsection 1237(2)), conviction of an offence (subsection 1237(3)), undervalued properly (subsection 1237(4)) or debts less than \$200 (subsection 1237(5)).

The new section 1237 provides that the Secretary may now waive all or part of the debt referred to in new sections 1237A to 1237AAD (with the exception, of course, of section 1237AAB that provides for part payment of a debt in full settlement of the outstanding balance of a debt). Accordingly, decision-makers can now waive part of a debt in situations where it is not appropriate (or not possible) to waive the whole debt.

Section 1237 has been re-written as sections 1237A, 1237AA and 1237AAA.

New section 1237A provides for the waiver of a debt where the debt was attributable solely to an administrative error. This amendment will require the Secretary to waive only that part of a debt that is solely due to administrative error. Subsection 1237A(3) allows the Secretary to waive the whole of the debt if 100% of the debt was due solely to administrative error.

A debt is attributable solely to administrative error where the debt was solely caused by an error by an officer of the Commonwealth. New section 1237A does not apply to that part of the debt that was partly caused by administrative error and partly caused by other factors, for example, an error by the debtor (a note to section 1237A advises the reader of this limitation).

It is possible that a person could receive an overpayment in good faith that was solely caused by administrative error if the Department coded two children into the system instead of one child. If the person later received a notice from the Department advising that two children were being taken into account then, following that notice, the person could no longer be considered to be receiving the payment in good faith. Under new section 1237A, the Secretary will be able to waive that part of the debt that was received in good faith (the extra payments received prior to the Department's notice) but will not be able to waive that part of the debt received by the person after the notice was given.

New section 1237AA provides for the waiver of a debt where a person was convicted of an offence and the court indicated in sentencing that it imposed a longer custodial sentence because the debtor was unable or unwilling to pay the debt. The new section overcomes the problem identified by the AAT in *Re Dennis* and provides that part of a debt can be waived if the longer sentence did not take the whole of the debt into account.