



Debts – what to do if you have a Social Security Debt

This factsheet explains what to do if you have been overpaid Social Security payments and owe Centrelink a debt. If Centrelink advises you that you owe a debt - don't panic. Read this factsheet to see what you can do.

What is a debt?

If you are paid more of a pension, allowance or benefit than you are entitled to, even if it is not your fault, the amount you were overpaid is a debt owed to Centrelink.

Do I owe a debt to Centrelink?

Centrelink can make mistakes. Centrelink could have the wrong facts. Centrelink could have applied the law incorrectly. Just because Centrelink says you have been overpaid does not mean the decision to raise a debt is correct.

What actions can I take?

Get independent advice about your debt. See below for where to get help.

Get a copy of your file from Centrelink to check the facts. For further information on getting a copy of your file, see the factsheet "Freedom of Information".

If you think there's been a mistake and the debt shouldn't exist at all, you can appeal. See below for details on how to appeal.

Is the debt amount correct?

Centrelink sometimes calculates debts incorrectly. The debt could actually be smaller. It is often a good idea to check and if you believe the amount of the debt is too high, to appeal the amount of a debt. See below for details on how to appeal.

The amount of a debt can occasionally increase as a result of an appeal. This is usually due to matters such as the dates of the debt, the reason for the debt and the information Centrelink used to

calculate the debt. Therefore, it is important to check these details before you appeal and seek independent advice from a Welfare Rights Centre if necessary.

Why was a 10% penalty added to the debt?

A 10% penalty may be added to your debt if the reason for your debt is:

- you refused or failed to provide information to Centrelink about your income from work; or
- you knowingly or recklessly provided false or misleading information about your income.

The 10% penalty cannot be added if:

- you had a "reasonable excuse" for refusing or failing to provide the information; or
- you were not notified that you needed to provide the information.

If you think you should not have to pay a 10% penalty you can appeal that decision. See below for details on how to appeal.

How does Centrelink collect debts?

Centrelink normally sends you a letter demanding repayment of the debt within 28 days. Don't panic. You don't need to repay the entire amount within 28 days. However, you should contact Centrelink before the due date to negotiate repayments.

Centrelink doesn't need your permission to start collecting a debt from you. Centrelink may collect debts by taking the following action(s):

- if you are getting a Social Security payment, it can deduct money from your payment;
- if you are not getting a Social Security payment, Centrelink will try to negotiate a repayment arrangement with you;
- Centrelink can "garnishee" your wages or bank account. This means that money can be taken from your bank account or wages. Your tax return can also be garnisheed;



- you can be taken to court and the court may make an order about how the debt is to be repaid.

How much can Centrelink collect each fortnight?

If you are getting a Social Security payment Centrelink normally deducts 15% of your payment each fortnight (not including Rent Assistance and other extras) to recover a debt. However, it may deduct as much as 95% from some payments, eg, Family Tax Benefit.

If you have extra income Centrelink will want to increase the amount of your repayments.

What if I can't afford the debt repayments?

Don't agree to repay more money than you can afford. If you can't afford the debt repayments, you should call Centrelink's debt recovery number 13 63 30 to negotiate the amount you repay each fortnight.

To help you work out how much you can afford to repay each fortnight, download and complete the "Financial statement" form from www.welfarerights.org.au, or ask your local Welfare Rights Centre/Advocate to send you one.

If Centrelink will not agree to reduce your fortnightly repayments and you can't afford it, you can appeal. See below for details on how to appeal.

Do I have to repay the debt?

It is possible that even where a debt exists, you may not have to pay it back. You can make an appeal asking Centrelink to "write-off" or "waive" your debt.

It can be complicated to argue that a debt should be written-off or waived, so get independent advice. See below for details on where to get help.

Can the debt be written-off?

When Centrelink writes-off a debt, you do not have to make repayments for an indefinite or specific period. The decision to write-off a debt can be reviewed by Centrelink at any time.

There are only limited grounds to have a debt written-off. The most common grounds for write-off are:

- you cannot repay the debt. If you are receiving a Social Security payment you will need to show that deductions from your payment would cause you severe financial hardship;
- you are not receiving a Social Security payment, and it would be too expensive for Centrelink to collect the debt;
- there is no proof the debt exists (eg, the records about your debt have been lost);
- you have been discharged from bankruptcy (subject to some exceptions);
- the person who owes the debt has died and there is no estate;
- the six year limitation period applies.
- If you think your debt falls into one of these categories, make an appeal. See below for details on how to appeal.

Can the debt be waived?

If a debt is waived, it means that you never have to repay it.

Your whole debt may be waived or only a part of it. If your whole debt is waived, any amount you have repaid to Centrelink will be refunded to you.

There are only a few grounds for waiver of a debt. The main two grounds are explained here. If you want to know about the other types of waiver contact your local Welfare Rights Centre/Advocate for advice.

"Administrative error" waiver

Your debt **must** be waived if it was caused solely by Centrelink "**administrative error**" and you received the payments "**in good faith**".

It can be difficult to convince Centrelink that a debt was "solely" caused by its error. Centrelink may admit that it made a mistake, but point out that you made a mistake as well (eg, failed to answer a question on your claim form). Although Centrelink may refuse to accept that your debt was solely caused by its error, the Administrative Appeals Tribunal could view your case differently and decide that your debt must be waived. Keep appealing if you are convinced that Centrelink error caused the debt.



In order for your debt to be waived on the grounds that it was caused solely by administrative error, it must be accepted that you believed that you received the payments in “good faith”. This means that you believed that you were entitled to the payments received during the debt period, at the rate paid.

Waiver due to administrative error can only apply where a debt is raised by Centrelink more than six weeks after the commencement of the debt.

Generally, if you want a **Family Tax Benefit debt** waived you also need to show that you will suffer “severe financial hardship” if you have to repay the debt.

“Special circumstances” waiver

Your debt **may** be waived where you have “**special circumstances**” and your debt did not occur because you or another person “**knowingly**” making a false statement to Centrelink or knowingly failed to comply with Social Security law.

Whether there are “special circumstances” will depend on the particular facts of your case. “Special circumstances” may include:

- financial hardship;
- you or your family’s poor health;
- high medical costs due to you or your family’s poor health;
- any disability that affected your ability to understand or comply with Centrelink’s rules;
- if you would have been entitled to another Social Security payment if you had realised the need to change payments;
- any Centrelink errors that partly caused the debt; and
- any unusual or out of the ordinary circumstances that you or your family has suffered.

Be persistent in seeking waiver of your debt. It may be useful to ask doctors, counselors or community caseworkers to provide reports to help explain your circumstances.

You must also show that you did not knowingly make any false statements to Centrelink or knowingly fail to give Centrelink correct information. For example, if you knew you were giving Centrelink incorrect details about your

income from work, then your debt cannot be waived under this ground.

Will Centrelink automatically consider waiver of the debt?

No. Usually you need to make an appeal and ask Centrelink to waive your debt. See below for details on how to make an appeal.

What happens if I become bankrupt?

If you owe a Social Security debt, and then become bankrupt, you do not have to repay the debt during the period of bankruptcy. Centrelink cannot take deductions from your payments, require payments by installments, garnishee your bank accounts or take court action to recover the debt.

After bankruptcy, Centrelink can only recommence to recover a debt in limited circumstances. Whether or not a debt can be recovered after bankruptcy is a complicated issue. If Centrelink tried to recover your debt after you are discharged from bankruptcy you should seek legal advice from your local Welfare Rights Centre/Advocate.

Could I be prosecuted?

As well as owing a Centrelink debt, you may also be prosecuted if the debt occurred due to fraud. Centrelink does not make the decision about whether or not a person is prosecuted. That decision is made by the Director of Public Prosecutions. Fraud means where you deliberately gave Centrelink false information or failed to give information, or received a payment that you knew you were not entitled to.

You may get a letter saying that your case is being considered for prosecution. Centrelink may ask you to attend an interview or make a statement. You are under no legal obligation to attend this kind of interview or say anything. Ask Centrelink to put questions in writing if you are unsure.

Never ignore Centrelink notices, but always seek independent advice before attending a prosecution interview or making any statement about the debt.

For more information on prosecutions, see the factsheet “Prosecution of Social Security offences”.



Appeal rights

If you think a Centrelink decision is wrong you have the right to appeal against it. **Appealing is easy and free.** To appeal simply tell Centrelink that you are not happy with its decision and that you would like to appeal to an Authorised Review Officer (ARO). It is best to lodge an appeal in writing and you should keep a copy of your appeal letter. However, you can lodge an appeal over the telephone.

The ARO is a senior officer in Centrelink who has the power to change the original decision. Many people are successful at this level.

You can appeal to an ARO at any time. However, to receive back pay from the date you were affected by the original decision, you must appeal to an ARO within 13 weeks of receiving written notice of the original decision. If you appeal more than 13 weeks after receiving the notice and you are successful, you will only receive back pay from the date you appealed.

If you think the ARO decision is wrong you can appeal to the Administrative Appeals Tribunal (AAT-1). The AAT-1 is independent of Centrelink.

You have further appeal rights to the Administrative Appeals Tribunal (General Division) and the Federal Court. Time limits apply.

For more information on appealing see the factsheet "Appeals – how to appeal against a Centrelink decision" and the guide "Appealing to the Administrative Appeals Tribunal".

Where can I get help with my appeal?

If you have any questions about making an appeal you should contact your local Welfare Rights Centre/Advocate.

Welfare Rights Centres are community legal centres which provide **free** legal advice and assistance with Centrelink problems. They specialise in Social Security law. They are independent of Centrelink. Contact the Welfare Rights Centre/Advocate in your state or region see www.welfarerights.org.au.

Interpreters

If you think you need an interpreter, or if you feel more confident with an interpreter, you should use one of the three **free** available interpreter services.

- Most Centrelink offices have interpreters available at regular times each week. Your local Centrelink office can tell you about their available languages and times.
- You can telephone the Centrelink Multilingual Call Centre on 131 202 and speak to a bilingual Centrelink officer.
- You can also call the **free** Telephone Interpreter Service (TIS) on 131 450 and ask for an interpreter.

Please Note:

This Fact Sheet is collaboration between the National Welfare Rights Network (NWRN) and Basic Rights Queensland (BRQ). It contains general information only and does not constitute legal advice.

NWRN members are community legal centres, which provide specialist advocacy and legal services in Social Security law, administration and policy. We are independent of Centrelink. All assistance is free. If you need legal advice please contact the NWRN member closest to you:

| | Metropolitan | Regional |
|--------------|----------------|--------------|
| Adelaide: | (08) 8223 1338 | 1800 246 287 |
| Brisbane: | (07) 3421 2510 | 1800 358 511 |
| Canberra: | (02) 6218 7977 | |
| Darwin: | (08) 8982 1111 | 1800 812 953 |
| Freemantle: | (08) 9432 9790 | 1300 430 599 |
| Geelong: | (03) 5221 4744 | |
| Hobart: | (03) 6223 2500 | 1800 066 019 |
| Launceston: | (03) 6334 1577 | 1800 094 164 |
| Melbourne: | (03) 9481 0355 | |
| Perth (Nth): | (08) 9328 1751 | 1800 642 791 |
| (Sth): | (08) 6253 9500 | |
| Sydney: | (02) 9211 5300 | 1800 226 028 |
| Townsville: | (07) 4721 5511 | |
| Wollongong: | (02) 4276 1939 | |

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