

20 January 2011

Australia's social security system exacerbates insecure work problems

Overview

For working age people, Australia's social security system is modelled on a world that no longer exists. The system need to be overhauled if it is to be an effective safety net and back up for the industrial relations system.

Insecure Work

The Independent Inquiry is timely as workers and households bear more and more risk. Big employers also need to increase their efforts with respect to people with disability, longer-term unemployed people and training responsibilities.

"Many people who contact us are casual workers or people over 50 who have lost their jobs"

- WorkChoices and Welfare2Work were planned together

Who are the people?

They are unemployed and underemployed, falling in and out of casual work. At August 2011, 547,000 people were on the Newstart Allowance.

- one in 2 have disabilities
- one in 3 is over 45 years old
- one in 5 have been out of work for more than 12 months

The Henry Tax and Transfer Review recommended in effect an increase of \$50 per week in the rate of the Newstart Allowance. In 2009 the OECD questioned the efficacy of the payment to help people into work.

Major Issues

- Liquid Assets Test Waiting Period - kicks in at \$2,500.00 of liquid assets. The test should be abolished. However, note that the level would be \$16,000 if indexation had been applied.
- Adequacy - Newstart Allowance is approximately \$243.00 per week (\$486 per fortnight)
- Withdrawal rate of the Newstart Allowance- after \$62 per fortnight of other income received
- Indexation - to CPI as opposed to the far more beneficial indexation available for pensions

- Debts to Centrelink - over 2 million actual debts in 2009/10 – the system is too complex. Furthermore, the balance between the responsibilities of the system versus the responsibility placed on the individual is out of balance. For example, Centrelink may be 99% at fault for an overpayment but debt waiver on administrative grounds cannot occur. The sole cause of the debt has to be Centrelink's (and the overpayment has to be received in good faith).
- Prosecution - 79.1% of prosecutions for social security fraud relate to employment income (ANAO Report No. 10 2010-2011 p.63)

Case Studies

Michelle lives in regional Australia. She was receiving Parenting Payment at the single rate. She has a 2 year old and has just separated from her husband. The separation was acrimonious. Michelle worked retail shifts at the super market and cleaning shifts at two of the town's motels.

Michelle's work was irregular, casual and at call. However, she welcomed being able to supplement her income.

Michelle found it complex to report her earnings fortnightly when, in fact, she was receiving the income not in the fortnight she worked but when each of the employer's ran their pay cycles. Michelle was over-reporting income some fortnights and under-reporting in others. She had more fortnights of under-reporting.

Despite contacting Centrelink on a number of occasions about this problem, Michelle ended up with a \$7000.00 debt to Centrelink which she was paying back. Michelle was also eventually prosecuted. She tried to gain access to legal services but was eventually given advice by a private practitioner to plead guilty for a whole number of practical reasons.

Michelle did not have criminal intent but she did make mistakes in a complex system.

Hanja lives in a capital city. She immigrated to Australia 20 years ago. For 8 years she ran a successful, small retail business. Unfortunately, she went into bankruptcy as expenses became too great. From the time of her business collapse until she gained regular, casual work at the local government level, she was on the Newstart Allowance. She stayed on the Newstart Allowance, although at a much reduced rate when she gained work.

Unfortunately, she ended up with a debt because of extra shifts undertaken. Hanja had been taking her payslips to Centrelink and thought she was doing the right thing. However, she had been receiving letters from Centrelink and those letters indicated the employment income she was receiving. Hanja did not check because she thought the payslips were enough. Hanja's debt could not necessarily be waived on administrative grounds because the debt was not solely Centrelink's, as required by the *Social Security Act 1991*.

Although Hanja's debt was relatively small, in her circumstances it was a huge problem for her. Furthermore, Centrelink's debt recovery team refused to allow Hanja to pay back the debt at a manageable amount per fortnight.

Centrelink overpayments and prosecutions – workforce casualisation and other causes

In this section, Welfare Rights puts the case that the extraordinary high level of casualisation and changes to the composition of work are major contributing factors to the high levels of overpayments, leading to financial stress and in some cases, the criminalisation of working poor. Commentators suggest that people on low incomes are targeted by the Director of Public Prosecutions much more than white-collar criminals.¹ We also outline why the levels of debt, the causes of debt, and the consequences for working people of a Centrelink payment, is an issue that warrants serious attention.

Australia's highly-targeted, means-tested social security system system is so complex that income support recipients face considerable difficulties meeting or knowing how to comply with their reporting requirements. Mistakes and errors – by both Centrelink clients and staff – happen far too frequently. The issue of overpayments is at endemic proportions, with 1,965,994 overpayments worth \$1,692 million raised in 2010-11. (Source: Centrelink Annual Report, 2010-11.)

Over the same period there were 555,310 FaHCSIA - payment debts, valued at \$294.36 million. (FaHCSIA Annual Report, 2010-11). Welfare Rights' members report that debt cases comprise 50 to 60 per cent of the cases dealt with by Welfare Rights Centres.

The main reason for debt is under or non-declared earnings. The Australian National Audit Officer Report into Centrelink Fraud Investigations reports that in 2007-08, of those cases

¹ See: Garnaut, J, *Law targets dole fraud as rich cheats escape the net*, 6 February 2006, p. 1 and Hannah, L. *Tax evaders avoid tome behind bars*, Weekend Australian Financial Review, 18-19 June, 20101

successfully prosecuted, 79.1 per cent were for employment-related offences.² These cases included under-declaring casual earnings; failure to declare part-time and full-time earnings; and failure to declare partner income.

Member of a couple accounted for 6.3 per cent of cases, education 4%, and non-employment income and assets (mainly from older people) at 5.4 per cent.

The smallest group of those prosecuted were for identify fraud, at 1.4 per cent.

Welfare Rights believes that, apart from the inadequacy of social security payments, the level of debts and overpayments is the most pressing problem with the social security system in Australia. The issue of overpayments is at endemic proportions, with 1,965,994 overpayments worth \$1,692 million raised in 2010-11. Source: Centrelink Annual Report, 2010-11.

It should be noted that successive governments have consistently placed more obligations and responsibilities on individuals; with severe consequences for error or failure, even if caused by lack of understanding of a very complex system. Where an individual seeks review of a Centrelink decision there is a high level of overturn rate. For example, at the level of Authorised Review Officer level, in 2010-11 over 32 per cent of decisions were changed upon appeal, according to the latest Centrelink annual report.

Working patterns and income reporting

The increasing casualisation of the labour market and the move to part-time rather than full-time employment adds additional elements and complexity. Many people on income support payments are reliant upon Centrelink entitlements to supplement their part-time or casual work.

Around 40 per cent of workers are engaged in insecure work arrangements, such as casual work, fixed term work, contracting or labour hire.

Currently, 16 per cent of teachers are now on short term contracts. The accommodation and food service industry have 20 per cent of all casual workers and the retail industry has 19 per cent. Two thirds of all hospitality workers are casual.

² Australian National Audit Office, *Centrelink Fraud Investigations*, Performance Audit Report No. 10, 2010-11, p. 63.

This well-documented shift to a highly casualised labour market, combined with the liberalisation of means tests for eligibility for family payments and child support means that increasing numbers of Australians receiving some form of Government assistance (from either Centrelink or Family Assistance Office).

Almost 7.2 million Australians now interact with the Social Security system in an increasingly complex environment, with many unwittingly and inadvertently becoming the victims of a system of financial assistance that is meant to help them.

The causes of overpayments

Debts often occur because people have limited or no understanding of what is required to ensure they receive the correct amount each fortnight. Centrelink letters and correspondence which attempt to explain individual obligations and requirements to recipients are often difficult to understand, particularly for people with limited literacy, with limited formal education or whose first language is not English.

Simple errors and misunderstandings – like confusing declaration of gross and net amounts, or wrongly guessing the amount of earnings because employers do not provide pay slips, or having to juggle multiple jobs paid at varying rates of payment with multiple allowances, having earnings pay periods unaligned with Centrelink payment periods – can lead to large debts for income support recipients. In the worst case scenario it can result in prosecution for Social Security fraud.

It is not uncommon for a person to be employed by a number of employers.

Earnings declaration can be made more problematic if a person is not provided with regular payslips. This is increasingly more common, as reported in the University of Wollongong study undertaken with NSW Legal Aid.³ At Welfare Rights we are seeing increasing numbers of people who are being sent their pay slips via email online – but may not even know it!

If people do not have regular access to a computer, or a reliable internet connection, then this can be a recipe for disaster – and an overpayment. This scenario is becoming more common, and the amount put into the bank for many is mistakenly regarded as the amount to be declared to Centrelink. From our casework trends we are noticing more contact with casual employees getting into debt with Centrelink. We have provided two de-identified case studies about this issue in our overview section at page 2 above.

³ Hui, F, et al, *Centrelink Prosecutions at the Employment/Benefit Nexus: A Case Study of Wollongong*, Social Accounting and Accountability Research Centre, Report No. 1, 2011.

Aboriginal and Torres Strait Islander income support recipients are particularly susceptible to problems with overpayments and are twice as likely to incur a debt as non-Aboriginal clients. Centrelink has sought to minimise overpayments, but still too many occur.

As well as addressing the broader policy issues around prosecutions policy, we propose that Centrelink take steps to better understand this problem, and put in place strategies, with business and employers groups, unions and Welfare Rights, to address this problem.

Welfare Rights believes that it is the fundamental structure of the system that places people at risk of overpayment. For example, earnings must be reported to Centrelink when the income is earned, rather than when the income is paid or received.

Prosecution and its impacts

The level of deliberate and intentional fraud in the system is acknowledged to be extremely small, at around 0.044%. Unfortunately too many people are saddled with debts – often not intentionally incurred. Individuals can, however, be prosecuted and criminalised for incurring debts with the potential for imprisonment or other sentencing options. Apart from the recording of a fraud conviction they can also suffer a range of other impacts including loss of employment and preclusion from being employed in particular fields into the future.

Welfare fraud and tax fraud

Some have criticised the treatment of those charged with offences against Social Security compared to those involving the Australian Taxation Office. We note that the failure to pay a commensurate amount of tax does not invoke a similar level of prosecutorial activity as does a failure to notify of Social Security earnings. We also note that the Commonwealth Director of Public Prosecution (CDPP) expends a far greater level of its resources in the pursuit of “welfare fraud” than it does to “tax fraud”, with 80 per cent of cases that were prosecuted by the CDPP in 2004-05 involved Centrelink prosecutions. The CDPP also prosecutes cases involving tax fraud, Medicare fraud, drug importation, money laundering and people smuggling, yet the bulk of its activities is focussed on “welfare” fraud.

Inappropriate recourse to prosecution activity

There were 7,339 cases in 2007-08 that met Centrelink guidelines but were not referred to the CDPP for consideration of prosecution action. However, Welfare Rights still sees too many instances where cases should never have been referred to the CDPP.

We have consistently raised issues with government and Centrelink, and more recently, the Department of Human Services. Generally, Centrelink considers prosecution in cases where overpayments are fraudulently obtained and the amount is over \$10,000.

Lack of legal representation and inconsistent treatment

There is a 99% conviction rate for Social Security prosecutions primarily because recipients are unable to get legal representation for contested matters and because there are great incentives to “plead guilty. In our experience, many of those prosecuted are extremely vulnerable and their life circumstances should be taken into account and it is not in the public interest to prosecute.

Impact of criminal conviction on future employment options

If a person is convicted for fraud for a Centrelink debt, they will receive a criminal record. A number of professions restrict the employment and licensing/registration of people with a criminal record some include:

- persons working with children
- police and corrections officers
- lawyers, public notaries, justices of the peace
- doctors, dentists, nurses, pharmacists and other health professionals
- members of Parliament , public office holders, company managers
- conveyances, real estate and land agents
- building work contractors, plumbers and gas fitters
- taxi and other public passenger licences
- gaming licence holders, liquor sellers and publicans.

A new approach that focuses on administrative penalties, warnings and a limited amnesty from prosecution

A significant problem with the current system is the potential for prosecution to act as a disincentive for correction if an income recipient is aware that they are being overpaid or that they have not been paid the correct amount (be it intentionally or unintentionally). Increasingly we are seeing income support recipients who know they are being overpaid are too scared to fix the problem because of fear of going to prison. The debts may only be for relatively minor sums at present, but, these sorts of debts left unchecked build up in the system. Whilst confined to a small cohort of clients often in extremely vulnerable circumstances, some people do state they now realise they did the wrong thing but think that there is no avenue to rectify without risking the raising of debts and potentially criminalisation.

The public rightly expects our system of income to support protect those most in need. This approach is strongly supported by the Welfare Rights Centre. However, the system has become unbalanced. Certainly, strong sanctions and procedures which protect public revenue are essential, but the costs paid by some in the current arrangements are far too high.

We propose that the current prosecution guidelines be re-balanced toward a greater reliance on administrative warnings and other solutions instead of the current and often inappropriate recourse to criminal law. It should consider alternatives to criminal prosecution by building on the work currently being undertaken by the Department of Human Services which seeks to reform the way that Government services are delivered and information exchanged, for example, through greater reliance on verification systems.

Welfare Rights would recommend a limited prosecution amnesty. This would address the range of problems with current arrangements. An amnesty is not without precedent, and in 1995 the Government agreed to a limited amnesty from prosecution. Criminal prosecution would only occur in the most serious cases of deliberate, intentional Social Security fraud, such as persistent and serious multiple offences, identity theft and dual claims. Stern warnings would be provided to debt offenders.

The amnesty period would provide an opportunity for people to advise Centrelink of their correct circumstances without fear of prosecution and the imposition of a custodial sentence. There would thus be the opportunity for Centrelink records to be updated to ensure payment correctness with the potential for rate increases, rate reductions and in some instances cancellation of payments. Ultimately this strategy would prevent the accrual of further debts within the system into the future. Even if Government was unwilling to extend the amnesty to forgive the recovery of the debts which would have been raised through self-disclosure during the amnesty a prosecution amnesty would likely encourage individuals into action and protect future Government expenditure.

Centrelink overpayments, fairness and disincentives

With large numbers of individuals and families moving in and out of the income support system, and in and out of casual and part-time employment, the problem of a Centrelink overpayment is becoming a serious problem for many working people and their families.

Welfare Rights deals with many thousands of Australians who experience problems with the Centrelink rules. In December 2010 a Senate Legal and Constitutional Affairs Committee report found Centrelink's debt waiver rules were harsh and often unfair. The inquiry heard evidence that Centrelink's clients were forced to bear the costs of its mistakes. Centrelink

could make a multitude of mistakes and errors in assessing a person's entitlement to a social security payment and still accept no responsibility for its errors.

The main problem is that social security law requires that for a debt to be waived due to administrative error the debt must have arisen solely due to Centrelink error. Even if the person was partly responsible for the debt (eg a 1% contribution) the debt could not be waived under the administrative errors provision.

In the case of Family Tax Benefit (FTB), Centrelink can be 100% responsible for the debt, but unless a person can prove that they are in "severe financial hardship", the debt cannot be waived under the administrative error waiver provisions of the legislation.

Apart from the inadequacy of social security payments, debts are the main problem experienced by the seven million Australians receiving a payment from Centrelink. Overpayments are at endemic proportions, with 1,965,994 debts worth \$1,692 million raised in 2010-11. In our experience the debts arise mainly due to the complexity of the system, which includes the requirement that a person estimating their income for FTB, and Centrelink error either as part or the sole reason for the debt.

Debts cause considerable distress and anxiety for social security clients, particularly given that they are already severely disadvantaged, face considerable financial stress and may have underlying illnesses such as depression.

In the experience of Welfare Rights workers most debts arise due to the complexity of the system, client confusion or Centrelink error, or a combination of all of these factors. Welfare Rights was therefore heartened Jenny Macklin, the Minister for Families, Housing, and Community Services Indigenous Affairs pledged to fix the unfair Centrelink rules, telling the media in December 2010: "I want to make sure that the social security system is working as fairly as possible, so my department will review the report and its recommendations."

However, the Government to date has only responded to the Senate Legal and Constitutional Affairs Committee report about the debt waiver rules by stating that it wishes to ensure that social security law provides an appropriate balance between recovering person's entitlement and avoiding onerous and inequitable outcomes for clients. In its Report the Government notes that it is "actively engaging, and will continue to engage the National Welfare Rights Network in ongoing discussion to make the system fairer."

Since Welfare Rights made its submission to the Senate about the debt waiver issue in December 2010 we have raised this issue with the Minister's advisers and the department

and agencies. We remain committed to working with the Government to try to resolve an issue that is critically important to social security recipients across Australia.

Government inaction causing debts

An additional problem that causes a great deal of concern to tens of thousands of Australian families is overpayments that arise from the current complex family payments system. According to the FaHCSIA 2010-11 Annual Report, in 209-10 125,667 clients, around 6 per cent, owed family payment debts of around \$169 million. The average debt owed was \$1,342. In addition, 40,915 families missed out on their expected tax returns and had their tax returns garnished to cover an overpayment.⁴

Welfare Rights workers across Australia regularly deals with are clients who have incurred social security debts, many of substantial size, even where they have provided Centrelink or the Family Assistance Office (FAO), which is often located in the same office space as Centrelink, with the correct information about their family income.

Centrelink offices operate independently from FAOs, even though they are located in the same office. Information provided to either Centrelink or a FAO is not passed between each office. So, for example, a person who is in receipt of Parenting Payment and Family Tax Benefit (FTB) needs to report their income to both Centrelink (for Parenting Payment) and a FAO (for FTB).

One of the reasons for this is that the income test for Parenting Payment is a fortnightly income test, which requires that a person notify Centrelink of gross (before tax) income earned each fortnight. FTB has an annual income test which requires the person to estimate their income at the start of the financial year and provide updates as required to the FAO.

In practical terms this means that where a person reports their income to Centrelink via the telephone, or online, for Parenting Payment, they are also required to contact the FAO and advise of their income details for FTB. Where a person attends the local Centrelink office, they are required to inform Centrelink of their income and then attend that FAO counter and advise it of their income. Failure to do so will lead to a debt.

Welfare Rights' clients regularly vent their frustration and anger at this process, with many of them incurring Parenting Payment debts even though the FAO has all of their income details. Our clients have mistakenly believe the hype – that is, Centrelink operates as a one

⁴ Department of Families, Housing, Community Services and Indigenous Affairs, *Annual Report, 2010-11*, Appendix 1, pp. 367-8.

stop shop when in fact it doesn't – and this causes a multitude of significant problems for clients.

Even though Centrelink and FAOs are often located in the same office space, in our experience they might as well be on different planets. The failure to transfer information across these agencies is continual source of frustration for our clients and Welfare Rights workers.

Solving the debt problem

NWRN has put a detailed list of suggestions to Government and Senate inquiry about how to address the problems with overpayments and prosecutions. These are detailed in a 2009 paper: *Redressing the Balance of Risk and responsibility through active debt prevention strategies*.⁵ We will provide a copy of that submission with our supplementary submission to this Inquiry.

Additional proposals from the University of Wollongong study are also work serious attention, and mirror NWRN's suggestions for reform. These recommendations include:

- using existing data matching technology with the Australian Taxation Office to stop fraud before it happens;
- trialling this data management system with at least one large employer, the ATO and Centrelink;
- creating a more flexible Centrelink income reporting cycle; and
- an education program for those receiving the benefits.

⁵ Find at: www.welfarerights.org.au